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

Reserved on : 5th April, 2018

Date of Decision: 4th July, 2018

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RFA 331/2012

O P GUPTA

..... Appellant

Through: Mr. R. K. Tewari, Mr. R.K. Bhargwa
and Mr. Y. R. Sharma, Advocates.
(M-9891222979)

versus

SARLA DEVI JAIN

..... Respondent

Through: Mr. Ranjan Kumar, Advocate.
(M-9811136353)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present appeal arises out of a suit for recovery of Rs.7 Lakhs filed by the Respondent/Plaintiff (*hereinafter 'Plaintiff'*) against the Appellant/Defendant (*hereinafter 'Defendant'*). The Trial Court has decreed the suit vide a hand-written judgment dated 5th March, 2012 running into 13 pages for a sum of Rs.7 Lakhs with interest @ 8% per annum from the date of filing of the suit till its realization.

2. The case of the Plaintiff in brief is that her husband Shri S.D. Jain had given a loan of Rs.10 Lakhs to the Defendant in cash for which a promissory note was executed by the Defendant. Out of the loaned amount, an amount of Rs.3 Lakhs was paid back and another promissory note for Rs.7 Lakhs was executed. The first promissory note of Rs.10 Lakhs is a photocopy of the original placed on record and the second promissory note of Rs.7 Lakhs has been placed in original. The suit was initially filed under Order XXXVII

CPC. However, leave to defend was granted on 3rd August, 2006. 3. The Defendant then filed his written statement and took various pleas. The first plea of the Defendant was that he had a business relationship with the Plaintiff and the money was given by the Plaintiff towards a supply of glass wall frames and other items. The second plea was that it was impermissible in the Income Tax Act to pay a sum of Rs.10 Lakhs in cash. The third plea was that the signatures of the Defendant were obtained on the blank promissory note and the same was signed by the Defendant in good faith.

3. The Trial Court framed the following issues in the suit on 12th February, 2008:

“Issues:

1. Whether the defendant has signed blank promissory note? OPD.

2. Whether the suit is bad for non-joinder of necessary parties? OPD.

3. Whether the suit is barred under the provisions of Money Lending Act? OPD.

4. Whether the plaintiff is entitled to recover the suit amount? OPP.

5. Whether the plaintiff is entitled to interest? If so, at what rate? OPP.

6. Relief.”

4. The Plaintiff has herself appeared as PW-1 and deposed that her children had given her no objection to file the suit to recover the money. She stated that there were family relations with the Defendant. She also stated that out of the total amount of Rs.10 Lakhs, Rs.5 Lakhs were given by her, which were withdrawn from her bank in Sadar Bazar. She admitted that she was not present when the promissory note was signed by the Defendant.

5. Shri Rajan Jain, son of PW-1/Plaintiff appeared as PW-2. He stated

that he was personally present when Rs.3 Lakhs was returned by the Defendant to his father. He admitted that he was not aware as to when the loan was given to the Defendant but he acquired knowledge of the same when a sum of Rs.3 Lakhs was returned in his presence.

6. The Defendant appeared as DW-1 and he took contradictory pleas in his evidence and cross-examination. He stated in his affidavit that the original promissory note of Rs.7 Lakhs does not bear his signatures and the same is not a document because it is torn and adhesive tape has been used to stick it together. He claimed that the Plaintiff had given him an advance amount of Rs.10 Lakhs as he wanted to place orders for glass items and on that basis, he obtained the signatures on a blank promissory note. He admitted that he had signed on the blank promissory note in good faith. In his cross examination, he admitted that he used to regularly visit the shop of the Plaintiff in Bhagirath Place. He took a complete U-turn in his cross-examination and stated that he has not signed any promissory note and when he was confronted with paragraph 7 of his affidavit, he claimed that the same was written by his counsel without informing him. He admitted that the promissory note bears the correct address of his firm. In effect his entire evidence was that since the second promissory note of Rs.7 Lakhs was torn, the same could not be relied upon.

7. The Trial Court held on issue no.2 that the Plaintiff had produced the succession certificate dated 2nd September, 2011 in terms of the order dated 18th October, 2010 passed in Petition No.534/2007, which is in her favour. Thus, she is competent to pursue the claim for recovery. On issue no.3, the Court came to the conclusion that there is no averment that Sh. S.D. Jain used to lend money for interest and hence the suit is not barred under the

Money Lending Act, 1939. Since the case is of a loan between two persons, who were in business relationship and no other instance of loan having been given by the Plaintiff has been pleaded, the transaction does not attract the bar under the said Act.

8. On the question as to whether the Defendant had signed a promissory note, the Trial Court came to the conclusion that the same is a false stand. The affidavit of the Defendant clearly admits that he had signed a blank promissory note, thus signatures on the promissory note are no longer in doubt. The attempt to resile from this in the cross-examination, is nothing but a feeble attempt, inasmuch as a perusal of the written statement and the affidavit in evidence shows that these pleas of signing on a blank promissory note were taken in both places. Thus, it cannot be stated that the Defendant did not sign the promissory note. Once it is clear that the Defendant signed a promissory note, it is to be seen as to whether the said signatures were obtained on breach of faith and trust. A perusal of the evidence clearly reveals that the Defendant is a trader and a person of business acumen. He claimed that he signed a promissory note out of a business transaction where he was to make supplies to the Plaintiff. This defence needs to be stated only to be rejected, inasmuch as if the Defendant was to make supplies to the Plaintiff and the Plaintiff was to make payments, it is hardly imaginable as to why the Defendant would execute the promissory note. It should have been the other way round. Moreover, the plea of the Defendant that the signatures were obtained on blank promissory note is also liable to be rejected as, had it been so, the Plaintiff would have been the first person to issue a notice or file a complaint seeking return of the promissory note. However, the Defendant kept quiet all along till he received the notice from

the Plaintiff. In the reply to the leave to defend, the Plaintiff had stated that the original promissory note of Rs.10 Lakhs had been returned to the Defendant when the new promissory note of Rs.7 Lakhs was executed. This seems highly plausible in the facts. Paragraph 9 of the reply filed by the Plaintiff to the leave to defend application is set out below:

“It is important to mention here that as the sum of Rs.10,00,000/- lacs was taken back as loan and a sum of Rs.3,00,000/- lacs were duly returned by the defendant so he has taken the earlier promissory note and signed a fresh one for Rs.7,00,000/- only.”

9. In the said reply, the Plaintiff has been fair to say that owing to the long relationship, he is even willing to accept Rs.7 Lakhs without insisting payment of interest.

10. The second promissory note of Rs.7 Lakhs has been filed on record in original. The denial by the Defendant of his signatures on the promissory note, is not credible or plausible. Various objections were raised in respect of the original promissory note of Rs.7 Lakhs. It was also alleged that the same was tampered with. A perusal of the same shows that it is a genuine document though there appears to be some over writing. The promissory note and Receipt is a printed document with a perforated marking separating the two. On the promissory note the interest is 18% but with overwriting as 8%. On the receipt side the interest is clearly mentioned as 18%. The printers name i.e. Grover Stationery Mart, Sadar Bazar, Delhi-110006 is also mentioned. There are four revenue stamps on the document. The details have been filled in hand. The amount of Rs.7 Lakhs is mentioned in words and in numbers. There is thus no doubt the promissory note is for Rs.7

Lakhs. The copy of the promissory note of Rs.10 Lakhs is also a similar document. It appears that these are printed promissory notes and receipts which are used in the trade and the details are filled up by hand. The Defendant does not dispute that he signed the document but he claimed that it was blank. It does not appear that the Defendant signed the two blank promissory notes and even if it was signed blank, he would not have remained silent and sought return of the same. Under these circumstances, the Trial Court rightly held that the promissory note was not signed in blank.

11. The Defendant did not conduct the admission and denial in the suit. Initially, an attempt was made to seek dismissal of the suit under Order VII Rule 11 CPC which was then rejected on 22nd November, 2007. On 12th February, 2008, when the issues were framed, the Court observed “*Since defendant has not come forward to admit or deny the original documents of the plaintiff, legal consequences would follow.*” In view of this order, the Defendant ought to suffer the legal consequences for not having admitted or denied the promissory note Ex.PW-1/1. Moreover, notice dated 20th May, 2004 was served upon the Defendant Ex.PW-1/2, which was also admitted to have been received by him in his cross-examination. A reply was allegedly sent and was claimed to have been filed on record. However, in his cross-examination DW-1 stated as under:

“It is correct that I have received the notice sent to me through Registered AD as well as UPC. I have also sent the reply of the said notice. However, the said reply is not on record.”

Thus, the Defendant did not care to even reply to the legal notice which he admittedly received.

12. The Defendant places reliance on ***Tatipamula Naga Raju v. Pattem***

Padmavathi AIR 2011 SC 1499 to argue that even if the signatures are admitted, if the promissory note is tampered, then it cannot be held that money is payable. The facts in the said case were that the figure '1' had been added with Rs.25,000/- making the amount due as Rs.1,25,000/-. In the present case, the promissory note mentions in words the amount of Rs.7 Lakhs and hence the said judgement is clearly distinguishable.

13. Similarly, in other judgments relied upon by the Defendant i.e. ***Suresh Chandra v. Satish Chandra AIR 1983 Allahabad 81*** there were material alterations in the promissory note. The Defendant also relies upon the ***State of Madhya Pradesh v. Usha Devi (2015) 8 SCC 672*** to argue that the Plaintiff had to succeed on the strength of his own case and cannot depend upon the weakness of the case of the Defendant. In the present case, the Plaintiff had filed mark 'A' which is a copy of the promissory note of Rs.10 Lakhs and also the original promissory note Ex.PW-1/1. The signatures are admitted. The Defendant did not care to do the admission/denial and the Plaintiff and her son both appeared and gave their testimonies. The Defendant, apart from taking contradictory pleas, did not set up any justifiable defence. Moreover, the manner in which in his cross examination the Defendant denied his signatures also destroys his credibility. He even tried to blame his counsel for drafting the affidavit in the manner it was drafted. Thus, the case of the Plaintiff has in fact been proved. By filing the original promissory note and giving oral evidence, the Plaintiff discharged her burden fully.

14. ***Seithammarakkath Mammad v. Koyommatath Mammad AIR 57 Kerala 63*** relied upon by the Defendant relates to a document which only had a thumb impression and was on blank paper without stamp. The said

judgment is clearly distinguishable. The Defendant has also relied upon section 118 of the Negotiable and Instruments Act to argue that the promissory note of Rs.7 Lakhs was not in continuation of the earlier promissory note of Rs.10 Lakhs and since Rs.7 Lakhs was not given at the time when the promissory note dated 3rd December, 2001 was executed, there is no presumption under Section 118 of the Act.

15. The Defendant has relied upon several authorities under Section 118 of the Evidence Act and especially on secondary evidence. The question of secondary evidence does not arise in this case inasmuch as the original promissory note, even if in torn condition, has been produced on record. When the primary evidence is itself available, there is no need to go to the secondary evidence. In fact, both the parties being traders, operating in well known trading markets located in Old Delhi, source of funds of the Plaintiff cannot be a serious question inasmuch as, as per the Defendant himself, the Plaintiff and his family were running two shops in electrical market, Bhagirath Place, Delhi.

16. This Court has not gone under the presumption that the promissory note is by itself admissible in evidence, however, the Court has examined all the circumstances leading up to the said promissory note i.e. relationship between the parties, having capacity of entering into transactions of Rs.10 Lakhs, return of Rs.3 Lakhs, execution of the second promissory note for Rs.7 Lakhs, issuance of the legal notice, non-receipt of any reply, oral evidence and testimony of all the witnesses. Thus, even without any presumption, it can be safely concluded that the Defendant owed Rs.7 Lakhs to the Plaintiff. All these circumstances narrated above point to the fact that the Defendant has raised defences only for the sake of doing so. The defence

of business relationship being the reason for signing the promissory notes and also that he signed blank promissory notes is not made out. The Plaintiff is, therefore, entitled to decree as prayed for and granted by the Trial Court in her favour.

17. In this appeal initially, the Defendant was granted stay of the judgment and decree subject to deposit of the decretal amount. However, the stay was vacated on 22nd November, 2012 as a statement was made that the Defendant is not in a position to deposit the amount. Thereafter, a fresh application was moved seeking stay of the execution. On 20th November, 2013, the stay was granted subject to deposit of the entire decretal amount. On 15th October, 2014, the decretal amount was directed to be released to the Plaintiff subject to furnishing the adequate security, however, it appears that the said amount has yet not been released to the Plaintiff. Accordingly, the Registry is directed to release the decretal amount which stands deposited in this Court vide FDR No.15530310399033 dated 10th December, 2013 along with interest accrued thereon in favour of the Plaintiff within 10 days. The bank may deduct usual TDS amount on the interest component.

18. The appeal is dismissed with costs of Rs.25,000/-.

PRATHIBA M. SINGH
JUDGE

JULY 04, 2018/dk