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

% ***Date of Decision: 20th March, 2025***

+ **CM(M) 1602/2023& CM APPL. 50430/2023**

RADHEY SHYAM GARG

.....Petitioner

Through: **Mr. Rohit Kumar Modi, Advocate.**

versus

SANGITA PODDAR

.....Respondent

Through: **Ms. Khushboo Aggarwal, Advocate.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The respondent herein i.e. Ms. Sangita Poddar has filed a suit seeking recovery of Rs. 10,00,000/- and, according to her, defendant had approached her seeking a friendly loan and, accordingly, she had given such friendly loan by issuing a cheque on 01.10.2012 and such cheque was also duly encashed by the defendant.

2. According to her, the defendant entered into one agreement on same day and admitted that he had taken loan from her and, in return, he also issued a post-dated cheque towards discharge of his liability, as per the loan agreement.

3. As per the averments appearing in the plaint, on the basis of subsequent requests made by the defendant, he was permitted to hand over new cheque *in*



lieu of the old cheque. Such arrangement continued for quite some time and since the amount was not returned, the plaintiff (respondent herein) was compelled to file the above said suit, seeking recovery.

4. The stand of the defendant (petitioner herein) is that he never approached the plaintiff for any friendly loan. He also contended that the alleged written agreement was never executed by him. He also claimed that he had dealings with one Mr. Manak Aggarwal and some blank signed cheques were handed over to him as security, which seemed to have been misused by the plaintiff.

5. He also claimed that the suit was barred by the limitation.

6. Learned Trial Court framed issues and the negative onus with respect to the above said agreement i.e. receipt dated 01.10.2012, was put on the defendant and simultaneously, defendant was directed to lead his evidence first.

7. It also observed that, in view of the facts appearing in the pleadings, the suit was filed within the period of limitation and, therefore, there was no requirement of framing any issue with respect to limitation.

8. Such order dated 02.06.2023 is under challenge, herein.

9. It is apprised that defendant (petitioner herein) was suffering from cancer and, therefore, his evidence could not be recorded, though, affidavit of examination-in-chief was presented before the learned trial Court.

10. It is submitted by learned counsel for the parties that, without there



being any specific orders regarding closure of evidence of defendant, the Court has directed the plaintiff to lead his evidence.

11. The Court has heard learned counsel for both the sides.

12. After hearing arguments, both the sides submit that they would have no objection if the issues are re-cast as under and plaintiff is directed to lead her evidence, first. It is also agreed that once the evidence of the plaintiff is over, the defendant may lead his evidence.

13. The parties are, *ad idem*, for recasting of issues as under: -

“(1) Whether the receipt dated 01.10.2012 as well as cheque bearing no. 000064 of HDFC Bank has been signed and executed by the defendant in favour of the plaintiff? (Onus on parties)

(2) If issue no. 1 is decided in favour of plaintiff, for what amount plaintiff is entitled as recovery? OPP

(3) Whether the suit is barred by limitation? OPP

(4) Relief.”

14. Mr. Modi, learned counsel for the petitioner (defendant before the learned Trial Court), submits that the above said issue of limitation is a mixed question of fact and law and, therefore, there is no requirement of treating the same as a *preliminary issue*.

15. In view of the above, the petition, along with pending application, stands disposed of.

16. Needless to say, the learned Trial Court would proceed with the trial, keeping the above said issues in mind.



17. Since the defendant is stated to be suffering from cancer, it is expected that the learned Trial Court gives requisite priority to this case and makes best of the endeavour to dispose it of, as expeditiously as possible.

18. It needs to be clarified that the above order has been passed as per the joint request of the parties and no special equity shall flow in favour of either of the parties from the observations appearing herein.

(MANOJ JAIN)
JUDGE

MARCH 20, 2025/sw/SS