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

Date of decision: 23rd May, 2018

\+ **RFA 211/2012**

VINOD MAHAJAN ..... Appellant

Through: Mr. S.B. Singh, Advocate (M-9811218405) with Appellant in person.

versus

GAYATRI ENTERPRISES & ORS. ..... Respondents

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present appeal arises out of the impugned judgment and order dated 24th March, 2012 by which the Trial Court dismissed the suit for recovery of the Plaintiff/Appellant (*hereinafter, 'Plaintiff'*) against the Respondents/ Defendants (*hereinafter, 'Defendants'*).

2. In brief, the case of the Plaintiff is that he gave a sum of Rs.10,50,000/- to the Defendants. The Defendants agreed to return the said money and executed a Promissory Note, the original of which is on record and is exhibited as **Exhibit DW-1/PX-1**. The text of the Promissory Note reads as under: -

> *"Received an amount of Rs.14,00,000/- (Rupees Fourteen Lac only) from Sri Vinod Mahajan S/o Shri Shanti Prakash Gupta R/o B-10/7174, Vasant Kunj, New Delhl-110070 against following post dated cheques drawn on the Jammu and Kashmir Bank Ltd.*

Cheque No.	Date	Amount
500047	4/4/03	2,00,000=00
500048	17/4/03	1,00,000=00
500050	22/4/03	2,00,000=00
500051	6/5/03	1,00,000=00
500052	15/5/03	1,00,000=00
500053	20/5/03	1,00,000=00
500054	29/5/03	1,00,000=00
500046	17/3/03	5,00,000=00
		Rs.14,00,000=00

Sd/- Adarsh Kumar Gupta For Gaytri Enterprises
S/o S. P.Gupta Sd/- (Revenue Stamp)
4578, Gali Sunde Singh, Mayur Pasricha
R.A. Road, Delhi-7

Manik Pasricha
S/o Shri Trilok Nath Pasricha
AW-94,
Shalimar Bagh

4/4/03 I confirm having paid cash amount of Rs.3,50,000/- (Rupees Three Lac fifty thousand only) and have collected cheque:- 500046 J&K Dt. 17/3/03 for Rs.500000/-. Balance Rs. 150000/- has been paid by me to Mr. Vinod Mahajan vide Cheque No. 500077 J&K dated:10/04/03. I hereby undertake to pay Rs.150000/- in cash by 11th April, 2003. Other dues of April will be cleared within April by me.

Sd/-

Received cash Rs. 3,50,000/- (Rupees Three Lacs fifty Thousand only) and a cheque for Rs. 1.5 Lac as above.
Sd/-
Vinod Mahajan
04.04.03."

3. A perusal of the above Promissory Note reveals that post dated cheques for a sum of Rs.14,00,000/- were issued by the Defendants against the loan taken by them. The Promissory Note is signed by Mr. Mayur Pasricha-Defendant No.2 and witnessed by his brother, Mr. Manik Pasricha. The third signature appearing on the Promissory Note is of Mr. Adarsh Kumar Gupta, the Plaintiff's brother, who is since deceased. Out of the said amount of Rs.14,00,000/-, the cheque for Rs.5,00,000/- dated 17th March, 2003 was taken back by the Defendants and in place thereof, cash of Rs.3,50,000/- was given along with a cheque of Rs.1,50,000/- dated 10th April, 2003. Thus, the total amount outstanding which were to be paid by cheques was Rs.10,50,000/-.

4. The Trial Court dismissed the suit with the observation that such a huge amount could not have been given without an agreement or any relationship. The Trial Court goes on to observe that the document i.e. the Promissory Note has not been placed on record of the present suit. The fulcrum of the reasoning of the Trial Court is that the purpose for which the amount was given is not clear from the evidence on record i.e., as to whether it is a business dealing or a gift. The Trial Court, therefore, holds that the Plaintiff is guilty of concealment.

5. A perusal of the Trial Court's judgment shows that it has proceeded on a surmisal logic instead of perusing the evidence on record. The issues framed in the suit are as under: -

> *"(1) Whether the suit of the plaintiff is not maintainable as not verified according to law? OPD*
> *(2) Whether the suit is not within limitation? OPD*

> *(3) Whether the suit is bad for mis-joinder of defendant no.3 & 4? OPD*
> *(4) Whether the impugned cheques had been issued without any consideration? OPD*
> *(5) Whether the plaintiff is entitled to the amount claimed? OPP*
> *(6) Relief."*

6. In support of his case, the Plaintiff has placed on record various documents including the banker's cheques - Exhibits PW-1/1 to 1/8, original bank memo - Exhibits PW-1/9 and 1/10. The Plaintiff has also placed on record the copy of the legal notice (Exhibit PW1/11) and the postal receipts (Exhibits PW1/12- PW1/24) thereof. In his cross-examination, he produced his income tax returns which were exhibited and taken on record. The Plaintiff admitted that the loan was given in cash. However, the Promissory Note which was signed by the Defendants was in writing. The case of the Plaintiff was that the amount given as loan was not withdrawn from the bank but some part of the money belonged to him and some of the money belonged to his father who is no more. Relevant portion of his cross examination is as under:

> "*The sum of Rs. 10,50,000/- given by me to defendant No. 1 was out of cash lying with me. Some of the said amount consisted of money of my father who is no longer alive and some was my own money. I had not taken out any money from the bank for giving the same to defendant No. 1. I had not asked my father, but perhaps, he had not taken out any money from his bank. The money was his savings.*"

7. The Plaintiff PW-1 admits that a full page note was signed by Mr. Mayur Pasricha but the same was not filed with his evidence. It transpires

that the said note i.e. Exhibit DW-1/PX-1 was confronted to DW-1 during his cross-examination.

8. PW-1 deposed that the money was handed over to Mr. Mayur Pasricha, Mrs. Savita Pasricha, Mr. Mayank Pasricha and Mrs. Gauri Pasricha who were Defendants Nos.2 to 5 and were partners of Defendant No.1, M/s. Gayatri Enterprises. The remaining partners had not accompanied them at the time when the loan was given. PW-1 further deposed that he did not have a money lending license and was not having any business of money lending.

9. In the statement of PW-2, the official from the Jammu & Kashmir Bank Ltd., New Sabzi Mandi Branch, Azadpur, New Delhi confirmed that the cheques that were issued in favour of the Plaintiff by the Defendants, were issued from the said bank. PW-3, the Ahlmad of the Court where the proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated, was also produced and the original cheques which were on the record of those proceedings were also admitted.

10. In his evidence, Defendant No.2 Mr. Mayur Pasricha, who appeared as DW-1, gave a vague reason as to why he had given cheques to the Plaintiff as is captured in para 5 of his evidence:

> "*I say and state that I had handed over few blank cheques to the plaintiff in my personal capacity as security, as the Plaintiff was an aged person and was like my guardian and due to the fact that I used to go out station for my business tour and having faith upon the plaintiff, I used to leave behind few blank cheques with the Plaintiff to negotiate it with any person other than his ownself, in case of some financial requirements, as the Plaintiff used to look after my business in*

my absence, and the Plaintiff has misused certain cheques and has breached the trust reposed in him by me."

11. He admitted the 8 original cheques which were issued by him. He admitted his signatures on DW-1/PX-1 as under:

> "*A document now Ex. DW-1/PX-1 is in my handwriting which bears my signatures at point A & B. (Original placed on record today copy of which is already on record). It is correct that cheque bearing No. 500046 was given to the plaintiff for a sum of Rs. 5 lacs. Against which a sum of Rs. 3,50,000/- was paid in cash to the plaintiff and the said cheque was taken back by me and another cheque of Rs. 1,50,000/- was issued to the plaintiff.*"

12. He confirms that he had not lodged any complaint with the Bank or police in respect of the cheques which he had issued to the Plaintiff. He confirms that Directors of Shakti Durga Cold Store had taken another loan of Rs.2,00,000/- from the Plaintiff which was returned after making payment of Rs.2,35,000/-.

13. The Defendants also produced an official from the Axis Bank, Vasant Kunj Branch who brought the statement of account of the Defendant in the said bank. The income tax records were produced and marked as Exhibits DW-3/1 and DW-3/2.

14. In this appeal, repeated steps have been taken to serve the Defendants. The record also reveals that the notices which have been issued to the Defendants have been served. Learned counsel for the Defendants had also put an appearance and filed the *vakalatnama*. On one occasion, the Registrar issued notice though SHO of the concerned area. Pursuant to the said notice

dated 27th February, 2017, the Respondent No.2, Mr. Mayur Pasricha appeared in person. He made a categorical statement on the said date that he represented all the Defendants and sought time to engage a counsel. Thereafter, the Defendants have been absent for several dates and on one occasion on 29th August, 2017 appearance was put in. On the last date, on 5th April, 2018, notice was again issued to counsel whose *vakalatnama* is on record. Intimation was also given by SMS on his mobile number. Despite all steps being taken, the Defendants have failed to put in appearance. It is clear that they are avoiding the Court process.

15. A perusal of the evidence and the pleadings shows that though the relationship between Plaintiff and the Defendants is not clear, there was familiarity between parties as, even earlier another firm where D2 was a director had also taken a loan from the Plaintiff. Further the signatures on DW-1/PX-1 are admitted by Mr. Mayur Pasricha who was a partner of M/s. Gayatri Enterprises. The issuance of the cheques, the signatures on the cheques and the factum of signing the Promissory Note being admitted, there was no requirement for the Trial Court to go into the issue of reasons for giving of the loan. The Promissory Note is clear to the extent that there was an undertaking given by the partner of M/s. Gayatri Enterprises that he would repay through post dated cheques. The transactions having been admitted, the reason why the loan was given or whether it was business dealing or a gift is not a relevant consideration. The bank official has proved that the cheques were genuine and have been issued by the Jammu & Kashmir Bank Ltd., New Sabzi Mandi Branch, Azadpur, New Delhi, which is the bank of the Defendant. There is no doubt as to the genuinity of the cheques as well. The suit being based on a Promissory Note supported by

cheques, the said documents being admitted, nothing further needs to be seen. The existence of a relationship or otherwise between the parties is completely extraneous to the enforcement of the Promissory Note. The documents being fully admitted, the defence of DW-1 as to the reasons why he gave the cheques clearly appear to be spurious.

16. Under these circumstances, the Trial Court's judgment is set aside. A decree for a sum of Rs.14,50,000/- along with 6% interest from the date of filing of the suit till the date of the disposal of the appeal is granted in favour of the Plaintiff. Decree sheet shall be drawn accordingly.

17. Appeal is allowed and disposed of accordingly.

PRATHIBA M. SINGH
JUDGE

MAY 23, 2018/*Rekha*