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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **RSA 39/2018, CM APPL. 8027/2018, CM APPL. 8028/2018****RAJ KUMAR**

.....Appellant

Through: Ms. Monica Kapoor, Ms. Bhavya
Singh, Advs. with appellant.

versus

DARSHAN CHAWLA

.....Respondent

Through: Mr. C.L. Dhawan, Ms. Aanchal
Bansal, Advs.

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*Date of Decision: 25.03.2025.***CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)**

1. The present Regular Second Appeal has been filed under Section 100 of CPC challenging the order and judgment dated 25.10.2017 passed by learned Additional District Judge-02, North, Rohini Courts, Delhi in Regular Civil Appeal No. 5/17 titled *Sh. Raj Kumar vs. Sh. Darshan Chawla*, vide which judgment dated 26.07.2016 passed by learned JSCC-Cum-ASCJ- Cum- GDN Judge, North, Rohini Courts, Delhi in Civil Suit No. 534433/16 titled *Darshan Chawla vs. Raj Kumar* was upheld.

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2. Briefly stated, the facts of the case are that the respondent (hereinafter referred to as 'Plaintiff') filed a suit for the recovery of Rs. 2,66,220/- along with pendent lite and future interest. It has been alleged in the plaint that the appellant (hereinafter referred to as 'Defendant') had approached the Plaintiff for financial assistance in purchasing a flat from the DDA and persuaded the Plaintiff to extend monetary help. Consequently, a sum of Rs. 2,40,000/- was paid by the Plaintiff at the request of the Defendant for the purchase of Flat No. GH-4/365, LIG, First Floor, Sector-28, Rohini, Delhi. It was further stated in the plaint that the Defendant and his wife executed a receipt dated 02.11.2012, acknowledging receipt of Rs. 2,40,000/- and the Defendant represented that the amount was deposited with the DDA and assured the Plaintiff that it would be returned as and when released by the authority. However, the Defendant failed to return the amount. It later transpired to the Plaintiff that the funds had already been released to the Defendant's account. A legal notice was duly served on the Defendant, which was refused and the Plaintiff filed the Civil Suit bearing No. 534433/16
3. In the written statement, the Defendant objected to the suit stating that the suit was based on a false and fabricated story. The Defendant objected to the claim that any loan had been taken from the Plaintiff and the execution of the receipt acknowledging the payment was vehemently denied. It was stated that the Plaintiff had purchased a flat from the Defendant, which had been allotted to them by the DDA. And after the terms and conditions between the parties were finalized a sale



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deed was executed in the name of Mrs. Raj Chawla, the Plaintiff's wife. The Defendant asserted that they were under the impression that the Plaintiff would make the full payment as committed. However, instead of fulfilling this commitment, the Plaintiff filed the present suit for recovery. Defendant in the written statement stated that there was no privity of contract between the parties, and therefore, the suit was liable to be dismissed.

4. After the completion of the pleadings, learned Trial Court framed the following issues:

“Whether the plaintiff is entitled to the money decree along with interest as prayed for ? OPP

Whether the suit filed by the plaintiff is liable to be dismissed for want of cause of action ? OPD”

5. Learned Trial Court after appreciating the evidence advanced by the parties and after perusing the record *inter alia* decreed the suit in favour of the Plaintiff. Aggrieved of this, the Defendant filed a Regular Civil Appeal No. 5/17 titled *Sh. Raj Kumar vs. Sh. Darshan Chawla*, on the ground that the judgment and decree of the learned Trial Court dated 26.07.2016 are perverse, contrary to natural justice and without appreciation of evidence. The learned First Appellate Court did not find any infirmity in the observations given by the learned Trial court while deciding the issue no. 1 in favour of the Plaintiff and with respect to Issue No. 2, which concerned the want of cause of action, the learned First Appellate Court observed that the cause of action was inherently linked to the Plaintiff's entitlement to recover the suit amount and that



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the Defendant had failed to present any cogent material to establish that no cause of action existed for filing the suit. Thus, the first Appellate Court *vide* impugned order and judgment dated 25.10.2017 upheld the judgment and decree of the learned Trial Court dated 26.07.2016.

6. Aggrieved thereto, the Defendant preferred the instant second appeal on the ground that impugned judgment and decree dated 25.10.2017 are contrary to the evidence and material placed on record, thus, is liable to be set aside. Learned Counsel for the Appellant/Defendant has submitted that, in the present appeal, the following substantial questions of law arise for consideration:
 - i. Whether the decision of the appellate court is vitiated for non-consideration of the entire oral and documentary evidence in upholding the judgment of the Ld. Trial Court?
 - ii. Whether the decision of the appellate court in concurring with the judgment and decree regarding the entitlement of plaintiff to decree of Rs 2,66,220/- alongwith interest @ 9% p.a. from the date of filing suit till its realization is correct ?
 - iii. Whether an Application u/o 41 Rule 27 C.P.C. is filed by an appellant in order to fill up the lacunas before Ld. Trial Court ?
7. The Learned Counsel for the Defendant/Appellant submits that the findings of both the learned First Appellate Court and the learned Trial Court suffer from non-application of judicial mind. It is submitted that the Plaintiff/Respondent's suit is based solely on a forged document, as the alleged acknowledgment dated 02.11.2012, purportedly bearing the signatures of the Defendant/Appellant and his wife, is demonstrably



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forged. It is submitted that even from naked eye it is visible that there are significant differences between the disputed signatures on the acknowledgement dated 02.11.2012 and their admitted signatures on the sale deed, written statement, affidavit of evidence, and signatures recorded during cross-examination. Additionally, it is submitted that an application under Section 73 of the Indian Evidence Act was filed before the learned Trial Court, seeking a comparison of the Defendant/Appellant's signatures with those on the disputed acknowledgment. However, learned counsel submitted that without obtaining expert opinion, the learned Trial Court undertook the task of comparing the signatures itself and erroneously concluded their genuineness. Furthermore, learned counsel submitted that the Defendant/Appellant filed an application under Order 41 Rule 27 CPC before the learned First Appellate Court, seeking permission to present additional evidence, including expert opinion on the authenticity of the signatures. However, the learned first Appellate Court wrongly dismissed the application, holding that the Defendant/Appellant could not be permitted to fill up lacunas. It is submitted that the learned First Appellate Court failed to appreciate that the application was necessitated due to the erroneous approach of the learned Trial Court in not deciding the application under Section 73 of the Indian Evidence Act

8. The Learned Counsel for the Defendant/Appellant submits that both the learned First Appellate Court and the learned Trial Court erred in holding that the Plaintiff/Respondent proved the loan transaction



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merely on the basis of his assertion that the sum of Rs. 2.40 lakhs was reflected in his Income Tax Return. It is submitted that the learned Trial Court incorrectly treated a mere entry in the ITR as conclusive proof of the loan transaction and assessed the evidence in a piecemeal manner, ignoring that a declaration of an amount as a loan in an ITR does not, in itself, establish that the loan was actually advanced. The learned Counsel for the Defendant/Appellant has categorically denied that any loan was received by the Defendant/Appellant from the Plaintiff/Respondent and has challenged the authenticity of the alleged acknowledgment.

9. The Learned Counsel for the Defendant/Appellant submits that the Plaintiff/Respondent's case is inconsistent and lacks material particulars. The Plaintiff/Respondent alleges that the Defendant/Appellant sought financial assistance for purchasing a flat from the DDA and that Rs. 2.40 lakhs were given six months before 02.11.2012. However, the sale deed of the flat in favor of the Plaintiff/Respondent's wife establishes that the Defendant/Appellant purchased the flat from DDA on 31.10.2012. This directly contradicts the Plaintiff/Respondent's claim that financial assistance was sought six months earlier. Moreover, it is submitted that the Plaintiff/Respondent has failed to specify the exact date on which the alleged loan was extended. Learned Counsel for the Defendant/Appellant also submits that if any amount had indeed been given to the Defendant/Appellant, it would have been adjusted in the sale consideration paid by the Plaintiff/Respondent's wife at the time of



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executing the sale deed on 02.11.2012 and the absence of any such adjustment further discredits the Plaintiff/Respondent's claim.

10. Learned Counsel for the Defendant/Appellant submits that both the learned Trial Court and the learned First Appellate Court failed to consider the absence of any valid reason for executing an acknowledgment of the alleged loan amount six months after its purported disbursal. It is also submitted that the learned Appellate Court has failed to independently assess the evidence and has merely reiterated the findings of the learned Trial Court without assigning any cogent reasons.
11. *Per contra*, learned counsel appearing for Plaintiff/Respondent submitted that the instant appeal raises no substantial question of law. It is submitted that the learned Trial Court and the First Appellant Courts have rightly decided the matter and have arrived at concurrent findings. It is submitted that the said findings cannot be interfered with and thus, the suit is liable to be dismissed.
12. The Defendant/Appellant has preferred the instant appeal under Section 100 of Civil Procedure Code, 1908 which reads as under:

"100. Second appeal.-

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.



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(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

13. It is a settled proposition of law that the jurisdiction of the High Court in second appeals is limited to cases where a substantial question of law arises. The First Appellate Court is the final Court on facts and as a Court of the second appeal, the High Court in exercise of its jurisdiction under Section 100 CPC would not interfere in the impugned judgment on the ground of erroneousness of the findings of fact, however gross or inexcusable the error may seem to be unless there is a substantial question of law. Reliance can be placed on **Bholaram v. Ameerchand** (1981) 2 SCC 414 wherein the Second Appellate Court set aside the impugned judgment on the ground that the findings of the learned Trial Court and First Appellate Court were perverse and in disregard of the material available on record. However, Supreme Court, while setting aside the concerned High Court judgment, held that even if it was to accept the rationale of the



concerned High Court, at best, it could be termed as an error in findings of fact but that itself would not entitle the High Court to interfere in the absence of a clear error of law.

14. It is no longer *res intergra* that the High Court as a second court of appeal should be satisfied that the case involves a substantial question of law, and not a mere question of law. A second appeal cannot be admitted or be allowed to continue on the general questions of law. Apex Court in **Nazir Mohamed vs. J. Kamala**(2020) 19 SCC 57 has crisply analysed numerous decisions rendered on section 100 of the CPC and summarised the law as follows:

*“30. Where no such question of law, nor even a mixed question of law and fact was urged before the trial court or the first appellate court, as in this case, a second appeal cannot be entertained. ****

33.2. The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

33.3. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the



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decision rendered on a material question, violates the settled position of law.”

15. The scope of Section 100 CPC becomes even more stringent when the second appeal challenges concurrent factual findings. The Supreme Court, in Civil Appeal No. 6825/2008 titled **State of Haryana v. Harnam Singh (Dead) Thr. Lrs.**, emphasized that the High Court, while hearing a second appeal under Section 100 of CPC, must not interfere with the concurrent findings of fact recorded by the lower courts unless there is a substantial question of law and only in exceptional circumstances. The Apex Court *inter alia* held that the High Court cannot re-evaluate the factual matrix and substitute its own findings in the absence of any legal infirmity or perversity in the judgments of the Trial Court and the First Appellate Court. A second appeal is not intended to serve as a third round of factual scrutiny, but only to address significant legal issues that have a bearing on the case.
16. Furthermore, in **P. Chandrasekharan v. S. Kanakarajan** (2007) 5 SCC 669, the Supreme Court reaffirmed that interference in a second appeal is justified only when the findings of fact are based on a misreading of evidence or are so perverse that no person of ordinary prudence could arrive at the same conclusion. The present appeal fails to establish any such exceptional circumstances warranting intervention.
17. In the present case, the learned Trial Court has considered the oral and the documentary evidence carefully and *inter alia* held as under in respect of the first issue that the plaintiff has proved that he had shown the amount of Rs.2.40 lacs in his ITR that the same was given by him



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to the defendant as loan and as such the plaintiff has proved that Rs.2.40 lacs was given as loan to the defendant. It was further *inter alia* held that PW-2 has proved that a sum of Rs.2.40 lacs was credited in the bank account of the defendant through RTGS. During cross-examination, DW1-Raj Kumar/ defendant has admitted that Rs.2.40 lacs was credited in his account through RTGS from DDA. Learned Trial Court further *inter alia* held that neither in his WS nor in the affidavit filed in evidence, explained from where the amount of Rs.2.40 lacs was paid by him to the DDA. Learned Trial Court further *inter alia held* that the amount of Rs.2.40 lacs which was given by plaintiff to the defendant, was not adjusted in the sale-consideration of Rs.25.20 lacs and the same was not refunded till then by the DDA. Learned Trial Court also noted that the defendant has admitted that he has not filed any reply to the legal notice served upon him. Learned Trial Court *inter alia* held that the adverse inference shall be drawn against the defendant in respect of contents of the legal notice Ex. PW-1/2.

18. It is pertinent to mention that learned Trial Court further *inter alia* held in para-17 as under:

*17. In view of ratio of case laws **Murari Lal, appellant vs. Miss. State of MP, respondent (supra) and Mohd. Sultan vs. Nawazunnisa, (supra)**, I compared the signatures of the defendant and his wife on acknowledgment dated 02-11-2012 Ex. PW-1/1 with admitted signatures of the defendant on the WS, applications, affidavits and sale-deed Ex. DW-1/PX and signatures of wife of the defendant with sale-deed Ex. DW-1/PX and PW-2 and I am of the view that the signatures on the document Ex. PW-1/1 are the same as their admitted signatures. Therefore, I am of the view that the defendant has taken a false plea that document Ex. PW-*



1/1 was not executed by him and his wife and it is held that the document Ex. PW-1/1 was executed by the defendant and his wife.

18. The plaintiff has claimed interest @ 9% per annum on Rs.2.40 lacs from 14-05-2013 till the filing of the suit which comes to Rs.26.220/-. Since the amount of Rs.2.40 lacs was received by the defendant in his bank account on 13-05-2013 as refunded from DDA, therefore, I am of the view that the plaintiff is entitled to interest @ 9% per annum from 14-05-2013. The plaintiff has claimed interest @ 12% per annum from the date of filing of the suit till the same is recovered on Rs.2,66,220/-. Since there was no agreement between the plaintiff and defendant regarding payment of interest, I am of the view that if the interest @ 9% per annum is granted, it would meet ends of justice and as such interest @ 9% per annum is granted on Rs.2,66,220/- from the date of filing of the suit till the same is recovered.

19. In the light of the above discussions and reasons therein, the plaintiff is entitled for recovery of Rs. 2,66,220/- along with interest @ 9% per annum from the date of filing of the suit till the same is recovered. This issue is decided accordingly.”

19. Similarly, learned Trial Court returned a finding against the Defendant/Appellant in respect of Issue no. 2 as well.
20. The learned First Appellant Court has also after careful consideration *inter alia* held as under:

“11. The onus was on the respondent/plaintiff to prove the issue no. 1 regarding his entitlement for recovery of suit amount. For this purpose, he examined himself as PW-1 and tendered his affidavit of evidence as Ex.PW-1/A wherein he has deposed as per the case put forward in the plaint. He has also tendered in evidence different documents i.e. acknowledgement dated 02.11.2012 given by defendant/appellant as Ex.PW-1/1, legal notice Ex.PW-1/2



and postal documents/reports as Ex.PW-1/3 to Ex.PW-1/5. He has been duly cross-examined in detail by the Ld. Counsel for appellant. Despite detailed cross-examination, nothing could be extracted which may be considered against the case of the plaintiff. The claim of the plaintiff has been corroborated by the PW-2 who is a witness from bank who proved that a sum of Rs. 2.4 lakhs was credited in the account of defendant by way of RTGS. He tendered the statement of account Ex.PW-2/1.

12 The testimonies of PW-1 & PW-2 have discharged the initial onus lying on the plaintiff. So far as the case/defense of the defendant/appellant is concerned, no cogent evidence has been brought on record by the defendant in this regard. The case of the defendant is that the plaintiff has purchased a flat from defendant and a sale deed was executed by the defendant in the name of wife of plaintiff. Further that plaintiff instead of giving the payment of said transaction filed the present false case against the defendant. At the time of trial, the defendant has not been able to connect the alleged transaction of sale and purchase of flat with the present transaction as claimed in the plaint by the plaintiff. During his cross-examination, the defendant has admitted that he had received the sale consideration of Rs. 25.20 lakhs from the plaintiff. Since, it is admitted by the defendant that the sale deed was executed in the name of wife of the plaintiff and he has received the whole sale consideration, the defense taken by the defendant stands disproved.

13. The Ld. Trial court has properly dealt with the issue no. 1 relating to the entitlement of the plaintiff qua recovery of suit amount with interest. I do not find any infirmity in the observations given by the Id. Trial court while deciding the issue no. 1 in favour of the plaintiff.

14. So far as issue no. 2 is concerned, the same is regarding want of cause of action. The issue of cause of action is inherent in the entitlement of the plaintiff for recovery of



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suit amount. Otherwise also, the defendant/applicant has failed to bring on record any cogent material to show that there is no cause of action for filing of the present suit. Sc. I am in agreement with the findings of the Ld. Trial court on issue no. 2 as well which has been decided in favour of the plaintiff.

15. In view of above observations, the appeal filed by the appellant is found to be devoid of merits and same is accordingly dismissed.”

21. The bare perusal of finding of learned Trial Court and learned First Appellate Court makes it explicitly clear that both the Courts have duly and methodically considered the material and evidence on record. All the factual findings are based on material on record. There is no perversity at all. The appellant has also failed to raise any substantial question of law. In view of the above, the present appeal along with pending applications stands dismissed.

DINESH KUMAR SHARMA, J

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