* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No. 129/2018**

% **Reserved on: 9th February, 2018**
**Pronounced on: 15th February, 2018**

SHEKHAR ANAND & ORS. ..... Appellants

Through: Mr. Sabsachi Mishra and Ms. Bikash Vishawakapma, Advocates.

versus

SUMAN KHURANA ..... Respondent

**CORAM:**
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J**

**C.M. Appl. No. 5206/2018 (for exemption)**

1. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

**RFA No. 129/2018 and C.M. Appl. No. 5205/2018 (for stay)**

2. This Regular First Appeal is filed by the appellants/defendants under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugning the judgment of the trial court dated 23.11.2017 by which trial court has dismissed the leave to

defend application filed by the appellants/defendants and has decreed the suit filed under Order XXXVII CPC for recovery of Rs.16,00,000/- given as a friendly loan.

3. The facts of the case are that respondent/plaintiff filed the subject suit pleading that he had granted friendly loan of Rs. 16 lacs to the appellants/defendants and with respect to which a loan agreement dated 23.1.2015 was signed by the appellant no. 1/defendant no. 1 for himself and on behalf of appellant nos. 2 and 3/defendant nos. 2 and 3. To secure the loan, three cheques of Rs.6,50,000/-, 6,50,000/- and Rs.3,00,000/- were given of the appellant no. 1/defendant no.1 bearing Nos. 017958, 017959 and 009727, and which cheques when presented were dishonoured and hence the subject suit was filed for recovery under Order XXXVII CPC.

4. Appellants/defendants filed the leave to defend application and stated various aspects of how appellant no. 1/defendant no. 1 and one Sh. Sudhir Kumar who are friends and how they formed the company being the appellant no. 3/defendant no. 3. It was then pleaded that after the resignation of Sh. Sudhir Kumar as a Director of the appellant no. 3/defendant no. 3 company the husband

of the respondent/plaintiff Sh. Madan Khurana and one Sh. Rajesh Jha started a business together for plastic bolls in the year 2014 and in which Sh. Madan Khurana invested Rs.11 lacs. Since Sh. Rajesh Jha is said to have left work taking away major investment, therefore, Sh. Madan Khurana compelled appellant no. 1/defendant no. 1 to pay Rs.11 lacs. There are other averments in the leave to defend application with respect to appellant no. 1/defendant no. 1 paying the amount of Rs.11 lacs to Sh. Madan Khurana. All the aforesaid averments in the leave to defend application in the opinion of this Court are irrelevant and have no bearing to the issue of the cause of action in the suit and which cause of action in the suit is of the dishonoured cheques and that the case of the appellants/defendants was that the cheques were forcibly taken away and appellant no. 1/defendant no. 1 was forced to put thumb impression and sign on blank papers and therefore in fact FIR dated 27.4.2016 has been lodged against Sh. Madan Khurana, his son Sh. Jayant Khurana and his nephew Sh. Karan Handa. This is stated in para 6(d) of the application for leave to defend and which para reads as under:-

> "6(d) The deponent submits that on 23/04/2016 at around 2:00 pm, a criminal assault with an intent cause death was committed upon the deponent by the husband (Madan Khurana), son (Jayant Khurana) and her

nephew (Karan Handa) at the work place of the deponent and forcibly took away several signed blank cheques and forced the deponent to put the thumb impressions and sign on the blank papers and forced the deponent to pay more money. It is further pertinent to mention here that the police officials rescued the deponent and took him for medico-legal examination. **Copy of the statement/complaint by the Deponent against the plaintiff's Huband, Son and nephew is annexed herewith as an Annexure A-1.**"

5. Trial court has in my opinion rightly dismissed the leave to defend application holding that the defence is a moonshine because there is no credibility whatsoever in the case forthwith by the appellants/defendants that the cheques were taken away by force and forcibly the appellant no. 1/defendant no. 1 was made to put his signatures and thumb impressions of certain papers. These 'certain papers' would include the loan agreement dated 23.1.2015 and accordingly it is argued on behalf of the appellants/defendants through their counsel that loan agreement is dated 23.1.2015 for 36 days but the cheques are dated 29.2.2016 and not 29.2.2015 and therefore clearly the loan agreement should be held to have been signed under force/coercion and the details on the cheques were only put subsequently. This argument, however, of the appellants/defendants in my opinion carries no weight merely because of discrepancy in the year 2015 instead of 2016 because indubitably the cheques are of the

appellant no. 1/defendant no. 1 and signed by him and also filled in by him and the loan agreement is also admittedly signed and bears the thumb impressions of the appellant no. 1/defendant no. 1 as many as three times. Therefore, trial court has rightly held the story put forth by the appellants/defendants as moonshine of the cheques having been taken by coercion/force by the respondent/plaintiff.

6. There is no merit in the appeal and the same is hereby dismissed.

**FEBRUARY 15, 2018** **VALMIKI J. MEHTA, J**