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

Date of Decision: 5th February, 2018

\+ **RFA 468/2017**

HARISH KUMAR BHOLA ..... Appellant

Through: Ms. Sanya Kapur & Mr. Sagar Aggarwal, Advocates (M-9999645466).

versus

CHANDER BHAN ..... Respondent

Through: Mr. Bhupinder Mehtani & Mr. Vineet Kumar Tuteja, Advocates (M-9811433605).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh. J. (Oral)

RFA 468/2017 & CM APPL. 17035/2017 (Stay)

1. The Appellant/Defendant *(hereinafter, 'Defendant')* has preferred the instant appeal challenging order dated 4th March, 2017 refusing leave to defend to the Defendant. The case of the Respondent/Plaintiff *(hereinafter `Plaintiff')* is based on loan agreement dated 25th June, 2012 by which the Plaintiff had lent to the Defendant a sum of Rs.4 lakhs. The Plaintiff filed a suit based on the loan agreement, under Order XXXVII of CPC on 5th November, 2014 and prayed for a decree for a sum of Rs.6,70,000/- which included the interest component.

2. The Defendant initially filed an application under Order XXXVII Rule 3(5) of CPC seeking leave to defend on 19th May, 2015. However, the

same was amended by the Defendant. The amendment was allowed on 7th April, 2016.

3. The main defence of the Defendant is that the loan agreement is fictitious and a sham document which was signed on blank papers by the Defendant. The submission of the Defendant is that there was an earlier property transaction with the Plaintiff, by which the Defendant had purchased a property from the Plaintiff. Since the electricity meter of the said property had to be transferred in the name of the Defendant and the Plaintiff had agreed to assist in the said DESU meter being transferred. The Defendant submits that the said blank papers were signed for the purpose of transfer of the DESU meter.

4. On the other hand, counsel for the Plaintiff submits that the parties were known to each other for many years and the Defendant was in need of money, and a sum of Rs.4 lakhs was given to the Defendant as a loan. Counsel for the Plaintiff fairly concedes that the interest as contained in the loan agreement is not being claimed.

5. The Trial Court record was requisitioned and the court has perused the original loan agreement. The important features of the entire transactions are;

a) It is a Rs.10 stamp paper purchased by the Plaintiff on 21st June, 2012, four days prior to the date of agreement;

b) The loan agreement bears the signature of the Defendant on the first page and on the second page. The thumb impression of the Defendant also appears on the loan agreement on both the pages.

(c) After the execution of the agreement, the Plaintiff issued a notice to the Defendant some time in 2014, which was replied by the

Defendant. The legal notice called upon the Defendant to pay the loan amount of Rs.4 lakhs along with the interest @ 24% p.a. The reply to the legal notice was a bare denial apart from alleging that the loan agreement was fabricated, fraudulent and a sham;

(d) Another important feature is that the initial leave to defend which was filed by the Defendant did not contain any averment as to the DESU meter which is now being submitted. The amended leave to defend application completely changed the defence being put up.

6. It is relevant to point out that no copies of bills of the so called electricity meter have been placed on record along with the application for leave to defend to support this averment. It appears that the entire defence being put up therefore is a completely sham defence and is an afterthought. The Trial Court has therefore rightly held that no case is made out for grant for leave to defend to the Defendant.

7. Even in this appeal, the conduct of the Defendant has been far from *bonafide*. On the first date, subject to deposit of Rs.1 lakh, the judgment and decree was stayed by the court. The said amount was deposited in this court. On the last date, the son of the Appellant appeared before the court and submitted that he merely earns a sum of Rs.10,000/- and he has no capacity to deposit any further money. The counsel for the Respondent had pointed out on the last date, that the Appellant's family runs a jewellery shop in the name of Durga Jewellers at F-280, Mansarovar Garden, New Delhi-110015. The Defendant was directed to file an affidavit as to the status of the M/s. Durga Jewellers and assets owned by the Defendant. No affidavit was filed in compliance of the order dated 11th January, 2018.

8. Today, the counsel for the Defendant submits that the Defendant is

unwell and is bed ridden and his son is also unwell. No details of assets have been produced. The Respondent produced photographs of the shop of Durga Jewellers which shows that the shop is open and is conducting business. The counsel for the Defendant then submitted that the shop Durga Jewellers is run by the wife of the Defendant. It is, therefore, clear that the Defendant has not been candid with the court and he has also not complied with the orders passed by this court on the last date.

9. The leave to defend application does not made any mention of the thumb impressions of the Defendant which appear on the loan agreement. It is, therefore, clear that the defence of the Defendant is nothing but moonshine. The leave to defend has been rightly rejected by the Trial Court.

10. The appeal is therefore dismissed. The amount lying deposited along with the interest accrued thereon shall be released in favour of the Respondent within 10 days. The Defendant is directed to pay the remaining decretal amount within a period of 8 weeks from today. If the same is not made, the Respondent is free to execute the decree in accordance with law. In the fact and circumstances of the present case, Appellant is directed to pay a sum of Rs.10,000/- as costs.

11. In view of the above, the appeal and pending application stands disposed of.

PRATHIBA M. SINGH
Judge

FEBRUARY 05, 2018
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