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

\+ CS(OS) 561/2014

Decided on 31st July, 2015

ASHISH JAIN ..... Plaintiff

Through: Mr. Ankur Goel, Adv.

versus

KAPIL GUPTA ..... Defendant

Through: None.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Initially, plaintiff had filed this suit under Order XXXVII CPC against the defendant for recovery of ₹24.45 lacs together with pendente lite and future interest @ 24% per annum. Summons under Order XXXVII CPC were duly served on the defendant but he did not enter appearance. Thereafter, on 15th October, 2014 counsel for the plaintiff made a statement that present suit be treated as an ordinary suit. Accordingly, suit proceeded further. Since defendant had remained unrepresented he was proceeded against ex-parte.

2. Plaintiff has led ex-parte evidence by filing his affidavit Ex. PW1/A in his evidence. Plaintiff has proved four documents as Ex. PW1/1 to PW1/4.

3. I have heard the learned counsel and perused the record.

4. Plaintiff has alleged in the plaint that on 5th January, 2011 defendant approached him for financial help. He requested for grant of friendly loan of ₹14 lacs which was paid by the plaintiff to defendant in cash. Defendant executed two documents on 15th September, 2012 categorically acknowledging grant of loan of ₹4 lacs and ₹10 lacs respectively from the plaintiff on 5th January, 2011. Prior thereto, defendant had executed two receipts on 15th February, 2011 wherein he had acknowledged the receipt of ₹4 lacs and ₹10 lacs respectively from the plaintiff. Defendant had stated in the said receipts that he required the money for investing in some property.

5. Ex.PW1/3 and Ex.PW1/4 indicate that defendant had agreed to repay the loan within six months. Plaintiff has categorically deposed that defendant did not repay the loan despite requests and, hence, the suit for recovery of ₹24.45 (₹14 lacs + ₹10.45 lacs towards interest @ 24% per

annum with effect from 5th January, 2011 till filing of the suit, that is, 14th February, 2014).

6. Plaintiff has corroborated the averments made in the plaint which had been reproduced hereinabove in brief. The averments made by the plaintiff are also supported from the Ex. PW1/1 to PW1/4. In Ex. PW1/3 and Ex. PW1/4 defendant has categorically stated that he had taken loan of ₹4 lacs and ₹10 lacs from the plaintiff on 5th January, 2011 for investing in property. He has further admitted in these documents that due to financial crises he could not repay the loan of ₹4 lacs and ₹10 lacs. He reiterated that he would repay the loan amount with interest @ 24% per annum within six months.

7. From the unchallenged deposition supported by the documentary evidence, plaintiff has succeeded in proving that he had extended loan of ₹14 lacs to the defendant on 5th January, 2011 and defendant had agreed to repay the same with interest @ 24 % per annum. However, in my view, rate of interest is on the higher side and appropriate rate of interest which can be awarded to the plaintiff would be 12% per annum.

8. For the foregoing reasons, a decree is passed in favour of the plaintiff and against the defendant for ₹14 lacs together with interest @ 12 % per

annum with effect from 5th January, 2011 till realisation of entire decretal amount by the defendant. Plaintiff shall also be entitled to costs. Decree sheet be drawn.

A.K. PATHAK, J.

JULY 31, 2015
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