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

\+ RFA 519/2022 & CM APPL. 46028/2022 (Stay)

RAVINDER KUMAR AGGARWAL ..... Appellant
Through: Mr. Abhimanyu Garg, Advocate

versus

SUNIL SINGHAL (HUF) ..... Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

O R D E R

% **27.10.2022**

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 46029/2022 (Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CM APPL. 46030/2022 (Delay of 14 days in refiling the appeal)

Present application has been filed by the appellant seeking condonation of delay of 14 days in refiling the present appeal.

For the reasons stated in the present application, the same is allowed. Delay of 14 days in refiling the present appeal is condoned.

Application stands disposed of.

RFA 519/2022 & CM APPL. 46028/2022 (Stay)

The appellant (original defendant) is aggrieved by the impugned judgment and decree dated 04.06.2022 passed by learned Additional District Judge-01, Central District, Tis Hazari Courts, Delhi in Suit No. CS No. 504/2020 titled as Sunil Singhal (HUF) Vs. Ravinder Kumar Aggarwal.

The respondent herein (original plaintiff) filed a suit for recovery of Rs.59,42,213/- against the appellant herein.

Vide the impugned judgment and decree dated 04.06.2022, the learned Trial Court was pleased to allow the application filed by the respondent under Order XII Rule 6 of Code of Civil Procedure, 1908 and decreed the suit in favour of the respondent.

Learned counsel for the appellant argues that the learned Trial Court failed to appreciate that there is no clear and unequivocal admission on behalf of the appellant in the written statement.

Learned counsel for the appellant submits that there is an oral agreement between the parties whereby the respondent agreed to invest his surplus fund in the business of the appellant as a long term investment.

As per the terms of the oral agreement between the parties, the respondent agreed to invest Rs. 1 crore in the business of appellant on or before 30.09.2017. The said investment would be repayable alongwith dividend over a period of ten years starting from 30.09.2017 till 30.09.2027.

As per the terms of the oral agreement between the parties, if the respondent fails to invest Rs. 1 crore in the appellant's business on or before 30.09.2017, the appellant is entitled to forfeit the deposited amount. The rate of the dividend agreed between the parties was 10 %. Hence in pursuance of the oral agreement between the parties, the respondent invested Rs.35 lacs on 17.04.2015 as part of the agreed investment of Rs. 1 crore. The appellant paid 10% of agreed dividend till 30.09.2017. However, the respondent failed to invest the balance amount and in view of the oral agreement between the parties, the appellant forfeited the deposited amount.

Learned counsel for the appellant submits that the respondent filed the suit as a summary suit under Order XXXVII of Code of Civil Procedure, 1908, however, since there was no clear acknowledgment on the part of the appellant qua the final amount, the suit was registered as a regular suit.

Learned counsel for the appellant relies on the judgment of ***Abdul Hamid Vs. Rahmat Bi*** reported as ***AIR 1965 Mad 427*** and argues that the "*loan and deposit / investment are two different concepts. A loan is repayable the minute it is incurred whereas the investment is repayable after the term of investment is over*."

Since in the present case, the respondent paid Rs.35 lacs as part of the of investment, the said amount is repayable only after the maturity i.e. 30.09.2027.

Learned counsel for the appellant further submits that the issue as to whether the amount of Rs.35 lacs paid by the respondent to the appellant is in the nature of loan or it is a long time investment itself is a triable issue. There was no clear and categorical admission in the written statement and hence the suit ought not to have been decreed in favour of the respondent.

Learned counsel for the appellant relies upon the recent judgment of the Hon'ble Supreme Court of India in the case of ***Karan Kapoor Vs. Madhuri Kumar*** reported as ***2022 SCC OnLine SC 791*** and urges that in a similar situation, the Apex Court held that defence taken by the defendant is plausible and the veracity of the defence can be determined only by leading evidence.

The learned Trial Court ought to have appreciated that the Court should not deny the valuable right of the defendant to contest the suit and the discretion under Order XII Rule 6 of Code of Civil Procedure, 1908 should be used only when there is a clear, categorical and unconditional admission.

This matter requires consideration.

Notice.

On the appellant taking steps, issue notice to the respondent through all permissible modes including electronic mode and dasti, returnable on 22.03.2023.

Subject to the appellant depositing the entire decretal amount with upto date interest within four weeks with the Registrar General of this Court, there shall be a stay of the operation of the impugned judgment dated 04.06.2022.

The Registry is directed to keep the said amount so deposited in an interest bearing FDR with an auto renewal facility.

GAURANG KANTH, J

OCTOBER 27, 2022
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