

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

+ **RFA 428/2008**

MR.RAVI CHAND Appellant
Through: Mr.R.P.Sharma, Adv. and
Mr.Pankaj Raj, Adv.

versus

MR.PRAMOD KUMAR AGGARWAL Respondent
Through: None.

% **DATE OF DECISION:**
17.11.2008

Coram:

* **Hon'ble Mr.Justice Pradeep Nandrajog**
Hon'ble Mr.Justice J.R. Midha

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. On 5th November 2008 the Trial Court record was requisitioned through special messenger. The same is available and has been considered in the light of the submissions made by learned counsel for the appellant.

2. The respondent filed a suit for recovery of Rs.4,35,000/- alleging that on six different dates being 19.9.2003, 20.9.2003, 22.9.2003, 27.9.2003, 4.10.2003 and

7.10.2003 he had advanced Rs.50,000/- on each date to the appellant by way of loan for which proper receipts were executed by the appellant and that the loan was to carry interest @15% per annum. Alleging that in spite of notice being served no payment was made to return the loan, suit was filed to claim the principal sum of Rs.3 lakhs and interest thereon till the date when suit was filed i.e. 13.9.2006.

3. The defence of the appellant was that he had received Rs.3 lakhs by way of loan from his nephew Balram who while advancing the loan obtained his signatures on six receipts which were blank. Appellant stated that he returned the loan to Balram in the year 2004 but did not take back the receipts because of being close relatives.

4. In a nutshell the appellant denied having executed any receipts in favour of the plaintiff.

5. The six receipts have been proved by the plaintiff as PW-1/1 to PW-1/6. The plaintiff proved the partition deed as Ex.PW-1/7 which he claimed was handed over to him by the appellant as security when loan was advanced. Under the partition deed certain immovable properties stand

assigned to the appellant. The respondent also proved as Ex.PW-1/8 the legal notice sent to the appellant under registered post vide postal receipt Ex.PW-1/9 and in proof of the notice being served upon the appellant proved the acknowledgment card Ex.PW-1/10. Suit has been decreed with interest @9% per annum from date of suit till realization.

6. The contention of the appellant that the receipts Ex.PW-1/1 to Ex.PW-1/6 do not record the name of the person to whom the receipts have been executed and hence a conclusion should be drawn that the receipts were never issued to the plaintiff has been repelled by the learned Trial Judge on account of the fact that the appellant took inconsistent stands while deposing as his witness. He stated that he had signed the receipts blank, which deposition we note is in harmony with his defence pleaded in the written statement. Simultaneously he denied his signatures thereon. The learned Trial Judge has held that the appellant is obviously not speaking the truth. Learned Trial Judge has held that the appellant ought to have examined his nephew Balram and by not doing so has weakened his defence. But, what has been held as fatal to the defence of the appellant is

the non-explanation by the appellant as to how the original partition deed, Ex.PW-1/7, under which an immovable property stood assigned to the appellant reached the hands of the plaintiff. The original document being in the possession of the plaintiff has been held by the learned Trial Judge to be good evidence of a loan transaction between the parties with the document being handed over to the plaintiff as a security. Admittedly, the appellant never refuted the legal notice Ex.PW-1/8 (in spite of being held to be served with the same) where from the conclusion drawn is that the appellant did not state, what he did in the written statement, at the first opportunity.

7. Learned counsel for the appellant has re-agitated the plea that the six receipts are not executed in favour of the plaintiff.

8. We are surprised at the plea urged for the reason each receipt records as under:-

“Received by Ravi Chand son of Late Shri Suraj Bhan from Pramod Kumar Aggarwal son of Shri Mahavir Prasad Aggarwal cash 50,000 (Rs.Fifty Thousand only).”

9. The argument urged runs in the teeth of the contents of the receipts Ex.PW-1/1 to Ex.PW-1/6.

10. We note that the question of the receipts being signed blank stands negated from the receipts themselves inasmuch as the appellant has signed the receipts across the revenue stamps affixed at the bottom of the receipts and has also signed the receipts at the place the amount has been filled up. This appears to be for the reason the receipts are as per printed proforma and the beneficiary of the receipt i.e. the plaintiff took care to obtain the signatures of the appellant at the place where the sum stands recorded.

11. A second contention is urged that the partition deed, Ex.PW-1/7 was handed over by Balram to the appellant. In respect of this plea we note that in his testimony the plaintiff has categorically deposed that the said document was handed over to him by the defendant when he took the loan. Learned counsel for the appellant has not been able to show that this assertion of the plaintiff was refuted by cross-examining the plaintiff. Indeed, the testimony of the plaintiff on this point has gone unchallenged.

12. Learned counsel for the appellant next urges that the legal notice Ex.PW-1/8 was never received by him and points out the testimony of the appellant to the effect that the A.D. card Ex.PW-1/10 does not bear his signatures.

13. Learned counsel for the appellant does not dispute that the address at which the notice Ex.PW-1/8 has been issued is correct.

14. Postal receipt Ex.PW-1/9 shows that the notice dated 30.8.2006, Ex.PW-1/8, was posted at the correct postal address of the appellant. A.D. card, Ex.PW-1/10, shows that the postal authorities returned the same to the person who had issued the notice. At the place where the recipient i.e. the noticee has to pen his signatures on the A.D. card we find some initials.

15. Ex.PW-1/9 and Ex.PW-1/10 are good evidence of the legal notice being served upon the appellant. Thus, non-reply thereto is a circumstance against the appellant.

16. The final argument of learned counsel for the appellant is that the decree has been drawn for an excessive cost evidenced by the fact that while filling up the costs, towards stamp paper on which the plaint was drawn,

Rs.18,465.00 have been awarded. Counsel urges that the suit amount was Rs.4,35,000/- as per which, counsel urges that the court fee payable comes to approximately Rs.5,000/-.

17. As noted above, the plaintiff sued on six different loans advanced on six different dates and since the defendant was the same person and subject matter being same, in one suit six loan transactions were founded as the action. The plaintiff correctly valued the suit for purposes of court fee by recording that court fee payable would be as under:-

	Date	Principal	Interest	Total	C.Fee paid
1.	Receipt dt: 19.9.2003	Rs.50,000/-	Rs.22,500/-	Rs.72,500/-	Rs.3076/-
2.	Receipt dt: 20.9.2003	Rs.50,000/-	Rs.22,500/-	Rs.72,500/-	Rs.3076/-
3.	Receipt dt: 22.9.2003	Rs.50,000/-	Rs.22,500/-	Rs.72,500/-	Rs.3076/-
4.	Receipt dt: 27.9.2003	Rs.50,000/-	Rs.22,500/-	Rs.72,500/-	Rs.3076/-

5.	Receipt dt: 4.10.2003	Rs.50,000/-	Rs.22,500/-	Rs.72,500/-	Rs.3076/-
6.	Receipt dt: 7.10.2003	Rs.50,000/-	Rs.22,500/-	Rs.72,500/-	Rs.3076/-

18. No other contention has been urged. With reference to the record of the learned Trial Judge we find that each and every contention is worthless. We dismiss the appeal *in limine* and hence no costs.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

November 17, 2008

Dharmender