



2025:DHC:9917-DB



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

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Judgment reserved on: 14.10.2025**Judgment pronounced on: 13.11.2025**+ **RFA(COMM) 136/2024****SMT MEENAKSHI OBERG**

.....Appellant

Through: Mr. Keshav Sehgal, Mr. Shivam Gaur, Mr. Aryan Kumar, Ms. Rashmi Singh and Ms. Shabina, Advs.

versus

SH. KARUN DUBE & ORS.

.....Respondents

Through: Mr. Dinesh Monga, Ms. Merlin Mathew & Ms. Vrinda Awasthi, Advs. for R-1 and R-2.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR****J U D G M E N T****ANIL KSHETARPAL, J.**

1. The present Appeal has been filed assailing the correctness of the impugned judgment and order dated 22.12.2023 [hereinafter referred to as "IJ"] passed by the learned District Judge, Saket Court Delhi [hereinafter referred to as "DJ"], whereby the civil suit filed by the Appellant and Respondent No.3 (Plaintiffs before the Trial Court), for recovery of Rs.70,20,172.53/- was dismissed on account of failure to discharge the burden of proof necessary to establish their claim.

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RFA(COMM) 136/2024

Page 1 of 10



2025:DHC:9917-DB



FACTUAL MATRIX:

2. For the sake of convenience, the parties before this Court shall be referred in accordance with their status before the DJ.

3. In substance, the brief facts culminating in the present Appeal and relevant for adjudication, revolve solely around the loan agreement dated 21.11.2013 [hereinafter referred to as “LA”] executed between Mr. Karun Dube (Defendant No.1/Respondent No.1) and Late Smt. Shanti Devi, whereby the latter purportedly advanced a loan of Rs.50,00,000/- to the former, along with an interest at the rate of 18% per annum, repayable at the end of the period of LA, i.e. of three years from the date of execution of the LA.

4. Additionally, under the terms of the LA a post-dated cheque bearing No.000102 dated 21.11.2016 was drawn in favour of Smt. Shanti Devi. However, on 05.07.2017, she passed away leaving behind three children, namely Mrs. Meenakshi Oberg (Plaintiff No.1/Appellant), Mr. Praveen Chawhan (Plaintiff No.2/Respondent No.3) and Mr. Brijesh Singh Chauhan (Defendant No.2/Respondent No.2). Following the demise of Smt. Shanti Devi, legal notices dated 20.01.2018 and 14.06.2018 were issued by Plaintiff No.1 to Defendant No.1, seeking recovery of Rs. 50,00,000/- repayable with an interest at the rate of 18% per annum, in compliance with the terms and conditions of the LA.

5. Subsequently, the Plaintiff No.1, on account of failure of Defendant No.1 to make payment, instituted a civil suit against the Defendant Nos.1 and 2. During the course of trial, the dispute, with



2025:DHC:9917-DB



the consent of the parties was referred to mediation by the DJ. Consequently, the matter was settled between the Plaintiff No.1 and Defendants by way of a Settlement Agreement dated 19.04.2023 [hereinafter referred to as “SA”], whereby the parties agreed to resolve the dispute in full, upon payment of Rs.20,00,000/- to be made in two instalments, with Rs.2,00,000/- payable immediately via cheque on the same date, and the remaining amount of Rs. 18,00,000/- payable on or before 23.05.2023 by way of a DD/NEFT/RTGS. However, the settlement reached by the parties could not attain finality and was abandoned by the Plaintiff No.1 after forfeiting Rs.2,00,000/- already received. Following the failure of the SA between the parties to settle the matter, the trial resumed in its ordinary course and the DJ upon appreciation of pleadings and evidence was pleased to pass the IJ against the Plaintiffs. Hence the present Appeal.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF NO.1

6. Learned Counsel representing the Plaintiff No.1 impugning the findings of the DJ, contends that a scanned copy of the LA and the cheque dated 21.11.2016, securely saved on the Google Server, was produced before the DJ, hence the requirement of proof under Section 65-B of the Indian Evidence Act, 1872 [hereinafter referred to as “IEA”] stood satisfied. It is further contended that the acceptance of Defendant No.1 about the receipt of loan amount constituted foundational evidence, thereby proving the scanned copy of the LA and the cheque in accordance with law. Hence, once the foundational facts were established, compliance with Section 65-B of IEA stood

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RFA(COMM) 136/2024

Page 3 of 10



2025:DHC:9917-DB



satisfied, and the DJ erred in discarding the Plaintiff No.1's claim on technical grounds.

7. In addition to the aforesaid, it has also been contended that the cheque dated 21.11.2016 in favour of Smt. Shanti Devi forms a separate and independent acknowledgment of liability.

8. It is contended by the Plaintiff No.1 that the DJ failed to take into account the conduct of the Defendants, who first entered into the SA and made a partial payment of Rs.2,00,000/-, thereafter undertook to pay Rs.18,00,000/- towards the outstanding amount, thereby implying admission and acknowledgement of their liability to repay the Plaintiff No.1.

9. Lastly, the findings of the DJ were further vitiated by placing reliance on Order VIII Rule 4 and 5 of the Civil Procedure Code, 1908 [hereinafter referred to as "CPC"], to state that the vague and evasive denials of the loan transaction by the Defendants amounts to admission and do not constitute a valid transverse in law.

SUBMISSIONS ON BEHALF OF THE DEFENDANTS

10. *Per contra*, the learned counsel for the Defendants while defending the IJ submits that although the amount was received from the account of Late Smt. Shanti Devi, the same did not constitute a loan transaction. In response to the reliance placed by the Plaintiff No.1 on the cheque dated 21.11.2016, it is contended that the said cheque was issued by a different company, in respect of an unrelated business transaction and not towards repayment of any alleged loan or

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RFA(COMM) 136/2024

Page 4 of 10



2025:DHC:9917-DB



liability arising out of the purported LA. Hence, reliance on the said cheque cannot be construed as a proof of liability.

11. In addition to the aforestated, it has been contended that the said amount was transferred by the Defendant No.2 from his personal account maintained in the United Kingdom to the account of Late Smt. Shanti Devi, who thereafter transferred the same to the Defendant No.1. Reliance in this regard has been placed on an email dated 11.12.2013, wherein the Defendant No.2 expressed concern as to why, despite having transferred the amount to his mother's account, the said transfer was not reflecting therein. Further, it is contended that the amount only came to be transferred to the Defendant No.1, after the funds were reflected in the account of Smt. Shanti Devi, thereby corroborating that the transfer originated from Defendant No.2 and not from Late Smt. Shanti Devi's independent funds.

12. Controverting the submission made by the Plaintiff No.1 with respect to the SA, the learned counsel for the Defendants has provided two clarifications; firstly, it has been contended that the Defendants agreed to settle the matter merely to maintain cordial family relations and not as an acknowledgment of any legal liability. Secondly, while placing reliance on Order dated 06.07.2023, it has been contended that the Plaintiff No.1 had already abandoned the settlement, since the amount of Rs.2,00,000/- already paid was forfeited and no further payments were made thereafter.

13. Reliance has also been placed on the Order dated 22.12.2022, which records that the original copy of LA was in the possession of



2025:DHC:9917-DB



Plaintiff No.1, though she failed to produce or trace the same. This act of the Plaintiff No.1 clearly established that her inability to produce the original document was not attributable to any act or omissions on the part of the Defendants.

ANALYSIS

14. This Court has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

15. At the outset it is noted that the Plaintiff No.1 admitted during the course of arguments before this Court that she had lost the original copy of LA, thereby confirming her inability to produce primary evidence; notably, this position was not adopted before the DJ. Upon perusal of the material on record, it is evident that Plaintiff No.1 had consistently asserted before the DJ that she was in possession of the LA, while merely producing a scanned copy of the LA thereof for perusal of the Trial Court. Additionally, it is noted that the Plaintiff No.1 also failed to produce the source laptop and scanner through which the LA was allegedly scanned as a part of their evidence.

16. With regard to the aforesaid, the contention advanced by the Plaintiff No.1 that the acceptance of receipt of loan by the Defendant No.1 constitutes foundational evidence, thereby satisfying the requirements of Section 65-B of IEA, is legally unsustainable. This is for the reason that the compliance of producing a certification under the said provision is merely a mandatory pre-requisite for the admissibility of an electronic record, and such certificate must comply with all the requirements prescribed under Section 65-B(4) of the IEA,



2025:DHC:9917-DB



non-compliance of which renders the electronic evidence inadmissible and eschewed from consideration.

17. In the present case, although the Plaintiff No.1 provided a certificate under Section 65-B of the IEA, they failed to produce the source computer and the scanner to establish the manner and authenticity of creation of the scanned copy of the LA. This failure on account of the Plaintiff No.1 casts doubts on the integrity of the source device thereby undermining the chain of custody necessary for admissibility of electronic evidence. Consequently, the certificate is insufficient to satisfy the mandatory requirements of Section 65-B of the IEA.

18. Moreover, the best evidence rules as envisaged under Sections 61 to 64 of the IEA for proving a document through primary evidence was also not met by the Plaintiff No.1, since she failed to establish the genuineness of the LA and its contents. Reliance in this regard is placed upon the cross-examination of Plaintiff No.1; the relevant paragraphs of which are reproduced hereinbelow:

Cross-examination dated 22.12.2022:

“The agreement was signed between my mother and defendant no.1, I was abroad at that time but on the same time I was on telephonic conversation with my mother. The original agreement was in my possession but I cannot trace it now.”

Cross examination dated 09.01.2023:

“I was not in India at the time of execution of Agreement dated 21.11.2013 Mark ‘A’.”

The above-reproduced excerpts warrant an adverse inference against the Plaintiff No.1 with respect to the best evidence rule, in as much as



2025:DHC:9917-DB



the Plaintiff No.1, despite claiming to have been in possession of the original LA, failed to produce the same and merely stated that it could not be traced. Such non-production deprived both this Court and the DJ of the opportunity to peruse the original document. Additionally, the Plaintiff No.1 neither examined any attesting witness or person present at the time of execution of the LA nor provided any reasonable explanation for the alleged loss or unavailability of the original LA in terms of Section 65 (c) of the IEA. Accordingly, the DJ rightly concluded that the scanned copy of the LA could not be relied upon for want of admissibility under the IEA.

19. Upon a careful reading of Paragraph Nos.3, 4 and 5 of the written statement filed by the Defendants before the trial court, it is evident that the borrowing of loan amounting to Rs.50,00,000/- as per the LA has been emphatically denied by the Defendants. It is further the case of the Defendants that the cheque dated 21.11.2016 was issued in blank by Defendant No.1 for a different transaction, as the said cheque belongs to another company of the Defendant No.1, namely, M/s Adpros Media Pvt. Ltd. and not to Defendant No.1 in his personal capacity.

20. It is also alleged that the Plaintiff No.1 has fabricated the LA. Hence, there is no unequivocal or implicit admission on part of the Defendants acknowledging the alleged loan transaction. Accordingly, the reliance placed by the Plaintiff No.1 on Order VIII Rules 4 and 5 of the CPC will not be applicable in the present case, since the denial by the Defendants cannot be termed as evasive or insufficient.



2025:DHC:9917-DB



Moreover, Paragraph No.4 of the written statement filed by the Defendants, clearly records and reads as under:

“That it is submitted that the version of the Plaintiffs are completely false, fabricated and vexatious and the Plaintiffs have concealed and suppressed the true and correct facts from this Hon’ble Court.”

In view of the aforesaid categorical stance taken by the Defendants, the argument advanced by the learned counsel for the Plaintiffs premised upon application of Order VIII Rules 4 and 5 of the CPC cannot be accepted.

21. Similarly, the SA relied upon by the Plaintiff No.1 to prove admission of liability on behalf of the Defendants also falls, being devoid of merit. The said agreement neither constitutes a binding admission of liability nor is it conclusive in nature for the adjudication of the present dispute. In particular, owing to the fact that the Plaintiff No.1 themselves abandoned the settlement, and as such, cannot be permitted to cherry pick the favourable portions of the SA while disregarding their own conduct in abandoning the same.

CONCLUSION

22. Accordingly, in light of the above findings, it is concluded that the Appellant has failed to demonstrate any illegality, perversity or procedural impropriety in the impugned judgement warranting the interference by this Court. The findings of the learned District Judge are based on record, including the witness testimonies and documents placed on record before it by both the parties.



2025:DHC:9917-DB



23. In view of the aforesaid discussion on facts and law, this Court does not find any reason to interfere with the impugned judgment passed by the learned District Judge.

24. Having found no merit in the Appeal, the same is accordingly dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 13, 2025

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