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

+ RSA 171/2019

GHANSHYAM DASS GUPTA Appellant
Through Mr.Prashant Kr. Mittal, Adv.

versus

VIVEK GUPTA Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **21.01.2020**

CM 38003/2019 (Exemption)

Allowed, subject to all just exceptions.

RSA 171/2019 & CM No.38002/2019

1. This appeal has been filed challenging the judgment dated 23.04.2019 passed by the learned Additional District Judge-01(North), Rohini, Delhi in RCA No.66/2017, dismissing the appeal filed by the appellant in challenge to the judgment and decree dated 28.02.2017 passed by the learned JSCC-Cum-ASCJ-Cum GDN, Judge, North District, Rohini Courts: Delhi (hereinafter referred as to the 'Trial Court').
2. By the judgment dated 28.02.2017, the learned Trial Court had decreed the suit filed by the respondent herein for a sum of Rs.1,00,000/- alongwith interest at the rate of 14% p.a. from 01.08.2011 till the same is recovered.
3. The learned counsel for the appellant submits that the Impugned

Judgment is liable to be set aside insofar as the learned Appellate Court has failed to appreciate the fact that the respondent herein (plaintiff) had set up a new case in his replication filed before the learned Trial Court. The appellant never got an opportunity to rebut such new case, although he wanted to produce a witness in support of his case. The learned Trial Court disallowed the production of said witness on the ground that the case set up by the appellant herein through the said witness would be beyond the pleadings of the appellant/defendant.

4. I have considered the submissions made by the learned counsel for the appellant, however, find no merit in the same. The learned Appellate Court has also considered the submission in detail and found that the respondent had filed the suit claiming recovery of the balance amount of Rs.1,00,000/- given as a loan to the appellant herein. The appellant in his Written Statement propounded that the said amount had been repaid to the respondent vide cheque no.156105 dated 12.07.2011 issued in the name of the wife of the respondent. The respondent in his replication stated that this cheque was issued in payment of another loan of Rs.5 lacs given by the wife of the respondent in favour of one Mr.Rajiv Garg. It was the case of the respondent that as the appellant had stood as a guarantor for the said loan, the said loan had to be repaid by the appellant herein.

5. The respondent also produced Mr.Rajiv Garg as a witness in support of his above averment.

6. After the evidence of the appellant herein had been concluded, wherein he did not set up a case of cash payment, the appellant moved an application seeking to produce an additional witness being Ms.Sandeep Kr. Verma in support of his new case that the amount of Rs.1,00,000/-

remaining to be paid against the loan given by the wife of the respondent to Mr.Rajiv Garg had been paid by way of cash in his presence. As this was a new case being set up by the appellant, the production of the said witness was refused by the learned Trial Court. The learned Trial Court and the Appellate Court, apart from the said reason, have given other reasons also for rejecting the claim of the appellant regarding the payment of this amount of Rs.1,00,000/- in cash to the respondent. I see no reason to disagree with such finding.

7. In any case, there is no substantial question of law involved in the present appeal.

8. The appeal and the application are dismissed, with no order as to cost.

NAVIN CHAWLA, J

JANUARY 21, 2020/Arya