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

\+ C.R.P. 306/2023 & CM APPL. 55493/2023

MILAN JAIN ..... Petitioner

Through: Mr. A. Mishra Advocate (through VC).

versus

VED PRAKASH JAIN ..... Respondent

Through: Mr. Ajay Jain, Mr. Krishna Sharma, Ms. Shreya Jain, Mr. Bijay Lakshmi Sahu, Mr. M.N. Mishra & Ms. Shivani, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **01.03.2024**

1. Petitioner, who is the defendant in the suit filed by the respondent/plaintiff before the learned Trial Court, is assailing the impugned order dated 08.08.2023, whereby his application under Order VII Rule 11 CPC has been dismissed.

2. Learned counsel appearing for the petitioner through VC has urged that the respondent/plaintiff in paragraph (12) of the plaint has made an averment that the loan granted by the plaintiff was of a commercial in nature which was utilized by the defendant to finance his business. It is further pointed out that in paragraph (5) of the plaint, it is also averred by the respondent/plaintiff that earlier a loan had been advanced to the father-in-law of the defendant as well as his brother.

3. It is submitted that the suit for recovery is not maintainable before the Civil Court as the lending amount was in the nature of a

commercial transaction covered under the Commercial Courts Act, 2015. It is further urged that the plaintiff is a professional moneylender and the bar of Section 3 of the Punjab Prohibition of Interest on Private Loans Act, 2022 would be made applicable.

4. Learned counsel appearing for the respondent has urged to the contrary.

5. It is relevant to extract the observations which have been made by the learned Trial Court while considering the present application which read as under:

> "14. As per the fact of the plaint, the plaintiff lent the amount of Rs. 61 Lakhs on the insistence of one Prabhat Garg who assured that the amount was needed by the defendant as he was facing a financial crunch and that the defendant would make the payment alongwith interest in case of default. There is no mention in the entire plaint that plaintiff is a money lender rather it has been mentioned in para no. 5 of the plaint that said loan is a friendly loan given by the plaintiff to the defendant. It is also mentioned in the plaint that plaintiff regularly demanded money from the defendant but outstanding was not paid to him by the defendant as the said loan was a friendly loan and there is no averment by the plaintiff in the plaint that he was into money lending business. Hence, he is not covered under the Punjab Prohibition of Interest on Private Loans Act, 2022.
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> I5. The 2nd argument for the rejection of the plaint that the transaction is commercial in nature and hence should be tried in a commercial court. It is the settled position that Commercil Courts are made to resolve the purpose of commercial transaction and commercial litigation is one that involves the commercial litigation between two or more business entities. As per Section 2C of the Commercial Courts Act, the commercial dispute are the one involving routine transaction of merchant, bankers, financiers and traders, such as those relating to mercantile documents including enforcement and interpretation of such documents. It also involved the export or import of merchandise or services. Hence, commercial court have jurisdiction to solve the issue arising in business. Whereas in the present matter no issue of business transaction has been raised between the parties. It is further submitted that plaintiff and defendant were not sharing any kind of customer client relation or business partner relation and the mere issue is that of friendly loan payable by the defendant.

> 16. It is not evident from the facts of the plaint that the plaintiff was involved in any kind of money lending activities and even if it was the same is a matter of trial and cannot be tested at this stage. The averment made by the plaintiff in his evidence by way of affidavit which is basis of the present application cannot be considered in the application under Order 7 rule 11 of the CPC."

6. On a careful perusal of the record, this Court finds that there is no illegality, perversity or incorrect approach adopted by the learned Trial Court while rejecting the application under Order VII Rule 11 PC. The case of the plaintiff is that a friendly loan was advanced. The transaction per se does not amount to a commercial transaction and it one or two words cannot be picked out of the averments without the contextual background. The plaint read as whole does show existence of cause of action and whether or not eventually relief would be granted is an altogether different aspect. The defence that the respondent/plaintiff has been working as a professional money lender is a triable issue which cannot be considered without recording of evidence of the parties.

7. Hence, the revision petition is dismissed. Nothing contained in this order shall tantamount to an expression of opinion on the merits of the case pending before the learned Trial Court.

8. A copy of this order be sent to the learned Tribunal for information and necessary compliance.

DHARMESH SHARMA, J.

MARCH 1, 2024/ck