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

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Date of Judgment: 29.05.2023

+ **RFA 420/2023**

RANDHIR SINGH

..... Appellant

Through: Mr. Kunal Madan, Advocate.

versus

SUMAN KUNDRA & ANR.

..... Respondents

Through: Mr. Shaurya Sharma and Mr. Ankit Khurana, Advocates for Respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

GAURANG KANTH, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 28117/2023

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

RFA 420/2023 and CM APPL. 28116/2023 & 28118/2023

3. The Appellant (original defendant no.1) is aggrieved by the Impugned Judgment and Decree dated 25.11.2022 passed by the Principal District & Sessions Judge (South), Saket Courts, New Delhi in CS No. 969/2017 titled as '*Suman Kundra Vs. Randhir Singh and Anr*'. The learned Trial Court, vide the Impugned Judgment, was pleased to decree the Suit filed by the Respondent No. 1 (original plaintiff) against the Appellant for recovery of loan amount.



4. Learned counsels for both the parties state that the present appeal can be taken up for hearing today and no date for hearing of the appeal shall be fixed, as contemplated in Sub-Rule 1 of Rule 11 of Order XLI CPC. It is observed that Trial Court record is available with this Court, so on request of parties, the present Appeal is being heard today.

5. It is the case of Respondent No. 1 that she was introduced to the Appellant by Respondent No. 2 in the year 2014. The Appellant informed Respondent No.1 that he was planning to purchase plot No. 849, Block No. A, Sushant Lok, Phase-I, Gurgaon, admeasuring 291.550 sq. mtr. ("**Suit Property**"), however, he was falling short of Rs.10 Lakhs. Respondent No. 1 further contended that the Appellant requested her to advance a loan of Rs.10 Lakhs to him so that he can pay the complete sale consideration with regard to the Suit Property. Respondent No. 1 further claims that she was assured an interest rate of 18% per annum by the Appellant on the loan amount and she was also assured that Respondent No. 2 (original defendant no. 2) would stand as a surety to the said loan transaction. Respondent No.1 claims that on the said assurances, she advanced a loan amount of Rs.10 Lakhs to the Appellant through a cheque bearing No. 152001 dated 08.11.2014, drawn on Punjab National Bank, Tughlakabad Extension, Delhi. It is further claimed by Respondent No.1 that the said loan was advanced for a period of 36 months.

6. It is further the case of Respondent No. 1 that the Appellant duly encashed the said cheque on 11.11.2014. However, the Appellant failed to repay the said loan within the agreed period of 36 months. Hence, Respondent No.1 issued a notice dated 16.10.2017 to the Appellant. On failure of the Appellant to repay the said loan despite service of notice



dated 16.10.2017, Respondent No. 1 was left with no other option but to initiate the present suit for recovery against the Appellant.

7. The Appellant entered appearance and filed his written statement to the Suit. It is the case of the Appellant that in the month of September 2014, Respondent No. 1 had approached the Appellant expressing her willingness to purchase the Suit Property. The parties settled the deal for a total sale consideration of Rs. 4 Crores. Out of the said agreed sale consideration, Respondent No. 1 paid Rs.10 Lakhs as token money/earnest money. The balance sale consideration of Rs.3,90,00,000/- was to be paid by Respondent No.1 to the Appellant within 60 days or at the time of registration of the sale deed in respect of the Suit Property, whichever was earlier. It was further agreed between the parties that if Respondent No. 1 fails to pay the aforesaid balance sale consideration within 60 days, then the token money of Rs.10 Lakhs shall stand forfeited by the Appellant. It is the case of Appellant that Respondent No. 1 failed to pay the balance sale consideration within the stipulated period of time and therefore, the Appellant forfeited the token amount of Rs.10 Lakhs, as agreed between the parties. The Appellant further contends that subsequently real estate market crashed and he was forced to sell the Suit Property for a lesser sale consideration of Rs.3,13,00,000/-, due to which he suffered huge loss with regard to the Suit Property.

8. Respondent No. 2 filed his written statement wherein he supported the case of the Appellant. However, it was denied by Respondent No. 2 that he introduced the Appellant to Respondent No. 1. He also denied the fact that he stood as surety to the alleged loan transaction.



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

“1. Whether the sum of Rs.10 lacs had been paid by the plaintiff to the defendant no.-1 towards token money for the sale of property bearing no.-849, block-A, Sushant Lok, Phase-I, Gurgaon, as claimed by the defendant no.-1 and if so, to what effect? OPD-1

2. Whether the plaintiff had paid a sum of Rs.10 lacs to the defendant no. 1 towards the loan, as claimed by the plaintiff? OPP

3. Whether the plaintiff is entitled to the recovery of Rs.10 lacs? OPP

4. Whether the plaintiff is entitled to interest and if so, at what rate and for what period? OPP

5. Whether the defendants no. 1 & 2 are jointly and severally liable for making the payment of Rs.10 lacs to the plaintiff? OPP

6. Relief.”

10. At the stage of evidence, Respondent No. 1 examined herself as PW-1 and one Ms. Lily Chhabra as PW-2. The Appellant examined himself as DW-1 and Respondent No. 2 examined himself as DW-2.

11. The learned Trial Court, after examining the evidence adduced by the parties, decreed the Suit filed by Respondent No. 1 against the Appellant and held that Respondent No. 1 is entitled to recover Rs.10 Lakhs from the Appellant along with *pendente lite* interest @ 6% per annum and future interest @ 7.5% per annum for the period of delay in payment subsequent to the date of decree. Being aggrieved by the Impugned Judgment, the Appellant has filed the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

12. Mr. Kunal Madan, learned counsel for the Appellant submits that the Impugned Judgment is based on conjunctures and surmises and is full



of ambiguity. Learned counsel for the Appellant further argues that the learned Trial Court failed to appreciate that Respondent No. 1 had not produced any loan agreement or any other cogent evidence to prove the alleged loan transaction between the parties. Learned Trial Court erred in assuming that the transaction between the parties was a loan transaction.

13. Learned counsel for the Appellant further submits that Respondent No. 1 wanted to purchase the Suit Property for a sale consideration of Rs.4 Crores and had advanced an amount of Rs.10 Lakhs towards earnest money. The balance sale consideration of Rs.3,90,00,000/- was to be paid within 60 days. However, Respondent No. 1 failed to honour her commitment and consequently, the Appellant forfeited the token amount of Rs.10 Lakhs, as had been agreed between the parties.

14. Learned counsel for the Appellant further submits that the Appellant subsequently had to sell the Suit Property for a lesser value i.e. Rs.3,13,00,000/- due to which he suffered losses to the tune of Rs. 87 Lakhs with regard to the Suit Property.

15. Learned counsel further points out that the learned Trial Court failed to appreciate that the Suit Property belonged to the Appellant's uncle and that the Appellant was in possession of the same for the last 14 years. Hence, it is his submission that execution of sale deed in respect of the Suit Property in favour of the Appellant on 20.11.2014, for which Respondent No.1 claims to have advanced a loan to the Appellant, was a mere formality. It is further submitted that Appellant had the right to transfer the Suit Property in favour of Respondent No. 1. He further submits that the burden of proving the fact that the amount given by Respondent No. 1 was a loan amount had to be established by her, however, she failed to discharge the said burden of proof.



SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1

16. Mr. Shaurya Sharma, learned counsel for Respondent No. 1 submits that the learned Trial Court had passed the Impugned Judgment based on the correct appreciation of facts. He argued that Respondent No. 1 had successfully proved on record that she had advanced Rs.10 Lakhs to the Appellant as loan for purchase of the Suit Property. It is submitted by learned counsel for Respondent No. 1 that on a perusal of Ex. PW-1/2, it is evident that the Appellant encashed cheque No. 152001 dated 08.11.2014 on 11.11.2014. This fact is not disputed by the Appellant. As on the said date, the Appellant was not the owner of the Suit Property. The Appellant purchased the Suit Property on 20.11.2014 when the sale deed in respect thereof was executed in his favour, as reflected by Ex. PW-1/1. Hence, from the said transaction itself, it is clear that the Appellant took loan from Respondent No. 1 for purchase of the Suit Property.

17. Learned counsel for Respondent No. 1 further submits that even after the receipt of the demand notice i.e. Ex. PW-1/4, the Appellant failed to respond to the same. He further states that the Appellant had failed to bring any document on record to establish that there was an alleged agreement to sell between the parties. In view of the said submissions, learned counsel for Respondent No. 1 seeks dismissal of the present appeal.

LEGAL ANALYSIS

18. This Court has heard the arguments advanced by the parties and has examined the Trial Court record and the documents placed on record.

19. In the present case, there is no dispute to the fact that Respondent No. 1 issued a cheque bearing No. 152001 dated 08.11.2014 and the said



cheque was encashed by the Appellant on 11.11.2014. It is the case of the Appellant that the said amount of Rs.10 Lakhs was paid to him as token amount/earnest money for purchase of the Suit Property, whereas it is the case of Respondent No. 1 that the said amount was advanced as a loan to the Appellant to enable him to purchase the Suit Property. There is no written agreement between the parties to determine the nature of the transaction. Hence, it is important to examine the documentary and oral evidence led by the parties.

20. In order to substantiate the nature of transaction between the parties, Respondent No. 1 had examined herself as PW-1 and she reiterated her case as spelt out in the plaint. She was cross-examined excessively, however, she stood by her case. PW-2 also supported the case of PW-1. Respondent No. 1 placed on record her bank statements as Ex. PW-1/2 to show that an amount of Rs.10 Lakhs was debited from her account and credited into the account of the Appellant on 11.11.2014. Another important piece of evidence is Ex. PW-1/1 which is the sale deed dated 20.11.2014 executed by M/s Conscient Infrastructure Pvt. Ltd. in favour of the Appellant. The said sale deed reveals that as on 11.11.2014, the Appellant was not the owner of the Suit Property. He became owner of the Suit Property only on 20.11.2014 when sale deed (Ex. PW-1/1) was executed in his favour. Respondent No. 1 also proved on record the ledger account maintained by her in the name of the Appellant as Ex. PW-1/3. The said document contains an endorsement to the effect that this ledger account forms a part of books of accounts maintained by Respondent No. 1 and is also duly attested by Chartered Accountant, Mr. Ashwani Kumar Relan. It is also endorsed by Chartered Accountant on this ledger account (Ex. PW-1/3) that the amount of Rs.10



Lakhs is categorized as 'loans' in her books of accounts. Hence, Respondent No. 1 successfully discharged her onus of proving the nature of transaction by producing these documents. On a perusal of these documents, it is clearly evident that Respondent No. 1 had advanced the said amount of Rs.10 Lakhs to the Appellant as 'loan'.

21. *Per contra*, the Appellant failed to file any documentary evidence in support of his contentions. He only entered into the witness box as DW-1 and reiterated his averments in written statement. During his cross examination, he admitted that he had received an amount of Rs.10 Lakhs from Respondent No. 1 but stated that the said amount was not towards loan. A further perusal of his cross-examination reveals that he also admitted that he never entered into any terms and conditions for sale of the Suit Property with Respondent No. 1. It was stated by the Appellant that there was no agreement to sell or any other written agreement entered between the Appellant and Respondent No. 1. He even stated in his cross-examination that he was not sure whether he had ever met Respondent No. 1 or not.

22. Thus, from the evidence, it is borne out that the Appellant had received Rs.10 Lakhs from Respondent No. 1, however, he miserably failed to prove that the said amount was received in pursuance of any agreement to sell entered between them. The Appellant categorically admitted during his cross-examination that he never met with Respondent No. 1 to settle any terms and conditions of the agreement to sell. Further, the Appellant stated in his cross-examination that he was dealing with Mr. Ajay and Mr. Anil with respect to sale of Suit Property but he failed to call them into the witness box. Therefore, the Appellant also failed to prove any nexus of Respondent No. 1 with Mr. Ajay and



Mr. Anil in any manner. A perusal of record also shows that the Appellant even failed to produce any agreement to sell or any other written document with respect to nature of transaction which took place between Appellant and Respondent No. 1. The Appellant even failed to prove that there was any discussion between the parties for sale of the Suit Property, much less an oral agreement to sell. It is further observed that the Appellant had stated in his evidence affidavit that remaining sale consideration had to be paid within 60 days of payment of token money, but he contradicted the said fact in his cross-examination when he stated that Mr. Anil and Mr. Ajay had assured him that within one month of payment of earnest money, remaining sale consideration would be paid. Therefore, in the absence of any agreement to sell, whether written or oral being proved by the Appellant, his claim with regard to forfeiture of amount of Rs.10 Lakhs paid by Respondent No.1 remains unsubstantiated.

23. Furthermore, there is no communication on record from the Appellant to Respondent No. 1 after the expiry of stipulated period following-up/seeking payment of remaining sale consideration in respect of the Suit Property or communicating about the forfeiture of the said amount of Rs.10 Lakhs to Respondent No.1.

24. A perusal of Ex. PW-1/1 also shows that the Appellant was not the owner of the Suit Property on the date when, as alleged by him, he entered into agreement to sell with Respondent No. 1. Further, the averment of Appellant that he was in possession of Suit Property before the execution of sale deed dated 20.11.2014 (Ex. PW-1/1) and the execution of said sale deed was a mere formality does not hold ground because as per law, the ownership of an immovable property transfers in



the name of a person only by way of execution of registered title document(s) in his/her favour and not by mere possession.

25. It is also pertinent to note that Respondent No. 2 in his written statement had supported the stand of the Appellant that Rs.10 Lakhs was paid to the Appellant by Respondent No. 1 as earnest money for purchase of the Suit Property. However, Respondent No. 2 also contradicted his stand in his cross-examination. He stated in his cross examination that he did not have any knowledge of any transaction between Appellant and Respondent No. 1 including transaction of Rs.10 Lakhs.

26. Lastly, presuming the case of the Appellant to be true that the amount of Rs.10 Lakhs was advanced as earnest money, even then the Appellant had failed to prove that he is entitled to forfeit the said earnest money. This Court in *Nafe Singh Vs Sanjay Gupta*, reported as **2018 SCC Online Del 13111**, had specifically stated that in order to forfeit earnest money, a party needs to prove that he/she had incurred loss. However, in the present case, the Appellant has failed to prove the same. Although, the Appellant had specifically claimed that he had suffered losses to the tune of Rs. 87 lakhs when he had to sell the Suit Property for a lesser value, but he failed to bring on record the sale deed or agreement to sell proving the said transaction. Under these circumstances, even if it is assumed that the Appellant had received Rs.10 Lakhs as earnest money, even then, he is not entitled to forfeit the same.

27. In view of the observations made hereinabove, this Court has no hesitation in holding that Respondent No. 1 had advanced an amount of Rs.10 Lakhs to the Appellant as a 'loan'. It is a settled law that documentary evidence prevails over oral evidence. Respondent No.1



proved the nature of transaction by producing documentary evidence as explained above, but Appellant did not produce agreement to sell or any other written agreement with respect to nature of transaction. Thus, the Appellant has miserably failed to prove on record that he had received the said amount as earnest money for sale of the Suit Property. Rather, he himself unambiguously stated in his cross-examination that there were no terms and conditions of sale of Suit Property between the Appellant and Respondent No. 1.

28. In view of the above held detailed discussion, this Court is of the considered opinion that learned Trial Court had passed the Impugned Judgment based on the correct appreciation of facts and evidence and had rightly decreed the Suit against the Appellant. Hence, this Court is not inclined to interfere with the Impugned Judgment.

29. The appeal is accordingly dismissed. All the pending applications are hereby dismissed. No order as to costs.

GAURANG KANTH, J

MAY 29, 2023

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