Ritika Gulati vs Chaser Financial Services Pvt. Ltd. on 5 November, 2024

Author: Rekha Palli

Bench: Rekha Palli

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision:

+ RFA(COMM) 463/2024, CM APPL. 64592/2024-Stay, CM APPL. 64593/2024-Exp

RITIKA GULATI .....AP

Through: Mr. Varun Jain, Dr. M. K and Ms. Himanshi Advocates

Versus

CHASER FINANCIAL SERVICES PVT. LTD. .....RESPONDENT

Through: Mr. Lalit Gupta and Mr. Priyansh Jain, Advocates

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present appeal under Section 96 of the Code of Civil Procedure, 1908, seeks to assail the judgment and decree dated 12.08.2024 passed by the learned District Judge (Commercial Court)-01, Tis Hazari Court, Delhi in CS (Comm.) No. 985/2022. Vide the impugned judgment, the learned Trial Court has decreed the suit preferred by the plaintiff/ respondent by directing the appellant/ defendant to pay a sum of Rs. 20,00,000/- (Rupees Twenty Lacs Only) with interest @ 9% per annum w.e.f. 22.10.2020.

2. The brief factual matrix as emerging from the record may be noted at the outset. As per the case set up by the respondent/plaintiff in its plaint filed before the learned Trial Court, it was urged that on 21.10.2019 the respondent/plaintiff had on the recommendation of one Mr. Ajay Gupta, advanced a sum of Rs.20,00,000/- as loan to the appellant/ defendant, which amount was at her request, remitted in her bank account on the same day itself. It was the respondent's further case that as per the oral agreement between the parties, the said amount was to be repaid by the appellant within a period of one year alongwith interest @ 24% per annum. However, when the appellant failed to repay the said amount, the respondent issued a legal notice to the appellant on 12.11.2020, demanding the amount due alongwith interest @ 24% per annum within fifteen days of receipt of the said notice. Although the said legal notice was duly served on the appellant on

13.11.2020, the same remained unanswered, leading to the filing of the suit being CS (Comm.) No. 985/2022. It may be noted that as per the laid down procedure, the parties were referred to the West District Legal Services Authority, Delhi, for pre-litigation mediation which failed.

3. Upon summons being issued in the suit, the appellant filed a written statement, wherein she, while categorically admitting the receipt of Rs.20,00,000/- through RTGS in her bank account, set up a plea that the said amount was received by her towards the sale of gold. The appellant also urged in her written statement that the respondent being a non-banking financial company (NBFC) could not have extended any loan to her without following the guidelines issued by the Reserve Bank of India, vide its circular dated 01.07.2010. It was her plea that as per these guidelines a loan could be extended only after receiving a loan application and further a sanction letter must be issued and a loan agreement entered into before advancing the loan. It was, therefore, urged by the appellant that the suit was liable to be dismissed.

4. These pleas of the appellant were refuted by the respondent by filing a replication.

5. Upon completion of pleadings, the learned Trial Court framed the following issues:-

> "5. From the pleadings of the parties, the following issues were framed vide order dated 26-02-2024:
>
> i) Whether the plaintiff is entitled to the suit amount of Rs. 34,40,000/- ? (OPP).
>
> ii) Whether the plaintiff is entitled to any interest? If so, at what rate and for which period? (OPP).
>
> iii) Whether any gold was sold to the plaintiff for an amount of Rs. 20 lakhs as claimed by defendant no.1 ? If so, its effect. (OPD1).
>
> iv) Relief."

6. Both parties then led their respective evidence and examined one witness each. The respondent examined its sole witness Sh. Sushil Kumar Singla as PW1, who was duly cross examined, wherein he denied the suggestion that the amount remitted to the appellant was on account of sale of gold to the respondent by her.

7. In rebuttal, the appellant examined herself as a sole witness wherein she, in contrast to her stand in the written statement, took a plea that she had handed over the gold which was her istridhan comprising of 5-7 ginnis, 4 gold bangles and 2 gold sets to her husband, who had sold the same to the respondent. During her cross-examination, a question was put to her regarding the date and place when the gold was sold to the respondent. She was further asked whether she had any document to show that she was in possession of the gold articles which were claimed to have been sold to the respondent. She, however, gave a vague reply that the gold was sold in the year 2019, but pleaded ignorance regarding the place where the gold was sold to the respondent. Further, she

categorically stated that she had no document to show that she was in possession of the gold articles which were claimed to have been sold to the respondent.

8. Upon consideration of the evidence led by the parties and perusing the documents placed on record, the learned Trial Court found no merit in the defence set up by the appellant and consequently based on her admission that she had received a sum of Rs.20,00,000/- in her bank account from the respondent, has vide the impugned judgment, decreed the suit filed by the respondent by directing the appellant to refund a sum of Rs.20,00,000/- to the respondent with interest @ 9% per annum. It may be noted at this stage that though the respondent had claimed interest @ 24% per annum, the learned Trial Court, by taking into account the prevalent rate of interest, granted simple interest @ 9% per annum.

9. Before us, learned counsel for the appellant besides reiterating the pleas taken before the learned Trial Court, urges that once no loan agreement was produced by the respondent, the learned Trial Court ought to have accepted the appellant's plea that the amount was paid to her towards sale of gold. He further submits that once it was an admitted position that the guidelines issued by the Reserve Bank of India for issuance of a sanction letter and execution of a loan agreement, had not been followed, the transaction between the parties could not qualify as a loan. Finally, he submits that the learned Trial Court has also failed to appreciate the effect of Section 34 of the Indian Evidence Act (now Section 28 of the Bharatiya Sakshya Adhiniyam, 2023), according to which the respondent's claim could not have been accepted merely on the basis of the entries in the books of account maintained by the respondent. He, therefore, prays that the impugned judgment and decree be set aside.

10. On the other hand, learned counsel for the respondent who appears on advance notice supports the impugned judgment and submits that once the appellant had admitted the receipt of Rs.20,00,000/- from the respondent in her bank account, the onus was on her to show as to why she received that amount from the respondent, who was admittedly not known to her. He contends that the appellant has miserably failed to discharge the said onus and therefore the learned Trial Court was justified in decreeing the suit. He further contends that though in the written statement the appellant had raised a bald plea that the amount was received by her towards sale of gold, in her cross-examination, she sought to improve her case by urging that the gold was given by her to her husband, who sold the same to the respondent. However, for reasons best known to the appellant, her husband was not even examined as a witness before the learned Trial Court and, therefore, this plea that the gold was sold to the respondent by the appellant's husband was rightly rejected by the learned Trial Court. Finally, he contends that merely because no loan agreement was entered into between the parties, it could not be a ground to disbelieve the respondent's categoric stand that the amount of Rs.20,00,000/- had been advanced to the appellant as a loan, which was not only substantiated from the books of account maintained by the respondent but also by the appellant's own stand that the amount had been received by her. He, therefore, prays that the appeal be dismissed.

11. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the relevant extracts of the impugned judgment, which read as under:-

"16. Thus, plaintiff on one hand has claimed that the aforesaid amount of Rs. 20,00,000/- was advanced to the defendant as loan for a period of one year with interest @ 24% per annum and on the other hand the defendant has claimed that she had sold her gold jewellery for Rs. 20,00,000/- to the plaintiff. It is well settled that facts admitted need not be proved. Once the defendant has admitted the factum of transfer of Rs. 20,00,000/- through RTGS by the plaintiff in her account, it is for the defendant to prove that the same was not a loan as claimed by the plaintiff and rather the same was sale proceeds of her gold jewellery. In support of her claim, defendant has examined herself but in her cross-examination, she has not been able to tell as to how much gold was sold to the plaintiff, what was the exact date and month when she had purportedly sold the gold to the plaintiff and she had further stated that she had put the aforesaid gold articles in a pouch and handed the same to her husband, she was not aware as to at which place her husband had sold the said gold articles to the plaintiff. DW-1 has also not been able to produce any document to show the possession of the aforesaid gold jewellery but had claimed that her mother had given the same in her marriage and it was here istridhan. Thus, from the deposition of DW-1, it is clear that she was not privy to the said purported sale of her gold jewelery by her husband to the plaintiff and her testimony in this regard is hearsay and is not admissible in evidence and hence liable to be rejected.

17. Ld Counsel for the plaintiff has relied upon para 27 of the judgment of the Hon'bIe Supreme Court of India in the case titled as Anita Rani Vs Ashok Kumar And Others (supra) wherein it is held as under:-

"27. As pointed out earlier, the respondents have admitted that the moneys as claimed by the appellant -- plaintiff were either paid by the plaintiff or flown out of the plaintiff's account into their own account. Therefore, the onus was actually on the respondents to prove either a discharge by way of settlement of accounts or the gratuitous nature of the payment. The respondents miserably failed to discharge the onus of proof so cast upon them. Hence, the plaintiff-- appellant is entitled to a decree despite a few discrepancies in her evidence, especially when the discrepancies have no bearing upon the payment / flow of monies from the plaintiff to the defendants".

18. Relying upon the aforesaid judgment, Ld Counsel for the plaintiff has submitted that since the defendant has claimed that she had sold gold jewellery worth Rs. 20,00,000/- to the plaintiff while admitting the factum of transfer of Rs. 20,00,000/- through RTGS by the plaintiff in her account, the onus to prove the sale of gold jewellery was on the defendant as the defendant has admitted factum of transfer of said money in her account by the plaintiff but the defendant has failed to prove the same. The defendant has not proved the source / bills of her purported gold jewellery. She has also not been able to prove any sale document of the said gold jewellery, payment of any tax qua the said purported sale to the Government and also her income tax return qua the same. In these circumstances, the plea of the defendant that the said amount was transferred to her as sale proceeds of gold jewellery, is not tenable and rather the plea of the plaintiff appears to be correct.

19. On the basis of pleadings, evidence led and the documents exhibited, the plaintiff has discharged the onus of proving that defendant is liable to re-pay the loan amount of Rs. 20,00,000/- as on 22-10-2020 along with interest, whereas the defendant has failed to discharge the onus that the said amount was transferred as sale proceed of her gold jewellery."

12. From a perusal of the aforesaid, what emerges is that the learned Trial Court held that once the appellant had admitted the receipt of a sum of Rs.20,00,000/- from the respondent, it was for her to prove as to why the said amount ought not to be treated as a loan, which onus she was unable to discharge. The learned Trial Court however did not find any merit in her plea that the amount was received by her against the sale of her gold articles to the respondent by her husband. The learned Trial Court also rejected the appellant's plea that the remittance of Rs.20,00,000/- by the respondent to her could not be treated as a loan on account of the respondent's failure to comply with the guidelines issued by the Reserve Bank of India. It was held that the absence of a loan application, sanction letter and/or loan agreement could at best be taken as a breach of the guidelines for which the Reserve Bank of India could take appropriate action against the respondent, the same could however not be a ground to reject the very transaction of loan which was otherwise proved on the basis of the evidence led before the Court. Consequently, the learned Trial Court vide its impugned judgement decreed the suit filed by the respondent by directing the appellant to refund the sum of Rs.20,00,000/- with interest @ 9% per annum.

13. As noted hereinabove, the appellant in order to assail the impugned judgment, has raised two pleas; the first being that since no loan agreement, loan application or sanction letter were ever produced by the respondent, the appellant's plea regarding the amount having been received by her towards sale of gold ought to have been accepted. Her next plea being, that the entries in the account books of the respondent depicting the advance of loan to the appellant were in itself not sufficient to prove the transaction of loan; for which purpose learned counsel for the appellant has relied on Section 34 of the Indian Evidence Act.

14. In order to appreciate the first plea of the appellant, we may begin by noting the relevant extracts of the circular dated 01.07.2010 issued by the Reserve Bank of India, which lays down the practices required to be followed by NBFCs as noted in para 13 of the impugned judgment. The same read as under:-

> "13. The Ld Counsel for the defendant has drawn my attention to clause (i) (a), (ii) and (iii) (a) of the guidelines issued by Reserve Bank of India in Circular No. RBI/2010-11/25, DNBS (PD) CC No. 185/03.10.042/2010-11 dated 01-07-2010 on fair practice of NBFCs issued by RBI which are reproduced as under:-
>
> "(i) Applications for loans and their processing
>
> (a) Loan application forms should include necessary information which affects the interest of the borrower, so that a meaningful comparison with the terms and conditions offered by other NBFCs can be made and informed decision can be taken by the borrower. The loan application form may indicate the documents required to

be submitted with the application form.

.....

(ii) Loan appraisal and terms / conditions The NBFCS should convey in writing to the borrower by means of sanction letter or otherwise, the amount of loan sanctioned along with the terms and conditions including annualised rate of interest and method of application thereof and keep the acceptance of these terms and conditions by the borrower on its record.

.....

Accordingly, it was advised that not furnishing a copy of the loan agreement or enclosures quoted in the loan agreement is an unfair practice and this could lead to disputes between the NBFC and the borrower with regard to the terms and conditions on which the loan is granted.

.....

(iii) Disbursement of loans including changes in terms and conditions

(a) The NBFCS should give notice to the borrower of any change in the terms and conditions including disbursement schedule, interest rates, service charges, prepayment charges etc. NBFCs should also ensure that changes in interest rates and charges are effected only prospectively. A suitable condition in this regard should be incorporated in the loan agreement.

(b) Decision to recall/accelerate payment or performance under the agreement should be in consonance with the loan agreement.

(c) NBFCs should release all securities on repayment of all dues or on realization of the outstanding amount of loan subject to any legitimate right or lien for any other claim NBFCs may have against borrower. If such right of set off is to be exercised, the borrower shall be given notice about the same with full particulars about the remaining claims and the conditions under which NBFCs are entitled to retain the securities till the relevant claim is settled / paid. ....."

15. From a perusal of the aforesaid circular, we are unable to find any such provision therein to accept the appellant's plea that non-compliance with the stipulations set out in the circular would result in nullifying the existence of a valid loan, if otherwise proved. We, therefore, find absolutely no merit in this plea of the appellant that on account of non-compliance with the circular, the payment of Rs.20,00,000/- to the appellant as loan cannot be treated as a valid loan.

16. Now coming to the appellant's plea that the suit amount was received by her towards sale of her gold articles. In this regard, it has been urged by the learned counsel for the respondent that this bald plea of the appellant was merely an attempt to wriggle out of her liability to refund the sum of Rs.20,00,000/-, which she admitted was remitted in her bank account. It is the respondent's plea

that the appellant has taken contrary stands regarding the sale of gold in her written statement and cross-examination. In order to appreciate this plea, it would be apposite to refer to the stand taken by the appellant in her written statement as also her cross examination.

17. We may, therefore, note the appellant's explanation in the written statement regarding receipt of this sum of Rs.20,00,000/- from the respondent, for which purpose we may refer to para 4 of the preliminary objections raised in the written statement, the same reads as under:-

> "4. That the plaintiff is not entitled for any relief from this Hon'ble Court as the plaintiff has not approached to this Hon'ble Court with clean hands as the answering defendant had sold her gold to the plaintiff to the tune of Rs.20,00,000/-. The plaintiff had transferred the said amount through RTGS in the account of the answering defendant so the dishonest and fraudulent conduct on the part of the plaintiff totally disentitled it from claiming any relief from this Hon'ble court."

18. We may now refer to the appellant's cross-examination where unlike the stand taken by her in her written statement that she had sold the gold to the respondent, she sought to explain that she had given her gold articles to her husband, who had sold the same to the respondent. The same reads as under:-

> "DW-1 Statement of Ms. Ritika Gulati wife of Sh. Sidharth Gulati, Rlo GA-5, Sector-5, Shivaji Enclave, Tagore -Garden, Rajouri Garden, New Delhi.
>
> SA I tender my evidence by way of affidavit, which is now Ex. DW- 1/A bearing my signature at point A and B. XXXXXX by Sh. Anmol Ghai, Ld. Counsel for the plaintiff.
>
> My affidavit Ex. DW-1/A was drafted by my counsel on my instructions. The same was signed in the office of my counsel. I do not remember the place where the said affidavit was signed. I am 12th class pass. I am a housewife. I do not earn. My husband is into the business of steel pipe distribution.
>
> Question: How you came to know that the plaintiff provide you money against the gold?
>
> Answer: I do not know anything about the plaintiff. Question: What was the immediate reason for selling gold to the plaintiff for Rs. 20 Lakhs as alleged by you in your WS and evidence affidavit Ex. DW-1/A?
>
> Answer: My husband needed immediate funds in the year 2019 for business purpose and that is why I had sold the gold worth Rs. 20 Lakhs to the plaintiff.
>
> Question: How much gold was sold to the plaintiff
> Answer: I do not know. Vol. The same consisted ginnis, four gold bangles and two gold sets.

Question: What was the exact date or month on whi
purportedly sold the gold to the plaintiff?
Answer: I do not remember the same. Vol. It was
year 2019.

Question: What was the location where the gold was allegedly sold by you to the plaintiff?

Answer: I had put the aforesaid gold articles in a pouch and handed the same to my husband. I am not aware as to at which place my husband had sold the said gold to the plaintiff. Question: Can you produce any document to show that you were in possession of aforesaid gold articles or that you had sold the said articles to the plaintiff?

Answer: I am not having the same. My mother had given the aforesaid gold articles to me in my marriage. Again said, it was my Streedhan.

My address mentioned in the legal notice Ex. PW-1/8 of the plaintiff, is correct. I am residing at the said address since last about 18 years.

It is wrong to suggest that amount of Rs. 20 Lakhs was taken as loan by me from the plaintiff at the rate of interest of 24% per annum on 21.10.2019 through RTGS. Vol. The said amount received was pertaining to the aforesaid gold articles sold to the plaintiff. It is wrong to suggest that legal notice of demand Ex. PW-1/8 was duly served upon me and my husband. It is wrong to suggest that I had not sold the aforesaid gold articles for an amount of Rs. 20 Lakhs to the plaintiff."

19. From a bare perusal of the aforesaid, it is evident that though there was no denial by the appellant in her written statement regarding the receipt of a sum of Rs.20,00,000/- from the respondent, she had taken a vague plea that this amount was not by way of any loan but was towards the sale consideration for the gold sold by her to the respondent. As rightly urged by the learned counsel for the respondent, in her cross examination the appellant when asked as to when and where the gold was sold to the respondent, took a different stand and now claimed that she was unaware about the date and place where the gold was sold as she had handed over her gold articles to her husband, who had sold the same to the respondent.

20. In the light of this plea taken by the appellant that her gold articles were sold by her husband, we are of the view that it was incumbent upon the appellant to examine her husband as a witness before the Trial Court. The appellant has, however, given no reason for not examining her husband as a witness. In these circumstances, the learned Trial Court rightly rejected her plea that the amount received by her was not by way of a loan but towards sale consideration of her gold articles to the respondent by her husband. We, therefore, find no merit in the appellant's plea that this amount of Rs.20,00,000/- received by her was towards the price of the gold sold to the respondent by her husband.

21. We have also considered the appellant's plea that in view of Section 34 of the Indian Evidence Act, entries in the books of account of the respondent could not in itself have been treated as sufficient evidence by the learned Trial Court to hold that the amount paid to her was by way of a loan.

Even though the appellant is correct in urging that such entries in the books of account cannot alone be treated as sufficient evidence to charge any person with liability, we are of the view that in the facts of the present case, once the appellant had herself admitted the receipt of a sum of Rs.20,00,000/- in her bank account from the respondent, these entries were relevant for substantiating the nature of this transaction as a loan as claimed by the respondent.

22. In the light of the aforesaid, we find no merit in any of the pleas taken by the appellant. There being no infirmity in the impugned order, the appeal along with the accompanying applications is accordingly dismissed.

(REKHA PALLI) JUDGE (SAURABH BANERJEE) JUDGE NOVEMBER 5, 2024/akr