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

+ **RFA 291/2025 CM APPL. 18194/2025 CM APPL. 18195/2025**

SHRI R.N. DHAKAAppellant

Through: Adv. Pradeep Kumar, Adv Anshul
Dokhoria, Adv. Surender Kr. Hooda.

versus

SHRI SURYA BHAN GAUTAMRespondent

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **28.03.2025**

CM APPL. 18193/2025

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

RFA 291/2025

1. This appeal assails judgment and decree dated 29th August 2024 passed by the ADJ-04, District-South, Saket Courts, New-Delhi in Suit bearing **CS/DJ No. 150/2021** directing recovery of Rs.6 lakhs along with interest at 6% p.a. from the date of the filing of the suit till its realisation, with costs.
2. The said suit was filed by the respondent/plaintiff on the basis that appellant /defendant and the respondent/ plaintiff were friends and known to each other and were working in the same department in Airport Authority of India.
3. In the month of July 2017, the appellant requested the respondent for



financial help of Rs.6 lakhs, as he was under financial crisis. The respondent promised to provide him financial help and he agreed to repay the amount within one year. The respondent stated that he gave an amount of Rs. 6 lakhs by withdrawing amount from the ATM in three transactions – Rs. 3 lakhs on 6th August 2017, Rs.80,000 on 8th August 2017 and Rs.2 lakhs were withdrawn on 26th December 2017. On asking for the return of the said amount consistently from the appellant, he refused to pay.

4. The respondent placed WhatsApp chats dated 2nd June 2019, 3rd July 2019, 2nd August 2019, 16th August 2019 and 12th October 2020 in this regard. A legal demand notice was served on 6th February 2021, but no reply was given to the same.

5. The written statement of the defendant essentially stated that the money had been given by the respondent to one Mr. Avtar Singh Pilot and the appellant had no responsibility or liability in that regard.

6. Issues were framed and evidence was led.

7. Aside from the legal notice and its tracking report, the bank passbooks and WhatsApp chats were placed in evidence by the plaintiff, along with Certificate under section 65B of the Indian Evidence Act 1872.

8. Notably, the Trial Court assessed the bank passbooks and noted that the relevant entries were there as also the communication and the WhatsApp chats that the respondent had been consistently asking the appellant for return of his amount. The respondent in his cross-examination also reiterated that he had paid the amount in cash in three instalments and therefore, there was no inconsistency in his testimony.

9. The Trial Court notes that there were various entries of withdrawal of amounts from the ATM at Yusuf Sarai from July-August 2017 as also in December 2017.



10. Most importantly, the defendant chose not to be present himself as a witness and instead produced one Vidhi Gupta as DW-1 who stated that it was in her presence, the respondent had stated that he had advance money to the said Avtar Singh.

11. The Trial Court assesses the evidence of DW-I and rightly notes that it is hearsay and that she had heard about the said assertion being made allegedly by the respondent. More importantly, the said Mr. Avtar Singh Pilot was also not summoned as a witness by the defendant.

12. The Court is of the view that in these circumstances, this appeal is not tenable and cannot be sustained. The Trial Court is right and correct and there is no infirmity in the order passed by it.

13. Appeal is accordingly dismissed, along with pending applications.

14. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 28, 2025/sm/na