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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 09th October, 2024***

+ **CM(M) 3585/2024 & CM APPL. 59697-59699/2024**

GANESH PRASHAD

.....Petitioner

Through: **Mr. Sanjay Garg, Advocate (Through
VC)**

versus

NAWAL KISHORE SONI

.....Respondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

CM APPL. 59698-59699/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3585/2024 & CM APPL. 59697/2024

1. Petitioner is defending a commercial suit.
2. He is aggrieved by order dated 03.09.2024 as well as by order dated 23.09.2024.
3. The sole question raised by the petitioner herein is that petitioner cannot be permitted to prove a fact in negative.
4. According to petitioner/defendant, there was never any business dealing with the plaintiff and, therefore, learned Trial Court should have at least appreciated that it was impossible for the defendant to prove a negative fact in such a scenario.
5. In order to comprehend the above, I have seen the copy of the plaint



and written statement in question and it appears that the contention raised herein is totally fallacious.

6. According to plaintiff, defendant had purchased certain jewellery from him through one invoice dated 18.03.2021 and in lieu thereof, he had also issued cheques. Invoice was also, as alleged by plaintiff, containing the signatures of the defendant. Such invoice has already been proved as Ex. PW1/2.

7. In the written statement, defendant has merely claimed that he had never purchased any such jewellery and never issued any cheques. According to him, he had gone to Karol Bagh for some business purpose where he met the plaintiff who then took him to his home and after spending some time there, when the defendant came back, he found that his handbag containing documents including the cheques etc. were missing. He also lodged report with the police. According to him, the alleged invoice is forged and fabricated and he had never purchased any goods from the plaintiff and such invoice did not bear his signature either.

8. In order to prove its case, the initial burden is always on any party who asserts a particular fact. However, once so asserted, the burden can always shift upon its adversary in given situation. Herein, plaintiff is seeking recovery of Rs. 18 lacs approximately. Plaintiff seems to have placed strong reliance not only upon the aforesaid invoice which, allegedly, bears signatures of the defendant but also on the cheques.

9. It is the case of the defendant that a fraud has been played upon him as according to him, though he had met the plaintiff but plaintiff seems to have misused the cheques, after stealing the same. If he labels invoice as forged and fabricated, the burden would, in such a situation, upon him to prove the



same. The primary onus, which was there on the shoulder of the plaintiff, seems to have been discharged, the moment he, besides leading oral evidence, proved the aforesaid invoice and cheques. Learned Trial Court has, therefore, rightly rejected the prayer for reframing the issues while observing as under: -

*“The onus of proof in civil cases, however is not fixed permanently but it keeps on fluctuating frequently. The elementary rule as also defined in Section -101 of The Evidence Act is inflexible and it shifts to the Defendant to prove those circumstances, which disentitle the Plaintiff for such **[Anil Rishi Vs. Gurbaksh Singh, 2006 (2) RCR (rent) (60)]**. Therefore, it is the Plaintiff, who has to establish that the ornaments were purchased as claimed in the Plaint and Invoice was raised pursuant thereto as also subsequent issuance of cheques to Plaintiff in respect of outstanding amount.*

The Defendant has denied any such purchase from Plaintiff or having issued any cheques against alleged discharge of liability by contending that the alleged Invoice was forged and has also contended of one incident dated 11.06.2020 of missing his hand-bag with documents. Thus, the burden is on the Defendant to prove these circumstances. Having observed thus, the application of Defendant praying for reframing of Issues no. 1 and 2 by placing the onus instead on the Plaintiff is misconceived and deserves dismissal.”

10. In view of aforesaid, this Court does not find any reason to interfere with the impugned order.

11. The petition is accordingly dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 9, 2024/dr