

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

+ **RFA No. 80/2018**

% **29th January, 2018**

AVADH LOK SEWA ASHRAM & ANR. Appellants

Through: Ms. Richa Relhan and Ms.
Surabhi Sardana, Advocates.

versus

RASHTRIYA MAHILA KOSH Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 3155/2018 (for exemption)

1. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 3154/2018 (for delay)

2. For the reasons stated in the application, the delay of 14 days in re-filing the appeal stands condoned.

C.M. stands disposed of.

RFA No. 80/2018

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit

impugning the judgment of the trial court dated 24.10.2017 by which the trial court decreed the suit for recovery of an amount of Rs.32,93,779/- along with interest at the rate of 8% simple.

4. The facts of the case are that the respondent/plaintiff is a registered society carrying on its activities under the directions of the Department of Women and Child Development, Ministry of Human Resources Development, Government of India. The object of respondent/plaintiff is to give loans to the Non-Governmental Organizations (NGOs) so that such NGOs give loans to poor women. Appellant no. 1/defendant no. 1 received from respondent/plaintiff firstly a loan of Rs.20,00,000/- on 17.12.1996, then a sum of Rs.25,00,000/- on 30.12.1997 and finally a loan of Rs.20,00,000/- on 27.3.1998. With respect to all the three loans the appellant no. 1/defendant no.1 executed the necessary loan documents in favour of the respondent/plaintiff and the appellant no. 2/defendant no. 2 stood as guarantor to secure the loans granted and he signed a guarantee bond with respect to each of the aforesaid three loans given. Loans were granted to the appellant no. 1/defendant no.1 at the interest of 8% per annum so that further loans could be granted by the appellant no.

1/defendant no.1 to the poor women at interest rates not exceeding 12% per annum. There was therefore a profit margin for the appellant no. 1/defendant no.1, inasmuch as, appellant no. 1/defendant no.1 received loans at 8% per annum and could have further given loans at interest not exceeding 12% per annum. Appellant no. 1/defendant no.1 made certain payments, however it defaulted in making repayment of the loan amounts and consequently after issuing reminders dated 27.7.2001, 8.3.2003 and 12.8.2003, a legal notice dated 12.9.2003 was issued to the appellants/defendants. Appellants/defendants responded to the notice by sending a reply where they acknowledged the loans granted. As per the statement of account a sum of Rs.32,93,779/- was outstanding against the appellants/defendants and therefore for recovery of this amount the suit was filed.

5. Appellants/defendants contested the suit and pleaded that courts at Delhi did not have territorial jurisdiction. It was also pleaded that appellants/defendants had given loans to poor women and therefore since the poor women had failed to repay the amount,

consequently loans could not be repaid on time though there was intention to repay the loans.

6. After pleadings were complete trial court framed the following issues:-

- “1. Whether this Court has territorial jurisdiction to try and entertain the present suit? OPP
2. Whether the suit is bad for misjoinder of parties or for non joinder of necessary parties? OPD
3. Whether the plaintiff is entitled to recovery of a sum of Rs.32,93,779/- as prayed for in the plaint? OPP
4. Whether the defendants are liable to pay penal interest in addition to the admitted rate of interest at the rate of 8% per annum on the principal amount? OPP
5. Relief.”

7. So far as the issue of territorial jurisdiction is concerned it is seen that in the plaint in para 26 it is stated that courts at Delhi have territorial jurisdiction because amounts were repaid by the appellants/defendants to the respondent/plaintiff at New Delhi. In the written statement in reply to para 26 of the plaint it is not disputed that loans were repaid by the appellants/defendants to the respondent/plaintiff at New Delhi. Learned counsel for the appellants/defendants also could not dispute that appellants/defendants in fact repaid the loan amounts, by paying different amounts to the respondent/plaintiff, at New Delhi. Since therefore part of cause of

action has accrued at New Delhi on account of repayment of loans at New Delhi, in view of the ratio of the judgment of the Supreme Court in the case of *A.B.C. Laminart Pvt Limited and Anr. Vs. A.P. Agencies, Salem, AIR 1989 SC 1239* courts at Delhi would have territorial jurisdiction. I, therefore, reject the argument urged on behalf of the appellants/defendants that Courts at Delhi did not have territorial jurisdiction.

8. On merits it is seen that respondent/plaintiff has proved payments made to the appellants/defendants with respect to all the three loan transactions. The documents of the loan transactions have been duly proved and exhibited as is seen from the following paras of the impugned judgment at pages 46 to 50:-

“In order to prove his case the plaintiff has examined Sh.Y.K. Gautam, Deputy Director of Rashtriya Mahila Kosh, as PW1, who filed his evidence by way of evidentiary affidavit Ex.PW1/A. PW1 in his evidentiary affidavit Ex.PW1/A has reiterated the contents of entire plaint and replication. The plaintiff has relied upon the following documents in order to prove its case:

- i. Certificate of registration of plaintiff is Ex.Pw1/1.
- ii. Copy of the minutes of meeting of Governing Board of plaintiff held on 10-02-2003 is Ex.PW1/2.
- iii. A copy of the office order dated 28-02-2003 is Ex.Pw1/3.
- iv. Copy of the office order dated 28-10-2005 in favour of Mr. Y.K. Gautam is Ex.Pw1/4.
- v. A copy of the office order dated 26-11-2007 in favour of PW1 is Ex.PW1/4.
- vi. Loan application of the defendant dated 6-3-1995 is Ex.P-1.
- vii. Loan of Rs.10 lacs sanctioned letter dated 26-6-1995 is Ex.P2.

- viii. Memorandum of agreement dated 5-8-1995 executed by the defendant in favour of the plaintiff is Ex.P-3.
- ix. Guarantee letter/deed dt. 5-8-1995 executed by defendant no:2 is Ex.P-4.
- x. Demand pronote dated 5-8-1995 executed by the defendant in favour of the plaintiff is Ex.P-5.
- xi. The defendant no:1 for availing the loan passed a resolution dated 26-7-1995 authorizing defendant no:2 to execute the documents for awarding the loan from the plaintiff, is Ex.P6.
- xii. Application for drawl dated 16-8-1995 filed by defendant is Ex.P-7.
- xiii. The first loan disbursement advice of Rs.5 lacs is Ex.P-8.
- xiv. Loan receipt and covering dated 10-12-1995 sent by defendant to the plaintiff is Ex.P-9 and Ex.P-10.
- xv. The application for drawl dated 5-4-1996 is Ex.P11.
- xvi. Demand pronote sent by defendant to the plaintiff for a sum of Rs.5 lakhs is Ex.P-12.
- xvii. The disbursement advise for Rs.5 lakh dt. 28-5-1996 is Ex.P-13 and the covering letter and receipt of the same are Ex.P-14 and Ex.P-15 respectively.
- xviii. Sanction letter dated 17-12-1996 for Rs.20 lacs (Rs.15 lacs as Short Term Loan and Rs.5 lacs as Medium Term Loan) and defendant executed a memorandum of Agreement dated 26-12-1996 which is Ex.P-16.
- xix. The guarantee letter/deed dated 26-12-1996 is Ex.P17.
- xx. The defendant no:1 for availing the loan again passed a resolution dt. 25-12-1996 authorizing defendant no:2 to execute the documents for availing the loan from the plaintiff which resolution is Ex.P-18.
- xxi. Two demand pronotes for Rs.10 lacs each dated 26-12-1996 and dated 17-4-1997 executed by the defendant in favour of the plaintiff are Ex.P-19 and P-20.
- xxii. Sanction letter dated 30-12-1999 for the further sum of Rs.25 lacs (Rs.20 lacs as Short Term Loan and Rs.5 lacs as Medium Term Loan) in favour of the defendant no:1 is Ex.P-21.
- xxiii. Memorandum of Agreement dated 14-1-1998 is Ex.P-22.
- xxiv. Guarantee letter dt. 14-1-1998 is Ex.P-23.
- xxv. Demand Pronote for Rs.25 lacs dt. 14-1-1998 is Ex.P-24.
- xxvi. Resolution passed by defendant no:1 in favour of the defendant no:2 is Ex.P-25.
- xxvii. Application for drawl filed by the plaintiff is Ex.P-26.
- xxviii. The loan disbursement advise is Ex.P-27.
- xxix. Receipt of loan along with covering sent by the defendant to the plaintiff are Ex.P-28 and ExP-29.

xxx. The disbursement advise dt. 24-12-1998 for Rs.12,50,000/- is Ex.P-30. Covering letter dt. 29-1-1999 along with receipt are Ex.P-31 and Ex.P-32.

xxxi. Defendant no:1 again approached the plaintiff for loan of Rs.20 lacs vide application dt. 13-1-1998 which is Ex.P-33.

xxxii. Sanctioned letter for Rs.20 lacs dt. 27-3-1998 is Ex.P-34.

xxxiii. Agreement for Revolving Fund Loan dt. 21-4-1998 is Ex.P-35.

xxxiv. Guarantee letter/deed dt.21-4-1998 executed by the defendant no:2 is Ex.P-36.

xxxv. Demand pronote for Rs.20 lacs dt. 21-4-1998 is Ex.P-37.

xxxvi. Resolution passed by defendant no:1 in favour of the defendant no:2 dt. 16-4-1998 is Ex.P-38.

xxxvii. Defendant also confirmed the terms and conditions of the loan sanction letter, vide his letter dt. 21-4-1998 Ex.P-39.

xxxviii. Application for drawal and its covering letter dated 21-4-1998 are Ex.P-40 and Ex.P-41.

xxxix. Demand draft of Rs.10 lacs dt. 4-6-1998 is Ex.P-42.

xl. Defendant again filed application for drawl dt. 28-6-1998, which along with covering letter are Ex.P-43 and P-44.

xli. Disbursement advice is Ex.P-45.

xlii. Demand draft is Ex.P-46. Receipt along with covering letter dt. 12-11-1999 are Ex.P-47 and Ex.P-48.

xliii. Reminders sent by the plaintiff to the defendants for the payment of loan amount, dated 8-5-2003 are Ex.Pw1/5 and Ex.Pw1/6.

xliv. Two reminders dt. 12-8-2003 are Ex.Pw1/7 and Ex.Pw1/8, AD card of these reminders are Ex.PW1/9.

xlvi. Notice dt. 1-6-2006 is Ex.PW1/10, its postal receipts are Ex.PW1/11 to Ex.PW1/13, AD card is Ex.Pw1/4.

xlvi. The defendants also stated to have sent a letter dt. 2-8-2001 thereby acknowledging their loan amount which is Ex.P-54 and demand drafts sent by defendant along with the letter are Ex.P-55.

xlvi. Legal notice dated 12-9-2003 sent to the defendant for recalling of the entire loan amount is Ex.P-50, its postal receipt is Ex.P-52, AD card is Ex.P-52 and Ex.P-53.

xlvi. Reply to the notice by defendant dated 28-9-2003 is Ex.P-49.”

9. Since the respondent/plaintiff has accordingly proved the *factum* with respect to grant of loans and also of balance amount being due under the loans granted, and which facts are duly proved by

means of various documents, in my opinion, the trial court has committed no error in decreeing the suit.

10. Learned counsel for the appellants/defendants argued that appellant no. 1/defendant no.1 was giving loans to poor women, who failed to repay the loans, and hence the default so as to entitle appellants/defendants to not repay the loans, however in my opinion this argument does not take away the liability of the appellants/defendants towards the respondent/plaintiff as the relationship between the appellants/defendants and the respondent/plaintiff is that of a debtor and creditor. As already stated above, the appellants/defendants are doing no charity because they were in the business of granting loans by receiving loans from the respondent/plaintiff at 8% and thereafter giving further loans at interest not exceeding 12%. It is for the appellant no.1/defendant no.1 to recover the loans given by them to third persons and this cannot be a ground for the appellants/defendants to deny their liability for the suit amount to the respondent/plaintiff.

11. There is no merit in the appeal and the same is hereby dismissed.

JANUARY 29, 2018

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VALMIKI J. MEHTA, J