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

\+ **RFA No.98/2018**

% **Reserved on: 31st January, 2018**
Pronounced on: 5th February, 2018

SUMAN GOEL & ANR. ..... Appellants

Through: Mr. Sanjay Padam Jain, Adv. with Mr. Vinay Kumar Bhasin, Adv.

versus

SANJEEV KUMAR JAIN ..... Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. No.3752/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M.Nos.3755/2018 (for condonation of delay in filing) & 3754/2018 (for condonation of delay in re-filing)

2. For the reasons stated in the applications, delay of 215 days in filing and 10 days in re-filing the appeal are condoned.

C.M. stands disposed of.

RFA No.98/2018 and C.M. No.3753/2018(stay)

3. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit

impugning the judgment of the Trial Court dated 10.1.2017 by which the trial court has decreed the suit filed by the respondent/plaintiff for recovery of Rs.14.50 lacs along with interest at18% per annum.

4. The facts of the case are that the respondent/plaintiff filed the subject suit for recovery of Rs.14.50 lacs along with interest at 18% per annum till realization by pleading that appellants/defendants who were husband and wife were given a friendly loan of Rs.14.50 lacs by means of cheques which were encashed in the account of the appellant no.1/defendant no.1. Since the appellants/defendants failed to repay the loan therefore after serving the legal notice dated 4.7.2015, the subject suit was filed by the respondent/plaintiff.

5. The appellants/defendants filed their written statement and contested the suit by raising various objections. On merits, it was not denied that the cheques were encashed in the account of the appellant no.1/defendant no.1, however it was pleaded that the appellants/defendants are strangers to the respondent/plaintiff and in fact the amounts of the cheques which were given to the appellants/defendants were actually meant to be given to one Sh. Pradeep Mittal and that the respondent/plaintiff had issued the cheques

in the name of the appellant no.1/defendant no.1 to clear his part liability towards Sh. Pradeep Mittal. Sh. Pradeep Mittal was stated to be a person who had purchased premises bearing no. I-6/64, 2nd floor, Sector-16, Rohini, Delhi from the respondent/plaintiff without any documentation with an alleged settlement that when the said plot would be sold by Sh. Pradeep Mittal the documentation would be completed by the respondent/plaintiff as the property had remained in the name of the respondent/plaintiff. Sh. Pradeep Mittal was pleaded to be a friend of the appellant no.2/defendant no.2 and engaged in the business of a property broker and financier. Sh. Pradeep Mittal is pleaded to have sold the suit premises to Sh. Shiv Charan Gupta and respondent/plaintiff is pleaded to have executed the sale deed of the suit premises in favour of said Sh. Shiv Charan Gupta on 13.8.2012. Sh. Shiv Charan Gupta transferred the sale consideration of Rs.65 lacs into the account of the respondent/plaintiff and out of this amount the respondent/plaintiff is pleaded to have paid the amount of Rs.14.50 lacs to the appellant no.1/defendant no.1 to clear the respondent/plaintiff's liability to Sh. Pradeep Mittal. Suit was pleaded to be bad on account of the respondent/plaintiff not having licence to do money lending business as required by Section 3 of Punjab Registration of Money Lenders' Act, 1938. It was also pleaded that there was no privity of contract between the parties to the suit.

6. After pleadings were complete, the following issues were framed:-

> "1. Whether the suit is not maintainable in view of Section 3 of Punjab Registration of Money Lenders' Act, 1938? OPD
> 2. Whether the cheques were given by the plaintiff for discharge of his liability towards Pradeep Mittal, as alleged in the WS? OPD
> 3. Whether the suit is bad for misjoinder of D-2? OPD
> 4. Whether the plaintiff is entitled to recover any amount from the defendant? If so, what amount? OPP
> 5. Whether the plaintiff is entitled to any interest? If so, for what period and at what rate? OPP
> 6. Relief."

7. Whereas respondent/plaintiff examined two witnesses including himself in support of his case, there was no evidence which was led by the appellants/defendants. Respondent/plaintiff proved his case and showed the encashing of cheques in terms of his pass book proved as Ex.PW1/1. The legal notice served upon the appellants/defendants along with postal receipts were proved as Ex.PW1/2 to Ex.PW1/4. PW-2 was the Deputy Manager summoned from the Punjab National Bank, Ashok Vihar, Delhi and he proved the certified copy of the bank statement of the respondent/plaintiff as

Ex.PW2/1. Both these witnesses of the respondent/plaintiff were not cross-examined on behalf of the appellants/defendants in spite of opportunities granted and therefore such testimonies of PW-1 and PW-2 remained unchallenged. Also the appellants/defendants led no evidence and therefore trial court has held that the respondent/plaintiff had proved his case and that the appellants/defendants have failed to substantiate their defence.

8. So far as the issue of suit being barred because respondent/plaintiff did not have licence under the Punjab Registration of Money Lenders' Act, trial court has held that the amount given as loan through a negotiable instrument would not be covered under the Punjab Registration of Money Lenders' Act. This is so decided in terms of paras 20 to 22 of the impugned judgment and which paras read as under:-

> "20. Even otherwise, I have found that Section 3 of the Act is as follows:
>
> > "**3.Suits and Applications by money-lenders barred, unless money-lender is registered and licensed.**
> >
> > Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan,or an application by a money-lender for the execution of a decree relating to a loan, shall after the commencement of this act, be dismissed, unless the money-lender-
> >
> > (a)at the time of the institution of the suit or presentation of the application for execution; or

(b)at the time of decreeing the suit or deciding the application for execution –
(i)is registered; and
(ii)holds a valid licence, in such form and manner as may be prescribed; or
(iii)holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or
(iv)if he is not a registered and licenced money-lender, satisfies the Court that he has applied to the Collector to be registered and licenced and that such application is pending; provided that in such a case, the suit or application shall not be finally disposed of until the application of money-lender for registration and grant of licence pending before the Collector is finally disposed of."

21. Section 2 of the Act (relevant portion) is as follows:
"Definitions :-
2.In this Act, unless there is anything repugnant in the subject or context:-
(8)"Loan" means.... but it shall not include-(vii)an advance made on this basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note."

22. It is clear from the above that for the purposes of the Act, definition of "loan" does not include a loan given on the basis of cheque. I have held above that both the cheques in question were given towards loan. Hence, the Act is not applicable. Accordingly, it is held that the suit is not barred by the Act. Issue no. 1 is, accordingly, decided in favour of the plaintiff and against the defendants."

9. In addition to the reasoning given by the trial court of the suit not being barred under the Punjab Registration of Money Lenders' Act because a loan under the Punjab Registration of Money Lenders' Act does not include a loan given on the basis of cheque, it is also required to be noted that it is settled law that friendly loans are not covered under the Punjab Registration of Money Lenders' Act and the Punjab Registration of Money Lenders' Act is to not allow business of

granting of loans by financiers and which business would mean regular business and not giving of friendly loans given by one person to another. For this reason also, the suit was not barred under the Punjab Registration of Money Lenders Act.

10. Learned counsel for the appellants/defendants argued that appellants/defendants were given a wrong impression by their lawyer that they would be contacted when the need arises, and really the case was being contested by Sh. Pradeep Mittal, however, this Court refuses to believe such self-serving stand including for the reason that appellants/defendants had moved an application under Order IX Rule 13 CPC for setting aside the judgment and decree and which was dismissed in terms of order dated 17.11.2017 of the trial court.

11. In view of the above discussion, since the respondent/plaintiff proved his case and appellants/defendants failed to prove their case by leading any evidence, and the appellants/defendants in fact even did not cross examine the witnesses of the respondent/plaintiff, therefore there is no error in the impugned

judgment decreeing the suit for recovery filed by the respondent/plaintiff.

12. However, I may note that the rate of interest granted by the trial court is at 18% per annum and which is extremely high in today's circumstances and age when rates of interest have consistently fallen over the last decade or so and accordingly Supreme Court has therefore held in many judgments that courts should not grant high rates of interest. These judgments of the Supreme Court are ***Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and Others (2005) 6 SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and Others (2006) 11 SCC 181, Rajasthan State Road Transport Corporation v. Indag Rubber Ltd. (2006) 7 SCC 700, Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy and Another (2007) 2 SCC 720 and State of Rajasthan and Another Vs. Ferro Concrete Construction Private Limited (2009) 12 SCC 1.***

13. Accordingly, while dismissing the appeal, the rate of interest granted by the trial court at 18% per annum is reduced to 9%

per annum simple for the *pendente lite* and future period till realization of the decretal amount.

14. Appeal is accordingly dismissed except to the extent of grant of reduction of rate of interest.

FEBRUARY 05, 2018 **VALMIKI J. MEHTA, J**
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