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

% Delivered on : 20th November, 2019

\+ **RFA 186/2019 & CM APPL No.10563/2019**

RAMBHOOL SINGH ..... Appellant
Through : Mr.Ashish Virmani, Advocate.

versus

MANJEET SINGH ..... Respondent
Through : Mr.Vivek B Saharya, Advocate with respondent in person.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This Regular First Appeal is preferred by the appellant/defendant against the judgment and decree dated 22.12.2018 passed by the learned Additional District Judge-01/East District, Karkardooma Courts, Delhi/ (hereinafter as the learned *'Trial Court'*) in Civil Suit No.*318/2017* whereby the suit filed by respondent/plaintiff under Order *XXXVII CPC* for recovery of Rs.4.50lac was decreed with simple interest @ 6% per annum while rejecting the leave to defend application of the appellant.

2. The facts in brief are:-

a) the appellant approached the respondent on 11.10.2015 with a request for availing a friendly loan of Rs.4.50 lac for two months for his legal and bonafide needs;

b) on 18.10.2015, the respondent gave the friendly loan of Rs.4.50 lac in cash and in lieu thereof the appellant had executed a promissory note in favour of the respondent in the presence of marginal witnesses;

c) after agreed period of two months when the respondent asked for repayment of loan, the appellant requested for some time and started making false promises to linger on the payment and after great persuasions and requests, the appellant issued three cheques of Rs.1.50 lac each bearing No.072364-66 dated 29.01.2016, 05.02.2016 and 12.02.2016 respectively all drawn on Axis Bank in favour of respondent;

d) all the above three cheques were dishonoured for the reason of *funds insufficient* vide return memo dated 18.02.2016. The legal notice under Section 138 of the Negotiable Instruments Act, 1881 was served upon the appellant and even the complaint(s) under NI Act was also filed. This suit under Order *XXXVII CPC* was also consequently filed.

3. The appellant filed an application for leave to defend before the learned Trial Court taking a plea that the appellant and the respondent both were known to each other and respondent introduced himself as an agent for securing bank loans and thus only for the purpose of securing the loan from bank, the appellant had given the documents viz blank signed cheques, Aadhaar Card, a signed promissory note and even signed some other blank documents on an assurance the loan shall be sanctioned in the name of the appellant, but neither any loan was sanctioned nor the respondent returned the said documents and later had misused the same to extort the money from the appellant herein. It is also alleged by the appellant that legal notice dated 20.02.2016 was never received at any point of time and the amount of Rs.4.50 lac allegedly paid in cash by the appellant is barred by the Income Tax Act and only for this reason, the complaint under Section 138 NI Act was dismissed in appeal by the learned Sessions Court.

4. The learned Trial Court after examining the leave to defend application of the appellant has passed the impugned judgment by giving the following reasons:-

> *"3. I have heard the arguments by the ld. Counsels for the parties and it appears that defendant accepts that he issued the cheques in question, to the plaintiff for the purpose of obtaining loan of Rs.4,50,000/-, which the plaintiff did not give, ultimately, the defendant, on 11.10.2018, in the court had admitted his signatures on such blank cheques issued by him, but it is pleaded that other particulars of the cheques were not filled up by him and the defendant further admits his signatures on the promissory note dated 18.10.2015 also and, it is ,therefore, clear that defendant has not been able to raise even a plausible defence. in his favour, inasmuch as, no explanation is forthcoming as to why the defendant should issue three cheques on a much later date of signing of promissory notes in question, dated 18.10.2015, when the plaintiff did not give or provide or arrange to provide the loan, then it is beyond comprehension as t() why defendant should issue cheques dated 29.01.2016, 05.02.20-16 and 12.02.2016 and all these cheques were dishonoured and they have been placed on record of the case and as per provisions enumerated under Negotiable Instrument Act, plaintiff is to be considered a holder in due course of these cheques and the cheques are deemed to have been issued for due consideration unless proved otherwise and it is not the case of the defendant that cheques were obtained by the plaintiff through any intimidation or any criminal offence and as such the defence raised by the defendant is clearly, a moonshine and cannot be given any credence, hence, application for grant of leave to defend the suit unconditionally, discloses no ground and is dismissed and as such plaintiff becomes entitled for judgment and decree forthwith ,therefore, I hereby, pass a decree of Rs.4,50,000/-(Rupees Four Lakhs and Fifty Thousand Only) in favour of the plaintiff and against the defendant with interest @ 6% p.a. from the date of this order and till realization of the decretal amount. There is no order as to cost. Decree Sheet be prepared accordingly. The decree shall be executable only on the payment of the deficit court fee, if any. File be consigned to record room."*

5. The learned Trial Court had gone through the averments made in the application for leave to defend and only after examining it had passed the decree while rejecting the said application for leave to defend. The issue - if such loan could not have been given in cash, may be taken up by the appellant with the appropriate authorities, but here what is relevant is; on the basis of an oral understanding an amount of Rs.4.50 lac in cash was given to the appellant as a friendly loan and who in turn had executed various documents viz. promissory note duly witnesseth and

only after much persuasions the appellant had also handed over three cheques of Rs.1.50 lac each to the respondent herein. No prudent man would sign a blank promissory note or blank documents, if he has not to repay any money/loan. Further, though in his application for leave to defend the appellant has alleged he had signed blank documents for obtaining an alleged loan but strangely enough his application did not disclose from which bank such loan was to be procured and/or the amount of alleged loan he needed and for what purpose. His application for leave to defend leaves us in no doubt the appellant was actually in need of money, thus considering the documents on record duly signed by the appellant in favour of the respondent, there is no reason to disbelieve the case put forth by the respondent.

6. The defence raised by the appellant, thus, is nothing but a moonshine defence and rightly rejected by the learned Trial Court.

7. In the circumstances, there is no reason as to why the impugned judgment be set aside. The appeal has no merit and is accordingly dismissed. The pending applications, if any, also stand disposed of. No order as to costs.

YOGESH KHANNA, J.

NOVEMBER 20, 2019

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