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

+ **RSA 64/2018, CM No. 15644-46/2018**

M/S PACKING PAPER SALES & ANR. Appellants
Through: Mr. Sunil Lalwani, Advocate.

Versus

VEENA LATA KHOSLA (DECEASED) & ANR. Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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23.04.2018

This second appeal impugns an order dated 26.04.2017 passed in RCA No. 59/2015 by the learned Additional District Judge. The appellant had filed a suit seeking recovery of Rs.25,000/- allegedly given to one Mr. O. S. Khosla in 1991, against which a purported acknowledgment was issued by the latter on 06.06.1994. However, no efforts were made to recover the monies. He passed away on 06.11.1996. Thereafter, a legal notice was issued to the respondents-his legal heirs, for recovery of the said monies alongwith an interest @ of 24 % per annum, with effect from November, 1996. The entire claim was for Rs.25,000/- and Rs.18,000/- as an interest thereon. Hence, a suit being Suit No. 656/12 seeking recovery of Rs.43,000/- was filed on 26.10.1999. The said suit was dismissed on the ground that the appellant was unable to prove that he was a partner of the firm on the day, the suit was instituted especially since the purported acknowledgment was in favour of the partnership firm on whose behalf a

cheque had been issued towards the loan. The Trial Court held that the partnership firm was registered on 05.11.1982 with three partners, namely, Mr. Girish Kumar Jain, Mr. Vijay Kumar and Mr. Harish Kumar. It was reconstituted in 1993. A photocopy of Form A issued by the Registrar of Firms was of the year 1993. The suit was filed in 1999. The Trial Court was of the view that the document was not contemporaneous to the time when the suit was filed. They had failed to prove that Mr. Girish Kumar Jain, who instituted the firm, was indeed the partner of the firm on the said date i.e. on 26.10.1999 when the suit was filed. In absence of any such document being filed or being proved by summoning the Register of Firms, the Trial Court was of the view that the suit was not properly instituted, therefore, hit by provisions of section 69 of the Indian Partnership Act, 1932. Furthermore, the loan was purportedly extended to the deceased by cheque No.105255. This was sought to be proven by evidence of the officers from UCO Bank, Parliament Street Branch, New Delhi. However, their evidence could establish a loan because the document relied upon by the appellant was an acknowledgement by late Mr. Khosla, who stated to have accepted the said monies by cheque No.105229. The said acknowledgment formed the basis of the suit. However, since it acknowledges a different cheque number and it was not proved through banking transactions that monies pertained to the cheque No. 105229 had indeed been credited to the account of late Mr. Khosla as a loan, the plaintiffs case could not be established.

In the circumstances, the Trial Court held that the plaintiff had failed to prove that the loan was accepted by Mr. Khosla through cheque No.105225. The Trial Court also held that since the suit was based on

cheque No.105225 dated 18.11.1988; therefore, the suit should have been filed within three years i.e. by 18.11.1991, but it was not done so. Hence, the suit otherwise was not maintainable. For the said reasons, the First Appellate Court too rejected the appeal.

In view of the aforesaid discussion, this Court finds no substantial question of law in the instant appeal. Accordingly, the appeal is dismissed as lacking merits. The pending applications also stand disposed off.

For pursuing a baseless case, costs of Rs.25,000/- is imposed upon the appellant to be deposited within four weeks to the Delhi High Court Mediation and Conciliation Centre. This cost will be in addition to the costs of Rs.20,000/- already imposed on 08.10.2015 by the courts below.

List for compliance on 17.05.2018.

NAJMI WAZIRI, J.

APRIL 23, 2018

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