

\$~32

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

+ RFA 644/2014

Decided on 10th December, 2014

DUSHYANT SINGH DABAS

..... Appellant

Through: Mr. Ashok Kaushik, Adv.

versus

DINESH KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J. (Oral)

CM Appl. No. 20232/2014 (exemption)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

RFA No. 644/2014 and CM Appl. No. 20231/2014 (O 41 R 5 r/w Sec. 151 CPC)

3. Respondent filed a suit for recovery of ₹9,54,000/- together with interest and costs against the appellant, which has been decreed by the trial court vide impugned judgment and decree dated 4th September, 2014. Aggrieved by the judgment and decree, appellant has preferred this appeal.

4. Respondent alleged in the plaint that appellant was known to him. At the request of appellant, respondent extended friendly loan of ₹9,00,000/- to

him on interest @ 2% per month on 10th day of each English calendar month; on 1st December, 2009. Appellant executed a promissory note on 1st December, 2009 itself in the presence of Shri Hari Om. Appellant did not pay interest to respondent. On 2nd March, 2010 Respondent asked the appellant to refund the loan along with interest of ₹54,000/-. Appellant assured to refund the loan along with interest by 15th March, 2010. However, on 15th March, 2010 appellant refused to repay the loan, hence, the suit.

5. In the written statement, appellant alleged that suit was not maintainable as respondent was not having any money lending license, thus, could not have extended any loan. Signatures on the pronote were not disputed. However, appellant alleged that he had taken loan of ₹4,00,000/- only from the respondent on 3rd December, 2009 in presence of his relatives Shri Kamal Singh and two other persons namely Shri Hari Om and Shri Khoob Chand. Respondent obtained signatures of appellant and his relative Shri Kamal Singh on the blank pronotes. He also obtained one blank signed cheque drawn on HDFC Bank, from the appellant towards “collateral security”. Respondent assured that said documents would be returned on repayment of the loan along with interest. On 2nd March, 2010 father of

appellant paid ₹5,00,000/- to respondent to clear the loan liability. However, respondent did not return the blank signed pronotes and cheque and had misused the same. Respondent denied the averments made in the written statement and reiterated what was stated in the plaint.

6. Following issues were framed by the trial court on 5th February, 2011:-

- i) Whether defendant signed the pronote and receipt pronote which are Ex. P-1 and Ex. P-2 in blank? Onus of proof on defendant.
- ii) Whether defendant had settled all the outstanding on 02.03/2010 ... OPD
- iii) Whether plaintiff is entitled to recover a sum of ₹9,54,000/- from the defendant? Onus of proof on plaintiff.
- iv) Whether plaintiff is entitled to interest on decretal amount, if yes, at what rate? OPP.
- v) Relief.

7. Respondent examined himself as PW1. He also examined Shri Hari Om as PW2. As against this, appellant examined himself as DW1. He also examined his father Shri Raj Singh as DW2. One Shri Dayanand Singh Dabas was examined as DW3. Shri Umed Singh was examined as DW4. Shri Baljeet Singh was examined as DW5.

8. On scrutiny of the ocular as well as documentary evidence adduced by the parties, trial court has held that appellant had failed to prove that he had signed blank pronote. It has been further held that respondent had succeeded in proving the pronote Ex. PW1/1. Appellant had failed to prove that respondent was carrying on business of money lending. Occasional advancing of loan to 2/3 persons was not sufficient to prove that respondent was carrying on money lending business. Extending casual friendly loan does not require a 'license'.

9. I have heard learned counsel and perused the material placed on record and I am of the view that impugned judgment and decree does not suffer from any illegality or perversity, inasmuch as, findings returned by the trial court are in conformity with the evidence adduced by the parties. Respondent has categorically deposed that he had extended friendly loan of ₹9,00,000/- to appellant on 1st December, 2009 on a monthly interest @ 2%. At that time appellant executed promissory note on 1st December, 2009 in the presence of Shri Hari Om. He has further deposed that on 15th March, 2010 appellant refused to repay the loan. His this statement has remained unshattered in his cross-examination, inasmuch as, is corroborated from the documentary evidence, that is, pronote, which has been duly proved. Not

only this, respondent has produced Shri Hari Om, who had witnessed the pronote. He has also supported the loan transaction. Appellant has not disputed his signature on the pronote. Only plea taken by the appellant is that he had signed the blank pronote but this plea cannot be accepted and appears to have been taken as an afterthought. Pronote was signed on 1st December, 2009. Appellant did not lodge any complaint with any authority that his signatures were obtained by the respondent on blank pronote. Thus, this plea of appellant has rightly not been accepted by the trial court.

10. It is trite law that ocular evidence which is contrary to documentary evidence, cannot be accepted in view of Sections 91 and 92 of the Evidence Act. A person may speak lie but not the document. From the pronote Ex. PW1/1, it stands proved that respondent had extended loan of ₹9,00,000/- to appellant on interest. Appellant has claimed that he had taken loan of ₹4,00,000/- on 1st December, 2009 and the same was repaid with interest by his father Shri Raj Singh on 2nd March, 2010. But this plea cannot be accepted in absence of a proper receipt.

11. It is the case of appellant that respondent had acknowledged the receipt of ₹5,00,000/- in writing. However, appellant has failed to prove the alleged receipt dated 2nd March, 2010. This document was only marked as

‘X’ for the purpose of identification. DW3 in his cross-examination has deposed that receipt dated 2nd March, 2010 was signed by Shri Hari Om at point ‘A’. However, mark ‘X’ at point ‘A’ contained signatures of Dinesh. Original receipt was not produced and only photocopy was produced, thus, has rightly been ignored by the trial court. It may further be noted that in mark ‘X’ there is no mention that respondent had advanced loan of ₹4,00,000/- and had charged ₹1,00,000/- towards interest. Mark ‘X’ is also contrary to Ex. PW1/1, which has been proved in accordance with law.

12. The contention of appellant that suit was liable to be dismissed in absence of money lending license is rejected being misconceived. In the written statement, appellant has alleged that respondent was carrying on money lending business, thus, was required to obtain money lending license, in terms of Section 3 of Punjab Registration Money Lending Act, 1938. However, he has failed to prove that respondent was carrying on money lending business. DW1 and DW5, in their affidavits, deposed that respondent was carrying on money lending business but their bald statements have rightly been not accepted by the trial court, moreso when they have failed to give names of such persons. Respondents stated that he had given loans on 2/3 occasions, is not sufficient to conclude that he was

doing money lending business. Extending friendly loan to 2/3 persons requires no license.

13. In *Atul Anand vs. Nanak Food Industries & Ors.* 132 (2006) Delhi Law Times, 481, it has been held thus: “Punjab Registration of Money Lending Act, 1938, requires a person to obtain a licence to act as a money lender if the person is in the business of money lending. It was for the defendant to have specific averment that plaintiff engaged in the business of money lending. The said act does not prohibit casual advancing of loan by a person to third party. Casual loan does not require a licence.”

14. No other argument advanced nor any other point pressed.

15. For the foregoing reasons, appeal is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

DECEMBER 10, 2014

rb