*   IN THE HIGH COURT OF DELHI AT NEW DELHI

\+   RFA No. 866/2018 & CMs. 44128-29/2018

%   *7th February 2019*

SUMIT JUNEJA & ANR. ..... Appellants

Through: Mr. Udaibir Singh Kochar, Advocate

versus

RAM KANWAR ..... Respondent

Through: Mr. Rohit Kumar Modi, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant nos. 2 and 3 in the suit, and who are the legal heirs of late defendant no. 1. Late defendant no. 1 was the husband of defendant no. 3 and the father of defendant no. 2. The defendant no. 2 is the appellant no.1 and defendant no. 3 is the appellant no. 2 in this appeal. By the impugned judgment, the trial court has decreed the suit for recovery of moneys

filed by the respondent/plaintiff for an amount of Rs. 7,11,187/- along with interest at 9% per annum on account of such moneys being invested by the respondent/plaintiff with the defendant no.1, and this amount was agreed to be repaid back by all the defendants, but was not repaid, and hence the suit.

2. The facts of the case are that the respondent/plaintiff filed the subject suit pleading that he had been regularly investing in various firms being run by defendant no.1/Late Sh. S.C. Juneja in the form of Fixed Deposit Receipts, mutual funds, bonds etc. With respect to such amounts invested in different firms of the defendant no.1/Late Sh. S.C. Juneja, the respondent/plaintiff pleaded that he received the maturity amounts from time to time. It was then pleaded by the respondent/plaintiff that thereafter defendant no.1/Late Sh. S.C. Juneja/father of the appellant no.1 and husband of the appellant no. 2, approached the respondent/plaintiff to invest moneys in M/s Jaico Securities of which defendant no.1/Late Sh. S.C. Juneja was the sole proprietor. It was pleaded that the payments which were received by defendant no.1/Late Sh. S.C. Juneja were received in the name of the appellant no. 1/defendant no. 2. In the plaint, it is further pleaded that

all the defendants agreed to pay the amounts due as also the interest at 1% per month, and that the defendants paid Rs. 1,04,000/- as interest till 31.10.2008. It was further pleaded in the plaint that the three cheques for payment of part of the liability were issued by late defendant no.1 being Cheque No. 272876 dated 04.12.2008 for Rs. 44,054.15, Cheque No. 272877 dated 09.12.2008 for Rs. 50,175/- and Cheque No. 377555 dated 17.06.2009 for Rs. 41,958.84. These cheques which were presented to the bank were returned dishonoured on account of 'insufficient funds' and 'payment stopped by the drawer'. It was pleaded that the appellants/defendants visited the respondent/plaintiff on 31.05.2010, and assured to repay the entire amount very soon, but the appellants/defendants failed to pay anything, and on the contrary started extending threats to the respondent/plaintiff and his family members. Therefore, pleading that a total sum of Rs. 8,55,424/- was due to the respondent/plaintiff with Rs. 7,11,187/- as principal amount and Rs. 1,44,237/- towards interest till 30.06.2010 with interest at 1% per month, the subject suit was filed.

3. As already stated above, there were three defendants in the suit. Defendant no.1/Late Sh. S.C. Juneja was the father of the appellant no.1/defendant no. 2 and the husband of the appellant no. 2/defendant no. 3. All the defendants in the suit filed a joint written statement. In the written statement there was general and complete denial that there was ever any investment made by the respondent/plaintiff of Rs. 7,11,187/- in M/s Jaico Securities of defendant no. 1. It was also denied that the amounts totalling to Rs. 7,11,187/- were received in the personal name of the appellant no.1/defendant no.2/son/Sh. Sumit Juneja. It was pleaded that in fact the respondent/plaintiff was doing business in Forward Trades with the appellant no.1/defendant no.2, and since losses were caused in this business, the respondent/plaintiff issued two Cheques bearing no. 313371 and 313373 for the amounts of Rs. 50,000/- and Rs. 1,00,000/- respectively, in favour of the appellant no. 1/defendant no. 2 and the same were dishonored. It was pleaded that the respondent/plaintiff became liable to pay a sum of Rs. 3,67,000/- to the appellant no.1/defendant no.2 on account of losses in the Forward Trade business. It was pleaded that the respondent/plaintiff had admitted his

liability in writing on 20.12.2008, and therefore no amount could be claimed by the respondent/plaintiff from the defendants in the suit. The suit was therefore prayed to be dismissed.

4. The following issues were framed in the suit:-

> "1. Whether the plaintiff is entitled for suit amount as alleged in the plaint? OPP
>
> 2. Whether the plaintiff had invested or deposited the amount in FDR with the defendant? OPP
>
> 3. Whether the plaintiff is entitled for pendentelite and future interest @ 12% per annum? OPP
>
> 4. Whether the suit is bad for misjoinder of parties and for misjoinder of cause of action? OPD
>
> 5. Whether the plaintiff is entitled for the decree of suit amount along with interest? OPP
>
> 6. Relief."

5. The trial court has decreed the suit by holding that the appellant no.1/defendant no.2/son/Sh. Sumit Juneja who deposed as DW-1 admitted in his cross-examination on 26.02.2018 that the amount of Rs. 7,11,187/- was received and transferred in the bank account of the appellant no.1/defendant no. 2 from the account of the respondent/plaintiff. This was so admitted by admitting the document which was proved as Ex.DW1/P2, and this document contains various entries showing payments made by the respondent/plaintiff. The

relevant portion of the cross-examination of the appellant no.1/defendant no.2 on 26.02.2018 admitting the receipt of the amount of Rs. 7,11,187/- in his accounts reads as under:

> "I have throughout resided in A-3/146, Janakpuri, Delhi. The said house belongs to my maternal grand mother (Nani). <u>It is correct that an amount of Rs.7,11,187/- was transferred in my bank account from the account of Ram Kanwar as detailed in Ex.DW1/P2.</u> This amount was transferred by the plaintiff to me as I and Sh. Ram Kanwar used to do a joint business by way of investment in commodities. The business of commodities was done by a person known to Sh. Ram Kanwar. I do not have any record pertaining to the commodities transaction. Vol. The entire record is in the possession of Sh. Ram Kanwar. It is wrong to suggest that I have deposed falsely that any record of commodities business is in the possession of Sh. Ram Kanwar. It is wrong to suggest that I did not do any business in commodities. There was no agreement in writing between me and Sh. Ram Kanwar for doing joint commodities business. By commodities, I mean crude oil, copper, lead, zinc, gold and silver. There is no requirement of any license for the purpose of making any investment in commodities. I do not know the name of the broker through whom the commodities dealings were conducted but his name was Mr. Aggarwal. It is wrong to suggest that I have deposed falsely about dealings in commodities through Mr. Aggarwal. I had invested the same amount equal to the amount invested by Sh. Ram Kanwar. The amount must be around Rs. 7.1 lacs. I made the investments in commodities between the years 2008 to 2010. I have not shown this amount of Rs. 7.1 lacs as investment in commodities in my ITR of the relevant years. I might be having one more saving account during the period from 2007 to 2015. I have the investments from the bank account No. 01441000058009 with HDFC Bank, Patel Nagar, New Delhi."
>
> (<u>Underlining Added</u>)

6. The document Ex.DW1/P2, admitting the receipt of Rs. 7,11,187/- by the appellant no.1/defendant no.2 reads as under:

"**DETAILS OF PAYMENT MADE BY THE PLAINTIFF.**

Chq No	Dated	Amount	
285852	26.11.07	34000	**Mark A**
285853	14.12.07	30000	**ADJ/Delhi**
285859	28.01.08	26000	**17/3/2012**
295731	13.03.08	35000	
295733	25.03.08	15000	
295734	25.03.08	15000	Ex.DW1/P2
295735	02.04.08	25000	PO, MACT, Delhi 26/2/18
295738	27.05.08	20000	
295739	29.05.08	30000	
304074	07.07.08	20000	
304079	18.08.08	100000	
309388	11.10.08	80000	
309389	14.10.08	50000	
309390	15.10.08	40000	
313376	11.11.08	30000	
316233	27.12.08	25000	
Cheque return of payment against Cash FDRs			
272876	04.12.08	44054	
272877	09.12.08	50175	
37555	20.06.09	41958	
	Total	711187	

7. In my opinion, from the document Ex.DW1/P2, and the admission in the cross-examination made by the appellant no.

1/defendant no. 2 on 26.02.2018 of Ex.DW1/P2, it stands established that a sum of Rs. 7,11,187/- was received in the bank account of the appellant no. 1/defendant no. 2 from the respondent/plaintiff. It is also to be noted that this amount of Rs. 7,11,187/- has to be taken as towards investment made by the respondent/plaintiff in the firm of late defendant no.1, and these amounts were to be repaid by all the defendants in the suit, inasmuch as, the appellant no. 1/defendant no. 2 failed to prove that he ever did any business of commodities with the respondent/plaintiff. In the cross-examination conducted on 26.02.2018, it is conceded by the appellant no. 1/defendant no. 2 that he had no agreement in writing with the respondent/plaintiff for doing a joint commodities business, and also that he does not have any record pertaining to the commodities transaction. Therefore, there was only a self-serving *ipse dixit* on behalf of the appellant no. 1/defendant no. 2 for doing commodities business with the respondent/plaintiff, and therefore this defence of the appellant no. 1/defendant no. 2 has been rightly disbelieved and rejected by the trial court.

8(i). At this stage, it is required to be considered as to whether only the defendant no.1/Late Sh. S.C. Juneja/father of the appellant no.1 and husband of the appellant no. 2, is to be held liable because moneys were invested in the firm of defendant no.1/Late Sh. S.C. Juneja, or that all the defendants being the defendant no. 1 as also defendants no. 2 and 3 are jointly and severely liable as they had agreed to repay the invested amount with interest.

8(ii). In this regard, it is noted that after stating in para 3 of the plaint that the respondent/plaintiff had invested the amount of Rs. 7,11,187/- with the firm of M/s Jaico Securities of defendant no. 1, it is then stated in para 4 of the plaint that all the defendants agreed to repay the amount with interest at 1% per month. It is also pleaded in para 4 of the plaint that the defendants paid Rs. 1,04,000/- as interest till 31.10.2008. Para 5 of the plaint then states that the defendants assured the plaintiff on 31.05.2010 to repay the respondent/plaintiff, but the defendants have failed to do so. Para 6 of the plaint then refers to the total liability against all the defendants of Rs. 8,55,424/-.

8(iii). In the written statement, it is seen that there is no plea which is set up by the appellants/defendants no. 2 and 3 that they were not jointly and severely liable with the defendant no.1/Late Sh. S.C. Juneja. There is no case set up by the appellants/defendants no. 2 and 3 that they never agreed to repay the liability of the respondent/plaintiff, and that it was only the defendant no.1/Late Sh. S.C. Juneja who was solely liable. In fact, in the joint written statement of all the defendants, the appellants/defendant nos. 2 and 3 took up the route of complete denial of any investment made by the respondent/plaintiff of Rs. 7,11,187/-. Even in the affidavit by way of evidence filed on behalf of the appellant no. 1/defendant no. 2 dated 14.12.2017 there is no averment by the appellant no. 1/defendant no. 2/DW-1 that appellants/defendants no. 2 and 3 never agreed to repay the amount which was invested by the respondent/plaintiff with defendant no. 1/Late Sh. S.C. Juneja. Therefore, in my opinion, all the defendants are liable and the endeavour of the appellants/defendant nos. 2 and 3 is to get over their liability and deny their liability as a deliberately calculated move to achieve an illegal intention because defendant no. 1/Late Sh. S.C. Juneja had died during the pendency of the suit, and in case even if the respondent/plaintiff succeeds in showing investment made with defendant no. 1/Late Sh. S.C. Juneja and the liability of which was only of defendant no. 1/Late Sh. S.C. Juneja, then the appellants/defendant nos. 2 and 3 would be able to escape the liability on the ground that the liability was only of defendant no. 1/Late Sh. S.C. Juneja, and that the appellants/defendant nos. 2 and 3 have not inherited any assets from the defendant no. 1/Late Sh. S.C. Juneja. However, such a dishonest defence is completely misconceived and rejected by this Court especially in view of the aforesaid discussion on account of the pleadings contained in paras 4 to 6 of the plaint, and the supporting statements made in the affidavit by way of evidence of the respondent/plaintiff, and lack of any averments in the affidavit by way of evidence filed by the appellant no. 1/defendant no. 2 that appellants/defendants no. 2 and 3 never agreed to repay the liability of the defendant no. 1/Late Sh. S.C. Juneja and that only the defendant no. 1/Late Sh. S.C. Juneja was liable.

9. In view of the aforesaid discussion, there is no merit in the appeal. This appeal is dismissed with costs. The respondent/plaintiff will file certificate of costs of its Advocate with respect to the costs of the present litigation, and costs as mentioned in

the certificate will be costs in favour of the respondent/plaintiff and against the appellants/defendants.

10. The appeal is accordingly dismissed and disposed of. All pending applications are also disposed of.

FEBRUARY 07, 2019/ib **VALMIKI J. MEHTA, J**