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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 40/2023**

SARFARAZ ALI

..... Appellant

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Digvijay Singh, Mr. Shekhar
Kumar and Mr. Chandan Sinha,
Advocates

versus

DILSHAD KHAN

..... Respondent

Through: Mr. V.P. Rana and Ms. Achyuta
Dafdwara, Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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22.02.2023

[The proceeding has been conducted through Hybrid mode]

CM APP No.8595-96/2023

1. These are applications seeking exemption from filing certified/true copies of the annexures.
2. Exemption is allowed, subject to all just exceptions.
3. However, the certified copies of the exempted documents may be filed within six weeks from today.
4. The applications stand disposed of.

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5. The appellant challenges the judgment and decree dated 23.11.2022 passed in RCA 6/2020 titled '*Sarfaraz Ali vs Dilshad Khan*', whereby the



learned First Appellate Court agreeing with the judgment and decree rendered by the learned Trial Court concluded that in the facts of the case appellant/plaintiff ought to have filed suit seeking redemption of documents against the respondent/defendant and on that basis the plaint was rejected under Order VII Rule 11 of CPC, 1908.

6. Mr. Kirti Uppal, learned senior counsel appearing on behalf of the appellant/plaintiff submits that the only issue which ought to have been decided by the learned Trial Court before rejecting the plaint under the provisions of Order VII Rule 11, CPC was the fact that the petitioner/plaintiff never contended that the loan amount was against an equitable mortgage and petitioner/plaintiff had categorically asserted that the petitioner/plaintiff was made to sign certain documents which he was not aware of.

7. Mr. Uppal, learned senior counsel further submits that the respondent/defendant had taken a categorical stand in his written statement that he had purchased the suit property from the appellant/plaintiff and the co-sharers against the valuable consideration which the appellant/plaintiff claimed was a loan taken from the respondent/defendant.

8. On that basis, learned senior counsel submits that rejection of the suit by relegating to a suit of redemption of documents would not be possible and not the alternative relief which can be sought for by the appellant/plaintiff in the facts of the case.

9. Learned senior counsel submits that having non-suited the plaintiff in an alternative relief which was otherwise available with the Court, the learned Trial Court as well First Appellate Court have committed error which has caused prejudice to the appellant/plaintiff and the *prima facie*



findings are contrary to the facts which obtained in the suit.

10. Learned counsel appearing on behalf of the respondent disputes the same and submits that under the provisions of Order VII Rule 11 CPC the obligation of the Court is only to consider the plaint and its contents and not the stand taken by the respondent/defendant.

11. Learned counsel submits that having regard to the fact that the appellant/plaintiff had categorically stated in his plaint that the amount was taken on loan and the documents which were handed over to the respondent/defendant was as a security, the rejection of the plaint under Order VII Rule 11 CPC was correctly done by the learned Trial Court as well as the First Appellate Court.

12. Issue notice. Mr. V.P. Rana, learned counsel for the respondent accepts notice.

13. List on 14.09.2023 for framing of questions of law, if any.

14. In the meanwhile, TCR and ACR be requisitioned, scanned, paginated, bookmarked and appended to the present appeal and thereafter transmitted back forthwith.

TUSHAR RAO GEDELA, J

FEBRUARY 22, 2023

Aj