Mohd. Ibrahim vs. Naresh Kumar

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SooperKanoon Citation : sooperkanoon.com/1216771

Court : Delhi

Decided On : Aug-06-2018

Appellant : Mohd. Ibrahim

Respondent : Naresh Kumar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % MOHD. IBRAHIM NARESH KUMAR RFA No.626/2018 6th August, 2018 ..... Appellant Mr. Azizul Hasan, Advocate. Through: versus Through: ..... Respondent CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) C.M. No.31207/2018(for condonation of delay) 1. For the reasons stated in the application, delay of two days in re-filing the appeal is condoned. C.M. stands disposed of. RFA No.626/2018 and C.M. No.31206/2018(stay) 2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 19.3.2018 by which trial court has dismissed the leave to defend application filed by the RFA No.626/2018 Page 1 of 8 appellant/defendant and has decreed the suit filed under Order XXXVII CPC by the respondent/plaintiff for recovery of a sum of Rs.5 lacs. The subject suit was filed for recovery of a loan amount of Rs.5 lacs with respect to which two cheques were given and which were dishonoured.

3. The facts of the case are that the respondent/plaintiff pleaded that the appellant/defendant approached him for grant of a friendly loan of Rs.5 lacs. This amount of Rs.5 lacs was paid by the respondent/plaintiff to the appellant/defendant who acknowledged the same by his writing dated 3.6.2014. For repayment of loan amount with interest the appellant/defendant also issued two cheques dated 3.6.2014 and 10.7.2014. The cheques in question were not presented on the request of the appellant/defendant, however, once the loan was not paid the subject suit was filed under Order XXXVII CPC after serving the Legal Notice dated 17.12.2014. The appellant/defendant had sent a frivolous Reply dated 18.1.2015 to the notice and therefore the respondent/plaintiff had no option but to file the subject suit.

4. The appellant/defendant contested the suit and filed his leave to defend application. In the leave to defend application, the RFA No.626/2018 Page 2 of 8 appellant/defendant contended that respondent/plaintiff under threats and pressure had obtained the blank and undated signed cheques from the appellant/defendant as security for some transactions between the respondent/plaintiff and the sons of the appellant/defendant. The appellant/defendant contended that amounts with respect to transactions between the sons of the appellant/defendant with the respondent/plaintiff were paid to the respondent/plaintiff but the respondent/plaintiff refused to return the cheques and consequently the appellant/defendant had to write a letter to the bank to stop payment of the cheques. The appellant/defendant denied that any loan was taken by him from the respondent/plaintiff. With respect to the writing of the acknowledgment letter dated 3.6.2014, the appellant/defendant contended that the same is a materially altered document. It was also contended that the acknowledgment of loan being an acknowledgment under the Stamp Act, 1899, since the same is not stamped hence the same could not be looked into. 5.(i) In my opinion, the trial court by the impugned Judgment dated 19.3.2018 has rightly dismissed the leave to defend application. Trial court in my opinion was right in finding that the RFA No.626/2018 Page 3 of 8 appellant/defendant has made a bland averment of threat and coercion without any details, and therefore, such an allegation of the appellant/defendant could not be believed. To this aspect I would like to add that the appellant/defendant in the leave to defend application pleaded

that the transactions with respect to which cheques were given were between the respondent/plaintiff and sons of the appellant/defendant and the sons of the appellant/defendant had repaid back the respondent/plaintiff, but neither there are any details nor any proof filed as to repayment of the loan by the sons of the appellant/defendant to the respondent/plaintiff. 5.(ii) Trial court has then observed that the appellant/defendant alleged that his sons made a complaint on 4.12.2014 with the police station but such complaint was not filed on record, but even if this complaint was filed, however once there is no substantiation with respect to any transaction of the respondent/plaintiff with the sons of the appellant/defendant and especially documentary substantiation with respect to repayment of the amounts by the sons of the appellant/defendant to the respondent/plaintiff, such pleas of the appellant/defendant cannot be believed by the courts. RFA No.626/2018 Page 4 of 8 6. At this stage, it is required to be noted that the trial court has held that acknowledgment with respect to the loan dated 3.6.2014 being not stamped, still could be looked into because bar with respect to documents not being appropriately stamped can only be looked into in trial, however in my opinion such observations may not be justified, but the fact of the matter is that in the present case there is no Acknowledgment of Debt as per Article 1 of Schedule I of the Stamp Act because the acknowledgment in question is not an acknowledgment of debt but the acknowledgment is simply a statement with respect to loan of Rs.5 lacs being taken by the appellant/defendant from the respondent/plaintiff. This factum is not an acknowledgment of debt and which has a specific meaning and connotation under Article 1 of Schedule I of the Stamp Act. Therefore, in my opinion, the three line statement signed by the appellant/defendant on 3.6.2014 of having taken a loan of Rs.5 lacs from the respondent/plaintiff could have been looked into by the trial court, and which writing dated 3.6.2014 would remove any doubt whatsoever as to the liability of the appellant/defendant on account of having taken a loan of Rs.5 lacs from the respondent/plaintiff. RFA No.626/2018 Page 5 of 8 7. Counsel for appellant/defendant argued that respondent/plaintiff seeks to recover only Rs. 5 lacs and not the amount of Rs. 6 lacs (being loan amount plus interest), and therefore leave to defend be granted. However I fail to understand any prejudice to the appellant/defendant if the respondent/plaintiff only wants to recover the principal amount of Rs. 5 lacs without the interest.

8. The principles with respect to leave to defend have been recently summarized by the Supreme Court in its judgment in the case of IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd., (2017) 1 SCC568 The relevant paras of this judgment are paras 17 to 17.6 and these paras read as under:-

""17. Accordingly, the principles stated in paragraph 8 of Mechelec's case will now stand superseded, given the amendment of Order XXXVII Rule 3, and the binding decision of four judges in Milkhiram's case, as follows:

17. 1. If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment, and the Defendant is entitled to unconditional leave to defend the suit. 17.2 If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the Plaintiff is not entitled to sign judgment, and the Defendant is ordinarily entitled to unconditional leave to defend. 17.3 Even if the Defendant raises triable issues, if a doubt is left with the trial judge about the Defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to RFA No.626/2018 Page 6 of 8 see that such triable issues are not shut out by unduly severe orders as to deposit or security. 17.4 If the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires. If the Defendant has no substantial defence and/or raises no 17.5 genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the Plaintiff is entitled to judgment forthwith. 17.6 If any part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the Defendant in court."

9. In my opinion, on applying the ratio of the judgment of the Supreme Court in the case of IDBI Trusteeship Services Ltd. (supra), in the facts of the present case, since the defences raised by the appellant/defendant are found to be frivolous and vexatious, and they do not raise any triable issue, trial court has therefore rightly dismissed the leave to defend application, with the aspect that this Court has given additional reasons as to why leave to defend application ought to be dismissed.

9. There is no merit in the appeal. Dismissed. AUGUST06 2018 Ne VALMIKI J.

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