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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 1st May, 2018

\+ **RFA 259/2017 & CM. APPL. Nos. 8857/2017, 12364/2017 &12382/2017**

RAJESH KUMAR DIXIT ..... Appellant

Through: Mr. Vijay Sharma, Advocate (M.No.9717348305)

versus

SOMDUTT SHARMA (SINCE DEAD) THR LRS & ORS. ..... Respondents

Through: Mr. M. L. Bajaj, Advocate (M.No.9810987273)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This is an appeal challenging the impugned judgment and order dated 7th November, 2016 by which the suit of the Respondents/Plaintiffs (*hereinafter, 'Plaintiffs'*) has been decreed in the following terms:-

> "*11. Accordingly, the application filed by the plaintiff U/o 12 Rule 6 of the CPC is hereby allowed to the extent that a decree for the amount of Rs.4,85,000/- is passed in favour of the plaintiff and against the defendant alongwith the interest @ 9% per annum from the date of institution of the present suit till the date of the recovery of the decreetal amount of Rs.4,85,000/- (Rs. Four Lakhs and Eighty Five Thousands Only). Decree-sheet be prepared accordingly by the Reader.*"

2. The Plaintiffs filed the subject suit for recovery of Rs.8,06,000/- along with *pendente lite* and future interest. The Plaintiff also sought sale of the property, documents of which were kept as security. The prayer sought in the plaint is set out below:-

> *"(i) For recovery of Rs.806000/- (rupees eight lac six thousand), by plaintiff from the defendant;*
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> *(ii) For ordering payment of pendentelite and future interest, on principal, by the defendant of the plaintiff, till satisfaction of the decree liable to be passed;*
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> *(iii) For directing defendant to sell the Property No.1877, Ward No.V, Situated at Gali Mata Wali Cheera Khana, Nai Sarak Delhi, situated on second floor with roof rights, upto sky heights, with common rights of entrance, passage and stairs, etc, raised on area of 58 sq. mtrs., for recovery of plaintiff's due money payable by him; alternatively, putting the defendant's referred property to auction sale for recovery of the due amount of the plaintiff from the defendant; and*
>
> *(iv) Restraining defendant permanently, from changing present status thereof till payment of due money of plaintiff.*"

3. The Plaintiff along with plaint, filed a copy of a mortgage deed dated 8th May, 2013 along with the legal notice dated 6th May, 2014 issued by him and the reply dated 21st May, 2014. 7

4. The Appellant/Defendant (*hereinafter, 'Defendant'*) filed his written statement and made the following averments in the written statement:-

> "*4. That no alleged mortgage deed as relied upon by the plaintiff, has ever been executed between the parties at any point of time. Without prejudice to the rights and contention of the defendant, the contents of the said alleged mortgage deed are self contradictory, as a result, the said alleged mortgage deed cannot be relied upon, hence the*

suit of the plaintiff is not maintainable and liable to be dismissed."

Reply on merits:

……..

2. ………It is submitted that there were good friendly/family relations between the plaintiff and the defendant was in need of money of Rs.5 lacs somewhere in the month of May, 2013 and he approached the plaintiff and demanded a sum of Rs.5 lacs. Although there were good friendly/family relations between the plaintiff and the defendant but at that time the plaintiff put a condition to lend the money to the defendant on interest @3% p.m. and further told the defendant to enter into a loan agreement. Since the defendant was in dire need of money, hence the accepted all the proposals put by the plaintiff. The plaintiff handed over a sum of Rs.4,85,000/- to the defendant after deducting the interest @3% p.m. for the month of May, 2013 and obtained signature of the defendant on blank stamp paper and blank paper on the pretext of preparing the loan agreement."

5. In view of the averments made in the written statement and the admissions made in the documents, the Plaintiffs filed an application under Order XII Rule 6 CPC seeking a judgement on admissions. In the meantime, the Defendant also moved an application for amendment of the written statement. The said application for amendment was dismissed by the Court on 5th February, 2016, on the ground that, though the law on amendments is quite liberal, the Defendant cannot be allowed to withdraw admissions made in the written statement.

6. Thereafter, the application under Order XII Rule 6 CPC was allowed

by the Trial Court vide the impugned order.

7. The counsel for the Defendant has contended that a CM(M) Revision Petition is pending before this Court challenging the order by which the amendment application was dismissed. On this ground, it is prayed that the hearing in this appeal may be adjourned. A similar submission was made on 17th March, 2017 on which date this Court had recorded that the present appeal would be heard. Thereafter, notice was issued in the appeal. It is the further submission of the Defendant that the reply dated 21st May, 2014 to the legal notice was signed by Mr. Alok Bharti, Advocate without instructions having been given by the Defendant. It is the Defendant's submission that Mr. Alok Bharti, Advocate was in collusion with the Plaintiffs as there were some property transactions between them. He further submits that the stand of the Plaintiffs is contradictory, inasmuch as, in the reply relied upon by the Plaintiffs the interest rate is 3% per month. However, in the mortgage deed dated 8th May, 2013 relied upon by the Plaintiffs, it has been mentioned that the loan is `*without interest*'. He further submits that the admissions in the written statement being contrary to the documents, the said admissions ought not to be held against him.

8. Ld. Counsel for Plaintiffs, however, submits that the admissions made by the Defendant are categorical and clear. The Defendant having admitted his signature on the mortgage deed, his only defence is that his signatures were obtained on a blank paper. Mr. Bajaj further submits that the written statement also has a categorical admission and hence the impugned judgment has been passed.

9. The Court has heard the rival submissions of the parties. A perusal of the reply to the legal notice shows that the admission by the Defendant is

clear and categorical. The same is extracted below:-

> "*It is submitted that there were good friendly/family relations between your client and my client and my client was in need of money of Rs.5 lacs somewhere in the month of May, 2013 and he approached your client and demanded a sum of Rs.5 lacs. Although there were good friendly/ family relations between your client and my client, but at that time your client put a condition to lend the money to my client on interest @ 3% p.m. and further told my client to enter into a loan agreement. Since my client was in dire need of money, hence he accepted all the proposals put by your client. Your client handed over a sum of Rs.4,85,000/- to my client after deducting the interest @ 3% p.m. for the month of May, 2013 and obtained signature of my client on blank stamp paper and blank paper on the pretext of preparing the loan agreement. My client in good faith and keeping in view the friendly/family relations put his signature on the blank documents/paper brought by your client. Thereafter my client continued to make the payment of interest amount to your client regularly and punctually every month to the tune of Rs.15,000/- per month upto the month of April, 2014.*"

10. A similar admission, in fact, is contained even in the written statement in paragraph 2. The written statement bears the signature of the Defendant and the reply to the legal notice clearly states that it has been issued under instructions of the Defendant. The plea of collusion does not appear to be valid, inasmuch as the reply in the beginning, states as under:-

> "*Sir,*
>
> *My client Shri Rajesh Kumar Dixit S/o Shri*

Shyam Kishan Dixit R/o 1877, (Second Floor), Gali Mata Wali, Chira Khana, Chandni Chowk, Delhi-110006 has handed over to me your notice dated 06.05.2014, which was received by him on 08.05.2014, issued by you on behalf of your client Shri Somdutt Sharma S/o late Shri Beni Prasad Sharma R/o 70-71, Krishan Kunj Part-I, Ground Floor, Laxmi Nagar, Delhi-110092, and instructed me to sent you the reply, which is as under:-

The contents of your legal notice are not only false and baseless but also the entire legal notice is a bundle of lies and it seems that your client has not given you the correct information to you".

11. The legal notice dated 6th May, 2014 was sent to the Defendant- Mr. Rajesh Kumar Dixit. The postal receipt and the AD card are also in original in the trial court record. The Defendant - Mr. Dixit had obviously handed over this legal notice to Mr. Alok Bharti, Advocate for issuing a reply. There is no other explanation as to how Mr. Alok Bharti came in possession of this legal notice. Moreover, the written statement has been signed by the Defendant and so is the *Vakalatnama*. It is, therefore, clear that the Defendant has, in fact, engaged Mr. Alok Bharti as an advocate for issuing the reply to the legal notice and also for filing his written statement before the Court. He cannot be allowed to resile from the admissions made in the said reply and in the written statement by merely alleging collusion between the Plaintiffs and his own lawyer.

12. The law on this aspect is settled, i.e., that admissions could be made either in the pleadings or otherwise as held in ***Daljeet Singh Anand Vs. Harjinder Singh Anand [FAO (OS) 228/2008 decision dated 2nd***

September, 2008] passed by a Division Bench of this Court. The observation of this Court is set out below:-

> "*12. We have considered the respective submissions. Law relating to passing of decrees on the basis of admissions is well-settled and hardly needs elaborate discussion. It is trite that the admission has to be unequivocal, clear and unambiguous. It is also well-settled that use of expression 'Otherwise' in Order XII Rule 6 CPC permits the court to pass the judgment on the basis of statement made by the parties not only on pleadings but also de hors pleadings, i.e. either in any document or even in the statement recorded in the court under Order X Rule 1&2 of the CPC.*"

13. Counsel for the Defendant submits that even the reply to the application under Order XII Rule 6 CPC ought to be considered. The settled position under Order XII Rule 6 CPC is that the admissions could either be in pleadings or in documents. In ***Assocham vs. Y. N. Bhargava [RFA 12/2011 decision dated 13th July, 2011]*** a reference to reply to application under Order XII Rule 6 CPC has been made by the court in para 8 as the admissions made in that case were in the said reply. The observation of the Court is as under:-

> "*8. In view of the admission, facts which have emerged from the record being the pleadings of the suit, the documents including the legal notice terminating tenancy and reply thereto, the application under Order 12 Rule 6 CPC and reply thereto (and which themselves are pleadings in terms of Order 12 Rule 6 CPC by virtue of the decision in the case of* ***Uttam Singh Duggal (Supra)****, the requirements of Order 12 Rule 6 CPC are complied with for the suit to be decreed*

under the same."

14. The following are the clear and unequivocal admissions made by the Defendant in the written statement and in the reply to legal notice.

- That the parties had good family/friendly relations with each other.
- That the Defendant was in need of Rs.5 Lakhs.
- That despite the friendly relations between the parties, the Plaintiff lent money to the Defendant on interest @ 3% per month.
- That since the Defendant was in dire need of money he accepted the conditions of the Plaintiff.
- That the Plaintiff then gave a sum of Rs.4,85,000/- (after deducting the interest for the first month) in May, 2013.
- That the Defendant signed blank papers in view of the friendly relations.
- That the Defendant made payments regularly of Rs.15,000/- per month up till April, 2014.

15. The above admissions are sufficient to hold that there is no serious dispute as to the receipt of the loan. The suit was filed for a sum of Rs.8,06,000/- which included principal of Rs.6,50,000/- and interest @ 24% per annum. However, by the impugned judgment, the Trial Court has passed a judgment on admissions only to the extent of Rs.4,85,000/- along with the interest @ 9% per annum, which is the admitted amount. The Defendant has only paid the interest amount as agreed between the parties till April, 2014. The suit was, however, filed in June, 2014 and thus the entire principal sum was due.

16. The Trial court has considered the pleadings and the documents. The

Trial Court has also noticed that the mortgage deed has been denied. The Trial Court has, thereafter, proceeded to pass a judgment on admissions under Order XII Rule 6 CPC as per the admitted stand of the Defendant. The Defendant has made a categorical admission to the extent of receipt of Rs.4,85,000/- both in the reply to the legal notice and thereafter in the Written Statement. The Judgment of the Trial Court, therefore, warrants no interference.

17. The appeal is, accordingly, dismissed. No order as to costs. All miscellaneous applications also stand disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 01, 2018/*ab*