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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 22nd February 2018
+ **RFA 189/2015**

SHRI SHYAM SUNDER Appellant

Through: Mr. Sunil Kumar, Advocate.

versus

SOHAN SINGH @ SHOBAN SINGH Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

PRATHIBA M. SINGH, J (Oral)

CM APPL.5323/2015

1. The counsel for the Appellant/Plaintiff (*hereinafter*, 'Plaintiff') prays for condonation of delay on the ground that the Plaintiff was suffering from jaundice during the relevant period and hence could not take steps to file the appeal. In view of the reasons stated in the application, the delay of 213 days is condoned. Accordingly, application stands disposed of.

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2. The Respondent/Defendant (*hereinafter*, 'Defendant') was directed to be served through publication vide order dated 22nd January, 2018. None appears for the Defendant and they are proceeded ex-parte.

3. Copy of the publication is taken on record.

4. This is an appeal against the impugned order dated 16th May, 2014 by which the Trial Court has dismissed the suit for recovery of Rs.3,26,235.58/. The Plaintiff's case is that he had given a loan of Rs.3 lakhs to the

Defendant, in cash, on 1st April, 2008. When the Plaintiff demanded repayment of the loan, the Defendant is alleged to have executed a written agreement/receipt in the presence of two witnesses. Subsequently, the Plaintiff had also issued a legal notice on 23rd September, 2008. However, no payment was forthcoming. Hence the subject suit for recovery was filed by the Plaintiff against the Defendant. The following issues were framed in the suit:

“5. Vide order dt. 03.11.2009, the following issues were framed in view of pleading of the parties.

(i). Whether the plaintiff is entitled to the recovery of the said amount? OPP

(ii). Whether the plaintiff is entitled to any interest on the said amount? If so at what rate and for what period ? (OPP).

(iii). Relief.”

The Plaintiff led the evidence of himself and two witnesses who had witnessed the receipt. The Defendant filed his own affidavit. The Defendant denies the availing of the loan and, in respect of the receipt, it is the Defendant's case that on 4th September, 2008 at night about 10:30 P.M., the Plaintiff and his associates forcefully got the written receipt executed.

5. Two witnesses on behalf of the Plaintiff, PW-2 and PW-3 appeared and deposed that the written agreement was entered into in their presence on 4th September, 2008. PW-3 specifically submits that at the time of the transaction the Plaintiff, the Defendant and his wife were present and the loan was given. PW-3 has categorically denied that there was pressure and force exerted for signing the receipt dated 4th September, 2008 (Exhibit PW1/A).

6. What is significant is the evidence of DW-1, Mr. Sohan Singh who in

his cross-examination states -

“I was residing in H. No. 71, Gali No. 3, Braham Puri from last four-five years. At present, I am residing at H. No. I-40A, Gali No. 10, Braham Puri, Delhi from last 4-5 months. On 22.07.2011, I was not residing at the address at H. No. 71, Gali No. 3, Braham Puri. I can not tell the contents of my affidavit Ex.DW1/A. I can not tell the exact place where my signatures were taken by my counsel on the affidavit at points A and B.

It is incorrect that I was purchased the plot no. F-94, Rana Chowk, Ram Park, Loni Ghaziabad, UP in the name of my wife Smt. Guddi. It is incorrect to suggest that I have sold the house at present. It is correct that I was residing in front of the house of plaintiff at the time of taking the loan from plaintiff. It is correct that relation between me and plaintiff are good in the year of 2008. I have lodged a complaint on 04.09.2008 against the plaintiff regarding threats. I can not produce any documents regarding complaint or report filed by me in any police station. I had not lodged complaint against any 3-4 persons.

It is correct that the Ex.PW1/A is in my handwriting. Vol. when I was coming from my duty, 3-4 persons caught hold me and signed a blank paper. It is incorrect to suggest that I am deposing falsely no 3-4 were caught hold me and not signed on a blank paper. It is correct that one notice was sent to me by plaintiff which is with my counsel. I do not know whether any reply was given by my counsel. It is incorrect to suggest that I am deposing falsely due to not repay the amount of Rs. 3,00,000/-.”

The Defendant also contradicts himself by firstly, saying that PW1/A i.e. receipt dated 4th September, 2008 is not in his handwriting. Thereafter he says that he had signed on blank paper. Moreover, the Defendant has not

produced any witness who could corroborate his version that the receipt was executed by force or by putting any pressure. No police complaint has been filed. Thus, the Defendant, appears to be resiling from repayment, after having availed of the loan. It is not possible to presume, in the absence of evidence to the contrary, that the receipt was executed under pressure or coercion, merely on a bare allegation of the Defendant.

7. The Trial court has held that in view of the provisions of the Income Tax Act, no loan above Rs. 20,000/- could have been given in cash, so the loan transaction is not liable to be recognised. In so far as this is concerned, Sections 269SS and 269T do make it compulsory for persons who accept loan or deposits of about Rs.20,000/- to accept them only through proper banking channels. The consequence of not doing so could fasten the parties with penalties under the Income Tax Act, 1961 which the Court is not concerned with in these proceedings. The Plaintiff and the Defendant could be in violation of the said provisions which would be gone into by the Income Tax Authorities. Authorities are free to take action against the parties for violation of the provisions of the said Act. Under instructions from the Plaintiff, counsel for the Plaintiff submits that the Plaintiff used to file Income Tax Returns till 2 to 3 years back and has not filed any returns recently.

8. In so far as the present case is concerned, the categorical admission of the Defendant and the lack of any evidence to support the case of the Defendant, clearly lead to the conclusion that the Trial Court was in error in holding that the Plaintiff has not discharged his onus in proving that the loan was taken. The Receipt dated 4th September, 2008 exists and the Defendant does not deny his signatures on the same. The Plaintiff is thus entitled to a

decree in his favour.

9. The Trial Court judgment is accordingly set aside and the suit is decreed for a sum of Rs. 3 lakhs with interest @ 6% per month from the date of filing of the suit till the date of payment.

10. Appeal is allowed. No order as to costs.

PRATHIBA M. SINGH
Judge

FEBRUARY 22, 2018/ R

