

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

**RESERVED ON : 19th NOVEMBER, 2014
DECIDED ON : 10th DECEMBER, 2014**

+ CS (OS) 2388/2010

VENI MEHTA Plaintiff

Through : Ms.Deeksha L.Kakar, Advocate.

VERSUS

UMA SHANKAR SITANI Defendant

Through : Mr.Rajeev Awasthi, Advocate.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The plaintiff has instituted the present suit for recovery of ₹21,90,000/- along with pendente-lite and future interest. Case of the plaintiff as set up in the plaint is as under :

2. The defendant was introduced to the plaintiff by a common family friend. Thereafter, he approached her for a loan of ₹ 25 lacs urging compelling family exigencies assuring to return it within six months along with interest @ 24% per annum. She advanced the loan of ₹ 25 lacs by issuing cheque No.441417 dated 05.12.2005 drawn on ING Vysya Bank,

in the presence of her husband – Mr.Ved Prakash Mehta. The said cheque was duly encashed by the defendant. In the first week of May, 2006, she requested the defendant to pay back the entire loan amount with interest. To show his bonafide, the defendant made part payment of ₹ 5 lacs vide cheque No. 022026 dated 19.05.2006 in her favour. Acceding to the request of the defendant to give him time to pay back the remaining amount, six months period was given. In December, 2007, again, the defendant was requested to pay back the balance amount along with interest. Again, the defendant made a payment of ₹ 5 lacs vide cheque No.180529 dated 13.12.2007 and requested for more time to make the balance payment. The defendant, thereafter, failed to make the payment despite various requests. Legal notice dated 08.07.2010 was served upon the defendant. Hence the present suit.

3. The suit is contested by the defendant. In the written statement he has pleaded that the suit is not maintainable in the present form and the plaintiff has no cause of action. The plaintiff has no locus standi to file the present suit as no contract was entered into with her. There were no friendly relations between the plaintiff and the defendant. Case of the defendant is that the plaintiff's husband approached him after reading the hand written advertisement at the gate of his property

available for rent. The plaintiff's husband contacted him on mobile and showed keenness to take the portion of the house on rent for a short term urgently. A meeting was fixed and the plaintiff's husband agreed to take portion of the property i.e. 115, Sainik Farm, New Delhi, on monthly rent @ ₹ 5 lacs for five months on the pretext that their house was under construction and was likely to be completed within 3 – 4 months. The plaintiff's husband issued a cheque No.441417 dated 05.12.2005 in the sum of ₹ 25 lacs in his favour which was duly credited in the account.

4. Further case of the defendant is that the plaintiff or her husband did not turn up to occupy the rented accommodation. In the month of April, 2006, he cancelled the oral understanding and declined to give possession of the portion of the house. The plaintiff and her husband, thereafter, pleaded for refund of the amount. He being a God fearing person agreed to refund ₹ 5 lacs out of ₹ 25 lacs and issued a cheque bearing No.022026 dated 19.05.2006 in favour of the plaintiff. Again, after some time, the plaintiff and her husband started demanding more money from him which he declined to give. When the plaintiff and her husband put pressure on him through relatives and friends, he agreed to refund another amount of ₹ 5 lacs on the assurance that no further demand

for return of the money would be made. Accordingly, a cheque for a sum of ₹ 5 lacs bearing No.180529 dated 13.12.2007 was issued in favour of the plaintiff, which was duly credited.

5. In the replication, the plaintiff reiterated her stand in the plaint and refuted the assertions of the defendant.

6. On the basis of the pleadings of the parties and documents on record, following issues were framed by an order dated 03.09.2013 :

“1. Whether the sum of Rs.25,00,000/- advanced by the plaintiff to the defendant vide cheque no.441417 dated 05.12.2005 drawn at ING Vysya Bank was by way of a loan, returnable within 6 months alongwith interest at the rate of 24% per annum? OPP

2. Whether the payment of Rs.5,00,000/- made by the defendant to the plaintiff vide cheque no.022026 dated 19.05.2006 drawn at Lord Krishna Bank was towards part repayment of the loan of Rs.25,00,000/- advanced to him? OPD

3. Whether the payment of Rs.5,00,000/- made by the defendant to the plaintiff vide cheque no.180529 dated 13.12.2007 drawn at Standard Chartered Bank was towards further part repayment of the loan of Rs.25,00,000/- advanced to him? OPP

4. Whether the defendant is entitled to retain any amount from out of the amount of Rs.25 lacs advanced by the plaintiff toward rent for the premises bearing No.115, Sainik Farms, New Delhi? OPD

5. Whether the plaintiff is entitled to a decree in the sum of Rs.21,90,000/- alongwith pendente lite and future interest calculated at the rate of 24%

per annum pending payment and realisation thereof? *OPP*

6. *Reliefs.* ”

7. The plaintiff examined herself as PW-1 besides examining her husband - Mr.Ved Prakash Mehta, as PW-2. The defendant examined himself as DW-1.

8. I have heard the learned counsel for the parties and have examined the file. Findings on the issues are as under :

Issues No.1 to 4

9. All these issues are taken together as they are interconnected.

10. Learned counsel for the plaintiff urged that the plaintiff had advanced a loan of ₹ 25 lacs to the defendant along with interest @ 24% per annum, which the defendant was to return after six months. The defendant, however, did not pay back the entire amount. After great persuasion, on two different occasions, the defendant returned only ₹ 10 lacs by issuing two cheques in the sum of ₹ 5 lacs each. Despite issuance of the legal notice, the defendant failed to pay back the balance amount. She further contended that, at no stage, any portion of the premises in occupation of the defendant was agreed to be taken on rent as alleged. The plaintiff and her husband were in occupation of premises No. 183/D1,

Lane W-13B, Sainik Farms, New Delhi and after the purchase of property No. C-2/59, SDA, New Delhi, they shifted to that accommodation.

11. Learned counsel for the defendant has vehemently urged that the defendant was justified to forfeit the amount of ₹ 25 lacs given as advance rent for the occupation of the portion of his premises. Advance rent of ₹ 25 lacs was given by the plaintiff's husband to take the premises on rent for five months when construction in his premises was in progress. When the plaintiff and her husband did not occupy the rented accommodation for four months, he got suspicious and did not allow them to occupy the premises for the remaining one month. However, as a goodwill gesture, he at two different occasions returned ₹ 10 lacs in all to the plaintiff's husband by issuing two cheques in the name of the plaintiff at his instance to avoid some income tax problems. There was no agreement to pay interest whatsoever on the amount of ₹ 25 lacs. The plaintiff has no cause of action. The evidence led by the plaintiff is beyond pleadings and cannot be taken into consideration. He further urged that the plaintiff was not expected to advance a loan of ₹ 25 lacs to a stranger without any written agreement. The cheque in question was

issued by the plaintiff's husband. There is no privity of contract between the plaintiff and the defendant.

12. Admitted position is that by a cheque No.441417 dated 05.12.2005 an amount of ₹ 25 lacs was given to the defendant. The said cheque was duly encashed by the defendant. It is also not in controversy that subsequently, the defendant issued two cheques of ₹ 5 lacs each, one bearing No. 022026 dated 19.05.2006 and another No.180529 dated 13.12.2007 in favour of the plaintiff. It is also admitted position that no agreement in writing was executed between the parties. Apparently, it was an oral agreement.

13. The moot question is whether the amount ₹ 25 lacs was given as a loan to the defendant or it was an advance payment for rent to occupy the portion of the premises of the defendant for five months. On perusal of the evidence led by both the parties, it stands established that ₹25 lacs were given to the defendant as a loan in an oral agreement. PW-1, in her evidence by way of affidavit (Ex.PW-1/A), proved the averments in the plaint. In the cross-examination, she categorically asserted that the amount of ₹ 25 lacs was given to the defendant from her own bank account. She admitted that the cheque (Ex.PW-1/D1) was issued by her

husband. She, however, elaborated that she had authorized her husband to put signatures on her behalf. She volunteered to add that she had authorized her husband to sign on her behalf in all her financial matters. She specifically claimed that the account from which the amount was withdrawn belonged to her. The relevant cheque had been issued from her individual bank account. The said bank account was operated by her husband who had the signing authority on her behalf. PW-2 (Ved Prakash Mehta) also supported her version and stated that the amount of ₹ 25 lacs was paid to the defendant out of her bank account which used to be operated by him. The defendant did not examine any official from the bank to establish that the bank account in question did not belong to the plaintiff or that amount of ₹ 25 lacs was not given from the said account of the plaintiff.

14. The very fact that the two cheques of ₹ 5 lacs each subsequently were issued by the defendant in the name of the plaintiff shows that there was privity of contract between the plaintiff and the defendant. The defendant had no occasion to issue the cheques for ₹ 5 lacs each in favour of the plaintiff on the mere asking of the plaintiff's husband. These cheques were duly encashed by the plaintiff in her

account. Endorsement on the back of the cheque Ex.PW-1/2 at point 'A' also confirms the version given by the plaintiff.

15. Both PW-1 and PW-2 in their evidence before the Court have categorically deposed that amount of ₹ 25 lacs was given to the defendant who was introduced by a common family friend as a loan to be returned after about six months. The plaintiff was fair enough to disclose the name of the common family friend in the cross-examination i.e. Mr.Bhushan Arora. The defendant did not summon the said individual to show that he had no role in arranging the loan. Since the defendant was introduced by a common family friend – Mr.Bhushan Arora, there was nothing unusual for the plaintiff to give the amount of ₹ 25 lacs as loan to the defendant without written document.

16. The defendant has miserably failed to establish that the amount of ₹ 25 lacs was given as advance rent for the portion of his premises which were to be occupied by the plaintiff's husband for five months. Again, there is no written document / lease deed to substantiate the defendant's version. The defendant did not elaborate as to which specific portion in the premises was agreed to be taken on rent by the plaintiff's husband and on what date. It is also not clear as to when the plaintiff and her husband were to occupy the said accommodation and

from which date the rent was to start. It is also uncertain if it was inclusive of electricity or water charges or other services. The defendant did not examine any independent witness to show if any portion of the said premises was vacant to let out to the tenant at the relevant period. No evidence has emerged if any portion of the defendant's house used to be on rent before or after the said period, and if so, at what rate. The defendant did not file on record any proof of rental income. It is not expected that the plaintiff will pay entire advance rent of ₹ 25 lacs as lump sum and would not occupy it even for a day. Had it been so, the plaintiff or her husband must have requested the defendant to refund the said amount of ₹ 25 lacs at the earliest. Payment of ₹ 5 lacs was made for the first time by the defendant by a cheque dated 19.05.2006. Again, second payment of ₹ 5 lacs was made in December, 2007. There was no oral agreement to forfeit unilaterally the amount of ₹ 25 lacs. In the endorsement on the back of the cheque (Ex.PW-1/2 at point 'A'), there is no mention if the amount was being returned after forfeiture of advance rent of ₹ 25 lacs. The defence taken by the defendant deserves outright rejection and does not inspire confidence. The plaintiff and her husband categorically stated that they were in occupation of the premises No.

183/D1, Lane W-13B, Sainik Farms, New Delhi till August, 2007 and shifted to their new accommodation thereafter. There was no occasion for the plaintiff and her husband to get rented accommodation.

17. Regarding interest, the plaintiff did not adduce any cogent evidence to show if the defendant had agreed to pay it @ 24% per annum. There are only oral testimonies of PW-1 and PW-2 in this regard which has been controverted by the defendant in his evidence. The cheques in question do not reflect if there was any agreement to pay interest @ 24% per annum. Since the amount of ₹ 25 lacs was advanced to the defendant through a common family friend, it was imperative for the plaintiff to examine the common family friend in whose presence the rate of interest @ 24 % was agreed to be paid for the loan. In the absence of any credible evidence, it cannot be inferred that the defendant was liable to pay interest @ 24% per annum.

18. In the light of above discussion, it stands established that the loan of ₹ 25 lacs was advanced to the defendant by the plaintiff. The defendant returned ₹ 10 lacs and without any sufficient reasons failed to return the balance amount of ₹ 15 lacs, which he is liable to pay to the

plaintiff. Regarding interest, in the absence of any worthwhile evidence, the defendant cannot be held liable to pay interest at the said amount.

19. The issues stand disposed of in the above terms.

Issue No.5

20. In view of the findings on issues No.1 to 4, the plaintiff is entitled only to a decree of ₹ 15 lacs of the principal amount along with pendente-lite and future interest thereon.

Relief

21. The suit of the plaintiff is decreed in the sum of ₹ 15 lacs with proportionate costs. The plaintiff shall be entitled to interest @ 12% per annum from the date of filing of the suit till the realization of the outstanding amount. Counsel's fee is assessed to ₹ 20,000/-.

22. Decree-sheet be prepared accordingly.

23. The suit and pending IAs (if any) stand disposed of.

**(S.P.GARG)
JUDGE**

DECEMBER 10, 2014 / tr