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

\+ EX.F.A. 31/2019

DAYA RAM

..... Appellant

Through : Dr.V.P.Singh, Advocate.

versus

KEHAR SINGH

..... Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **29.07.2019**

CM APPL No.33699/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

EX.F.A. 31/2019 & CM APPL Nos.33707/2019

A Civil Suit for recovery of Rs.20 Lac was filed under Order *XXXVII* CPC in the year 2012 by the respondent against petitioner herein. The leave to defend was granted to appellant and the evidence was led.

As per facts proved on record, the appellant had taken a loan of Rs.20.00 Lac from the respondents for construction of his house and for tent business, which he could not repay and three cheques issued by him at different intervals were all dishonoured for *insufficiency of funds*, hence the suit under Order *XXXVII* CPC was filed. Both the parties led their evidence and during the course of evidence, respondent though admitted issuance of first two cheques but alleged money was paid against those. However the third cheque for Rs. 20

lac was alleged to be never issued by the appellant, but was issued by him to one Vijay Singh, who later handed over the said cheque to the decree holder and the suit was filed.

The learned Trial Court did not agree with the appellant herein and on 3.08.2018 had decreed the suit for Rs.20.00 lac with interest. The appellant failed to file any appeal against such judgment dated 03.08.2018.

The execution was filed by the decree holder / respondent against the appellant herein wherein the appellant had filed objections, primarily, saying decree has been obtained by the respondent by playing fraud upon the Court and seeks to take aid of the judgment dated 31.07.2015 passed in Criminal Appeal No.*13/2014,* filed by the respondent herein against his conviction under Section 138 Negotiable Instrument Act, 1881 in which appeal, the learned Appellate Court held the cheque of Rs.20.00 Lac was tampered with etc. However there is no reference to such judgment in the impugned orders and it seems the copy of the order dated 31.7.2015 passed in such Criminal Appeal No.*13/2014* was neither tendered nor exhibited. Nonetheless, the dispute in Criminal Appeal No.13/2014 was only qua the issuance of or tampering with the cheque and the court held offence u/s 138 of the NI Act was not made out. However, it is not in dispute that the appellant made payment against two cheques as alleged by him, which *prima facie* show he had taken the loan from the respondent.

It is also pertinent to mention the decree in Civil Suit No.*59867/2016* was passed after due evidence by both the parties.

The order passed by the Criminal Court, even otherwise, is not binding upon the Civil Court once the Civil Court has decided the *lis* on the basis of evidence adduced before it. It is also an admitted fact the appellant did not file any appeal against such decree. If the appellant alleged fraud was played upon the Court, he ought to have file an appeal against decree. The appellant cannot then wait for execution to be filed to raise frivolous objections for delaying just payment and the objections were rightly dismissed.

In the circumstances, I am not inclined to differ from the findings of the learned Executing Court. The appeal is also dismissed. The pending applications, if any, also disposed of. No order as to costs.

YOGESH KHANNA, J.

JULY 29, 2019

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