



2024:DHC:7831



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

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Judgment reserved on: 04.10.2024
Judgment pronounced on: 09.10.2024+ **RFA 320/2022 & CM APPL. 32087/2022****SANTOSH KUMARI**

.....Appellant

Through: Mr. Ashwini K. Sakhuja and Mr.
Puneet Saini, Advocate

versus

ROHIT GULATI

.....Respondent

Through: None

CORAM:**HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T****GIRISH KATHPALIA, J. :**

1. This appeal brought under Section 96 of the Code of Civil Procedure assails the judgment and decree dated 07.04.2022, whereby the money recovery suit filed by the appellant against the respondent was dismissed. Despite service of notice, initially none appeared for respondent; thereafter across repeated adjournments, only once a counsel for respondent appeared but did not disclose his name and also did not file *vakalatnama*. I heard learned counsel for appellant and examined the digitized record of the trial court.



2. Parties are related to each other, in the sense that the respondent is son of brother of the appellant's husband and they are residing on different floors of same property; the appellant is residing at the first floor while the respondent is residing at the ground floor. The appellant filed suit for recovery of Rs.15,00,000/- with *pendentelite* and future interest at the rate of 18% per annum and costs of the suit against the respondent, pleading as follows. In view of nature of relationship between the parties, the appellant had kept duplicate keys of her floor with the wife of the respondent, so as to enable her meet any eventuality whenever the appellant was abroad. On 03.01.2018, when the appellant had gone to a party, her husband and daughter on coming back from the park in front of their house, they noticed bedsheets and mattress of beds turned over, which raised some suspicion. On checking their almirahs the appellant, her husband and their daughter found certain jewellery articles missing. Since there were no signs of forced opening of almirahs, they suspected the respondent, who on being confronted, confessed to having taken keys of the floor from his wife to steal the jewellery. The respondent further stated having mortgaged the said jewellery with his friend, namely Lucky Bhogal and also with Muthoot Finance. The respondent handed over the jewellery receipts issued by Muthoot Finance to husband of the appellant. On being warned of a police complaint, the respondent pleaded for one month time to get back the jewellery, for which husband of the appellant agreed in view of their relationship. On 04.01.2018 itself, the respondent executed in his own handwriting an admission and also assured that in case he failed to return the



stolen jewellery within a month, legal action could be taken against him, including sale of his floor of residence. The exercise of the respondent admitting his wrong in writing was also videographed and converted into a compact disk (CD). Since the respondent failed to return the jewellery, the appellant's husband lodged a police complaint dated 05.05.2018, which was registered by PS Hazrat Nizamuddin as FIR No. 0114/2018. Towards cost of the stolen jewellery, the respondent handed over four cheques, out of which one was self cheque for Rs.5,00,000/- while the remaining three cheques were in favour of the appellant for a sum of Rs.3,10,000/-, Rs.5,00,000/- and Rs. 1,90,000/- dated 21.02.2018, 22.02.2018 and 23.02.2018 respectively. The said cheques got dishonoured, leading to initiation of proceedings under Section 138 Negotiable Instruments Act against the respondent. In order to secure her amount, the appellant also informed the concerned Sub-Registrar in writing about her interest in the ground floor premises of the respondent, in response to which, she received letter dated 22.12.2018 from the office of the Sub-Registrar, calling upon her to obtain stay on registration of a sale deed of the said premises in favour of one Mr. Ranjan Bir Singh, presented for registration.

3. The respondent on being served with summons of the suit filed a written statement, denying the plaint contents and pleaded that no incident as alleged occurred on 03.01.2018, so for more than four months, no complaint was lodged with the police. The respondent pleaded that the appellant had created false story after misusing the security cheques given



by him against the jewellery received from the now deceased husband of the appellant, which jewellery had to be mortgaged to arrange money. The respondent further pleaded that the alleged written confession was fraudulently got written and signed from him by daughter of the appellant. As regards the videography of the confession, the respondent pleaded: *“It is stated that at that time the defendant did not even see the plaintiff’s daughter videographing the same, otherwise he would have smelled the foul play on the part of the plaintiff and her family members”*. The respondent also pleaded that on 18.01.2018 he had also returned some of the jewellery to the appellant’s husband as admitted by the latter in the FIR.

4. The appellant filed replication, denying the contents of the written statement and reaffirming her pleadings.

5. On the basis of above pleadings, following issues were framed by the learned trial court.

- “I. Whether on 03.01.2018, the defendant had stolen jewelery from the premises of the plaintiff at 1st Floor, K-39, Jangpura Extension, New Delhi- 110014? OPP*
- II. Whether the defendant had acknowledged the liability vide letter dated 04.01.2018, 13.03.2018 and 17.03.2018? OPP*
- III. Whether the defendant had issued four cheques, as mentioned in para no. 8 of the plaint, to discharge his liability? OPP*
- IV. Whether the plaintiff is entitled to a decree for recovery of the suit amount? OPP*
- V. Whether the plaintiff is entitled to interest on the suit amount, if so, at what rate and for which period? OPP*
- VI. Relief.”*



6. In support of her case, the appellant examined two witnesses including herself and proved on record the documentary evidence as Ex. PW1/A-J. The second witness of the appellant was her daughter, who supported the case of the appellant in her testimony as PW2 and proved on record the documents Ex. PW2/A & Ex. PW2/B. The respondent participated in the trial only till partial cross examination of PW1 and thereafter stopped appearing, so was proceeded against ex-parte.

7. The trial court took up all issues together in view of intertwined nature thereof and delivered findings against the appellant, thereby dismissing the suit. The trial court found it not believable that theft of jewellery would have taken place and the reason for this view as recorded in the impugned judgment is extracted below:

“12. However, she (the appellant) has admitted in her cross examination that she did not handover any keys of any locker or almirah to the wife of defendant and in that situation, the allegation of the plaintiff that defendant had committed theft in her house seems to be unbelievable since reasonable man puts the jewellery in lock and key and it is not the case of plaintiff that she had left her jewellery open for all. Otherwise also, the question of theft is the subject matter of the criminal court where FIR Ex. PW1/E is pending. PW1 has further deposed that the defendant had issued four cheques for total sum of Rs. 5,00,000/- in favour of plaintiff as well as her daughter which got dishonoured against which complaint under Section 138 NI Act was filed which is pending before the court but she has not clarified the context of issuing the said cheques or under what liability the said cheques were issued by the defendant.....”

No other reason has been recorded by the trial court in the impugned judgment for not believing the pleadings and evidence of the appellant.



8. During arguments, learned counsel for appellant took me through the abovementioned pleadings and evidence, and contended that the impugned judgment and decree are not sustainable in law. It was argued on behalf of appellant that the trial court erred in ignoring the self written confessions of the respondent, which were even videographed. Learned counsel for appellant argued that in civil proceedings, the evidence is required to be appreciated on the basis of preponderance of probabilities and going by the same, the appellant has successfully proved her case. It was also contended on behalf of appellant that since the respondent opted not to complete the cross examination of the appellant and not to even commence the cross examination of daughter of appellant, dismissal of the suit was not sustainable in law.

9. In the present proceedings also, the respondent opted not to appear despite service of notice, so vide order dated 12.12.2022 of the predecessor bench, the respondent was proceeded against ex-parte. Even thereafter, the present appeal was adjourned before different benches of this Court for as many as ten dates. On only one date (26.07.2023) one counsel appeared on behalf of the respondent before the predecessor bench but opted not to submit his appearance slip and did not care to move any application. Even after 26.07.2023, the matter was repeatedly adjourned but the respondent stayed away and finally on 04.10.2024, final arguments were concluded, reserving the judgment.



10. As mentioned above, the trial court has recorded only one reason for not believing the case of the appellant, which reason is the admission of the appellant in her cross examination that she did not handover keys of any locker or almirah to wife of the respondent. But the trial court clearly failed to consider rest of the pleadings as well as evidence on record.

11. To begin with, admittedly parties are closely related to each other, in the sense that the respondent is son of brother of now deceased husband of the appellant. Also admittedly, the parties are residing in the same premises where the appellant is residing on first floor while the respondent is residing on the ground floor. In view of these circumstances, it is not unbelievable that the appellant had kept duplicate keys of her first floor premises with wife of the respondent so as to meet any emergent eventuality. In her chief examination, the appellant specifically deposed having kept the duplicate keys of her premises with wife of the respondent and in her cross examination, in response to a specific query she stated that the said keys were given to wife of the defendant in order to take care of any emergency like electric short circuit in her absence. Although on this aspect, the appellant was cross examined substantially, her testimony remains unshaken to the effect that she had kept duplicate keys of her premises with wife of the respondent.

12. In her cross examination, no doubt, the appellant admitted that keys of almirah or locker were not handed over by her to wife of the respondent.



But that is also not her pleaded case. As mentioned above, at the relevant time the appellant as well as her husband and daughter were not at home; and on reaching home they found the bedsheets and mattress overturned, which raised suspicion and on checking the almirah they found the jewellery missing. There is absolutely no cross examination on this aspect. It is commonly seen that people keep keys of lockers etc under the mattress. Therefore, a one liner statement of the appellant ought not to have led to discarding her entire case, especially because the respondent abandoned the trial midstream.

13. Besides, the trial court erred in completely ignoring the documents Ex. PW1/B and Ex.PW1/D (colly). The document Ex. PW1/B is the handwritten admission dated 04.01.2018 of the respondent, duly signed by him, recording the list of jewellery articles which he had taken from the premises of the appellant and assuring to return the same within one month, failing which any action could be taken against him. In the said document Ex. PW1/B, the respondent categorically admitted his access to the duplicate keys of the premises of the appellant. It was further recorded in Ex. PW1/B that if the jewellery articles were not returned within a month, husband of the appellant would have authority to sell house of the respondent and recover cost of those articles, besides lodging a police complaint after one month. The document Ex. PW1/D (colly) also are the handwritten admissions dated 13.03.2018 and 17.03.2018 of the respondent in continuation of Ex. PW1/B and through the said documents, the respondent



sought some more time to pay and pleaded not to take any police action.

14. The respondent in his written statement did not challenge the genuineness of Ex. PW1/B and Ex. PW1/D (colly). The respondent also did not deny that the said documents are in his own handwriting and bear his signatures. The only pleadings of the respondent pertaining to the said documents is that the same were fraudulently got written and signed from him by daughter of the appellant. No further elaboration of the alleged fraud has been pleaded, so this stand of the respondent appears to be completely vague and false.

15. Not only this, even a police complaint was lodged by husband of the appellant, on the basis whereof FIR Ex. PW1/E was registered by PS Hazrat Nizamuddin against the respondent for offence under Section 380 IPC and in the said case, the respondent has been declared Proclaimed Offender.

16. Most importantly, the entire exercise of the respondent writing his confessions Ex. PW1/B and Ex. PW1/D (colly) was videographed and reduced into CD Ex. PW1/C. Even genuineness of the said videography was not disputed by the respondent and the only stand taken by him in his written statement was that the videography was carried out by daughter of the appellant without his knowledge. It appears that the trial court failed to watch the said video CD Ex. PW1/C. Since the digitized record of the trial court did not accompany the video CD Ex. PW1/C, after conclusion of final



arguments, learned counsel for appellant was directed to submit the same, which he did by filing the CD as well as the said video in a pen-drive. The same were taken on record and watched by me.

17. The respondent in his written statement also did not dispute having issued the abovementioned cheques. Plea of the respondent that the said cheques were issued towards security sounds completely vague in the absence of further particulars. It fails to convince that for the jewellery of the appellant mortgaged with a finance company, it is the respondent who would issue the security cheques. Besides, there is not even a whisper in the documents Ex. PW1/B-D to the effect that the cheques being issued by the respondent were towards security.

18. The trial court has clearly failed to appreciate the pleadings and evidence in proper perspective. I am unable to uphold the impugned judgment and decree of dismissal of the suit, so the same are set aside.

19. On the basis of above discussed pleadings and evidence, it is held that on 03.01.2018, the respondent had stolen jewellery from the premises of the appellant (*though this finding on preponderance of probabilities is limited for the purposes of the present civil proceedings and shall not be read against the respondent in criminal trial*); that the respondent had acknowledged liability vide documents Ex. PW1/B and Ex. PW1/D (colly) in discharge whereof he had issued the four cheques as pleaded by the appellant; and that the appellant is entitled to recover the suit amount with



pendentelite and future interest. However, the rate of 18% per annum towards *pendentelite* and future interest as claimed by appellant is on higher side. Keeping in mind the overall facts and circumstances of this case, I am of the view that *pendetelite* and future interest at the rate of 8% per annum on the suit amount shall be fair and reasonable.

20. In view of above discussion, the appeal is allowed and the appellant is held entitled to recover from the respondent a sum of Rs. 15,00,000/- with *pendentelite* and future interest thereon at a rate of 8% per annum, alongwith costs of the suit and this appeal. Decree sheet be accordingly drawn. The pending application accordingly stands disposed of.

**GIRISH KATHPALIA
(JUDGE)**

OCTOBER 09, 2024/as