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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 17/2020, CM APPL. 12803/2022 & CM APPL. 14209/2022
DEVENDER SHARMAAppellant

Through: Mr. N. K. Rohatgi, Advocate
alongwith petitioner in person.

versus

HARBANS LALRespondent
Through: Mr. G.K. Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER
% **09.12.2024**

1. Heard learned counsel appearing for the appellant-defendant on admission. Learned counsel submits that the impugned judgment of reversal is illegal and improper and the same deserves to be set aside.
2. According to him, the Court below has gravely erred in accepting the secondary evidence in the absence of there being a plausible reason for not producing the original receipt. He further submits that the suit was barred by limitation and according to him, the findings rendered by the Courts below are not supported by any witness.
3. Learned counsel for the respondent, on the contrary, opposes the aforesaid submissions and he submits that no substantial question of law has arisen for consideration in the instant appeal.
4. I have considered the submissions made by learned counsel appearing



for the parties and have perused the record.

5. The instant appeal has arisen out of the impugned judgment and decree dated 06.11.2019 in RCA No. 89/17, passed by the Additional District Judge-1, North East District, Karkardooma Courts, New Delhi, whereby the judgment and decree dated 01.05.2017 passed by Learned JSCC/ASCJ/Guardian Judge, North East, Karkardooma Courts, New Delhi have been reversed, and the suit filed by the respondent-plaintiff was dismissed.

6. A perusal of the impugned judgment and decree would indicate that the first Appellate Court, in paragraph no. 15, has recorded that the original receipt Ex. PW1/1 and Ex.PW1/2, could not be produced by the respondent-plaintiff and therefore an application under Sections 63 and 65 of the Indian Evidence Act, 1872, was filed.

7. Order dated 10.11.2015 passed by the Trial Court allowing the said application indicates that the secondary evidence was allowed to be permitted, on the ground that the original receipt was stolen by the appellant-defendant and accordingly, a complaint was also made by plaintiff-respondent at P.S. Mandir Marg, New Delhi, *vide* DD No. 53B. Since the loss of the original receipt cannot be presumed due to the respondent-plaintiff's own default or neglect and therefore, under the facts and circumstances, it is seen that the Trial Court has rightly allowed the respondent-plaintiff to adduce secondary evidence. The objection with respect to the aforesaid aspect is concerned, the same does not have any substance and accordingly deserves to be rejected. In any case, the same does not raise any substantial question of law.

8. So far as the argument that the suit was barred by limitation is



concerned, the Court has the benefit of perusal of the finding rendered by the Trial Court with respect to the aforesaid aspect.

9. The Trial Court framed the specific issue with respect to limitation as issue no.3. While dealing with the aforesaid aspect, reliance has been placed on the decision in the case of *Virender Kumar Jain v. Alumate (India) Pvt. Ltd*¹ and it has been found that the instant suit would be governed by Article 113 of the Limitation Act, 1963, as the cause of action will arise from the date of demand for repayment of the loan. It is thus seen that the legal demand notice is dated 25.02.2015 (Ex.PW1/5), which was found to have been dispensed on 26.06.2015 (speed post receipts PW1/6, PW1/7) and therefore the civil suit which was filed on 19.03.2015 cannot be said to be beyond limitation.

10. The Court therefore finds that even the issue with respect to the limitation has rightly been decided by the Trial Court and therefore no interference is called for with respect to the aforesaid aspect as well.

11. The Court, therefore finds that there is no other proposed substantial question of law which can be said to have been arisen for adjudication.

12. Accordingly, the instant appeal fails and is thereby dismissed.

PURUSHAINDR KUMAR KAURAV, J

DECEMBER 9, 2024/KG

¹ 2012 SCC OnLine Del 1313