

Sachin vs.rajneesh Kumar

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Court : Delhi

Decided On : Feb-11-2019

Appellant : Sachin

Respondent : Rajneesh Kumar

Advocate for Pet/Ap. : Mr. Rama Shankar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % SACHIN RFA No.118/2019 11th February, 2019 Appellant Through: Mr. Rama Shankar, Advocate (Mobile No.9811214465). versus RAJNEESH KUMAR Respondent
CORAM: HONBLE MR. JUSTICE VALMIKI J.

MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) C.M. Appl. No.6251/2019 (for exemption) 1. Exemption allowed, subject to just exceptions. C.M. stands disposed of. C.M. Appl. No.6249/2019 (for delay) 2. For the reasons stated in the application the delay of 212 days in filing the appeal stands condoned, subject to just exceptions. C.M. stands disposed of. RFA No.118/2019 Page 1 of 6 RFA No.118/2019 and C.M. Appl. No.6250/2019 (for stay) 3. 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 22.03.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff under Order XXXVII CPC on

account of the appellant/defendant failing to comply with the order granting conditional leave to defend whereby the appellant/defendant had to deposit a sum of Rs. 1,00,000/- by 11.07.2017. The Order dated 27.04.2017 granting conditional leave to defend is also impugned in this appeal. I may note that once a challenge is made to a final judgment and decree then any interim order which has had the effect of bringing about the final judgment and decree, will be appealable as per Section 105 CPC, and hence the present appeal impugning the Judgment dated 27.04.2017 as also the consequential Order dated 22.03.2018.

4. The facts of the case are that respondent/plaintiff filed the subject suit pleading that he gave a loan of Rs. 7,00,000/- to the appellant/defendant in the month of May, 2016. The appellant/defendant had assured that he will return the same in time, RFA No.118/2019 Page 2 of 6 but he failed to do so. The appellant/defendant had issued his cheque No.013890 dated 07.07.2016 for a sum of Rs. 7,00,000/- drawn on ICICI Bank, Bhajan Pura, Delhi-110053 for repayment of the loan amount, but this cheque was dishonoured on presentation on account of insufficient funds, and hence after serving the Legal Notice dated 19.07.2016 to the appellant/defendant, the respondent/plaintiff filed the subject suit.

5. The appellant/defendant filed his leave to defend application and contended that appellant/defendant had not taken a loan of Rs. 7,00,000/-, but in fact the appellant/defendant had taken a loan of Rs. 1,00,000/- only, and this loan of Rs. 1,00,000/- already stands repaid to the respondent/plaintiff. It was pleaded that on asking the respondent/plaintiff to return back the cheque, the respondent/ plaintiff had failed to do so. Therefore, an unconditional leave to defend was prayed for.

6. The trial court by the first impugned Judgment dated 27.04.2017 has held that there was a triable issue and consequently leave to defend should be granted on deposit of Rs. 1,00,000/-. A conditional leave to defend was granted on 27.04.2017. Time was RFA No.118/2019 Page 3 of 6 granted up to 11.07.2017 to make the deposit as also file the written statement. The appellant/defendant has failed to comply with the Order dated 27.04.2017 inasmuch as this amount of Rs. 1,00,000/- which was to be deposited by 11.07.2017, was not deposited till

22.03.2018, and the appellant/defendant had also failed to file the written statement, and ultimately on 23.03.2018, the trial court on account of failure to comply with the condition of grant of leave to defend, decreed the suit.

7. The Ld. counsel for the appellant/defendant prays before this Court that one more opportunity be granted to the appellant/defendant to deposit a sum of Rs. 1,00,000/-, but in my opinion, this submission is liable to be forthwith rejected because after all, around almost two years have passed since the conditional leave to defend was granted on 27.04.2017. Surely the actions of the appellant/defendant are not bonafide because even Rs. 1,00,000/-, out of the total suit amount of Rs. 7,00,000/-, has not been deposited till date and even today only time is sought. The request for grant of additional time is also to be rejected because it is noted that the appellant/defendant has till date not even filed the written statement. Obviously, the appellant/ RFA No.118/2019 Page 4 of 6 defendant is trying all tactics to avoid payment of dues to the respondent/plaintiff.

8. In fact, in my opinion, the appellant/defendant was lucky to be granted the leave to defend on deposit of Rs. 1,00,000/- only, out of the total suit amount of Rs. 7,00,000/-, inasmuch as, in my opinion, the grant of conditional leave to defend to the appellant/defendant was by the trial court taking an unnecessary liberal approach, and the same is violative of the ratio of the recent judgment of the Hon'ble Supreme Court in the case of IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC568 In this judgment, the Hon'ble Supreme Court has reiterated that when a defence is frivolous or vexatious or does not raise a triable issue, the leave to defend should not be granted. I may note that the defence as put up by the appellant/defendant was ex-facie false because it is not believable, that if the loan was of Rs. 1,00,000/- instead of Rs. 7,00,000/-, and this loan of Rs. 1,00,000/- was allegedly repaid by the appellant/defendant to the respondent/plaintiff then why has the appellant/defendant not taken back the cheque from the respondent/plaintiff. In fact, this Court would like to note that if the respondent/plaintiff would have illegally refused to return the RFA No.118/2019 Page 5 of 6 dishonoured cheque, then the appellant/defendant would have at least issued a letter, if not a legal notice, asking the respondent/plaintiff to return the dishonoured cheque, but there is not even a single letter or communication in

writing issued by the appellant/defendant to the respondent/plaintiff that the appellant/defendant has repaid the loan amount of Rs. 1,00,000/-, and that the respondent/plaintiff is illegally retaining the dishonoured cheque.

9. In view of the aforesaid discussion, there is no merit in the appeal. As already stated above, in the facts of the present case, the appellant/defendant was not even entitled to the leave to defend, and the same had been granted in a liberal manner by the trial court on the appellant/defendant being asked to deposit Rs. 1,00,000/- only, out of the total suit amount of Rs. 7,00,000/-, but the appellant/defendant has failed to deposit this amount for almost two years and has not even filed the written statement. All pending applications are disposed of. Dismissed. FEBRUARY11 2019 VALMIKI J.

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