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

+ **RSA 61/2024 & CM APPL. 17787/2024**

SOUTH EASTERN CAPITAL INDIA & ANR.Appellants

Through: Mr. Akshat Gupta, Advocate.

versus

SANDEEP KHURANA

.....Respondent

Through: Mr. Rishab Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% 13.12.2024

1. This appeal has arisen out of the impugned judgment and decree dated 13.12.2023, passed in RCA DJ 70/2019, by Additional District Judge-02, North, Rohini Courts Complex, Delhi, dismissing the appeal preferred by the appellants/defendants against the judgment and decree dated 03.06.2019, passed by the Court of ACJ-CCJ-ARC, North, Rohini Courts, Delhi in civil suit no. 427156/2016, whereby, the civil suit filed by the respondent under Order XXXVII of CPC for recovery of a sum of Rs.2,20,000/- along with interest stood decreed.

2. Learned counsel appearing for the appellants/defendants submits that the Trial Court has gravely erred in not allowing the appellants/defendants' application for leave to defend. He submits that merely on the ground that the signatures on the cheques were not disputed by the appellants/defendants, the respondent/plaintiff was not entitled for decree of



recovery of the sum unless the respondent/plaintiff on the basis of cogent evidence establishes before the Court below that the amount was due against the appellants/defendants.

3. He, therefore, submits that under the facts of the present case, following questions of law are involved:-

“1. In a Suit for Recovery of Money filed by a plaintiff under Order 37 of the Civil Procedure Code, 1908 on the basis of cheques, whether the admission of issuance of cheque or signatures on the cheques in question by the defendant itself amounts to the admission of liability by the defendant or raises presumption in favor of the plaintiff as under the Negotiable Instruments Act 1881? If yes, then is defendant required to lead direct evidence only? Defendant cannot raise doubt on the averments/material/evidence brought on record by the plaintiff and is not entitled to leave to defend?

2. Whether in the absence of any documentary evidence in support of averments made in the plaint, the Ld. Trial Court can pass a decree against the defendant merely on the basis of the averments made in the plaint?

3. Whether the Ld. Trial court as well as Ld. First Appellate Court verdicts are justified in the absence of allowing the trial when the contentions of the appellants before the courts below was that the appellant did not owe any liability towards the respondent herein (the plaintiff before the trial court) which required trial and in the absence of allowing leave to defend, have committed illegality?”

4. I have considered the aforesaid submissions and have perused the records.

5. The facts of the case would postulate that the respondent/plaintiff instituted the civil suit stating that he had cordial relations with the appellant no. 2/defendant no. 2, who happens to be the Director of the appellant no. 1/defendant no.1 company. According to him, due to the cordial relations between the parties, the appellant no. 2/defendant no.2 on behalf of appellant no. 1/defendant no.1 Company had taken a personal loan/financial assistance from the respondent/plaintiff for an amount of Rs.2, 00,000/- for the furtherance of their business. It was his case that the aforesaid amount of



Rs.2, 00,000/- was paid by the respondent/plaintiff *vide* cheque no. 270640 dated 29.08.2014, and a loan agreement was also executed between the parties.

6. According to respondent/plaintiff, the appellants/defendants had undertaken to return the aforesaid loan amounts on or before 01.03.2015. It was also stated that the appellant no. 2/defendant no.2, who had issued six cheques of Rs.10,000/- each towards the interest amount with another cheque of Rs.2,00,000/- dated 04.03.2015 by the appellant no. 1/defendant no.1 Company. The respondent/plaintiff *albeit* received an interest for the months of October 2014 to January 2015. However, despite various requests, the appellants/defendants did not pay the principal amount and the remaining interest. The cheques in question were not encashed as the appellants/defendants had assured that the repayment would be made in cash and those cheques were agreed to be returned to the appellants/defendants. The respondent/plaintiff sent a legal notice on 19.08.2015, to the appellants/defendants which was duly served and despite service, no reply was given. Under those circumstances, the respondent/plaintiff was compelled to institute the civil suit under Order XXXVII of CPC for recovery of Rs.2, 20,000/- along with necessary interest.

7. On issuance of summons, the appellants/defendants filed an application for a leave to defend. The learned Trial Court while considering the plea raised in the application filed by the appellants/defendants has considered that the civil suit presented by the respondent/plaintiff was merely based on a loan agreement dated 29.08.2014, between the parties whereby, the personal loan of Rs.2,00,000/- was stated to have been granted by respondent/plaintiff.



8. The Court took note of the fact that the appellants/defendants did not dispute the veracity of the loan agreement dated 29.08.2014. Further, the appellant no. 2/defendant no.2 had not disputed his signatures on behalf of appellant no. 1/defendant no. 1 Company, on the said loan agreement. Even the factum of issuance of cheque in favour of respondent/plaintiff also remains undisputed besides not disputing his signatures on the aforesaid cheques also. Neither was it the defence of the appellants/defendants that the respondent/plaintiff is misusing the cheques issued to him on behalf of appellant no. 1. It is under the aforesaid circumstances while placing reliance on the decision of the Supreme Court in the case of ***Mechelec Engineers and Manufactures vs. Basic Equipment Corporation***¹, the Court has held that no triable issues were raised by the appellants/defendants and therefore, the suit filed by the respondent/plaintiff deserved to be decreed. The following pertinent findings rendered by the trial court need to be looked into:-

“Present suit under Order XXXVII filed by the plaintiff on the foundation of a loan agreement dated 29/08/2014 whereby personal loan of Rs.2,00,000/- was given by the plaintiff to the defendant no. 1 company through defendant no. 2. Further, in the present suit the plaintiff has also 7 emphasised/relied upon the three cheques issued by the defendant no. 2 on behalf of defendant no. 1 company. It is pertinent to mention here that in the present case, defendant is contending that the alleged loans agreement dated 29/08/2014 is false and fabricated. However ‘interestingly, the defendants are not disputing the execution of the loan agreement dated 29/08/2014 between them and the plaintiff. Further, the defendant no. 2 is not disputing his signatures on behalf of defendant no. 1 on the abovesaid loan agreement Moreso, the defendant no. 2 is also not disputing the issuance of the abovesaid cheques in favour of the plaintiff. Moreso, the defendant is also not disputing his signatures on the abovesaid cheques. It is also not the defence of the defendant no. 2 that the plaintiff is misusing the cheques issued by him on behalf of defendant no. 1.”

¹ AIR 1977 SC 577



9. In view of the aforesaid findings of facts, which have been affirmed by the first Appellate Court, and the fact that, if the appellants/defendants have no substantive defence and they only raise flimsy, frivolous and vicious ground, the leave to defend should be refused, the Court does not find any material illegality with the impugned judgment.

10. On perusal of the concurrent finding of facts by both the Courts and on the limited scope for interference under section 100 of CPC, the Court does not find any substantive question of law that arises under the facts of the present case. Accordingly, the instant appeal is hereby dismissed.

11. The amount deposited by the appellants/defendants be released in favour of the respondent/plaintiff against due verification.

PURUSHAINdra KUMAR KAURAV, J

DECEMBER 13, 2024

N/DP