$~6

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

\+ RFA 710/2024 & CM APPL. 60632/2024

RAM AVATAR .....Appellant

Through: Mr, Utsav Pandey & Mr, Rakesh Kaushik Advs.

versus

DINESH KUMAR .....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% **25.03.2025**

1. This appeal has been filed impugning judgment and decree dated 5th August 2024. By the said judgment and decree, the leave to defend application filed by appellant was dismissed, and the suit for recovery filed by respondent-plaintiff was decreed. The suit for recovery of Rs.11 lakhs against the appellant in the following facts and circumstances:

i) Plaintiff claimed that he and defendant (appellant herein) had friendly relations and in the first week of February 2020, defendant requested him for a friendly loan of *Rs.11,00,000/-* with the assurance that he would return the same within a period of '*15 months*'.

ii) After arranging the money, plaintiff handed over the same on 05th March 2020. Defendant had agreed to return the same within a period of *15 months*.

iii) Upon the expiry of *15 months,* when plaintiff contacted defendant, the defendant issued a *cheque bearing no.750611* dated 25th June

2021 of *Rs.11,00,000/-* drawn on *Syndicate Bank, Branch at Azadpur, Delhi*. However, the cheque was dishonoured on presentation.

iv) Defendant took a defence through an application alleging that he never took any loan from the plaintiff and the cheque in question, along with other cheques, was misplaced by him in the year 2020, and a Lost Report was lodged with the Police. He stated that said cheques were misused by the plaintiff.

v) Plaintiff countered defendant by stating that the defendant failed to disclose the cheque numbers and number of cheques that had been misplaced by him in the Lost Report

2. The Court has perused the impugned order and notes that the main ground taken by appellant was that cheques were misplaced and a Lost Report was filed on 10th August 2020. The Trial Court noted that Lost Report dated 10th August 2020, as lodged by the defendant, was with regard to a bank passbook and cheque book. However, the name of the bank was not mentioned. It was further noted that defendant had not provided details of cheques or even the series of cheques contained in the cheque book, which he alleged were lost. It was noted that Lost Report dated 10th August 2020 had been registered through an online mode, which could be lodged by anyone.

3. In the application for leave to defend, it was not the stand of the defendant that the cheques in question did not bear his signatures. Counsel for appellant also confirms the same. No details were provided in the Lost Report as to whether the cheques contained in the cheque book were signed or unsigned.

4. Considering all these circumstances, the Trial Court dismissed the leave to defend application on the basis that defendant had taken a false plea

just to escape from the liability towards the plaintiff and his defence was sham, illusory and moonshine.

5. The Court has heard submissions of counsel for the appellant, who states that these are triable issues and that the leave to defend application ought to have been considered, allowing the suit to proceed ahead.

6. However, considering overall circumstances, this Court is not inclined to allow this appeal. The defence taken by the Appellant is clearly sham and illusory, the story of the lost cheques is untenable, the details of the lost cheques are unavailable and not registered in the Lost Report, the signatures on the cheques are however admitted.

7. Accordingly, this appeal is dismissed along with the pending application.

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

ANISH DAYAL, J

MARCH 25, 2025/sm/tk