
(2011) 4 BC 255 : (2011) 180 DLT 499 : (2011) 6 RCR(Civil) 979

Delhi High Court

Case No: Regular Second Appeal No. 222 of 2007

K.L. Mehta

APPELLANT

Vs

Pawan Kumar

RESPONDENT

Date of Decision: May 18, 2011

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, 47

Citation: (2011) 4 BC 255 : (2011) 180 DLT 499 : (2011) 6 RCR(Civil) 979

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Manish Bishnoi, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 18.02.2006 which has endorsed the finding of the trial judge dated 02.05.2005 whereby the suit filed by the Plaintiff K.L. Mehta seeking recovery of Rs. 44,850/- along with interest had been dismissed.

2. The case of the Plaintiff is that the Defendant was his colleague; he had borrowed a sum of Rs. 30,000/- which was given to him vide cheque No. 093561 dated 09.07.1997 drawn on SBI, IOC extension counter, Yusaf Sarai, New Delhi. This advancement of loan was witnessed by two persons. After six months i.e. on 05.01.1998, the Plaintiff had demanded the loan from the Defendant but the Defendant avoided to pay the amount on one pretext or other. Legal notice dated 30.01.1999 was issued but of no avail. On 30.03.2000, the Plaintiff contacted the Defendant and demanded the money but the payment was refused. Suit was filed.

3. Contention of the Defendant was that he had not borrowed any money. A sum of Rs. 30,000/- was the payment given by the Plaintiff to the Defendant in a committee which

was returned by the Defendant by a cross cheque; the Plaintiff has concealed the material facts; he is not entitled to any relief.

4. On the pleadings of the parties, the following three issues were framed:

1. Whether the Plaintiff is entitled to recover the principal amount of Rs. 30,000/- as prayed in the plaint? OPP

2. Whether the Plaintiff is entitled to the interest, if so at what rate and for what period? OPP

3. Relief.

5. Oral and documentary evidence was led. PW-4 had produced the record from the bank; he had deposed that the cheque in question was a bearer cheque issued in favour of Ashok Kumar and the payment was received by Pawan Kumar; cheque had been proved as Ex. PW-4/1. The court had noted that it is not the case of the Plaintiff that the cheque had been issued in the name of Ashok Kumar and the payment had been received by the Defendant; his case was that he had made payment to the Defendant whereas Ex.PW-4/1 coupled with the testimony of PW-4 had noted otherwise. There was no material on record to suggest that this amount of cheque had been received by the Defendant; cheque was issued in the name of Ashok Kumar; it was a bearer cheque; there was no endorsement on the back side of the cheque about the receipt of payment by the Defendant. Oral testimony of the Plaintiff was not by itself sufficient to substantiate his claim; suit was accordingly dismissed.

6. In appeal, this finding was endorsed.

7. This is a second appeal. It has been admitted and on 16.11.2010, the following substantial question of law was formulated.

Whether the finding in the impugned judgment dated 18.02.2006 is perverse in view of the provision of Section 47 of the Negotiable Instruments Act, 1881? If so its effect:

8. On behalf of the Appellant, it has been urged that Section 47 of the Negotiable Instruments Act clearly presupposes negotiations by delivery; Ex.PW-1/4 was a bearer cheque; it was negotiated by delivery; it was in the name of Ashok Kumar but was delivered to Pawan Kumar and payment had been received by Pawan Kumar which is evident from the version of PW-4. Ex.PW-1/1 which is a promissory note is also admitted by the Defendant; the witnesses to this document have also proved it. The impugned judgment dismissing the suit of the Plaintiff is a perversity.

9. None has appeared for the Respondent although on the last date request had been made for an adjournment by the Respondent who had appeared in person. Matter has been kept since morning but none has appeared for the Respondent.

10. The case of the Plaintiff is hinged upon a loan of Rs. 30,000/- which he had advanced to the Defendant. As per the plaint, this payment was made vide cheque No. 093561 dated 09.07.1997 drawn on SBI, IOC extension counter, Yusaf Sarai, New Delhi; it was payable with interest @ 18% per annum. Receipt in this regard had also been executed by the Defendant which was witnessed by two witnesses.

11. Defendant had admitted that a sum of Rs. 30,000/- had been received by him; contention was that he had received it in a committee and the same had been repaid vide cheque in separate proceedings u/s 138 of Negotiable Instruments Act.

12. Ex. PW-1/4 is a bearer cheque. It is in the name of Ashok Kumar. PW-4 had produced the summoned record from the concerned branch and had deposed that payment of this cheque had been received by Pawan Kumar. This was evidenced by the endorsement on the back of Ex. PW-1/4 showing the signatures of Pawan Kumar; thereby substantiating the claim of the Plaintiff that this sum of Rs. 30,000/- had been received by Pawan Kumar. The impugned judgment had dismissed the claim of the Plaintiff holding that it could not perceive of a situation that if a loan is given to Pawan Kumar, the cheque would have issued in a different name i.e. in the name of Ashok Kumar. This was one reason for dismissal of the suit. The second reason was the submission of the Defendant that he had returned back this cheque in proceedings u/s 138 of Negotiable Instruments Act had found favour; the impugned judgment had noted that in these circumstances it was incumbent upon the Plaintiff to have proved that he had not received this amount in the criminal proceedings. The third reason which had weighed in the mind of the first appellate court to dismiss the claim of the Plaintiff was that witnesses to the promissory note were shaky in their testimonies; their version was suspicious as both had given conflicting statements on the names with regard to the cheque.

13. The impugned judgment had endorsed the findings of the trial Judge. These are two fact findings by the two courts below. The second appellate court can interfere with fact findings only if the same are perverse. What is perversity has been expounded by numerous judgments. For a finding to be perverse it must be based on no evidence or a mis-reading or it must be not right, turned the wrong way; distorted from right, deviating from what is right, proper, correct etc.

14. The written statement of the Defendant admits that the Plaintiff had given an amount of Rs. 30,000/- to the Defendant; the Defendant had returned the sum by means of crossed cheque; a sum of Rs. 22,000/- has been paid by the Defendant in proceedings u/s 138 of the Negotiable Instruments Act which are pending in the court of Mr. Vinod Kumar, Learned MM, Patiala House Court. The criminal complaint pending in the Court of learned MM shows that the complainant K.L. Mehta had taken a stand to the effect that the accused (Pawan Kumar) had borrowed a sum of Rs. 30,000/- vide cheque No. 9520807 drawn on SBI, IOC extension counter, Yusaf Sarai, New Delhi ON 15.01.1999; this cheque was cleared; the accused thereafter issued a cheque to the complainant bearing No. 166288 dated 01.02.1999 drawn on SBI, IOC extension counter. The said

cheque was dishonoured. Criminal complaint had been filed on the aforementioned cheque. The present suit is based on different cheque i.e. cheque No. 093561 dated 09.07.1997. Thus the defence of the Defendant that he returned this amount in the pending criminal proceedings is not sustainable. PW-4 had produced the summoned record from the bank; cheque No. 093561 dated 09.7.1997 showed that it was a bearer cheque in the name of Ashok Kumar but the payment had been received by Pawan Kumar; endorsement of Pawan Kumar on the back of Ex.PW-1/4 was noted. DW-1 in his cross-examination had also admitted that the document Ex.PW-1/1 bears his signatures. This document also contains the details of the present transaction i.e. the cheque details. It was witnessed by O.P. Gogia and S.G. Monga who were examined as PW-3 & PW-2 respectively. The finding in the impugned judgment dismissing the claim of the Plaintiff was thus a perversity. Evidence was writ large; DW-1 had in fact was the executant of PW-1/1; his defence that he had repaid the amount to the Plaintiff in the criminal proceedings was negated by the criminal complaint; this complaint had been placed on record showing that the cheque number in the present suit and the criminal complaint were different transactions. Even otherwise, it was for the Defendant to have proved this which he did not do so. The impugned judgment holding otherwise is a perversity.

15. Scope of interference in findings of fact is limited in second appeal. However, the findings noted hereinabove clearly make out a case of perversity. Both the courts below have misread the evidence both oral and documentary. The Plaintiff was entitled to a decree. Appeal is allowed. The suit of the Plaintiff is accordingly decreed.

16. There is no stipulation of interest either in Ex.PW-1/1 or Ex.PW1/4. However, being a commercial transaction, the Plaintiff is entitled to interest. It is accordingly granted interest @ 6% per annum from the date of filing of the suit till realization.

17. Section 47 of the Negotiable Instruments Act is an undisputed proposition. A bearer cheque can be negotiated by delivery.

18. In view of the aforementioned discussion, substantial question of law is answered in favour of the Appellant and against the Respondent. Appeal is allowed. Suit is decreed.