

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

+ **RFA No.453/2018**

% **28th May, 2018**

RAMNARAYA @ BALTI BABA (DECEASED) THROUGH LR
VIJAY KUMAR Appellant

Through: Mr. A.K. Singh, Advocate.

versus

YOGESH PRASAD SOTI Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.22599/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.22600/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of nine days in filing the appeal is condoned.

C.M. stands disposed of.

RFA No.453/2018 & C.M. No.22598/2018 (stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit

impugning the judgment of the Trial Court dated 30.1.2018 by which trial court has decreed the suit of the respondent/plaintiff for a sum of Rs.7.50 lacs along with interest at 6% per annum.

4. The case of the respondent/plaintiff was that original defendant Sh. Ramnarayan @ Balti Baba, since deceased and now represented by the appellant, was the sister's husband of the respondent/plaintiff, and that the original defendant Sh. Ramnarayan had issued a cheque no.047488 of Corporation Bank, Jaipur Branch, Jaipur inasmuch as Sh. Ramnarayan/original defendant was to pay the amount of Rs.7.50 lacs to the respondent/plaintiff for the right of his sister in the property bearing no.E-59, Laxmi Nagar, Delhi. It may be noted that the relations between the original defendant/Sh. Ramnarayan and the appellant's sister had turned sour. On the subject cheque being presented, the same was dishonoured and hence the present suit.

5. Before turning to the discussion as to the merits of the impugned judgment, it is required to be noted that the subject suit was originally filed under Order XXXVII CPC and the original defendant/Sh. Ramnarayan was given leave to contest, however he did

not file his written statement. In fact evidence has also not been therefore led on behalf of the appellant and who is the legal heir of the original defendant Sh. Ramnarayan. Once therefore respondent/plaintiff has stepped into the witness box and proved his case and appellant/defendant neither filed written statement nor led any evidence, in such a situation there cannot be any illegality in the impugned judgment decreeing the suit.

6. Trial court in my opinion has rightly observed that the subject cheque was proved and exhibited by the respondent/plaintiff as Ex.PW1/X along with the cheque dishonouring memo as Ex.PW1/Y. Earlier acknowledgments of receipts of the amount by the original defendant for purchase of the property no.E-59, Laxmi Nagar, Delhi was acknowledged by different receipts and which has been proved and exhibited as Ex.PW1/A (dated 3.1.1983), Ex.PW1/B and Ex.PW1/C (dated 8.9.1998), and Ex.PW1/D (dated 29.5.1993).

7. The relevant observations of the trial court in this regard are contained in para 9.1 of the impugned judgment and this para 9.1 reads as under:-

“9.1 PW-1 has deposed in same terms of the plaint being plaintiff in the case as stated above in the paras herein before which be read as part of the evidence herein. The evidence by way of affidavit is tendered as Ex.PW-1/A, however, the document Ex.PW-1/A is also so marked which is acknowledgment of receipt of Rs.2,55,000/- by defendant no.1 to the plaintiff on 3.1.1983 to purchase property no.E-59, Laxmi Nagar, Delhi. It is further mentioned in the said receipt that on receipt of documents of property defendant no.1 will return the documents to the plaintiff as the property belongs to plaintiff only. The document Ex.PW1/B is a typed written acknowledgment bearing signature of defendant no.1 at point A given to sister of the plaintiff. Another acknowledgment Ex.PW1/C executed by defendant no.1 is dated 08.09.1998 in the same respect bearing signature of defendant no.1 at point A. The Bayana receipt executed in presence of sister of plaintiff is Mark F which is dt. 3.4.1989 for a sum of Rs.31,000/- regarding property no.A-25, Shakar Pur, Delhi for total consideration of Rs.5.31 lakhs. Ex.PW1/D is dated 29.05.1993 which is acknowledgement by defendant no.1 to pay Ms. Prem Lata, sister of plaintiff/PW-1 and her parental family, the money received from sale of property no.E-59, Laxmi Nagar, Delhi. The said property was purchased by defendant no.1 in the year 1985 for a sum of Rs.75,000/- and sold in the year 1989 for a sum of Rs.14 lakhs. The agreement between Sh. Ram Pal and Ram Narayan Prasad/defendant no.1 is Mark E. The agreement to sell is Ex.PW1/E. The carbon copy of receipt of advance amount of consideration for a sum of Rs.1 lakhs by defendant no.1 is Ex.PW1/F. Copy of complaint to police by the plaintiff are Mark G to Mark L. The complaint regarding loss of ration card is Mark A. The two documents received by Ms. Prem Lata from a prospective buyer in December 1997 regarding property no.A-25, Shakar Pur, Delhi which are Power of Attorney/Mark B and affidavit/Mark C signed by Mr. Ujjagar Singh. The cheque for a sum of Rs.7.50 lakhs no.047488 is Ex.PW1/X signed by defendant no.1 at point A. The dishonoured returning memo dt. 22.02.1999 is Ex.PW1/Y and the penalty memo from SBI Delhi University Branch is Ex.PW1/Z. The legal notice u/s 138 of N.I. Act is Ex.PW1/R. The postal acknowledgment to the legal notice is Ex.PW1/S. The defendant no.1 has admittedly expired on 09.04.2000 whose passport is Ex.PW1/G.”

8. The trial court has relied upon the provision of Section 118 of the Negotiable Instruments Act, 1881 which states that there is a presumption that every negotiable instrument is drawn for the

consideration payable, and Section 118 of the Negotiable Instruments Act in my opinion has rightly been invoked by the trial court once the appellant/defendant has not filed written statement and led no evidence.

9. In view of the above, I do not find any merit in the appeal. Dismissed.

MAY 28, 2018
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VALMIKI J. MEHTA, J