

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

+ **RFA 575/2007**

Reserved on : 31st March, 2008

Date of Pronouncement : 22nd April, 2008

PAWAN KUMAR GUPTA Appellant

Through : Mr. M.R. Vig, Advocate.

versus

VED PRAKASH Respondent

Through : Mr. Navin Kumar and
Ms. Geeta Dalal, Advocates.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MS. JUSTICE ARUNA SURESH

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

JUDGMENT

22-04-2008

1. This appeal has been filed against the impugned judgment and decree

passed by the learned Additional District Judge in Suit No. 460/2004 dated 3rd August, 2007 wherein a decree was passed in favour of the respondent and against the appellant for the sum of Rs.3,90,000/- together with interest @ 9% per annum with effect from 14th October, 2004 till the realization of the entire decretal amount.

2. The facts of the case are restated as follows: -

a. The appellant was engaged in the transport business. In the month of December 1998, the appellant approached the respondent no.1 for some financial assistance as he was facing tremendous financial problems.

b. The respondent no.1 considered the request of the appellant and paid him a sum of Rs.7,73,000/- on 1st December, 1998. The appellant acknowledged having received an amount of Rs.7,73,000/- by executing a note dated 1st December, 1998.

c. The appellant assured the return of the loan in the monthly installment of Rs.30,000/- on 22nd of each month. The appellant paid a sum of

Rs.3,83,000/- in cash as well as through cheques on different dates.

d. On 20th November, 2001 the appellant again executed a receipt thereby confirming the balance payable amount as Rs.3,90,000/-. The appellant assured the respondent no.1 that he would repay the outstanding amount in monthly installments of Rs.10,000/-.

e. A cheque for Rs.5000/- dated 22nd June, 2003 drawn on United Bank of India, Kirti Nagar, New Delhi issued by the appellant in favour of the respondent no.1 on presentation was returned dishonoured with the remarks “Insufficient Funds”.

f. The respondent no.1 served a legal notice thereby demanding a total sum of Rs.3,92,565/- along with interest @ 24% per annum on 4th October, 2004.

3. The learned counsel for the appellant Shri M.R. Vig contended as follows:

a) The balance due from the appellant was shown on a paper as

7,73,000/- which does not show what that figures of 7,73,000/- is and to whom it is due. It also does not show the name of the father of the appellant nor the address of the appellant from whom it is due. The name and address of the witness has also not been given on it.

b) The balance due from the appellant has been shown on 20th October, 2001 as Rs.3,90,000/-. The paper had been written by respondent no.1 himself which has been denied by the appellant. This papers has also not been witnessed by any person.

c) A cheque of Rs.5,000/- was issued by the appellant on 22nd June 2003 which was dishonoured for the reasons “insufficiency of funds in account”. However, the cheque in question was never issued by the appellant towards the outstanding amount of the loan. The appellant never took loan from from the respondent No.1, rather the respondent no.1 being on friendly terms with the appellant had requested him for a loan of Rs.5,000/- and the appellant had issued the said cheque in favour of Respondent no.1 towards

advancing loan to the respondent no.1 which he stated that he had arranged from other sources.

d) Subsequently, the respondent no.1 informed the appellant that he had not presented the cheque for encashment as he had arranged the loan from some other person in cash. The appellant made several requests to the respondent no.1 to return the cheque but the respondent no.1 withheld the same with his malafide intention.

4. The principal plea raised by the learned counsel for the appellant is that the alleged extended loan of Rs.7,73,000/- to the appellant has not been accepted by the appellant and the alleged note is defective and not acceptable in the eyes of law. The learned Additional District Judge framed the following issues on 11th January 2007:

1. Whether the suit of the plaintiff is not maintainable in view of the preliminary objection of the written statement? OPD
2. Whether the plaintiff extended any loan of Rs.7,73,000/- to the defendant on 01.12.1998? OPP
3. Whether the suit is barred by time? OPD

4. Whether any amount is due and payable by the defendant to the plaintiff towards the repayment of the loan? OPP
5. Whether the plaintiff is entitled to any interest whatsoever? OPP
6. Relief.”

5. By his judgment dated 3rd August 2007 the learned Additional District Judge decided the above mentioned issues in favour of the respondent and against the appellant with the following observations:

“9. Onus to prove this issue was on the defendant. However, defendant has not led any evidence to show that plaintiff is a money lender and that he required a money lender's license before extending loan to the defendant. A friendly loan can be extended by any person. Accordingly, this issue is decided in favour of the plaintiff and against the defendant.

10. Both these issues are inter related and are decided together. PW1 has stated that defendant was in financial problems and had approached the plaintiff for some financial assistance. PW1 has categorically deposed that he had extended loan of Rs.7,73,000/- to the defendant on 01.12.1998. Defendant acknowledged the loan by executing a note dated 01.12.1998. This document has been proved by the plaintiff as Ex.PW1/1 and it bears signatures of the defendant. Ex.PW1/1 has also been witnessed by one Mr. Shyam Sunder. In his cross examination defendant has admitted that Mr. Shyam Sunder was his maternal uncle. DW1 has

further deposed that PW1/1 does not bear either his signatures or signatures of his uncle Mr. Shyam Sunder. However, he has not produced Mr. Shyam Sunder in the witness box to depose to this effect. He has also deposed that defendant had paid a sum of Rs.3,83,000/- upto 20th October 2001. Details given in affidavit shows that a sum of Rs.30,000/- each was paid on 22.12.1998, 21.01.1999 and 22.02.1999. A sum of Rs.10,000/- each was paid on 09.04.1999, 24.04.1999, 23.08.1999, 12.09.1999, 5.12.1999, 13.01.2000, 16.01.2000, 12.02.2000 and 12.03.2000. A sum of Rs.20,000/- was paid on 26.03.1999. A sum of Rs.15,000/- each was paid on 06.05.1999, 12.06.1999 and 27.7.1999. A sum of Rs.9,000/- was paid on 14.10.1999. A sum of Rs.8,000/- each was paid on 14.02.2000, 18.05.2000 and 13.06.2000. A sum of Rs.7,500/- each was paid on 15.07.2000, 17.08.2000 and 12.09.2000. A sum of Rs.7,000/- each was paid on 13.10.2000, 13.11.2000, 14.12.2000 and 15.01.2001. A sum of Rs.6,000/- each was paid on 15.02.2001, 18.04.2001 and 19.06.2001. Similarly, a sum of Rs.5,800/- each was paid on 18.05.2001 and 20.10.2001. A sum of Rs.5,500/- each was paid on 20.07.2001 and 20.09.2001. A sum of Rs.6,200/- was paid on 21.08.2001. In cross examination no question has been put to PW1 that these payments were not made by the defendant to the plaintiff. Rather PW1 has reiterated in his cross examination that the payments detailed in para six of his affidavit were made by the defendant in cash as well as through cheques. He has deposed that receipts were issued by him to the defendant. The plea taken by the plaintiff that defendant had paid a sum of

Rs.3,83,000/- on different dates towards acknowledgment dated 20.10.2001 duly signed by the defendant at point 'X' and which has been proved as Ex.PW1/2. DW1 has deposed that Ex.PW1/2 did not bear his signatures but except his bald statement in this regard he has not led any other evidence to show that signatures appearing on Ex.PW1/2 were not that of defendant. As per this document a sum of Rs.3,90,000/- was due and payable by the defendant to the plaintiff.

11. In his written statement defendant has stated that he had given one cheque for Rs.5,000/- to the plaintiff. However, he has stated that the said cheque was given to the plaintiff as a loan. He has not stated either in the written statement or in his affidavit that he had been extending loans to the plaintiff and had issued some more cheques. Plaintiff has placed on record photocopies of three cheques of Rs.10,000/- each dated 11th September, 1999 and 14th December, 1999 issued by the defendant to the plaintiff from his bank account maintained in State Bank of Patiala Bali Nagar, New Delhi. Though plaintiff has marked these cheques in his affidavit Ex.PW1/7 to Ex.PW1/9 but these cheque being photocopies have not been proved in accordance with law. At the same time defendant has not put any question to the PW1 in his cross examination that these cheques were not issued by the defendant to the plaintiff. Rather in his cross examination DW1 has set up a new story by saying that he might have issued one/two more cheques from his bank account maintained in State Bank of Patiala, Bali Nagar, New Delhi. This answer clearly shows that defendant has taken

shifting stand to suit his convenience. This conduct of the defendant makes him highly unreliable and untrustworthy witness. This fact further strengthens the plea taken by the plaintiff that defendant had made payments as detailed in para five of the plaint towards repayment of the loan. So far as story of the defendant that he had been extending loan to the plaintiff is concerned, same is not at all convincing for the simple reason that even a cheque of Rs.5,000/- issued by the defendant was returned dishonoured on presentation with the remarks “insufficiency of funds”. Accordingly, I am of the view that defendant is not a truthful witness and his testimony cannot be preferred as against the plaintiff which has otherwise been supported by documentary evidence. Besides this, the case of the plaintiff is duly supported by the documents Ex.PW1/1 and Ex.PW1/2.

15. In the light of above discussions I pass a decree in favour of the plaintiff and against the defendant in the sum of Rs.3,90,000/- together with interest @ 9% per annum with effect 14.10.2004 till the realization of the entire decretal amount. Cost of the suit is also awarded. Decree sheet be drawn. File be consigned to record room.”

6. In our view, the learned Additional District Judge has rightly come to the finding that the respondent had extended the loan of Rs.7,73,000/- to the appellant on 1st December, 1998. The respondent acknowledged the loan by executing a note dated 1st December, 1998 that the appellant had paid a sum

of Rs.3,83,000/- on different dates towards repayment of the loan, is also corroborated from the acknowledgment dated 20th October, 2001 duly signed by the appellant himself. As per this document a sum of Rs.3,90,000/- was due and payable by the appellant to the respondent. There is also no evidence to support the plea of the appellant that the respondent was in any requirement of loan and the cheque dated 22nd June 2003 for Rs.5,000/- which was dishonoured was not issued by the appellant because the respondent had requested him for loan but to pay was part of the balance payment of the loan extended to the appellant by the respondent on 1st December, 1998. Thus, the learned Additional District Judge had categorically come to the finding that the loan was extended by the appellant to the respondent on 1st December, 1998 and a balance payment of Rs.3,90,000/- was due on the appellant as per the acknowledgment note dated 20th October, 2001 duly signed by the appellant himself.

7. It is not in dispute that the document Ex. PW1/1 acknowledging the loan of Rs.7,73,000/- to the appellant was duly proved by the plaintiff/respondent and bore the signatures of the appellant and it was also witnessed by Shri Shyam Sunder who was the maternal uncle of the appellant himself. The bare allegation of the appellant that Shri Shyam Sunder had not signed the said document has not been proved by the appellant producing the said Shyam Sunder in the witness box.

8. The respondent having duly approved the execution of document of loan of Rs.7,73,000/- it was entirely up to the appellant / defendant to show the said loan was discharged. The appellant has not demonstrated the discharge of the debt acknowledged by the said note Ex.PW1. It is the plaintiff/respondent who has very fairly stated that out of the said amount of Rs.7,73,000, a sum of Rs.3,83,000/- was paid both by cash and cheque. He has also proved the document Ex. PW 1/2 by which after adjusting the payment of Rs.3,83,000/- by the appellant the balance amount of

Rs.3,90,000/- was acknowledged by the appellant. Except his bare statement disputing the signatures, the appellant has not led any other evidence to show that the signature bearing Ex. PW1/2 was not his. The learned Additional District Judge has rightly come to the conclusion that the acknowledgment of Rs.3,90,000/- on 20th October, 2001 as per Ex. PW1/2 clearly showed that the appellant owed this sum to the respondent. The pre-validating stand of the appellant about the cheques issued by him has been noticed by the learned Additional District Judge and we affirm the said finding in toto. The shifting stands of the appellant have been noticed and adversely commented upon by the trial court and in our view, rightly. The trial court having observed the statement of the witness was the best judge to judge the veracity of the appellant's testimony. Accordingly, we find no merit in this appeal while affirming the findings of the trial court.

9. Thus, in light of the categorical finding of the learned Additional District Judge to the effect that the loan was extended to the appellant by the

respondent and a balance payment of Rs.3,90,000/- was due on the appellant, which findings we entirely agree with, the appeal is dismissed.

(MUKUL MUDGAL)
JUDGE

(ARUNA SURESH)
JUDGE

April 22, 2008
sk/dr