Kamal Singh Vs. Dinesh Kumar

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Court : Delhi

Decided On : Dec-10-2014

Judge : A. K. Pathak

Appellant : Kamal Singh

Respondent : Dinesh Kumar

Judgement :

$~33 * IN THE HIGH COURT OF DELHI AT NEW DELHI + RFA6452014 Decided on 10th December, 2014 KAMAL SINGH Through: versus ..... Appellant Mr. Ashok Kaushik, Adv. DINESH KUMAR ..... Respondent Through: None. CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K.PATHAK, J.

(Oral) CM Appl. No.20236/2014 (exemption) 1. Allowed, subject to all just exceptions.

2. Application is disposed of. RFA No.645/2014 and CM Appl. No.20235/2014 (O41R5r/w Sec. 151 CPC) 3. Respondent filed a suit for recovery of `6,36,000/- together with interest and costs against the appellant, which has been decreed by the trial court vide judgment and decree dated 4th September, 2014. Aggrieved by the judgment and decree, appellant has preferred this appeal.

4. Respondent alleged that at the request of appellant he advanced friendly loan of `6,00,000/- to him on the interest @ 2% per month, payable on 10th day of each English calendar month on 1st December, 2009. Appellant executed a promissory

note dated 1st December, 2009 in presence of Shri Hari Om. Appellant did not pay agreed interest. On 5 th March, 2010 respondent requested the appellant to repay the loan with interest of `36,000/-. Appellant assured to clear the loan by 20th March, 2010. However, appellant did not return the loan; instead, flatly refused to re-pay the loan, hence, the suit.

5. In the written statement, appellant denied having executed the promissory note. He denied that he had taken loan from the respondent. It was alleged that promissory note was a forged and fabricated document. Appellant alleged that respondent had extended loan to one Shri Dushyant Singh Dabas on 3rd December, 2009 in presence of Shri Hari Om and Shri Khoob Chand. Shri Dushyant Singh Dabas was related to appellant. At that time, respondent got signatures of appellant and Shri Dushyant Singh Dabas on blank pronotes. He also obtained one blank signed cheque drawn on HDFC Bank from Shri Dushyant Singh Dabas. Respondent represented that said documents would be retained by him as security and will be returned on repayment of the loan by Shri Dushyant Singh Dabas. On 2 nd March, 2010 Shri Raj Singh, father of Shri Dushyant Singh Dabas, paid `5,00,000/- in cash to respondent to clear the loan. However, respondent did not return blank signed pronotes and cheque to appellant. Respondent was not having any money lending license, thus, could not have engaged himself in money lending business. In the replication respondent denied the allegations, as contained in the written statement, and reiterated what was stated in the plaint.

6. Following issues were framed by the trial court on 5 th February, 2011:i) ii) iii) iv) v) 7. Whether defendant signed the pronote and receipt pronote which are Ex. P-1 and Ex. P-2 in blank?. Onus of proof on defendant. Whether defendant had settled all the outstanding on 02.03.2010?. OPD Whether plaintiff is entitled to recover a sum of `6,36,000/- from the defendant?. Onus of proof on plaintiff. Whether plaintiff is entitled to interest on decretal amount, if yes, at what rate?. OPP. Relief. Respondent examined himself as PW1. He proved pronote as Ex. PW1/1. He also examined Shri Hari Om as PW2. As against this, appellant examined four witnesses. He himself stepped in the witness box as DW1. Shri Raj Singh Dabas was examined as DW2. Shri Dayanand Singh Dabas was examined as DW3 and

Shri Baljeet Singh was examined as DW4. Trial court scrutinized the ocular as well as documentary evidence, which had come on the record and held that respondent had succeeded in proving the pronote Ex. PW1/1. Appellant had failed to prove that he had signed the blank documents and handed over the same to respondent towards security. Appellant had failed to prove that no loan was extended by the respondent to him. Defence of appellant remained unproved. Respondent succeeded in proving that respondent had extended a friendly loan of `6,00,000/- to appellant on 1st December, 2009 on interest at the rate as mentioned in the pronote. Amount was due and payable by the appellant together with interest. It remained unproved that respondent was a money lender. No money lending license was required for extending friendly loan. Reliance has been placed on Atul Anand vs. Nanak Food Industries & Ors. 132 (2006) Delhi Law Times, 481.

8. I have heard the learned counsel and perused the material placed on record. In this case, PW1 has categorically deposed that he had extended friendly loan of `6,00,000/- to appellant. Appellant agreed to pay interest @ 2% per month. Loan was extended on 1st December, 2009. Appellant executed promissory note Ex. PW1/1. Respondent further deposed that loan was extended and promissory note was signed in presence of one Shri Hari Om. PW2 Shri Hari Om has corroborated the version of respondent. He has identified his signatures on the pronote Ex. PW1/1. Depositions of PW1 and PW2 on this point have remained unshattered in their crossexaminations. Appellant has not disputed his signatures on pronote Ex. PW1/1. A person may speak lie but not the documents. It is trite law that documentary evidence would prevail over the ocular evidence. Sections 91 and 92 of Evidence Act envisage that ocular statement contrary to documentary evidence cannot be preferred. Ex. PW1/1 in no uncertain terms, shows that respondent had extended loan of R.6,00,000/- to the appellant on interest.

9. In his written statement, appellant has taken a plea that blank pronote was signed by him and his friend Dushyant Singh Dabas. However, he has failed to lead any cogent evidence to prove this plea. Even otherwise, plea of the appellant that he had signed blank pronote as a guarantor in respect of loan transaction between his relative Shri Dushyant Singh Dabas and respondent cannot be

accepted, inasmuch as, no complaint was filed by the appellant before any authority to the effect that respondent had obtained his signatures on blank documents. Bald plea of the appellant that he had signed the blank documents, otherwise, cannot be accepted, more so when, an independent witness has been produced by the respondent as PW2, who has categorically deposed that loan was indeed extended and pursuant thereof pronote Ex. PW1/1 was signed by the appellant.

10. As regards plea of the appellant that suit is liable to be dismissed as respondent had extended loan without a money lending license also cannot be accepted in the facts of the present case. For extending friendly loan to 2-3 persons will not require any license. In Atul Anand (supra), this Court has held thus:

Punjab Registration of Money Lending Act, 1938, requires a person to obtain a license to act as a money lender if the person is in the business of money lending. It was for the defendant to have specific averment that plaintiff engaged in the business of money lending. The said act does not prohibit casual advancing of loan by a person to third party. Casual loan does not require a license.

11. Appellant has failed to lead convincing evidence to show that respondent was engaged in money lending business. Merely because, respondent had extended loan on 2/3 occasions would not, by itself, mean that he was carrying on money lending business. DW1 and DW4, in their affidavits, have deposed that respondent was engaged in money lending business but their this statement cannot be accepted more so when they have even failed to give the names of such persons. Trial court has, thus, rightly rejected the plea of appellant on this point.

12. No other argument advanced nor any other point pressed.

13. For the foregoing reasons, appeal is dismissed. Miscellaneous application is disposed of as infructuous. A.K. PATHAK, J.

DECEMBER10 2014 rb