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

+ RSA 125/2025

SH MOHAR SINGH

.....Appellant

Through: Mr. Puru Lekhi and Mr. Sparsh Goel,
Advocates.

versus

SH HARI SHANKAR ALIAS RINKOO

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **22.08.2025**

CM APPL. 51900/2025 (exemption)

Exemption granted, subject to just exceptions.

The application stands disposed of.

RSA 125/2025

By way of the present regular second appeal filed under section 100 of the Code of Civil Procedure 1908 ('CPC'), the appellant impugns judgment dated 13.05.2025 passed by the learned District Judge, Shahdara District, Karkardooma Courts, Delhi, whereby an appeal bearing RCA DJ No.131/2023 has been dismissed by the learned First Appellate Court, while upholding judgment and decree dated 17.10.2023 passed by the learned Civil Judge, Shahdara District, Karkardooma Courts, Delhi in Civil Suit No.623/17.

2. By judgment dated 17.10.2023, the learned trial court had dismissed the appellant's suit seeking recovery of a sum of Rs.1.50 lacs along with Rs.50,000/- as damages plus interest, from the respondent.



3. The court has heard learned counsel appearing for the appellant at length.
4. Counsel draws attention to the proposed questions of law set-out in the Memo of Appeal, which read as follows:

“3. THE SUBSTANTIAL QUESTIONS OF LAW RAISED BY THE INSTANT SECOND APPEAL ARE:

I. Whether the Ld. Appellate Court and the Ld. Trial Court erred in basing its entire judgment solely on a suggestion made in cross-examination, particularly when such suggestion did not amount to an admission by the Plaintiff and was not corroborated by any other evidence on record?

II. Whether both the Ld. Appellate Court and the Ld. Trial Court could rely merely on oral evidence of the Respondent/Defendant not backed by any documentary evidence?

III. Whether the Ld. Appellate Court and the Ld. Trial Court committed a substantial error by ignoring the proceedings recorded in the Order Sheets, which clearly established that the Plaintiff and Defendant had appeared before the Lok Adalat, thereby negating the very suggestion that the Plaintiff could not identify the Defendant?

IV. Whether a finding based solely on fragmentary analysis of evidence rather than a holistic consideration of all materials on record is good in the eyes of law?

V. Whether the Ld. Trial Court has dismissed the Suit in favor of the Respondent without adequately examining the peculiar facts of the case as well as the settled propositions of law?

VI. Whether oral evidence will prevail over documentary evidence when the entire defense is a concocted story of the Respondent/Defendant?

VII. Whether the findings of the Ld. Appellate Court and the Ld. Trial Court that the Appellant/Plaintiff could not



prove his case was based on the weight of the evidence or not?

VIII. Whether the findings of the Ld. Appellate Court and were perverse or not?

IX. Whether the propriety of findings recorded by both the Ld. Appellate Court and was without any evidence in support or not?

X. Whether both the Ld. Appellate Court and the Ld. Trial Court failed to consider evidence and materials produced by the parties?"

(bold in original)

5. The essence of the contention raised on behalf of the appellant, is that the learned trial court has dismissed the suit merely on the basis that the appellant's case that he had lent money to the respondent is unbelievable, inasmuch as during his deposition the appellant has said that he cannot identify the respondent. The relevant portion of the appellant's cross-examination reads as under:

"The name of my nephew is Sh. Pritam Singh. It is wrong to suggest that I had deposited Rs.1,25,000/- in the account of defendant in order to satisfy some financial need of Sh. Pritam Singh: I have deposit slip of the said amount at home. I cannot identify the defendant."

(emphasis supplied)

6. In this regard, the learned trial court has opined as under:

"14. Upon examining the probative value of the aforesaid competing evidence lead by the parties qua this issue, I find that this issue is liable to be decided against the plaintiff and in favour of the defendant because of multiple reasons. Firstly, this issue is liable to be decided against the plaintiff and in favour of the defendant because the plaintiff has not been able discharge his initial burden to prove that Rs.1,25,000/- credited by him in the bank account of the defendant had passed to the latter as a loan. It is the case of the plaintiff that the defendant was well known to him. Even in his cross-examination, the plaintiff had stated that he had known the



defendant since 2012. However, when he was asked to identify the defendant during his cross-examination, he has stated that he cannot identify the defendant. One of the cardinal principles of civil law is that in civil cases burden of proof is that of balance of probability and not that of proof beyond reasonable doubt. It is equally well settled that the plaintiff's case must stand on his own legs and any lacuna in the defendant's case cannot be a ground for granting relief to the plaintiff. In the facts of the present case, this court finds that the plaintiff having firstly set out a case of having friendly and family relations with the defendant in the plaint and later at the stage of cross-examination having failed to identify the latter, makes the case of the plaintiff highly improbable that he would lend money to an individual who he himself does not know. In the facts of the present case, merely because the defendant has admitted to have received an amount of Rs.1,25,000/- from the plaintiff by way of account transfer does not absolve the latter from his initial burden to prove that the same was advanced as a loan to the former. The inability of the plaintiff to recognise the defendant during his cross-examination is self-contradictory to his own case to the extent that he had known the defendant and had good friendly relations with him."

(emphasis supplied)

7. Furthermore, the learned trial court also records, that apart from the self-serving statement by the appellant, no other witness was examined by the appellant to establish that the respondent had visited the appellant or that he had requested a loan, though the appellant contends that his son was also present in the house at the relevant time. In this regard, the learned trial court observes as follows:

"15. Secondly, this issue is liable to be decided against the plaintiff and in favour of the defendant because the plaintiff has not been able establish that Rs.25,000/- was given to the defendant in cash as a loan at his house on 02.06.2014. Apart from the self-serving statement of the plaintiff, no other witness has been examined by him to establish that the defendant had in fact visited his house on 02.06.2014 requesting for a loan of Rs.1,50,000/- on



02.06.2014 as during his cross-examination, the plaintiff has himself stated that his son was present in the house at the relevant time, when cash of Rs.25,000/- was advanced by him to the defendant as loan. However, the plaintiff has chosen not examine his son thereby making the case of the plaintiff less probable.”

8. This decision of the learned trial court has been upheld by the learned first appellate court *inter-alia* with the following observations:

“16. It is the case of the appellant/plaintiff that the respondent was well known to him since the year 2012, however when he was asked to identify the respondent during his cross-examination, he failed to identify the respondent, which itself contradicts the very root of the claim made by the appellant/plaintiff in the instant suit that he gave a loan amount of Rs.1,50,000/- to the respondent as the respondent is well known to the plaintiff and having friendly and family relationship, as stated in Para 1 of the plaint of the appellant.

“17. Ld. Trial Court has rightly dismissed the instant suit while observing that the inability of the appellant to identify the respondent during his cross-examination, without any reasonable explanation, makes the case of the appellant highly improbable that he would lend money to an individual who he himself does not know, and mere admission on the part of the respondent to have received an amount of Rs.1,25,000/- from the appellant by way of account transfer does not absolve the appellant from discharging the initial burden placed upon him to prove that the said amount was transferred to the respondent by the appellant as loan owing to their good friendly and family relations.

“18. Further, the appellant has not examined any other witness to establish that the respondent had in fact visited his house on 02.06.2014 requesting for a loan of Rs.1,50,000/-; and despite stating in his evidence that at the time of grant of the cash amount of Rs.25,000/- to the respondent, the son of the appellant was also present in his house, the appellant has not examined his son to substantiate his averments in this regard, nor any receipt was executed between the appellant and the respondent w.r.t. the said loan amount of Rs.25,000/- as alleged.



“19. It is pertinent to note that the appellant has also admitted in his cross-examination that the name of his nephew is Pritam Singh, who had introduced the respondent to the appellant, which further fortifies the defence of the respondent that the said Pritam i.e. nephew of the appellant had taken loan from the respondent, and the appellant had only made repayment of the said loan amount to the respondent on behalf of his nephew Sh. Pritam Singh.

“20. It is also pertinent to note that despite the above defence taken by the respondent that the amount of Rs.1,25,000/- transferred in his account by the appellant was towards the discharge of loan amount taken by the nephew of the appellant Sh. Pritam from the respondent, no efforts were made on behalf of the appellant to examine the said Sh. Pritam, admittedly his nephew, in his evidence to dispel the defence of the respondent. Whereas on the other hand, the respondent had tried his best to summon the said Sh. Pritam in his defence evidence before the Ld. Trial Court, but despite his efforts he could not trace the said Sh. Pritam as the witness was not found available at his address.”

(emphasis supplied)

9. Viewed in the context of the aforesaid factual matrix, this court is of the opinion that the issues whether the appellant had granted a loan to the respondent, based on friendly relations between the two, have been decided by the learned trial court purely as issues of fact based on the evidence that has come on record in the course of the trial. The findings of fact arrived by the learned trial court have been upheld by the learned first appellate court, approving the factual inferences drawn by the learned trial court, based on the evidence on record. In these circumstances, this court is of the view that none of the proposed questions of law set-out in the memo of appeal arise in the present case, muchless is there any substantial question of law that presents itself in the matter.



10. In the circumstances, the second appeal is dismissed at the stage of issuance of notice itself.
11. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 22, 2025/ak