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

\+ RFA 850/2018 & CM. Nos. 42699/2018 and 42701/2018

DINESH KUMAR DIXIT ..... Appellant
Through: Mr. Somesh Chandra, Adv.

versus

NIKHIL SINGH ..... Respondent
Through: Ms. Anjali, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **10.04.2019**

1. Learned counsel for the appellant / defendant submits that the complete record of the Trial Court has been filed by him and as such the matter can be heard.

2. Admit.

3. With the consent of the parties, the appeal is taken up for hearing. The present appeal has been filed by the appellant against the judgment / decree dated July 10, 2018, whereby the application filed by the appellant herein for grant of leave to defend has been dismissed. Resultantly, the suit filed by the respondent herein was decreed for a sum of Rs. 8,50,000/- along with interest @ 6% per annum w.e.f. February 06, 2015 till the date of decree. Suffice it to state, the respondent herein had filed a suit under Order

XXXVII CPC for recovery of a sum of Rs.8,50,000/- along with interest. The suit was filed on the basis of a loan agreement dated February 06, 2014.

4. The case of the respondent (plaintiff) in the suit was that the appellant (defendant), is known to him and in the month of January, 2014, the appellant approached him for grant of loan of Rs.10,00,000/- for purchase of a flat in Laxmi Nagar. On the request of the appellant, the respondent arranged an amount of Rs.8,50,000/- and advanced the same as a personal loan and on the same day executed the agreement, wherein the appellant herein agreed to return the loan amount by February 06, 2015. Despite request, the appellant had not returned the loan which resulted in issuance of legal notice dated February 28, 2017 to the appellant herein. Despite service of legal notice, the appellant had not returned the loan amount which resulted in the filing of the suit.

5. An application for grant of leave to defend was filed by the appellant wherein it was stated that the suit was not maintainable as the appellant had not entered into any kind of agreement / pronote in respect of any loan.

6. It was further stated that the respondent had not paid any amount to him i.e. the appellant herein. It was further stated that the respondent was running an illegal business of money lending, i.e., lending money to needy

persons at a very high rate of interest ranging from 5% to 10% per month. It was stated that he had taken a loan of Rs.10,000/- to Rs.15,000/- from the plaintiff from time to time, with interest of 5% per month and at the time of taking such loan, the respondent had executed the agreement dated February 06, 2014 and taken the signatures of the appellant on some blank papers, which had been misused by the respondent to file the suit.

7. It was also stated that the respondent is a habitual offender and has cheated several persons and criminal case vide FIR No. 961/16 was also registered against him on the complaint of the appellant and his wife, at Police Station New Usmanpur under Section 354/354B/34 IPC.

8. The respondent herein had filed reply to the application wherein the respondent contested the application for leave to defend on the ground that the appellant had admitted the loan transactions. It was also stated that the appellant had not denied the service of the legal notice upon him and had also not raised any triable issue and therefore prayed that the application be dismissed. The Trial Court has dismissed the application for leave to defend on the following finding:

> *"Perusal of the record shows that the plaintiff has filed the present Suit u/o. XXXVII CPC for recovery of a sum of Rs.8,50,000/-, which he advanced as a personal loan to the defendant on 06.02.2014 vide agreement dated 06.02.2014.*

Perusal of the said agreement shows that the defendant had agreed to return the said loan amount till 06.02.2015. The execution of this agreement has not been denied by the defendant, in the present application for grant of leave to defend.

Perusal of the record further shows that in the present application for grant of leave to defend, the defendant has admitted that he used to take loan of Rs.10,000/- to Rs.15,000/- from the plaintiff, from time to time, with interest @ 5% per month and at the time of taking of such loan he executed the agreement dated 06.02.2014. He as further admitted that the plaintiff had also taken his signatures on some blank papers for security purposes, which have been misused by him.

Perusal of the record further shows that the defendant has failed to raise any triable issue and nothing has been disclosed by him in the present application, as to why, he executed the agreement dated 06.02.2014, for a loan amount of Rs.8,50,000/- when he had taken a loan of Rs.10,000/- to Rs.15,000/- only. These contentions as raised in the present application cannot be accepted by the court.

In these circumstances, I do not find any merit in the present application and the same is hereby dismissed, being devoid of any merits. Accordingly, the suit of the plaintiff is hereby decreed for a sum of Rs.8,50,000/- along with interest @ 6% per annum (as per the provisions of Section 34 of the CPC) w.e.f 06.02.2015 till the date of the decree."

9. It is the submission of the learned counsel for the appellant that the suit filed by the respondent was not maintainable, being hit by the provisions of the *Punjab Registration of Money Laundering Act, 1938*. According to him, the respondent being money lender was involved in the illegal activity of money lending without registration. That apart, it is his submission that

at no point of time did the respondent gave the amount of Rs.8,50,000/- rather the respondent had taken signatures on blank papers which have been illegally utilised by him by showing the agreement dated February 06, 2014.

10. He stated that the appellant had been taking loan in the amount of Rs.10,000/- to Rs.15,000/- at the interest of 5% per month from time to time.

11. He also relied upon two documents at pages 64 and 65 to contend that from time to time whatever amount of loan was taken, the same has been refunded back to the respondent. In other words, it is his submission that the amount of Rs.8,50,000/- was not payable.

12. I am unable to agree with the submissions made by the learned counsel for the appellant for the simple reason that the plea of maintainability of the suit was never taken in the application for leave to defend. What was averred was that the respondent was running an illegal business of money lending. If that be so, the plea of the learned counsel for the appellant that the suit was not maintainable under the *Punjab Registration of Money Laundering Act, 1938* is unsustainable. Such a plea having not been taken, there was no occasion for the Court to consider the said plea to make it a triable issue. This plea of the learned counsel for the appellant needs to be rejected.

13. Insofar as the plea of the learned counsel for the appellant that the respondent was an illegal money lender and the appellant had never taken a loan of Rs.8,50,000/- is concerned, the same is unsustainable as a finding on that aspect was given by the learned Trial Court based on the agreement dated February 06, 2014 which agreement has not been disputed by the appellant except stating that the respondent had got the signatures of the appellant on blank sheet which has been illegally used. There is no such evidence placed on record like the appellant making any complaint to the police authorities with respect to this act of the respondent. In the absence of any evidence showing that the appellant has brought to the notice to the public authorities, including police, the acts of the respondent taking the signatures of the appellant on blank papers, this plea would also be unsustainable, more so when the fact that the agreement was executed by the respondent has not been denied.

14. Further, the documents relied upon by the appellant himself show that the appellant has, from time to time, been taking loans of Rs.3,00,000/-, Rs.4,00,000/-, Rs.1,00,000/- etc. and the same would belie the stand of the appellant that he was, from time to time, taking loans of Rs.10,000/- - Rs.15,000/- only from the respondent, which he was repaying.

15. If that be so, keeping in view the overall fact situation, this Court is of the view that the present appeal filed by the appellant / defendant is without any merit. The same is dismissed.

CM Nos. 42699/2018 & 42701/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 10, 2019/*aky*