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

\+ **RFA No. 418/2018**

% **Reserved on: 16th May, 2018**
Pronounced on: 22nd May, 2018

M/S. STALION HOLDINGS PVT. LTD. ..... Appellant
Through: Mr. Sandeep Sharma and Ms. Risha Mittal, Advocates.

versus

PRIYANKA CHADHA & ORS. ..... Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. Appl. No. 20364/2018 (Exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 20361/2016 (Condonation of delay in filing)

2. For the reasons stated in the application, delay of sixty days in filing the appeal is condoned, subject to just exceptions.

C.M. stands disposed of.

RFA No. 418/2018 & C.M. Appl. Nos. 20362/2018 (for stay) & 20363/2018 (U/o XLI Rule 27 CPC)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the trial court dated 27.11.2017 by which the trial court has dismissed the suit for recovery of Rs.19,31,250/-. It was claimed by the appellant/plaintiff in the suit that loan of Rs.18,75,000/- was advanced by the appellant/plaintiff/company to Sh. Subhash Kalra and his wife Smt. Chander Kalra, both of who have expired, and that the respondents no.1 to 5/defendants no.1 to 5 are the legal heirs of Sh. Subhash Kalra and his wife Smt. Chander Kalra.

4. The aforesaid facts would appear to be a simple case of a creditor seeking recovery of loan amount from the legal heirs of the debtors, however, the relationship between the parties to the present suit is required to be noted because really the subject suit is not a simple suit for recovery of money by the creditor against the debtor, and that too for a loan which was admittedly granted without charging of any interest.

5. Appellant/plaintiff/company is a company which is closely owned by the respondent nos. 1 to 3/defendant nos. 1 to 3. On behalf of the appellant/plaintiff/company to prove its case deposition was made by Sh. Rakesh Chadha the appellant/plaintiff's Authorized Representative. Sh. Rakesh Chadha is however none other than the husband of respondent no.1/defendant no.1/Smt. Priyanka Chadha (maiden name Smt. Priyanka Kalra). Respondent nos. 2 and 3/defendant nos. 2 and 3 are the sisters of respondent no.1/defendant no. 1 i.e sisters-in-law of PW-1 Sh. Rakesh Chadha. Respondent no.4/defendant no. 4 in the suit is the sister of the deceased Sh. Subhash Kalra who is alleged to have taken the loan with his wife Smt. Chander Kalra. Respondent no. 5/defendant no. 5 was a joint holder in the account of the deceased Sh. Subhash Kalra maintained with the respondent no.6/defendant no. 6/bank i.e respondent no.6/defendant no. 6/bank has the account of late Sh. Subhash Kalra in which various amounts are lying.

6. Appellant/plaintiff/company as per the plaint pleads that by means of four cheques as stated in para 6 of the plaint loan was

advanced by the appellant/plaintiff/company to late Sh. Subhash Kalra and his wife Smt. Chander Kalra. Para 6 of the plaint reads as under:-

> "6. Accordingly, the plaintiff company advanced a loan of Rs.18,75,000/- to Shri Subhash Kalra and his wife Smt. Chander Kalra, which amount was paid by the plaintiff company to them vide following cheques:-

Cheque No.	Date	Amount (Rs.)	Issued in favour of
297600	29.10.2001	4,50,000/-	Mr. Subhash Kalra
297610	19.11.2001	4,25,000/-	Mr. Subhash Kalra
297616	18.12.2001	4,00,000/-	Mr. Subhash Kalra
297617	26.12.2001	6,00,000/-	Mrs. Chander Kalra"

7. It was pleaded in the plaint that since Sh. Subhash Kalra was not well he had approached the respondent no.2/defendant no. 2 for grant of an immediate short term loan. Respondent no.2/defendant no. 2/Smt. Monica Kalra since was not having sufficient funds in her hands, she approached the appellant/plaintiff/company to give a corporate loan of Rs.18,75,000/- to Sh. Subhash Kalra and Smt. Chander Kalra. Loans paid by the appellant/plaintiff/company to Sh. Subhash Kalra and Smt. Chander Kalra are said to be confirmed in terms of two undated documents affirming the receipt of loan in one document by Sh. Subhash Kalra and in other document Smt. Chander Kalra but signed only by Sh. Subhash Kalra for and on behalf of Smt.

Chander Kalra Both these documents are allegedly signed by Sh. Subhash Kalra, are proved as Ex.PW1/3 and PW1/4.

8. In the plaint it is further pleaded that Smt. Chander Kalra died on 9.1.2002 (subsequent pleading and evidence shows she was murdered) and Sh. Subhash Kalra died on 7.10.2002. Sh. Subhash Kalra is said to have died leaving behind his Will dated 11.9.2002 in favour of the respondent no.2/defendant no. 2, and it is then pleaded in the plaint that in the absence of such a Will it will be the respondent nos. 1 to 4/defendant nos. 1 to 4 who would be the legal heirs who would succeed to the estate of Sh. Subhash Kalra and Smt. Chander Kalra.

9. By the subject suit therefore, the appellant/plaintiff/company seeks the relief that the loan which was granted by the appellant/plaintiff of Rs.18,75,000/- to Sh. Subhash Kalra and his wife Smt. Chander Kalra, the same be ordered to be paid back to the appellant/plaintiff by passing a money decree for a sum of Rs.19,31,250/- which is the total of the principal amount of Rs.18,75,000/- plus interest.

10. As already stated above the respondent no.1/defendant no. 1 is the wife of Sh. Rakesh Chadha the Authorized Representative of the appellant/plaintiff/company and respondent nos.2 and 3/defendant nos. 2 and 3 are the sisters of respondent no.1/defendant no. 1 and the sisters-in-law of Sh. Rakesh Chadha. The respondent nos.1 to 3/defendant nos. 1 to 3 did not contest the suit, and were proceeded *ex-parte*.

11. Respondent nos.4 and 5/defendant nos. 4 and 5 contested the suit. It was pleaded by them that no loan was ever granted by the appellant/plaintiff/company to Sh. Subhash Kalra and his wife Smt. Chander Kalra. Whereas the respondent no.4/defendant no. 4 pleaded that amounts credited in the bank account of Sh. Subhash Kalra were actually amounts received by Sh. Subhash Kalra on account of claim of Sh. Subhash Kalra to the properties of his mother Smt. Shanta Kalra and which were denied to him by the respondent nos. 1 to 3/defendant nos. 1 to 3, the respondent no.5/defendant no. 5 claimed that Sh. Subhash Kalra was a very wealthy man having lots of moneys and properties and therefore he did not need the loan or that he had taken the loan from the appellant/plaintiff/company as was the case of the

appellant/plaintiff/company. The written statement of respondent no.4/defendant no. 4, the sister of Sh. Subhash Kalra, is a detailed one giving details of various litigations existing with respect to the estate of Sh. Subhash Kalra and Smt. Chander Kalra. Whereas the appellant/plaintiff had claimed that the deceased Sh. Subhash Kalra had left behind his Will dated 11.09.2002 in favour of the respondent no.2/defendant no. 2, however the respondent no.4/defendant no. 4 pleaded that the deceased Sh. Subhash Kalra died leaving behind his Will dated 10.9.2002 in favour of respondent no.4/defendant no. 4. Respondent no.5/defendant no. 5 pleaded that Sh. Subhash Kalra had in fact left behind his Will dated 23.8.2002 which was duly registered in the office of the Sub-Registrar. Resultantly, it is seen that, there is a free for all and a mad rush to own and take control of the properties of the deceased Sh. Subhash Kalra and his wife Smt. Chander Kalra. It is already stated above that Smt. Chander Kalra did not die a natural death and that she was in fact murdered on 9.1.2002.

12. After pleadings were complete, the trial court framed a sole issue of whether the appellant/plaintiff was entitled to the recovery of the amount claimed in the suit.

13. Though trial court has dismissed the suit on various grounds including of the suit not having been properly filed as also the loan having not been proved, for the purpose of present judgment it will be sufficient to consider the sole aspect as to whether at all any loan was given by the appellant/plaintiff/company to Sh. Subhash Kalra and his wife Smt. Chander Kalra. Trial court in this regard has disbelieved the undated documents Ex.PW1/3 and Ex.PW1/4 to hold that no loan was ever granted by the appellant/plaintiff to Smt. Chander Kalra. The relevant observations of the trial court in this regard read as under:-

> "Present suit of the plaintiff is mainly based upon Ex.PW-1/3 and Ex.PW-1/4. As per the plaintiff, Ex.PW-1/3 was executed by Sh. Subhash Kalra on his behalf and Ex.PW-1/4 was executed by Sh. Subhash Kalra on behalf of Smt. Chander Kalra. Accordingly to Section – 101 of the Indian Evidence Act, whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of the facts which he asserts, must prove that those facts exist and the burden of proof lies on that person. Onus of proving this issue was on the plaintiff. The plaintiff in order to prove its case, has to prove the execution of Ex.PW-1/3 and Ex.PW-1/4 to show that same were executed by Sh. Subhash Kalra. Execution of Ex.PW-1/3 and Ex.PW-1/4 by Sh. Subhash Kalra, is disputed by defendant no. 4 and 5. No independent witness has been examined by the plaintiff to prove the fact that Ex.PW-1/3 and Ex.PW-1/4 were executed/signed by Sh. Subhash Kalra. No handwriting expert has been examined by the plaintiff to prove the fact that Ex.PW-1/3 and Ex.PW-1/4 are bearing the signatures of Sh. Subhash Kalra." (underlining added)

14. I completely agree with the aforesaid reasoning and conclusion of the trial court because in the present case it is seen that

there is no document which is contemporaneous to the alleged grant of loan showing the grant of loan by the appellantt/plaintiff to Sh. Subhash Kalra and Smt. Chander Kalra. Also, the grant of loan is not in terms of execution of a printed document of loan. Also, the respondent no.4/defendant no.4 has contended that actually amount paid by the appellant/plaintiff/company was in fact the amount paid by the respondent nos. 1 to 3/defendant nos.1 to 3 for the claims of Sh. Subhash Kalra in the properties of his/their (respondent nos. 1 to 3/defendant nos.1 to 3) mother especially in the immovable property D-120, Saket, New Delhi. There are admittedly various litigations pending between the different legal heirs of Sh. Subhash Kalra and Smt. Chander Kalra. In such circumstances that the amount of the cheques given by the appellant/plaintiff/company (which is not by a complete stranger company being a creditor of giving of loan to a complete stranger debtor) was only and in fact was as a loan had to be proved by the appellant/plaintiff/company to the satisfaction of the Court and in this regard, in my opinion the appellant/plaintiff has clearly failed including for the reason that there was no reason why suit for recovery of this interest free loan was not filed during the lifetimes of Sh. Subhash Kalra and his wife Smt. Chander Kalra i.e the loans were paid in terms of the cheques of October, 2001 to December, 2001, and Smt. Chander Kalra was murdered on 9.1.2002 and Sh. Subhash Kalra died much later on 7.10.2002. Trial court has also rightly discussed that the document Ex.PW1/3 and Ex.PW1/4 with respect to alleged signatures of Sh. Subhash Kalra are not proved because these signatures have not been proved either through the handwriting expert's report or through independent witnesses. For the sake of convenience the so called confirmation of loan receipts Ex.PW1/3 and Ex.PW1/4 are reproduced as under:-

1. **Ex.PW1/3**

"TO WHOM SO EVER IT MAY CONCERN

This is to certify that I, Subhash Kalra have taken an interest free loan of Rs.12,75,000/- (Rupees Twelve lacs and seventy five thousand only) from M/s Stalion Holdings (Pvt) Ltd. vide cheque nos. 297600, 297610, 297616 dated 29/10/01, 19/11/01, 18/12/01 for Rs.4,50,000/-, Rs.4,25,000/- and Rs.4,00,000/- respectively drawn on HDFC Bank, New Delhi and I am assessed under Income Tax vide PAN No. AFZPK5135L under ward ....

sd-

Mr. Subhash Kalra
J-12/1 Rajouri Garden
New Delhi."

2. **Ex.PW1/4**

"TO WHOM SO EVER IT MAY CONCERN

This is to certify that I, Chander Kalra have taken an interest free loan of Rs.6,00,000/- (Rupees Six lacs only) from M/s Stalion Holdings (Pvt. Ltd. vide cheque no. 297617 dated 26/12/01 drawn on HDFC Bank, New Delhi and I am assessed under Income Tax vide PAN no. ..... under ward ....

sd-

(For) Ms. Chander Kalra

J-12/1 Rajouri Garden
New Delhi."

15. Since except the aforesaid two undated documents bearing the signatures of Sh. Subhash Kalra there are no documents to witness the loan transaction, in my opinion, on the balance of probabilities the appellant/plaintiff has rightly held by the trial court to have failed in proving the grant of loan by it to Sh. Subhash Kalra and his wife Smt. Chander Kalra. Also in my opinion another strong reason for holding that the appellant/plaintiff/company did not grant any loan to Sh. Subhash Kalra and Smt. Chander Kalra becomes clear from the fact that if the loan was granted then in the books of accounts; profit and loss account; as also balance sheets of the appellant/plaintiff/company for the financial year 2001-02, the loans would have been reflected but the appellant/plaintiff/company admittedly did not file and prove its balance sheet or profit and loss account etc for the financial year 2001-02 to show that any loan was granted by the appellant/plaintiff/company to Sh. Subhash Kalra and his wife Smt. Chander Kalra. This in my opinion is indeed a strong reason to hold that the appellant/plaintiff has failed to prove that the amount of Rs.18.75 lacs was paid to Smt. Subhash Kalra and Smt.

Chander Kalra was as a loan by the appellant/plaintiff/company to Sh. Subhash Kalra and Smt. Chander Kalra. At this stage, this Court would seek to refer to the affidavit by way of evidence filed by the respondent no.4/defendant no.4, Smt. Nirmal Makkar sister of the deceased Sh. Subhash Kalra, and who is also the sister of the father of the respondent nos. 1 to 3/defendant nos.1 to 3, and this affidavit by way of evidence will give the necessary details with respect to the various litigations as also disputes which existed between the family members showing that the present is not a case of grant of loan by a classical creditor to classical debtor. The relevant paras of the affidavit by way of evidence filed by the respondent no.4/defendant no.4 reads as under:-

> **"EVIDENCE BY WAY OF AFFIDAVIT**
>
> **(of Defendant No.4 Mrs. NIRMAL MAKKAR wife of Sh. P.D.MAKKAR Senior Citizen 76 years resident of AC-64, Tagore Garden, New Delhi-110027)**
>
> The above named deponent do hereby solemnly affirm and declare as under:-
>
> That the deponent is the sister of late Shri Subhash Chander Kalra, his next-of kin/only legal heir, and nominee registered with the defendant No.6(Bank) and N.S.D.L.(DP-I.D.B.I) for all deceased's account and is thus conversant with the facts of case. I am competent to swear this affidavit.
>
> **GOVT. RULES**
>
> 2. The deponent states, there is built in mechanism under the provisions of Section 610 of Companies Act-1956 read with Companies General Rules and Forms-1959 that documents for advancing loan from the Company accounts, are filed by the Company in Registrar of Companies office and the same being public documents are made

available in public domain. As per Govt. Rules, plaintiff Company is also required to file Balance Sheet, Profit and Loss Statement, within 30 days of Annual Return, each year i.e from 18.11.2002, till date, to avoid prosecution under the Companies Act-1956, payment of additional fee and publication in the list of defaulters. Plaintiff witness has not produced necessary information/documents, in Hon'ble Court for alleged Company loan Rs.18,75,000/- paid in the year 2001, as explained in Registrar of Companies (Shri Manmohan Juneja) in paras (A) to (H) of his letter No.RTI/2011/MISC/124 dated 26.9.2012 and Asstt. Registrar of Companies (C.P.I.O) letter No. RTI/2011/MISC/14 dated 24.7.2012, that corporate loans are transparent under central Govt. Rules. The original letters are Ex/DW-4/1 and EX/DW-4/2.

3. The deponent states that certain documents/information accessed under R.T.I. Act-2005, were allowed placing as evidence vide predecessor Court of Dr. ARCHANA SINHA, ADJ, Delhi order dated 4.5.2011. The plaintiff/witness was compensated Rs.5000/- on 14.5.2011, for following documents/information taken on, court record. Plaintiff/witness, was also allowed to file such documents, which and in Public domain as additional evidence to prove existence of company at S-236 Panchsheel Park, New Delhi on 4.10.2002/18.11.2002, the surplus funds with company to advance interest free loan.

(a) Registrar of companies vide letter No.R.T.I./2008-09/MISC/779 dated 31.3.2009(EX/DW-4/3), has informed that section 291, 292 of companies Act-1956, do not allow to advance loan. However, if the company passes the special resolution on this subject, the same is filed U/s 610 of the companies Act-1956. In this case plaintiff/witness has not produced minutes of meeting held by Company Directors and passed Special Resolution for advancing loan Rs.12,75,000/- to Shri Subhash Chander Kalra, Rs.6,00,000/- to his wife Smt. Chandra Kalra and registered on 29.10.2001, 19.11.2001, 18.12.2001, 26.12.2001, with copy of their individual PAN card, being a mandatory requirement under law.

(b) Smt. Chander Kalra (issue less) normal person, was murdered and died on 9.1.2002. Plaintiff Company has not recovered SHARE MONEY Rs.6,00,000/- paid to her on 26.12.2001, from her husband Shri Subhash Chander Kalra, who also died on7.10.2002. The recovery suit filed long after death of Smt. Chander Kalra, is barred under law and not maintainable.

(c) Senior Suptd. of Post Offices (South Dn)/ C.P.I.O, vide letter No. CR8A/RTI/MISC-13(A)/09-10 dated 8.6.2009(EX/DW-4/4), has informed that Station Holding Pvt. Ltd. had no office at S-236 (First floor front portion) Panchsheel Park, New Delhi-110017. The Board of Directors of Plaintiff Company have not authorized Shri RAKESH CHADHA, to do all the lawful acts in the alleged meeting on 4.10.2001 at 5.P.M., as there is no business establishment at S-236

(First Floor) Panchsheel Park, New Delhi 110017. Sub Post Master Malviya Nagar, Post Office New Delhi-110017 has also reported that present office address of Station Holdings Pvt. Ltd. is not available.

(d) Details, as to the address of registered office, whether it is owned by the company or taken on lease, is mandatory. Change of company office is also registered vide para 610(B)(F) of Companies Act-1956. Plaintiff/witness has given misleading address S-236 (First floor) Panchsheel Park, New Delhi-110017 in Hon'ble High Court of Delhi on 18.11.2002. Predecessor Court order dated 4.5.2011 allowed plaintiff witness, to submit Form-18, i.e. names of Directors and their residential address, as Certificate of Incorporation dated 13.12.1994 on court record, do not indicate company address. Plaintiff/Witness has not filed e-Form-68 for change of company address, from S-236 (First Floor) Panchsheel Park, New Delhi to D-120, Saket, New Delhi on 19.1.2013 as additional evidence if registered, although opportunity was given by Court of Dr. Archana Sinha, ADJ, Delhi on 4.5.2011.

(e) I say that plaintiff/witness is not 'Authorised Representative' of Station Holdings Pvt. Ltd. Regd. office S-236 Panscheel Park, New Delhi since 4.10.2002 and has not filed e-Form of CIN Regd. No. U748899 DL 1994 PTC 063444 for amending Company address, as given in para 2 of Affidavit-in Evidence dated 23.3.2006.

4. The deponent states that Station Holdings Pvt. Ltd., from false address B-23 G.K-I, New Delhi-110048, filed a Police Complaint in March 2003, claiming ownership of deceased Shri Subhash Chander Kalra's estate on the alleged WILL made and PUBLISHED on 11.9.2002, in favour Ms. Monica Kalra Company Director. The police enquiry was attended on 28.3.2003, on receipt of Police Summon No.L/CBI/Insp/LBR/EOW dated 24.3.2003 and statements were recorded. Police authorities found that complainant is resident of D-120, Saket, New Delhi-110017 and had filed Recovery Suit in Hon'ble High Court of Delhi on 18.11.2002. The Company Director (Ms. MONICA KALRA) is awaiting High court directions.

5. The deponent states that Span Securities Ltd. Malviya Nagar and Saket Owned by Shri RAKESH CHADHA and his wife Mrs. Priyanka Chadha, has also given address D-120 Saket, New Delhi-110017, for investments and related services of loan, which is in public domain. Plaintiff/Witness has filed H.D.F.C. Bank record in predecessor court of this Court, on 1.8.2006. Plaintiff/Witness (Shri RAKESH CHADHA) was examined on H.D.F.C. Bank entries of Share money transactions in year 2001, and not on the loan documents, which are public documents and in Public Domain, as per Govt. Rules. Span Securities Ltd. was necessary party in the present suit, liable to explain details of family securities encashed, in year 2001.

6. The deponent states that deponent's mother late Smt. Shanti Devi Kalra was grand-mother of Company Directors. She was class I legal heir

of her son, deceased Shri O.P.Kalra's estate and was residing at D-120 Saket New Delhi-110017 (Ration Card No. 6769/573214 dated 1.8.1988, original seen and returned on 2.4.2008). She was looking after her three minor grand-daughters i.e defendants-1, 2 and 3, proceeded ex-parte. Smt. Shanti Devi Kalra executed her Will on 12.1.1995 in favour of Nirmal Makkar/P.D.Makkar, excluding her son Shri Subhash Chander Kalra and others (i.e. plaintiff Company Directors), as plaintiff/witness and his wife Mrs. Priyanka Chadha (owners of **Span Securities**), were misusing her residence for commercial purposes, in year 1994. Her **WILL** dated 12.1.1995 was proved in the Court of Shri M.A.Khan, Distt. Judge Delhi on 17.8.1999, after Testator's death on 11.3.1997.

(b) I, say that deponent has inherited ¼ share in the family property D-120 Saket, New Delhi-110017, which is plaintiff Company's registered office and family shares on 11.3.1997, in possession of Span Securities Ltd., under Hindu Succession Act.

COURT RECORD DATE WISE

7. The deponent has obtained certified copy of H.D.F.C Bank account of Plaintiff Company for year 2001-02 (original seen by predecessor Court of this court on 1.8.2006 and returned to the plaintiff/witness). The plaintiff Company had no funds to advance Corporate Loan to deceased persons in year 2001. However plaintiff/witness Sh. Rakesh Chadha owner of **SPAN SECURITIES LTD**, D-120, Saket, New Delhli-110017 and **self-proclaimed representative,** has encashed and transferred Share Application Money i.e value of certain family securities Shri Rakesh Chadha owner Span Securities, has paid the amount by cheques in favour of Company Directors in their H.D.F.C Bank A/C No. 00320002178. The SHARE of Shri Subhash Chander Kalra in the family estate and HUF properties including benami Company's registered office D-120 Saket, New Delhi-110017 (IF ANY), was paid in the year 2001. Bank entries for the year 2001, filed on 1.8.2006 on court record are as under:-

(a) **Cheque No. 297610 dated 19.11.2001.** Span Securities Ltd. transferred Rs.4,25,000/- Share Application Money to plaintiff Company's HDFC Bank A/C No. 003200002178 and simultaneously transferred amount to I.D.B.I S.B. A/C No. 01310861800. Defendant No.6(Bank) issued Fixed Deposit Receipt No. 040105000010788 dated 22.11.2001 for Rs.4,25,000/-, for regular payment of interest to Shri Subhash Chander Kalra Customer I.D.No. 856918.

(b) **Cheque No. 297616 dated 18.12.2001**. Span Securities Ltd transferred Share Application Money Rs.4,00,000/- similarly for issuing 'Fixed Deposit' Receipt to Shri Subhash Chander Kalra Custom ID No. 856918, for regular payment of interest.

(c) I say that Plaintiff witness has not produced loan ledger of Shri Subhash Chander Kalra, on 1.8.2006 and record of share money Rs.4,50,000/- paid on 29.10.2001. Plaintiff Company has also not produced three 'Revenue Stamp' affixed receipts, of Shri Subhash

Chander Kalra for Share Money paid on 29.10.2001, 19.11.2001 and 18.12.2001, with copy of his PAN CARD No. AFZPK5135L. The Company Accounts are audited and documents are filed in Registrar of Company's office, mandatory requirements under law and Income Tax Rules. Company Directors ex-parte, have not filed audited accounts for the year 2001-02 on 18.11.2002.

(d) **Cheque No.297617 dated 26.12.2001**. Span Securities Ltd. Cheque No. 380476 for Share Application Money Rs.6,00,000/- was credited in HDFC Bank A/C No. 003200002178. Thereafter cheque No.297617 dated 26.12.2001 for Rs.6,00,000/- was issued in favour of Mrs. Chandra Kalra. The cheque was issued without obtaining her 'Revenue Stamp' affixed Receipt for Share Money Rs.6,00,000/- paid with copy of her PAN Card. Mrs. Chandra Kalra was not assessed under Income Tax Act and was not entitled for Corporate Loan as per Govt. Rules. Three Cheques were deposited in I.D.B.I S.B A/c No. 0131085691700 of customer No. 856917 Mrs. Chandra Kalra as under:-

(i)	H.D.F.C bank Surya Kiran cheque No.299617 dated 26.12.2001 (share Application Money)	=Rs.6,00,000/-
(ii)	State Bank of India D/W05153	=Rs. 25,000/-
(iii)	State Bank of India D/W05134	=Rs. 7,820/-
	Total	=Rs.6,32,820/-

Defendant No.6(I.D.B.I) issued Fixed Deposit Receipt No.040105000013484 dated 28.12.2001 for Rs.6,30,000/- payable on 12.2.2002, for Maturity Value Rs.6,35,359/-. Unfortunately Smt. Chandra Kalra, childless, was murdered and died on 9.1.2002. She has not withdrawn interest Rs.5359/- due for payment on 12.2.2002. The original documents given by defendant No.6(Bank), are annexed as EX/DW-4/5.

(b) Smt. Chandra Kalra customer ID 856917, had enough money in her other Fixed Deposit Receipts with Defendant No.6(Bank) vide F.D.R No. 0114285691700, F.D.R.No. 040105000009935 and F.D.R. No. 040105000013323, apart from her SB A/C No. 013110005691700. I say Smt. Chandra Kalra normal person, was not in need of loan and was insisting for payment of her Share Money in the family estate, business concern (Kalra Sales Crop.) and H.U.F. properties obtained by Ms. MONICA KALRA, Company Director on 15.2.1997, before **TESTATE** death of grand-mother, on 11.3.1997. She has not executed **WILL** in favour of defendant No.1,2, 3 ex-parte.

8. The deponent states that Registrar of Companies in para C of letter dated 31.3.2009 (**EX/DW-4/3),** has already informed that Balance Sheet(s) of amount transferred in H.D.F.C. Bank from **SPAN SECURITIES** to M/s Stalion Holdings Pvt. Ltd., are filed under section 610 of Companies Act-1956. Plaintiff/Witness has not produced copy of Board of Director's Special Resolution to transfer 18,75,000/- form **SPAN SECURITIES**, and pay Tax in

Govt. account, and thereafter advance interest free loan, till disposal of immoveable properties, owned by Smt. Chandra Kalra and Shri Subhash Chander Kalra.

9. The deponent states, Securities Transaction Tax is paid under Income Tax Act. Plaintiff/Witness has not produced record of S.T.T paid by Span Securities Ltd and thereafter Tax paid by Stalion Holdings Pvt. Ltd on 29.10.2001, 19.11.2001, 18.12.2001 and 26.12.2001, on alleged loan. Predecessor Court of **Dr. ARCHANA SINHA** ADJ allowed petitioner on 4.5.2011, to produce additional evidence claiming 24% interest on Rs.18,75,000/- from 7.10.2002 and Tax paid on amount Rs.19,31,250/- from date of present suit 18.11.2002, till Suit for Recovery of 'Share Money' is decided, in this Hon'ble Court.

SUCCESSION CERTIFICATE ON COURT RECORD

10. That deponent has already explained facts in preliminary objections, in paras 6 to 10 of her written statement dated 7.12.2002 in Hon'ble High Court of Delhi. G.T.C. Industries Ltd. Bombay letter dated 8.11.1988 on court record, asked Smt. Shanti Devi Kalra mother of deceased & Class-I legal heir to produce Succession Certificate. Thereafter G.T.C. Industries Ltd. Bombay, vide letter NO. GTC/SEC/123 dated 29.5.2002, informed deponent that company has already transmitted 40 shares in the name of Company Directors 1, 2, 3 as per Succession Certificate issued by the Civil Judge Delhi and said shares were demated. The company is unable to pay mother's share, who was claiming her share in the estate. In response to notice, G.T.C. Industries Ltd. Bombay vide letter No. G.T.C./SEC/147 dated 17.6.2002, on court record, supplied photocopies of Succession Certificate for doing the needful, against plaintiff company.

(b) Shri Subhash Chander Kalra strongly protested in September 2001 that plaintiff Company Directors/Defendants No. 1, 2, 3 have fraudulently obtained SUCCESSION CERTIFICATE. They have suppressed deceased's share in the estate and Succession Certificate obtained on 15.2.1997 before death of our mother Smt. Shanti Devi Kalra on 11.3.1997. Thereafter Plaintiff Company Directors agreed for payment of SHARE MONEY of Shri Subhash Chander Kalra in year 2001. The deponent has also found that Ms. Monica Kalra Company Director (declared ex-parte), has falsely deposed in the Court of Administrative Civil Judge Delhi on 15.2.1997, the plaintiff Company Directors 1, 2, 3, are the only legal heirs of their father Shri O.P. Kalra who died intestate in car accident on 2.7.1988 with his wife Smt. Veena Kalra. Ms. Monica Kalra suppressed 1/4th Share of grand-mother who was class I legal heir of her deceased son Shri O.P. Kalra, under Hindu Succession Act. Plaintiff/Witness denied facts in Replication dated 22.9.2005.

(c) I say that Smt. Shanti Devi Kalra also filed 'Death Claim' for Policy No. 24518551 of her deceased son Shri Om Prakash Kalra, on 17.11.1988. L.I.C. Delhi Davison, (Branch Unit 112) issued various reminders on 2.3.1989, 7.7.1989 and finally on 6.12.1989, asking Smt. Shanti Devi Kalra to provide Police Inquest', 'Post Morton Reports' and death certificates issued by Civil Hospital Bhoghpur. Company Directors/Defendant No. 1, 2, 3 refused to deliver required documents and were awaiting life time of grand-mother residing with them. After her Testate death on 11.3.1997 Company Directors received all the benefits on Six Insurance policies with accident benefit stating in court on 13.7.1998, that mother, of deceased father is now not alive and fraudulently obtained extension of Succession Certificate on 19.8.1999, already granted by Hon'ble court on 15.2.1997.

11. Predecessor Fast Track Court of Shri R.B. SINGH by other dated 2.4.2008 allowed prayer to place on record, (EX/SC-3) i.e. certified copy of court order dated 15.2.1997 for grant of Succession Certificate and copy of Succession Certificate dated 25.7.1997 (mentioned in para 13(b) of application dated 2.4.2008) was supplied to Ld. Counsel for the plaintiff (Shri Vijay Zaveri), to reply on source of funds Rs.18,75,000/- in year 2001, with details of securities encahsed and amount transferred in the plaintiff's Company's H.D.F.C. Bank Account from Span Securities Ltd. owned by Shri Rakesh Chadha. Copy of Administrative Civil Judge Delhi (Shri KAMLESH KUMAR) order dated 15.2.1997 in petition No. 772/94, for grant of Succession Certificate, in favour Company Directors 1, 2, 3 on 15.2.1997, on court record, is annexed as EX/DW-4/6.

12. Reply of Shri VIJAY ZAVERI Advocate dated 20.8.2008/3.9.2008 on court record, states that it is for this Hon'ble Court to decide, whether the plaintiff/witness has been able to prove in the case or not. In the even this Hon'ble Court comes to the conclusion that facts/documents are in Public Domain, and registration of audited accounts was filed in the Registrar of Companies in year 2002, the plaintiff would succeed in present suit.

(b) I say that Plaintiff/witness deposed on 19.1.2013 that he had resigned on 16.7.2002. He was not Company Director when resolution was passed on 4.10.2002 in his favour. The plaintiff/witness filed Recovery suit on behalf of Company Directors/Defendants No. 1, 2, 3 who remain ex-parte. None was present for them on 19.1.2013.

13. After Hon'ble court order dated 2.4.2008, the deponent also moved application dated 7.5.2008, U/S 383 of the Indian Succession Act in the court of Shri Dig Vinay Singh Administrative Civil Judge Delhi, for revocation of Succession Certificate dated 25.7.1997 and

extension dated 19.8.1999, granted on 15.2.1997, in respect deceased Shri O.P. Kalra's estate consisting of six life Insurance Policies with accident benefits, family business concerns, H.U.F. properties and various Bank and Post office accounts.

(b) I say that D.D.A. being a party in the suit, has stated in the court Case No. 380/2008 on 6.4.2009 that mutation of D-120 Saket, (Company's registration office on D.D.A. leased residential land), shall be resorted only after application dated 7.5.2008 for revocation of Succession Certificate, is decided.

(c) Dy. Director (RL)/D.D.A. informed deponent that Company Directors have applied for mutation of plot D-120 Saket, New Delhi vide D.D.A. Dy No. 7406 dated 3.7.2000, in the name of Smt. SONIA CHADHA and her two sisters, concealing share of legal heirs of deceased Smt. Shanti Devi Kalra, grandmother and class-I legal heir, for moveable and immovable properties of deceased son Shri Om Prakash Kalra.

(d) I say suit No. 380/2008 titled Nirmal Makkar .... vs..... Priyanka Chadha & others filed on 7.5.2008, is still pending sub-judice in the court of Shri Sanjeev Kumar Singh Administrative Civil Judge Delhi (with powers delegated under Indian Succession Act).

(e) State Bank of India (DEMAT Section) local Head office Delhi require PAN number of deceased Smt. Veena Kalra @ Usha Rani and her hasband Shri Om Prakash Kalra as detailed given in Succession Certificates dated 25.7.1997 and 19.8.1999 paid to Company Directors defendant No.1, 2, 3 ex-parte are not complete. Their counsel Shri Vijay Zaveri was not present on 5.10.2013 and case is listed for arguments on 20.12.2013.

14. The deponent states that Mrs. Priyanka Chadha (maiden name Priyanka Kalra) w/o Shri Rakesh Chadha r/o D-120 Saket, New Delhi – 110017 Company Director proceeded ex-Parte) has filed **AFFIDAVIT-IN-EVIDENCE** dated 11.2.2003 in the court of Civil Judge Delhi in transferred Suit No. 396/1990 IA No. 1144/90, from Hon'ble High Court of Delhi titled Priyanka Kalra and others.....vs.....Smt. Shanti Devi L/R(now represented by Nirmal Makkar), that remaining 1/15 share of property D-120 Saket, New Delhi (Plaintiff Company registered office CIN No. U74899DL1994PTC063444), may go and mutated in favour of Mrs. NIRMAL MAKKAR as Shri Subhash Chander Kalra relinquished his share (**IF ANY),** on 19.9.2001. D.D.A require court order for partition of the property, and transferring property share of Smt. Shanti Devi Kalra in favour of her only legal heir i.e. answering defendant No.4.

(b) I say that deceased was paid Share Money agreed amount Rs. 18,75,000/- in year 2001 and deponent's share in Company office, is pending sub-judice. Dist. Judge Delhi (west) order dated

> 15.12.2012, transferred suit No.20/2013 to court of Ms. RICHA GUSAIN SOLANKI, Civil Judge Delhi for deciding share of deponent in Plaintiff Company's Regd. Office D-120 Saket, New Delhi. ………"
>
> (underlining added)

16. Learned counsel for the appellant/plaintiff argued that appellant/plaintiff has filed in this Court an application for additional evidence under Order XLI Rule 27 CPC being CM No. 20363/2018 and this application be allowed. By this application appellant/plaintiff seeks to produce the documents to show proper filing of the suit, documents of the appellant/plaintiff company that loan was granted and that the probate petition filed by the respondent no.4/defendant no.4 claiming rights on the basis of the alleged Will of Sh. Subhash Kalra has been dismissed vide judgment dated 1.9.2009, however in my opinion this application cannot be allowed because the object of Order XLI Rule 27 CPC is not to allow a party to fill in lacuna in his case at the stage of first appeal once a party such as the appellant/plaintiff company had complete opportunity during the course of trial of the suit to lead evidence to prove its case, and in which regard the appellant/plaintiff failed resulting in dismissal of the suit for recovery filed by the appellant/plaintiff by the impugned

judgment. This application being C.M. Appl. No. 20363/2018 is therefore dismissed.

17. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed.

MAY 22, 2018 **VALMIKI J. MEHTA, J**