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

% ***Date of Judgment: 30.08.2022***

\+ **RFA 284/2022**

SATIN CREDIT CARE NETWORK LTD ..... Appellant

Through: Mr. Rishabh Kumar, Advocate.

Versus

COL J S MULTANI & ORS. ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

GAURANG KANTH, J. (*ORAL*)

1. The Appellant in the present Appeal is aggrieved by the Judgment and decree dated 31.07.2021 passed by the Additional District Judge-03, Central, Tis Hazari Courts, New Delhi in CS No. 610186/2016 whereby the learned Trial Court was pleased to dismiss the suit filed by the Appellant (Original Plaintiff) against the Respondents (Original Defendants).

The Facts relevant for the consideration of the present Appeal areas follows:

2. The Appellant is a registered Company engaged in the business of leasing and financing of the vehicles, personal loans, consumer durables and scrollers on a monthly and daily installment basis.

3. It is the case of Appellant that the Respondent No.1 was working as Regional Head of the Appellant. Respondent No.2 is the proprietor of R.S

Electricals and Respondent No.3 is the son of Respondent No.2 and looking after the business of his father i.e., of R.S Electricals. Respondent No.4 is the proprietor of Sandhu Electronics. Respondent No.5 was appointed as the Marketing Executive of the Appellant at the behest of Respondent No.1 and was actively involved in canvassing the borrowers for the Appellant.

4. The Appellant further states that Respondent Nos.2, 3 &4 supplied fictional data of the borrowers to the Respondent No. 1. Such fictional data included fabricated documents and false information pertaining to the end customers. Respondent No.1, who was the Regional Head of the Appellant at the relevant time, developed a mechanism of cheating the Appellant by using such fictional data. The Appellant alleges that Respondent No.1, with the help of Respondent No.5 prepared proposals by using such fictional data. Placing reliance upon the information supplied by the Respondent No.1, the Appellant sanctioned loans in favour of the end customers to facilitate the purchase of electronic goods from the shops operated by Respondent Nos. 2 to 4. The Appellant further released such loan amounts directly to Respondent Nos.2 to 4. However, later it was discovered by the Appellant that in cases involving Respondent Nos. 2 to 4, either such end customers could not be traced or the end customers did not opt for the lending facility. The Respondent Nos.2 to 4 in connivance with Respondent Nos.1 and 5 prepared proposals based on fabricated documents to get the loan amount released from the Appellant. Upon receipt of such loan proceeds, the said respondents shared the same amongst themselves.

5. The Appellant has further alleged that the Respondents in collusion with each other cheated the Appellant resulting in huge financial losses to the Appellant. In view of the same, the Appellant has filed the present suit for recovery against all the Respondents with the following prayer:

> *"The Plaintiff, therefore, most respectfully prays that this Hon'ble Court may be pleased to pass a decree for a sum of Rs. 9,71,402.65 in favour of the Plaintiff and against the Defendants jointly and severally. This Hon'ble Court may also be please to grant pendent lite interest @ 16% p.a. on the suit amount and further grant interest @ 16% p.a. on the decreed amount in favour of the Plaintiff and against the Defendants jointly and severally.*
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> *Amy other order that this Hon'ble Court may deem fit and proper under the circumstances of this case may also be passed in favour of the Plaintiff and against the Defendants in the interest of justice".*

6. Respondent No.1 filed the Written Statement denying the allegations against him. Respondent No.1 stated in his written statement that he was appointed as a 'Consultant' by the Appellant vide appointment letter dated 13.02.2001. However, due to unwarranted behavior of the Directors of the Appellant, he was forced to resign from the Appellant Company in the month of December, 2001. Respondent No.1 further submitted that he was a Regional Head only on papers and was not responsible for verification of the end customers or for processing the loans for disbursement to such end customers. Respondent No.5 was acting as field officer for canvassing the prospective customers. Respondent Nos. 2, 3 and 4 used to directly supply the details of the customers who wished to avail the loan facility from the Appellant. The

Appellant after due verification used to release the amount to Respondent Nos. 2, 3 and 4 directly. Respondent No.1 further submitted that the decision to open the office at Chandigarh was taken by the Appellant and further hiring of staff was done by the Appellant. The Appellant had a collection team for the recovery of money headed by one Mr. Vivek Shukla, who also resorted to threats in case of defaulting customers. Mr. Vivek Shukla started having issues with Respondent No.1 and started threatening him. However, due to the personal assurance given by the Chairman and Managing Director of the Appellant, Respondent No. 1 decided to continue with his engagement. The situation never improved as Mr. Shukla continued with his threats. The Respondent No.1 asserts that he always acted in good faith and in the best interest of the Appellant company.

7. Respondent Nos. 2 & 3 jointly filed their written statement. Respondent No.4 filed a separate Written Statement. Both the parties denied the allegations of collusion and connivance. According to them, they supplied goods to the end customers who availed the loan facility from the Appellant. Respondent No.1 was handling the financial issues and used to receive the account payee cheques from the Appellant for each transaction. All the documentation for the approval of the loan was prepared by Respondent Nos.1 & 5. The goods were supplied to the end customers as per the instructions of Respondent No.1. Respondent No.5 also filed Written statement denying all the allegations of collusion and connivance. It is the case of Respondent No.5 that he was not an employee of the Appellant.

8. Based on the pleadings of the parties, the learned Trial Court framed following issues:

> "1. Whether the plaintiff is entitled for a decree of recovery of Rs. 9,71,402.65/- against the defendants ? OPP
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> 2. Whether the plaintiff is entitled for the interest, if so, at what rate and for which period?. OPP
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> 3. Whether the suit has not been filed by duly authorized person on behalf of the plaintiff? OPP
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> 4. Whether the suit is barred by limitation ? OPD1
>
> 5. Whether the suit is not maintainable for non-joinder of necessary parties? OPD1
>
> 6. Whether this court has no territorial jurisdiction to entertain, try and decide the present suit ? OPD

9. In order to substantiate their respective cases, the Appellant examined Mr. Shyam Sunder, authorized representative of the Appellant as PW-1, Mr. Rajan Sabharwal, authorized representative of Appellant as PW-2, Mr. Sanjay Goel, Account Officer of the Appellant as PW-3, Respondent No.1 examined himself as DW-1, Respondent No.3 examined himself as DW-2, Respondent No.4 examined himself as DW-3 and Respondent No.5 examined himself as DW-4.

10. After examining the evidence adduced by the parties, the learned Trial Court concluded that the Appellant failed to prove the case and hence was pleased to dismiss the suit filed by the Appellant herein. The Appellant is challenging the said impugned Judgment in the present proceedings:

Submissions on behalf of the Appellant

11. The learned Counsel for the Appellant submitted that Respondent No.1 in connivance with other Respondents prepared the fabricated documentation in the name of fictitious customers for availing loans from the Appellant. Relying upon the documentation submitted by the Respondent No.1, the Appellant sanctioned the loans and released such amounts to Respondent No.2 to 4. The Respondents in connivance with each other managed to get the loans approved under fake names and addresses. The Appellant further submitted that Respondent No.5 was appointed as the verification officer of the Appellant at the instance of Respondent No.1. Further, in the proposals and loan agreements, Respondent No.5 signed as a verification officer of the Appellant. The learned Counsel for the Appellant further argues that the learned Trial Court failed to appreciate that there were 31 fictitious customers in whose name loans were sanctioned and amounts were disbursed. The learned Counsel also pointed out that the learned Trial Court erroneously noted that there was no police complaint despite the existence of FIR No. 186/2004 which was registered against the Respondents. With these submissions, the learned Counsel for the Appellant prayed for setting aside of the impugned Judgment.

Legal Analysis based on the facts of the present case

12. This Court heard the arguments advanced by the learned Counsel for the Appellant and has examined the complete Trial Court record.

13. It is the case of the Appellant that Respondent No.1 in collusion and connivance with other Respondents, played fraud upon the Appellant by getting huge amounts released from the Appellant in the name of fictitious

borrowers and appropriated the money for their own benefit thereby causing huge loss to the Appellant.

14. The Hon'ble Supreme Court in the case of ***Ram Chandra Singh vs Savitri Devi And Ors*** reported as ***2003 (8) SCC 319***, had an occasion to examine 'fraud'. The Hon'ble Court, held as follows:

> *"16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.*
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> *17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentations may also give reason to claim relief against fraud.*
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> *18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.*
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> *19. In Derry v. Peek, [1889] 14 A.C. 337, it was held:*
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> *In an 'action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.*
>
> *A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person make it liable to an action of deceit."*

20. In Kerr on Fraud and Mistake at page 23, it is stated:

"The true and only sound principle to be derived from the cases represented by Slim v. Croucher is this: that a representation is fraudulent not only when the person making it knows it to be false, but also when, as Jessel, M.R., pointed out, he ought to have known, or must be taken to have known, that it was false. This is a sound and intelligible principle, and is, moreover, not inconsistent with Derry v. Peek. A false statement which a person ought to have known was false, and which he must therefore be taken to have known was false, cannot be said to be honestly believed in. "A consideration of the grounds of belief", said Lord Herschell, "is no doubt an important aid in ascertaining whether the belief was really entertained. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so."

15. Therefore, in view of the law laid down by the Hon'ble Supreme Court in ***Ram Chandra Singh (Supra)***, to hold the Respondents guilty of fraud, the Appellant needs to prove the following:

(i) The Appellant, relying upon the representation of the Respondents, sanctioned the loan in fake names or in the name of person who never opted for the loan.

(ii) The Respondents processed the loan papers with the clear knowledge that there was no such person, and got the loan sanctioned in fake names.

16. As per Order VI Rule 4 of Code of Civil Procedure, 1908, when there are allegations of fraud or breach of trust, the detailed particulars thereof must be specifically mentioned in the plaint. From the perusal of the Plaint in the present case, it appears that the Appellant has failed to

mention the names of any such fictitious or non-existent borrowers/borrowers who did not opt for the loan facility and has also failed to specify the details of such transactions. The Plaint in the present case is sans any such mandatory particulars and details.

17. Along with the Plaint, the Appellant placed on record a Chart which is marked as Annexure 'A', in which details of 31 transactions were mentioned. Out of these 31 transactions, in 2 transactions the cheques were issued in the name of Mishra Electronics, in 5 transactions, cheques were issued in the name of R.S Electronics, in one transaction, the Cheque was issued in the name of Samir Electronics and in 23 transactions cheques were issued in the name of Sandhu Electronics. It is the case of the Appellant that these 31 transactions are fictitious transactions. A perusal of the records, reveals the following facts:

(i) The Appellant registered a criminal case, FIR No.186/2004 against all the Respondents under Section 408/420/120B IPC with P.S Sector 9, Chandigarh. Vide order dated 26.08.2014 (Exhibit PW1/D2), the Judicial Magistrate, First Class, Chandigarh acquitted all the Respondents by categorically observing that *'No evidence has been produced by the prosecution that any document has been forged by the accused persons or accused J.S Multani or Anil Kumar committed any breach of trust. From the evidence produced on record it is duly proved that it was merely a case of non payment of loan by the loanees and no criminal case was made against the accused persons'*.

(ii) Respondent Nos. 2 & 3 represent R.S Electronics. Respondent No.3 entered the witness box and examined himself as DW-2.

DW-2 in his evidence categorically stated that Respondent Nos. 2 & 3 supplied items to seven persons who availed loans from the Appellant and the name of all the seven persons were specifically mentioned in his Affidavit. It is his categorical statement that all the seven persons are genuine persons residing at the address as mentioned in the loan forms.

(iii) During the cross examination, PW-1 admitted that Respondent Nos.2&3 were acquitted in the criminal case, FIR No.186/2004.

(iv) Respondent No.4 represents Sandhu Electronics. He entered the witness box as DW-3 and categorically stated that he received payments from Appellant through account payee cheques and there were no transactions under fake names.

(v) DW-3 also during his evidence clarified that the criminal case pending against him was decided in his favour.

18. From the evidence adduced by the parties, therefore, it is clear that both DW-2 and DW-3 categorically stated that all the transactions carried out by them were in the name of genuine people and the payment for the same was received by them through account payee cheques. It is the case of the Appellant that these transactions were in the fake name/the end customer never opted for the loan facility. Hence, the burden was on the Appellant to prove that the transactions were fake/fraudulent. The Appellant failed to lead any evidence in this regard. In addition, all the Respondents were acquitted in the criminal case. The learned Magistrate clearly observed that it is a case of non-payment of loan. If that be the case, the Appellant is free to proceed against the borrower/guarantor as the case may be. However, the Respondents herein, who were the facilitator

for the said loans cannot be held liable for the repayment of such loan amounts. From the aforementioned facts, it is evident that the Appellant has failed to prove that these transactions are fictitious or that the Respondents played fraud upon the Appellant

19. It is also to be noted that PW-1 in his evidence stated that the Appellant claimed Rs.7,17,481/- on the basis of Mark I, however, original of Mark I has not been placed on record. PW-3 also categorically stated that the vouchers, bills and other documents on the basis of which the Statement of account was prepared was not placed on record. Hence the Appellant also failed to prove the claimed loss.

20. The learned Trial Court in the impugned Judgment dated 31.07.2021, dealt with all these aspects in detail. The relevant portions of the impugned judgment, reads, inter alia, as follows:

> "*14.The present suit has been filed for the recovery of Rs. 9.71.402.65/- against the losses incurred by the plaintiff Company for the illegal, unwarranted and malafide acts of defendant no. 1 in collusion with and in connivance of the other defendants. PW-1 as well as PW-2 have deposed that the defendants got released a huge amount from the plaintiff in the names of various borrowers and used the money to their own use and benefits causing huge loss to the Company however none of the borrowers have been made parties to the present suit. PW-2 has further alleged in para no. 3 of his affidavit that defendant no. 2 has supplied the date of borrower to be projected before the plaintiff Company and defendant nos. 2 to 4 directly received money from the plaintiff which were shared by all the defendants. However, he has no documentary evidence do show that the money was in fact shared by all the defendant.*

> *15.In view of the aforesaid discussion, I conclude that plaintiff has failed to establish his contentions and resultantly its case. Henceforth, issue no. 1,2 and 3 are decided against the plaintiff Company and issue no. 5 goes in favour of defendants*".

21. In view of the discussion herein above, this Court finds no perversity or infirmity in the findings of the learned Trial Court. In view of the same, the present Appeal is dismissed. No order as to costs.

GAURANG KANTH, J

AUGUST 30, 2022
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