

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

+ **RFA No. 895/2018**

% **31st October, 2018**

BEENA DEVI

..... Appellant

Through: Mr. Alope Kumar
Bhattacharya, Ms. S.
Mukherjee and Mr. Harjinder
Singh, Advocates (Mobile
No. 8447271675).

versus

DHARAMVEER

..... Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 45609/2018 (for exemption)

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

**C.M. Appl. Nos. 45610/2018 (for delay in filing) and 45611/2018
(for delay in re-filing)**

2. For the reasons stated in the applications the delays of 691 days in filing the appeal and 62 days in re-filing the appeal stand condoned, subject to just exceptions.

C.Ms. stand disposed of.

RFA 895/2018 and C.M. Appl. No. 45608/2018 (for 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 30.05.2016 by which the trial court has decreed the suit for recovery of Rs. 8,00,000/- along with interest at 12% per annum. The principal amount of Rs. 8,00,000/- was the amount paid by the respondent/plaintiff to the appellant/defendant under agreements for purchasing two flats of the appellant/defendant, but since these flats were sold to third persons, hence the suit was filed for recovery of the amount paid as evidenced by the two Receipts dated 14.06.2014.

4. The facts of the case are that respondent/plaintiff filed the subject suit pleading that the appellant/defendant agreed to sell two built up flats in her property to be constructed on a land ad measuring 37½ sq. yards, being the upper ground floor and first floor without roof rights, in property No. 3-C, Khasra no. 24/10, Village Khureji-Khas in the Abadi of Rani Garden, Shastri Nagar, Delhi-110031. The consideration of each flat was Rs. 4,00,000/-

and to evidence the payment of the total amount of Rs. 8,00,000/- two Receipts dated 14.06.2014 of Rs. 4,00,000/- each were executed by the appellant/defendant. The respondent/plaintiff pleaded that despite repeated demands to the appellant/defendant to deliver possession of the flats and register the Sale Deed, the appellant/plaintiff failed to do so, and that in the month of June, 2015, respondent/plaintiff came to know that the subject flats were already sold by the appellant/defendant to other person who was in possession of the said flats, and hence the subject suit was filed for recovery of the amount of Rs. 8,00,000/- paid, after serving Legal Notice dated 29.06.2015.

5. Appellant/Defendant contested the suit by filing written statement. It was pleaded that the Receipts dated 14.06.2014 were forged and fabricated documents and that the same were neither executed by the appellant/defendant nor she had put her signatures or thumb impressions on the receipts. The appellant/defendant pleaded that in fact the respondent/plaintiff along with two other persons namely Sh. Rajkumar and Sh. S.K. Shamim entered into a Collaboration Agreement on 20.03.2013 for constructing the property of the appellant/defendant, and at that time the respondent/plaintiff along with Sh. Rajkumar and Sh. S.K.

Shamim had taken signatures and thumb impressions of the appellant/defendant on some blank papers stating that they were required for exemption from house tax and for making applications to Municipal Corporation of Delhi for getting plan sanctioned, and therefore the appellant/defendant had put her signatures and thumb impressions on the blank papers, besides also giving her photograph to the three persons as asked for by them. The three builders, including the respondent/plaintiff, failed to perform their part of the contract and used poor quality material and cement for construction of the building and also delayed the completion of the work resulting in the appellant/defendant having spent Rs. 1,50,000/- to complete the work which was left incomplete and another amount of Rs. 1,50,000/- was claimed towards the rental amount. The builders are also alleged to have taken excess space of approximately Rs. 90,000/-, and therefore a sum of Rs. 3,90,000/- was claimed to be due to the appellant/defendant from the three builders including the respondent/plaintiff. The notice given by the respondent/plaintiff was repudiated by the Reply dated 13.07.2015 sent by the appellant/defendant. The suit was prayed to be dismissed.

6. After the pleadings were complete, trial court framed issues and parties led evidence, and these aspects are recorded in paras 4 to 6 of the impugned judgment which read as under:-

“4. On the pleadings of the parties, following issues were struck:-

- (1) Whether the receipt dated 14.06.2014 filed by the plaintiff is forged and fabricated as alleged by the defendant? OPD.
- (2) Whether the present suit is not maintainable due to non joinder of necessary and proper parties, i.e. Shri Raj Kumar and Shri S.K. Shamim, who are the partners of the plaintiff? OPD
- (3) Whether the suit is barred by Section 41(h) of Specific Relief Act? OPD
- (4) Whether the suit filed by the plaintiff is not maintainable? OPD.
- (5) Whether the plaintiff is entitled for recovery of Rs.8,00,000/-? OPP.
- (6) Whether the plaintiff is entitled to interest, if so at what rate? OPP.
- (7) Relief.

PLAINTIFF'S WITNESSES

PW1	Shri Dharamveer, (the plaintiff)
PW2	Shri Kriti Nagar, Munshi of a document writer who got the receipts prepared and is a witness to the same

5. PW1 Shri Dharamver proved his affidavit as Ex.PW-/A

DOCUMENTS RELIED UPON BY THE PLAINTIFF

Ex.PW-1/1 and Ex.PW1/2	Two receipts dated 14.06.2014 in respect of the consideration money (the
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	same were already exhibited as Ex.P1 and P2 at the time of admission-denial of document)
Ex.PW1/3, /Ex.DW1/P2	Legal Notice dated 29.06.2015
Ex.PW1/4	Postal receipt

DEFENDANT'S WITNESSES

DW1	Smt. Beena Devi, the defendant
DW2	Shri Pradeep Kumar Sharma, Ahlmad from the court of Sh. V.K.Goel, Ld. ADJ-01(E), KKD Courts, Delhi

6. DW1 Smt. Beena Devi has proved her affidavit as Ex.DW1/A.

6.1. DW2 is Sh. Pradeep Kumar Sharma, Ahlmad from the court of Sh.V.K. Goel, Ld ADJ-01(E), KKD Courts, Delhi, who has proved the summoned record pertaining to case file bearing No.1838/16/14, titled "Raj Kumar & Anr. Vs Veena @ Beena Devi" i.e. photocopy of written statement dated 20.11.2014 along with affidavit as Ex.DW2/1, photocopy of reply dated 13.10.2014 to the notice dated 26.09.2014 as Ex.DW2/2 and photocopies of postal receipts as Ex.DW2/3 (colly).

DOCUMENTS RELIED UPON BY THE DEFENDANT

Ex.DW1/1	Reply dated 13.07.2015 to the legal notice dated 29.06.2015
Ex.DW1/2	Postal receipt
Mark X (colly six pages) Ex.DW1/P1	Copy of collaboration agreement

7. The trial court has held that the respondent/plaintiff has proved his case on balance of probabilities because the two Receipts dated 14.06.2014 evidencing receipt of Rs. 4,00,000/- plus Rs. 4,00,000/- (total Rs. 8,00,000/-) were proved as Ex.PW1/1 and Ex.PW1/2. Trial court has held that it is not believable that these two receipts do not bear the signatures and thumb impressions of the appellant/defendant. I have gone through the two receipts, and it is noticed that besides the two receipts bearing the signatures and thumb impressions of the appellant/defendant, one receipt contains the photograph of the appellant/defendant and the appellant's/defendant's thumb impression exists across the photograph. Signatures of a person can be forged but surely thumb impressions cannot be forged, and it was always open for the appellant/defendant, in case the two receipts did not bear the thumb impressions of the appellant/defendant, to file her thumb impressions in the Court and also if so required handwriting expert's report qua the thumb impressions, to prove that the thumb impressions on the two receipts are not her's, but the appellant/defendant did not do the same.

8. Trial court has also rightly held that the receipts bear signatures of two witnesses and that one witness is one Sh. Raju,

and who is none else than the son of the appellant/defendant. Besides Sh. Raju signing as the first witness on the two receipts, the receipts also bear the thumb impression of Sh. Raju the son of the appellant/defendant, and the aforesaid reasoning with respect to the thumb impression of the appellant/defendant will apply *mutatis mutandis* so far as the thumb impression of Sh. Raju, the son of the appellant/defendant, is concerned.

9. In my opinion, therefore, the trial court has rightly relied upon the receipts to show that the appellant/defendant had received a total amount of Rs. 8,00,000/- from the respondent/plaintiff towards two flats being the upper ground floor and first floor without roof rights in the subject property of the appellant/defendant.

10. Another important aspect which is to be noted is that though the appellant/defendant claimed that the Collaboration Agreement dated 20.03.2013 was entered into by her with the respondent/plaintiff as also two other persons Sh. Rajkumar and Sh. S.K. Shamim, however admittedly the Collaboration Agreement does not bear the signatures of the respondent/plaintiff nor the Collaboration Agreement is entered into by the appellant/defendant

as a party to the same with the respondent/plaintiff/Sh. Dharamveer. The Collaboration Agreement as per its very first page and paragraph shows that the same was entered into only as between the appellant/defendant and the two other persons Sh. S.K. Shamim and Sh. Rajkumar. The trial court has therefore rightly disbelieved the case of the appellant/defendant that it was the respondent/plaintiff who also was a party to the Collaboration Agreement with her.

11. In fact the trial court has rightly noted in paragraph 12.9 of the impugned judgment that in an earlier litigation in the pleading of the appellant/defendant there was not even a whisper with respect to Sh. Rajkumar and Sh. S.K. Shamin in connivance with the plaintiff in getting some blank documents signed. This paragraph of the impugned judgment reads as under:-

“12.9 The written statement dated 20.11.2014 Ex.DW2/1 filed by the defendant in the case file bearing No.1838/16/14 titled ‘Rajkumar & Anr. Vs Veena @ Beena Devi’. Reply dated 13.10.2014 Ex.DW2/2 to the notice dated 26.09.2014 and photocopies of postal receipts of the case pending before the court of Sh.V.K.Goel, Ld. ADJ, KKD, Delhi, have been brought on record by DW2 Shri Pradeep Kumar Sharma, Ahlmad, in the court of Shri V.K.Goeal, Ld. ADJ-1, KKD, Delhi. The written statement is dated 20.11.2014 while the documents Ex.PW1/1 and Ex.PW1/2 are dated 14.06.2014. However, there is not even an iota of allegation that Sh. Raj Kumar and Shri S.K.Shamim in connivance with the plaintiff herein got some blank documents signed. There is no whisper regarding the plaintiff herein. Though in the notice dated 13.10.2014, issued to the Advocate

of Shri Raj Kumar and Shri S.K.Shamim, it is alleged that the above stated two persons along with their partner Shri Dharambir Tangri violated the agreed terms and conditions of collaboration agreement. There is no allegation of any connivance or collusion against the plaintiff and the above stated two persons.”

12. Learned counsel for the appellant/defendant argued that the trial court has itself observed in paragraph 12.14 of the impugned judgment that there were loose ends and lacunas in the case of the respondent/plaintiff, and which as per the appellant/defendant are that as to how receipts could only have been executed after total money was paid in 6-7 installments or that possession was not received in spite of complete payment, in my opinion, no doubt such facts may create a case in favour of the appellant/defendant, however, the earlier/aforesaid discussion shows that the trial court on applying the principle of preponderance of probabilities has rightly held that the respondent/plaintiff has proved the payment by him for a sum of Rs. 8,00,000/- to the appellant/defendant. Also, once the receipts bear not only the signatures but also thumb impressions of the

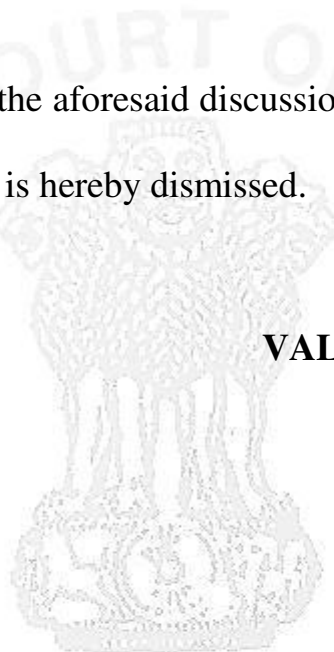
appellant/defendant, with one thumb impression appearing across the photograph of the appellant/defendant, then merely because there may be some aspects in favour of the appellant/defendant as argued before this Court and before the trial court, would not mean that the respondent/plaintiff was not entitled to succeed.

13. In view of the aforesaid discussion, there is no merit in the appeal and the same is hereby dismissed.

OCTOBER 31, 2018

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VALMIKI J. MEHTA, J



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