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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 25.11.2024

+ RFA 920/2019

ARUN KHANNA

.....Appellant

Through: Ms. Vaneeta Khanna (Appellant in person through SPA holder).

versus

RENU SHARMA

.....Respondent

Through: Mr. Hemant Kumar Yadav and Mr. Mohit Chaturvedi, Advocates.

CORAM:**HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. This appeal is directed against a judgment and order of the learned Trial Court dated 03.09.2019, by which a recovery suit filed by the plaintiff [appellant herein] has been dismissed, on an application of the defendant [respondent herein] under Order VII Rule 11 of the Code of Civil Procedure, 1908 ["CPC"].

2. Notice was issued in the appeal on 21.10.2019. The Trial Court record has also been summoned and is available.

3. The appeal is admitted, and has been taken up for hearing forthwith with the consent of the parties.

4. I have heard Ms. Vaneeta Khanna, wife of the appellant, who appears as his constituted attorney, and Mr. Hemant Kumar Yadav, learned counsel for the respondent.



5. In the suit filed by the appellant, it was contended that the respondent had filed a false, malicious and frivolous case against him under Section 138 of the Negotiable Instrument Act, 1881 [“the Act”] [CC No. 13144/2016], which was decided in favour of the appellant by an order of the learned Metropolitan Magistrate [“MM”] dated 19.08.2017. It was specifically stated in the plaint, that the respondent had failed to prove any alleged liability/debt against the appellant. The appellant sought recovery of an amount of Rs. 1,37,500/-, which had been tendered by him to the respondent in the course of the proceedings under Section 138 of the Act, alongwith interest at the rate of 2.5% per month, amounting to a total of Rs. 4,47,562.50/- as on date of filing of the suit.

6. The respondent filed a written statement, in which the details of the alleged transactions between the parties were stated in detail. Pertinently, it was stated that the appellant had borrowed a sum of Rs. 1,00,000/- from the respondent on 30.12.2008 for a period of three months which carried interest at rate of 2.5% per month. According to the respondent, the amount was secured by a post-dated cheque dated 30.03.2009 for the sum of Rs. 1,00,000/-. It was specifically contended in the written statement that the appellant had issued the cheque in question towards discharge of a legal liability towards the respondent. The respondent’s contention was that the proceedings under Section 138 of the Act were decided in favour of the appellant only because he had already paid the cheque amount to the respondent alongwith compensation. The cheque was dishonoured on presentation, with the endorsement, “Payment stopped by drawer”.

7. As far as the judgment of the learned MM is concerned, the respondent took the following stand:



“14. It is admitted case of the plaintiff is that he has taken loan from the defendant and check has been issued against his legal liability towards the defendant. It is submitted that not convicting the plaintiff in the above said case by the Hon’ble Court of Ms. Swati Sharma, MM-01, West District, Tis Hazari Court, Delhi does not make or give finding or observation that above said complaint case U/s 138 of NI Act, was false or frivolous but keeping in light of the fact that the amount pertaining to cheque in question had already been paid during the trial before the Court. It is submitted that Hon’ble Court of Ms. Swati Sharma, MM-01, West District, Tis Hazari Court, Delhi has taken lenient view in the light of fact that as loan amount along with compensation has already been given to defendant by plaintiff before the Court. It is submitted that defendant could not withdraw the case against plaintiff because plaintiff was not ready to accept the case of defendant that he has taken loan amount for the construction purpose as mentioned in criminal complaint. It is further submitted that The Hon’ble Court has only exonerates plaintiff for the offence U/s 138 of NI Act and acquitted only on ground of that defendant has failed to prove its case beyond all the reasonable doubts. It is further submitted that defendant deliberately chosen not to file appeal against above said judgment dated 19.08.2017 as she has already been received her loan amount along with compensation in respect of above said criminal complaint under section 138 of Negotiable Instruments Act and to avoid harassment and difficulties in legal matters.”¹

8. It is stated in the written statement that the respondent, alongwith co-owners of the property, had also filed a suit for damages, permanent, and mandatory injunction against the appellant [Suit No. 32/2014], in respect of a collaboration agreement dated 05.05.2005, which was decreed in their favour on 26.03.2015. The appellant has filed an appeal against the said judgment and decree before this Court [RFA No. 295/2015], which remains pending. However, these proceedings are not germane for the present purpose.

9. The respondent also filed an application under Order VII Rule 11 of the CPC, reiterating the contents of the written statement, and seeking

¹ Emphasis supplied.



rejection of the plaint on the ground that it did not disclose a cause of action.

10. By the impugned judgment, the learned Trial Court allowed this application and rejected the plaint. It noted the submission of the respondent that the judgment of the learned MM dated 19.08.2017, records the fact that the appellant had taken a loan of Rs. 1,00,000/- from the respondent, and that the payment of the sum of Rs. 1,37,500/- by him to the respondent was by way of compromise. In paragraph 12 of the impugned judgment, the learned Trial Court recorded the submission on behalf of the respondent that the learned MM had not returned a finding that there was no debt or liability of Rs. 1,37,500/-, which was paid by the appellant. Although the submission of the appellant to the contrary, based upon the judgment of the learned MM, has been noticed in paragraph 15 of the impugned judgment, the learned Trial Court has come to a finding in favour of the respondent on these aspects.

11. In order to consider the approach of the learned Trial Court, it is necessary to note the principles which govern exercise of jurisdiction under Order VII Rule 11 applications. The principles have been summarised in a judgment of the Supreme Court in *Dahiben v. Arvindbhai*², which held as follows:

“...23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

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² (2020) 7 SCC 366.



23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in



fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941] .

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.³

12. In *Geetha v. Nanjundaswamy*⁴ and *Eldeco Housing & Industries Ltd. v. Ashok Vidyarthi*⁵, the Supreme Court has reiterated the view that, while exercising power under Order VII Rule 11 of the CPC, the Court is bound to proceed on the basis of the plaint and documents filed in the plaint alone, and not on the basis of the defence asserted by the respondent in the suit.

13. Upon a reading of the plaint, in the present case, it is evident that the appellant had taken a stand that he was not bound by any legally enforceable debt, and that the respondent is liable to restitute a sum of Rs. 1,37,500/-, alongwith interest accrued thereupon. It was the appellant's specific case that the respondent was not entitled to such an amount.

14. For this purpose, the appellant relied upon the judgment of the learned MM dated 19.08.2017. To the extent that the judgment of the learned MM was relied upon by the appellant himself, the same was appropriately taken into consideration at the stage of the application under Order VII Rule 11 of the CPC. With regard to the question of existence of a legally enforceable debt in favour of the respondent herein, the following findings of the learned MM are of relevance:

“11. Once issuance of the cheque has been admitted or stands

³ Emphasis supplied.

⁴ 2023 SCC OnLine SC 1407.

⁵ 2023 SCC OnLine SC 1612



proved, a presumption arises in favour of the holder of the cheque that she had received the cheque of the nature referred to under Section 138 of the Act for the discharge, in whole or in part of any debt or any other liability. This presumption arises in favour of the holder under Section 139 of the Act which envisages that it shall be presumed unless the contrary is proved that the holder of a cheque received the cheque of the nature referred to under Section 138 of the Act for discharge, in whole or in part of any debt or any other liability. Accordingly, a presumption arises in favour of the complainant and against accused that the cheque had been issued in discharge of any debt or other liability. It was for the accused to rebut this presumption which he has been able to rebut.

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13. In the present case, the complainant has gone on to vehemently argue that she had given loan of Rs . 1 lakh to the accused for the purpose of completion of the work on the second floor of her premises. The collaboration agreement dated 05.05.2005 has not been placed on record by the complainant during the entire trial, The complainant stated that in the collaboration agreement it was not written that the construction of the house was to be completed within ten months but the accused had given his oral assurance. But the complainant did not lead any evidence to prove the above stated fact. When the complainant was asked that whether she could show any reference in the Ex.CW1/1 that the friendly loan was given for the purpose of construction of house then the complainant answered that

“The same fact was mentioned in the deleted para of the Ex.CW1/1 at point 3. I am having another photocopy of the said loan agreement and the same is Ex.CW1/1(i)”.

The exhibition of the photocopy of a loan agreement i.e. Ex.CW1/1(i) was objected by Ld. Counsel for accused as to its mode of proof. The complainant never explained on record that why the document Ex.CW1/1(i) was not filed at the time of pre summoning evidence and was produced only in her cross examination. It is to be noted that the complainant only placed on record copy of Ex.CW1/1 at the time of pre-summoning evidence and there was not even a whisper of another document Ex.CW1/1(i). It was for the complainant to explain that why she did not place on record Ex.CW1/1(i) initially moreover when the document was favorable to her. Be that as it may Ex.CW1/1(i) is merely a photocopy and has not been proved as per the provisions of law and hence cannot be relied upon for adjudication of the present matter. Therefore the complainant has not been able to prove that the loan was taken by the accused for completing the construction work on her premises as apart from Ex.CW1/1 she has not



produced any other document. Even Ex.CW1/1 is merely a photocopy. Moreover the complainant in her cross examination has quite candidly admitted the case of the accused by denying the suggestion of counsel for accused that “It is wrong to suggest that the accused raised a loan to the tune of Rs. 1 lac for the construction in terms of the collaboration agreement”.

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17. The defence set up by the accused is supported by the testimony of the complainant and probabilises the story of the accused. In the present case the main points for consideration are that the complainant has failed to prove the loan agreement, conduct of the accused in initiating criminal proceedings against the complainant and issuing instructions to his bank for stopping the payment of the cheque in question and the undisputed fact that the - amount pertaining to the cheque in question has already been paid during the trial before the court. For all the above mentioned reasons the accused deserves to be acquitted.

18. Therefore, in the present case the benefit of doubt must go to the accused. The complainant has not been able to prove her case and there are some serious lacunas in the story of the complainant. Moreover, the presumption of law which is to be drawn in favour of the drawee of the cheque, namely, the complainant, that the cheque has been issued to him for the valid discharge of his debt, gets dislodged by a plausible explanation furnished by the accused.”⁶

15. While analysing the judgment of the learned MM, the learned Trial Court, in the impugned judgment has observed as follows:

“21. Even Ld.MM has recorded the fact of payment by plaintiff in para 17 of the aforesaid judgment and nowhere in the said judgment, it has been recorded by Ld.MM that defendant had failed to prove that cheque was not issued in discharge of legally enforceable debt or liability. Even otherwise, debt or liability stood admitted by plaintiff at the stage of framing of notice under Section 251 Cr.P.C.as recorded in para 3 of the judgment and at the stage of recording of statement of accused/plaintiff under Section 313 Cr.P.C. as mentioned in para 4 of the said judgment.

22. Even the issuance of cheque was not disputed by plaintiff. Therefore, the aforementioned judgment clearly records the fact that

⁶ Emphasis supplied.



plaintiff had made payment of cheque amount in discharge of his liability and even compensation of Rs.37,500/- was paid by plaintiff to the defendant.

23. It was nowhere the defence of plaintiff in the criminal complaint that she had not taken friendly loan of Rs. 1 lac or cheque was not issued in discharge of liability.

24. On the contrary, plaintiff admitted her liability and accordingly, paid cheque amount of Rs. 1 Lac to the defendant alongwith compensation of Rs.37,500/-.

*25. Therefore, even if plaintiff stood acquitted vide judgment dated 19.08.2017 in a case under Section 138 of the NI Act, then also, he has got no cause of action to file the suit for recovery of Rs.1,37,500/- as **the said amount was paid by plaintiff to the defendant in discharge of his liability.**"⁷*

16. It is evident from the above extracts of the impugned judgment that the learned Trial Court has proceeded on the basis that the judgment of the learned MM did not contain any finding to the effect that the cheque in question was not issued in discharge of legally enforceable debt or liability. This finding itself is, as submitted on behalf of the appellant, in the teeth of the order of the learned MM. In fact, the learned MM had recorded a clear conclusion that the appellant herein had successfully rebutted the presumption that the cheque was issued in discharge of a legally enforceable debt or liability. That judgment has not been carried in appeal.

17. To this extent, the rejection of a plaint, at the threshold, on the basis of this reading of the judgment of the learned MM cannot be sustained. Other than the aforesaid judgment, the learned Trial Court could not, at the stage of Order VII Rule 11 of the CPC, render a conclusive finding as to the appellant's liability under the cheque in question. The learned Trial Court was required to confine its analysis to



the plaint and documents annexed therewith. The impugned judgment, however, renders a finding which is contrary to these pleadings and documents, and instead appears to accept the defence taken by the respondent in the written statement. Such a course was not open to the learned Trial Court under Order VII Rule 11 of the CPC.

18. The learned Trial Court has also rendered a finding in the impugned judgment that the suit was barred by limitation, as the amount of Rs. 1,37,500/- was paid by the appellant to the respondent on 28.08.2009, but the suit was filed only on 01.12.2017. The learned Trial Court has however not examined in this context, whether the cause of action in favour of the appellant was established even prior to the judgment of the learned MM dated 19.08.2017, recording the aforesaid findings in respect of the presumption with regard to discharge of a legal debt or liability. Once the judgment of the learned MM is taken in the correct perspective, it is evident that the issue of limitation would also have to be reconsidered.

19. For the reasons aforesaid, the appeal is allowed, and the impugned judgment dated 03.09.2019 is set aside. CS No. 1355/2017, alongwith the application filed by the respondent under Order VII Rule 11 of the CPC, is restored to the file of the learned Trial Court for fresh consideration in terms of this judgment.

20. It is made clear that the observations contained in this order are only for the purpose of disposal of this appeal, on the principles applicable under Order VII Rule 11 of the CPC.

⁷ Emphasis supplied.



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21. The parties will appear before the learned Principal District and Sessions Judge (West), Tis Hazari Court, or the Court assigned by him, on 16.12.2024.

PRATEEK JALAN, J

NOVEMBER 25, 2024/MR/AD/