

Lalit Sharma vs.attar Singh

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Court : Delhi

Decided On : Feb-19-2019

Appellant : Lalit Sharma

Respondent : Attar Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RFA No.584/2018 + % LALIT SHARMA ATTAR SINGH 19h February, 2019 Through: Mr. L.S. Solanki, Advocate. versus Appellant Through: Respondent CORAM: HONBLE MR. JUSTICE VALMIKI J.

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

MEHTA, J (ORAL) CM No.29174/2018 (Extension of time to pay the balance court fees) 1. Deficiency in the court fees has been made good. CM stands disposed of. CM No.29172/2018 (delay in re-filing) 2. For the reasons stated in the application, delay in re-filing is condoned. CM stands disposed of. RFA No.584/2018 Page 1 of 5 RFA No.584/2018 & CM No.29173/2018 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 19.03.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff for a sum of Rs. 20,00,000/- along with interest at 12% per annum on account of two loans of Rs. 10,00,000/- each advanced by the respondent/plaintiff to the appellant/defendant having not been repaid.

4. The facts of the case are that the respondent/plaintiff filed the subject suit by pleading that the appellant/defendant was the friend of the respondents/plaintiffs son, and therefore for the first time took a loan on 27.12.2013 for a sum of Rs. 10,00,000/- for financial assistance required in his business. Again, in October 2014, the respondent/ plaintiff was approached and he gave a further sum of Rs. 10,00,000/- as loan to the appellant/defendant. The appellant/defendant executed an Agreement-cum-Receipt on 27.10.2014 when the second loan of Rs. 10,00,000/- was given. The appellant/defendant issued two post-dated cheques of Rs. 10,00,000/- each on 27.08.2015 and 01.09.2015 for repayment of the loan RFA No.584/2018 Page 2 of 5 amounts. The appellant/defendant had also executed a pronote to make the repayment. Since the cheques were dishonoured, after serving the Legal Notice dated 26.09.2015, the subject suit was filed.

5. The appellant/defendant despite service and appearing through counsel in the trial court on 19.01.2017 failed to file the written statement. Since the written statement was not filed, the opportunity to file the written statement was closed by the Order of the trial court dated 19.01.2017. Thereafter, the respondent/plaintiff has proved his case by leading evidence.

6. The respondent/plaintiff has led evidence and proved the Agreement-cum-Receipt dated 27.10.2014 as Ex.PW1/1. The certified copies of the Cheques which were dishonoured along with the Pronotes and Receipt were filed and proved as Ex.PW

to Ex.PW1/4. Accordingly, on the basis of these documents, the trial court has held, and rightly so, that the respondent/plaintiff was entitled to the suit amount along with interest.

7. The Ld. counsel for the appellant/defendant argued that the appellant/defendant had no idea that he was appearing in the subject suit inasmuch as there was a simultaneous case under Section RFA No.584/2018 Page 3 of 5 138 of the Negotiable Instruments Act, 1881, however, this argument, in my opinion, is totally frivolous because the appellant/defendant did not appear in person in the trial court but he appeared through an advocate. In any case, the right of the appellant/defendant to file the written statement was closed by a specific order

showing that the appellant/defendant has been appearing in the suit and was aware of the nature of the same. This argument of the appellant/defendant therefore being totally misconceived is rejected.

8. The Ld. counsel for the appellant/defendant then argued that the appellant/defendant did not receive the affidavit by way of evidence filed by the witnesses, but once again this argument is totally false/wrong because the Order passed by the trial court on 24.03.2017 showed that the appellant/defendant had to take the affidavit by way of evidence of the witnesses from the court records within one week from 24.03.2017, and if this affidavit by way of evidence was not taken by the appellant/defendant from the court record in one week, then the appellant/defendant is only to blame. This argument of the appellant/defendant is therefore rejected. RFA No.584/2018 Page 4 of 5 9. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed. All pending applications are also disposed of. FEBRUARY19 2019/ib VALMIKI J.

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