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

\+ RSA 4/2018

RAM KISHORE TYAGI ..... Appellant

Through: Mr. Sushil Kumar Chauhan, Advocate.

versus

NARESH KUMAR LAHIRI ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 16.04.2018

1. This Second Appeal impugns an order dated 11.09.2017 dismissing the appellant's appeal against the order that dismissed his suit. The appellant seeks repayment of loan of Rs. 50,000/- allegedly given to the respondent. However, respondent proved in his evidence that an amount of Rs. 51,000/- had been re-paid to the appellant through Delhi Nagrik Sehkari Bank Limited from the account of one Mr. Kailash Chand who had deposited the said amount in two instalments on behalf of the respondent, i.e., Rs. 50,000/- and Rs. 1,000/- on 27.05.2009. This was corroborated by the official (PW-2-Mr. Hirdesh Poddar) of the aforesaid bank.

2. It is the appellant's case that an amount of Rs. 50,000/- had been paid by the appellant/plaintiff to Mr. Kailash Chand with whom he had friendly relations at the relevant time and the latter returned the said monies on 27.05.2009 by the aforesaid transaction. The learned counsel for the appellant relies upon the deposit slip of the said bank, according to which an amount of Rs. 51,500/-was credited to the appellant's bank on 28.04.2009.

It mentions a Permanent Account No. ACVPT3872C which pertains to the appellant. The reasonable explanation for mentioning the PAN details would be that it was deemed necessary to mention the PAN number, because the money was meant for the appellant. This proves that Mr. Kailash Chand deposited the money in the appellant's account but it does not prove that the appellant had loaned Mr. Kailash Chand the money which came into his account. If such a loan had been given to Mr. Kailash Chand, then the appellant should have brought him as a witness to prove that it was the loan amount to Mr. Kailash Chand that had been repaid by him.

3. On the contrary, evidence of Mr. Kailash Chand was led by the respondent to prove that he had deposited Rs. 51,500/- in the appellant's bank account at the behest of the respondent towards repayment of the loan taken by the latter from the appellant. Indeed, the Trial Court has recorded as under:-

> *"......Perusal of the record further reveals that in cross examination of PW-1/plaintiff, he has admitted that the account number of Kailash Chand is 84900 in Delhi Nagrik Sehkari Bank Limited Shahdara and that an amount of Rs. 51,500/- was transferred in his bank account on 27.05.2009 through account number 84900/- PW-2 Hirdesh Poddar from Delhi Nagrik Sehkari Bank Limited stated in cross examination that Kailash Chand had deposited money of Rs. 50,000/- and Rs. 1,000/- in two installments on 27.05.2009. He also admitted that an amount of Rs. 51,500/- was transferred in A/c bearing no. 84901 (account of the plaintiff).*
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> *Perusal of the record shows that Kailash Chand was very close to plaintiff/appellant and having faith on Kailash Chand plaintiff gave Rs. 51,500/- to Kailash Chand. however, plaintiff did not make Kailash Chand as his witness to prove that amount deposited in the account of the plaintiff was not on behalf of defendant for repayment of the loan taken by the*

defendant from the plaintiff. Even Kailash Chand was examined by the defendant as DW-2 and he supported the case of the defendant and during his cross examination no question was put regarding the stand of the defendant or to controvert that the amount deposited by him in the account of the plaintiff was not as per the instructions of the defendant or that defendant has not discharged his loan liability towards the plaintiff.

8. In view of aforesaid discussions and the facts and circumstances of the case, this court finds no illegality in the impugned order/judgment of Ld. Trial Court dated 19.08.2014. The appeal is hereby dismissed. Decree sheet be drawn accordingly. Trial Court record be sent back along with copy of this order."

4. In view of the above no substantial question of law arises. The appeal is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

APRIL 16, 2018

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