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

\+ RSA 378/2015 and CM APPL. 32846/2019, CM APPL. 36952/2019

SUMITRA RANI .....Appellant

Through: Mr.R.K.Bharani and Mr.Ashish Bharani, Advs.

versus

SARLA RANI .....Respondent

Through: Mr. Pradeep Singh Parihar and Mr. Ram Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **12.12.2024**

1. This appeal has arisen out of the impugned judgment and decree dated 28.08.2015, passed in RCA No. 08/2015, whereby, the appeal filed by the appellant/defendant has been dismissed against the judgment and decree dated 18.11.2014, passed by the Trial Court in Suit bearing number CS No. 142/2011, decreeing the suit for recovery of Rs. 1,95,000/- along with interest, at the rate of Rs. 18% per annum from the date of filing of the suit till the date of decree along with 6% future interest.

2. Learned counsel appearing for the appellant/defendant proposes a singular question of law as to whether the promissory note relied upon by the respondent/plaintiff has wrongly been accepted by the Courts below when the same has been alleged to be fabricated by the respondent/plaintiff.

3. Learned counsel for the appellant/defendant submits that the Courts

below have erred in concluding that the property was mortgaged without there being any recital or intention to create a mortgage by the mortgagor. He further submits that the respondent/plaintiff submitted a fabricated and forged promissory note which was purported to be signed by the appellant/defendant.

4. Learned counsel for the appellant/defendant further submits that an application under Section 151 of the Code of Civil Procedure, 1908 (CPC) for sending the document to the Central Forensic Science Laboratory (CFSL) was earlier filed before the Trial Court, which was withdrawn *vide* order dated 01.03.2014, with a liberty to file at an appropriate stage, and, therefore, the aforesaid aspect requires to be looked into and necessary directions are required to be issued for comparing the signatures of the document with the report of the CFSL.

5. I have considered the aforesaid submission and also perused the record.

6. The facts of the case would indicate that a Civil Suit was filed by the respondent/plaintiff for recovery of Rs. 1,95,000/- with *pendente lite* interest at 18% per annum along with the cost of the civil suit. As per the respondent/plaintiff, the appellant/defendant and her husband were acquainted and familiar with the respondent/ plaintiff due to the fact that the husband of the appellant/defendant used to borrow money from the husband of the respondent/ plaintiff.

7. It was stated that on 26.02.2007, the respondent/ plaintiff gave a loan of Rs. 2,00,000/- to the husband of the appellant/ defendant, who executed a promissory note cum receipt dated 26.02.2007, and also pledged/ mortgaged the property situated at B-Block, Rama Park, Uttam Nagar, New Delhi by

handing over the original documents of the said property as consideration. It was also alleged that the said loan was taken at an agreed interest of 18% per annum. It is the case of the respondent/ plaintiff that in the month of June 2007, the respondent/plaintiff again gave a loan of Rs. 1,50,000/- to the appellant/defendant, who further executed the promissory note *cum* receipt dated 12.06.2007, and the said loan was also given on an interest at the rate of 18% per annum. The case of respondent/ plaintiff is that the appellant/ defendant paid the agreed interest on the loan of Rs. 1,50,000/- up to June, 2008, and, thereafter, she stopped paying interest since July, 2008.

8. According to the case of the respondent/plaintiff, despite repeated requests, neither the appellant/defendant nor her husband returned the loan. Accordingly, the respondent/plaintiff had to serve a legal notice dated 20.11.2009. Hence, the respondent/plaintiff had to institute a civil suit for recovery of the said amount.

9. The appellant/defendant contested the civil suit and denied the acquaintance and relationship of the respondent/plaintiff and also stated that there was no privity of contract between the parties. The appellant/ defendant denied to have taken any loan from the respondent/plaintiff and had also denied the execution of the alleged promissory note. It was the case of the appellant/defendant that the promissory notes were fabricated by the respondent/plaintiff.

10. The civil suit filed by the respondent/plaintiff came to be decreed by judgment and decree dated 18.11.2014, and the appeal against the said judgment and decree filed by the appellant/ defendant has been dismissed by the first Appellate Court. Aggrieved by the said dismissal, the appellant/ defendant has preferred the instant appeal.

11. The perusal of the facts would indicate that the Trial Court framed two issues for adjudication which read as under:-

> *"i. Whether the plaintiff is entitled for suit amount as prayed for? OPP.*
> *ii. Whether the plaintiff is entitled to any interest, if so, for what period and at what rate? OPD."*

12. The record would further indicate that the respondent/plaintiff examined her as PW-1, Sh. Ravinder Kumar as PW-2 and Sh. Ishwari Prasad (husband of the defendant) as PW-3. The appellant/defendant, however, examined her as DW-1.

13. The Trial Court in paragraph no. 15 of the judgment and decree dated 18.11.2014, rendered a finding of fact that the appellant/defendant had not produced her signatures of the contemporary period of the execution of the said promissory note for comparison to substantiate her claim.

14. With respect to the argument made by learned counsel for the appellant that the promissory note deserves to be examined by CFSL, the same cannot be acceded to, in view of the aforesaid finding rendered in paragraph 15 of the Trial Court decision.

15. Even, the request to get the promissory note examined, at this stage, cannot be acceded to. The findings rendered by the Trial Court in paragraph 15 of the Trial Court decision dated 18.11.2014 read as under:-

> *"15. In the present case, the defendant has denied her signatures over promissory note Ex. PW1/1 and she has alleged that the signatures appearing on the said promissory note are not similar to her signatures appearing on WS and the Vakalatnama filed on her behalf. However, the defendant has not produced her signatures of the contemporary period of the execution of the said promissory note for comparison so as to substantiate her plea. Further, during her cross examination, the defendant has admitted that she had a bank account in SBl, Rama Park, Uttam Nagar Branch and that a ration card and voter card has been issued at her address. However, she denied the suggestion that she*

intentionally did not file the aforesaid documents on record so that her signatures are not verified therefrom **.** "

16. On the contrary, the Trial Court has found that PW-1 and Sh. Ravinder Kumar, PW-2 in whose presence and handwriting the said promissory note was signed and executed has supported the case set up by the respondent/plaintiff. Both the PWs have categorically stated that the appellant/defendant took the loan of Rs. 1,50,000/- on 12.06.2007, and executed the promissory note cum receipt dated 12.06.2007. They further stated that the appellant/defendant signed the promissory note in their presence. The aforesaid findings rendered in paragraph 16 of the aforesaid decision read as under:-

> "*16. The plaintiff has examined herself as PW1 and Sh. Ravinder Kumar in whose presence and handwriting the said promissory note Ex. PW1/1 was signed and executed. Both the PWs have categorically stated that the defendant took the loan of Rs. 1.5 lacs from the plaintiff on 12.06.07 and executed a promissory note cum receipt dated 12.06.07 and they have also stated that the defendant signed the promissory note in their presence. Both the said witnesses have stood well during their cross examination so far as the execution of promissory note is concerned. On the other hand, the defendant has simply denied the entire case of the plaintiff including her signatures over the promissory note Ex. PW1/1. The contentions raised by the defendant regarding acquaintance between the parties and the previous loans have already been disproved by the testimony of PW3 Ishwari Prasad who is the husband of the defendant. Further the defendant has not produced her signatures of the contemporary period of the execution of said promissory note for comparison so as to substantiate her plea. In view of the facts and circumstances of the present case and the evidence on record, I am of the considered opinion that the plaintiff has successfully proved that the defendant took the loan of Rs. 1.5 lacs from the plaintiff on 12.06.07 on interest @ 18% per annum and that the defendant has failed to repay the same. Accordingly, this issue is decided in favour of the plaintiff and against the defendant.*"

17. The aforesaid finding of facts has been confirmed by the first Appellate Court in terms of the impugned judgment and decree.

18. This Court, therefore, does not find any substantial question of law which can be said to have arisen under the facts and circumstances of the present case.

19. Accordingly, the instant appeal fails and is hereby dismissed.

20. The amount deposited by the appellant is directed to be released in favour of the respondent/ plaintiff.

PURUSHAINDRA KUMAR KAURAV, J

DECEMBER 12, 2024

aks/dp