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

+ RFA 492/2019, CM APPL Nos.24295/2019, 24297/2019

DEVENDER KUMAR Appellant

Through: Mr.N.C.Chauhan with Mr.Rajvir
Singh, Advs.

versus

ANJUL GOGIA Respondent

Through: Mr.Anoop Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **11.10.2019**

This appeal is against the judgment dated 19.03.2019 passed in suit No.1172/2018 by the learned Additional District Judge, Delhi.

The brief facts are a suit for recovery of Rs.8,26,000/- with interest was filed by the respondent against the appellant, under Order 37 CPC on the basis of a cheque dated 20.04.2018 drawn upon Punjab National Bank, Industrial Area Bawana, Delhi by the appellant herein in favour of the respondent.

The case of the respondent before the learned trial was he had given a friendly loan of Rs.8,23,000/- to the appellant in April, 2017 as the appellant was in financial difficulty. Such loan, was repayable within a period of 6 months. When after the expiry of the said period of six months the respondent approached the appellant for repayment of the loan amount, the respondent gave him a cheque bearing No.567325 drawn on Punjab National Bank, DSIDC Industrial Area, Bawana Branch, New Delhi of dated 20.04.2018. The said cheque was dishonoured with the remarks 'funds insufficient', hence a legal notice dated 14.06.2018 was issued and thereafter a complaint was

filed by the respondent under Section 138 of Negotiable Instruments Act against the appellant herein.

The summons were issued in this suit, under Order XXXVII CPC and were served upon Mr.Vikas, the son of the appellant on 09.01.2019. The appearance, however, was not filed by the appellant within the prescribed period of 10 days and rather was filed on 19.03.2019 stating inter alia *the summons were received by Ravi, his another son but he could not inform his father, the appellant herein*, hence the appearance could not be filed prior to 19.03.2019. The said appearance was not taken on record since was filed without any application for condonation of delay.

The suit was decreed accordingly.

Before this Court the learned counsel for the appellant has urged the appellant had not taken any loan from the respondent but had taken a friendly loan from Gulshan Kumar who was a common friend. However there is nothing on record to prove such submission of the appellant made in this appeal.

It is admitted fact a cheque dated 20.04.2018 issued by the appellant was dishonoured for insufficient funds and even a complaint was filed against him under Section 138 of the Negotiable Instruments Act. Despite the allegations, the respondent till date had not issued any notice to the respondent on the ground the respondent had misused the cheque allegedly given to Gulshan Kumar. Neither the appellant till date has filed any suit for declaration or cancellation of cheque, but rather is pursuing this frivolous defence.

No cogent ground was given either before the learned trial court

or before this Court for delay in filing appearance. The appellant when asked to deposit the decretal amount to consider condoning the delay, he even ignored it. There is thus no merit in the appeal, the appeal is accordingly dismissed. No order as to costs.

YOGESH KHANNA, J.

OCTOBER 11, 2019

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