

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

+ RFA 542/2006

GULSHAN KUMAR ..... Appellant  
Through: Mr.Pradeep Chowdhary, Adv.

versus

SUNIL KUKREJA ..... Respondent  
Through: Mr.R.L.Nanda, Adv. with  
Mr.T.Parashar, Adv.

% DATE OF DECISION:  
03.09.2008

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**(Oral)

1. We note that the appeal was admitted on 13.9.2006.

2. Learned counsel for the parties pray that the appeal may be heard for disposal without awaiting the printing of the appeal paper book.

3. Learned counsel for the parties pray that the trial court record may be considered for disposal of the appeal.

4. Trial Court record has been considered by us.

5. Printing of paper book is dispensed with.
6. The appellant was the plaintiff. The cause pleaded in the suit was an alleged promissory note Ex.CW-1/1, stated to have been executed by the respondent on 7.3.2002. Claim of the appellant was that the respondent had taken a friendly loan in sum of Rs.15 lacs from him and to repay the same had executed 3 promissory notes on 2.3.2002, 4.3.2002 and 7.3.2002.
7. The promissory note dated 7.3.2002 in sum of Rs.5 lacs was stated to be not honoured by the respondent when appellant claimed to have demanded money under the said promissory note.
8. It be noted that pertaining to the other promissory notes it was stated in the plaint that since no money was paid by the respondent to the appellant pursuant to the demand raised under the said 2 promissory notes, separate proceedings in relation thereto were pending.
9. The respondent denied having executed any promissory note. The execution of the promissory note Ex. CW-1/1 was denied.
10. Thus, the main issue debated between the parties was whether the respondent had received Rs.5 lacs as loan from the plaintiff and to repay the same had executed the

promissory note dated 7.3.2002, Ex.CW-1/1.

11. At the trial, appellant examined himself as the only witness. The respondent examined himself as the only witness.

12. The appellant reiterated his version as pleaded in the plaint. The respondent reiterated his version as pleaded in the written statement. However, evidence surfaced that pursuant to a complaint lodged by the appellant an FIR under Section 307 IPC stood registered against the respondent on 2.12.2002 for the reason the appellant told the local police that the respondent had attempted to murder him. Pursuant to the said FIR criminal proceedings were initiated before the court of competent jurisdiction at Baghpat U.P. against the respondent and were pending when parties led their respective evidence in the suit.

13. In view of the evidence led, the learned Trial Judge has dismissed the suit filed by the appellant holding that the appellant has failed to prove having advanced any loan to the respondent and that the evidence negated the due execution of the promissory note Ex. CW-1/1.

14. 4 reasons have been given by the learned Trial Judge to dismiss the suit.

15. The first reason is that, save and except the

promissory note, no other documentary evidence was placed on record, much less proved, to support the version of the appellant that a loan as pleaded was advanced by him to the respondent. The second reason given by the learned Trial Judge is the admission of the appellant that he was paying income tax. In the absence of any record produced to evidence that the appellant had disclosed, to the Income Tax authorities, the advancements of the loan by him as pleaded, view taken is that a presumption would arise against the appellant of not having advanced any loan. Third reason given by the learned Trial Judge is that the promissory note bears the signatures of 2 persons as witnesses and none was produced by the appellant. It has been held that the fact that the appellant withheld the witnesses to the promissory note required an adverse inference to be drawn against the appellant. The last reasoning of the learned Trial Judge, is the statement by the appellant during his evidence, that he went to the respondent in the first and second week of February, 2005 to receive back the loan. With reference to the criminal proceedings pending against the respondent at the instance of the appellant where respondent is facing a charge for the offence of a crime attracting Section 307 IPC, the learned Trial Judge has drawn an adverse inference of falsity in the

testimony of the appellant, reasoning that no reasonable person would believe that the appellant would have gone to the respondent to ask for his money because of inimical relationship between the parties.

16. Though not expressly stated, we note that the ethos of the reasoning of the learned Trial Judge is that if appellant had produced the income tax record it would have revealed the truth and that having not so done, an adverse inference would be drawn as required by law. The law being that a party which does not produce the best evidence is liable for an adverse inference to be drawn against the party on the reasoning that had said evidence come on record it would have gone against the party concerned.

17. Unfortunately, neither party drew the attention of the learned Trial Judge to the signatures on the promissory note for a visual comparison with the admitted signatures of the respondent on the written statement, affidavits filed by the respondent and the Vakalatnama filed by the respondent.

18. We have visually noted the signatures of the respondent on the disputed promissory note, Ex. CW-1/1. We have compared the same with his admitted signatures on the written statement, the signatures on an affidavit filed by the respondent on 29.9.2005, and his signatures on the affidavit

by way of evidence filed on 16.5.2006.

19. A bare perusal and comparison of the signatures reveal that the signature on Ex.CW-1/1 cannot be said to be in the hand of the respondent.

20. That apart, we concur with the reasoning of the learned Trial Judge that in the absence of any corroborative material to show advancement of the loan or for that matter that the appellant had the requisite amount with him coupled with the admitted fact that the appellant was assessed to income tax and did not produce his income tax record an adverse presumption had to be drawn against the appellant. We also agree with the learned Trial Judge that the inimical relationship between the parties belie the statement of the appellant when he deposed that in the month of February, 2005 he went to the respondent to seek return of the money. Indeed, if the respondent had attempted to take the life of the appellant in the month of December, 2002 and was facing a criminal prosecution for having committed an offence punishable under Section 307 IPC, it would be difficult to believe that the appellant would risk his life once again by visiting the respondent.

21. We may additionally note that the promissory note requires interest to be paid @ 2% per month. There is no

evidence on record that between 7.3.2002 i.e. the date when the promissory note was executed and till the suit was filed any interest was ever demanded or paid. This is also suggestive of the fact that no promissory note was executed by the respondent as alleged by the plaintiff.

22. It is settled law that a civil dispute has to be decided on the preponderance of probabilities and the evidence led by the parties has to be considered and probablized with reference to how a prudent person ought, under the circumstances of the particular case, to act on the supposition that a fact should be believed to exist or not to exist. As per Section 3 of the Evidence Act, 1872 a fact is disproved when, after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

23. On the evidence on record the view taken by the learned Trial Judge is reasonable and proper.

24. We find no infirmity with the impugned judgment and decree dated 10.8.2006.

25. The appeal is dismissed.

26. The respondent shall be entitled to costs against the

appellant.

**PRADEEP NANDRAJOG, J.**

**VEENA BIRBAL, J.**

**SEPTEMBER 03, 2008**  
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