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

+ C.R.P. 234/2024

VIJAY KUMAR MALIK

.....Petitioner

Through: Mr. Prateek Yadav & Mr. Yogesh
Yadav, Advocates.

versus

JYOTI CHANANA

.....Respondent

Through: Mr. Milan Deep Singh & Mr. Rohit
Dandriyal, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

07.10.2024

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1. The present Revision Petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on behalf of the Petitioner-Revisionist challenging the impugned Order dated 29.04.2024 passed by the learned District Judge-01, New Delhi in Civil Suit bearing CS No. 37/2023, whereby the Application under Order XII Rule 6 of CPC, 1908 filed on behalf of the revisionist-plaintiff, has been dismissed.

2. It is submitted in the petition that the respondent-defendant had admitted in the Affidavit-cum-Undertaking dated 23.10.2017 having received financial help of Rs. 30,00,000/- from the revisionist-plaintiff and had also admittedly issued three Cheque bearing Nos. 000008, 000009, 000010, for Rs. 11,00,000/-, Rs. 11,00,000/- and Rs. 11,50,000/- respectively. These three cheques on presentation, were dishonoured "*for insufficient funds*" and payments were stopped by the Drawer, for which the



proceedings under Section 138 of the Negotiable Instruments Act, 1881 have been filed which are pending consideration before the learned Trial Court.

3. According to the revisionist-plaintiff, in the light of these express admissions about having received the cash loan and also have admittedly given the documents of the property to the revisionist-plaintiff so as to secure the money so taken, no further facts are required to be proved. Therefore, the revisionist-plaintiff is entitled to Decree on Admissions.

4. The respondent-defendant has, however, contested the Civil Suit on the ground that the no Loan amount was ever disbursed to the respondent-defendant. Moreover, though the signature were admitted on the Affidavit-cum-Undertaking dated 23.10.2017, it was claimed that the said three cheques were given as blank cheques and the contents thereof, were filled later.

5. It is submitted that there are triable issues raised in the Suit; consequently, the Application under Order XII Rule 6 of CPC, 1908 filed by the revisionist-plaintiff has been rightly dismissed by the learned District Judge, *vide* impugned Order dated 29.04.2024.

6. **Learned counsel for the revisionist-plaintiff**, however, has argued that the documents relied upon and admitted by the respondent-defendant, clearly show the grant of loan payment and nothing further is required to be established in view of the admitted facts. Therefore, the learned District Judge was not correct in dismissing the Application under Order XII Rule 6 of CPC, 1908.

7. It is further argued that the contrary defence has been taken in response to the Notice under Section 251 of CPC, 1908 framed in the



Complaint under Section 138 of the Negotiable Instruments Act, 1881, wherein it has been asserted that the signatures were taken on the cheques in a blank and unsigned condition by way of security as the complainant wanted to create some pressure on some third party but later, the cheques were misused against the respondent-defendant. The contrary pleas taken by the defendant, prove the falsity of the defence.

8. **Learned counsel for the respondent-defendant has countered** the arguments made on behalf of the revisionist-plaintiff by claiming that there is no proof whatsoever that any loan in cash was actually disbursed to the respondent-defendant, which is a matter of evidence. Moreover, there has been stoic silence on the part of the revisionist-plaintiff for all these years. There are triable issues which have been raised by the respondent-defendant and the Application under Order XII Rule 6 of CPC, 1908 has been rightly dismissed.

9. **Submissions heard.**

10. The revisionist-plaintiff had based his Claim for recovery of Rs. 30,00,000/- along with interest, on the basis of the Affidavit-cum-Undertaking dated 23.10.2017 and the three cheques, one is dated 09.05.2018 and two dated 28.05.2018, to assert that the cash loan was given to the respondent-defendant. In the light of admission about the execution of these documents, the respondent-defendant cannot now summersault or deny having received the loan of Rs. 30,00,000/-.

11. The perusal of the record shows that the Affidavit-cum-Undertaking dated 23.10.2017 recorded that Rs. 16,00,000/- without interest was given in February, 2014 and Rs. 14,00,000/- without any interest were given in June, 2015 in cash and also Rs. 3,50,000/- without interest was given *vide* Cheque



dated 26.10.2017.

12. Learned counsel for the respondent-defendant has taken a specific defence that no Loans were taken by the respondent-defendant or else, the revisionist-plaintiff would have issued Notice or taken steps in regard to the recovery of loan allegedly taken in February, 2014 and June, 2015. Furthermore, the respondent-defendant has taken a specific defence that at that time when the Affidavit-cum-Undertaking dated 23.10.2017 and the three said Cheques were signed, the contents of these documents were not filled and the same have been subsequently manipulated.

13. The learned District Judge is thus, right in noting the defence of the respondent-defendant and to observe that there was no categorical and unambiguous admissions made on the part of the respondent-defendant, entitling the revisionist-plaintiff to a Decree on Admissions.

14. In view of above, there is no merit in the present Revision Petition and the same is hereby dismissed.

NEENA BANSAL KRISHNA, J

OCTOBER 7, 2024

S.Sharma