

\$~7

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

+ **RSA 279/2015**

Date of Decision: 23.03.2016

HARISH DUBEY Appellant

Through: Mr.K.P.Tomas, Advocate.

versus

ANKUR JAIN Respondent

Through: Mr.Vikrant Arora and Mr.Ashok
Kumar Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. The appellant has challenged the judgment passed by the District & Sessions Judge (North-West), Rohini Courts, Delhi in RCA No.20/2014 on 29.05.2015 whereby the judgment and decree of the Trial Court dated 22.03.2014 passed in Suit No.146/2012 (filed by the respondent) whereby the suit was decreed, was upheld and affirmed.

2. The respondent had filed a suit bearing No.146/2012 seeking recovery of Rs.1 lakh with interest at the rate of 12% per annum and the cost of the suit.

3. The case of the respondent/plaintiff is that because of the appellant/defendant being his neighbour and on friendly terms with him, Rs.1 lakh was given as loan to him in the month of August, 2011. The appellant/defendant had assured that the amount would be returned to him soon. The first demand for return of the loan amount was made by the respondent/plaintiff in November, 2011 when he

required money for purchase of a car. The appellant/defendant did not pay the amount, showing his inability and he sought some more time. Again a demand for repayment was made in the month of January, 2012 when the respondent/plaintiff had to get his child admitted in a school which required lumpsum expenses. On that occasion also, money was not returned. Then, finally, in March, 2012 when the respondent/plaintiff reminded the appellant of his obligation and requirement to return the money, it was refused point blank.

4. Hence the suit.

5. Before the Trial Court, the respondent/plaintiff examined himself as PW-1 and also filed his affidavit (Exh.PW-1/A). Neelam Jain, wife of the respondent/plaintiff (PW-2) supported the case of the respondent/plaintiff.

6. The appellant/defendant examined himself as DW-1 and filed his affidavit (Exh.DW-1/A).

7. The factum of the appellant being the neighbour of the respondent/plaintiff and residing in the same building was admitted by the appellant. The appellant has denied of his having taken any friendly loan from the respondent/plaintiff. Appellant also claims to have lodged a complaint with the Drugs department against the respondent; that being the sole reason for the respondent to have filed a case against the appellant.

8. The Trial Court, however, decreed the suit, taking into account that the fact of grant of loan had been proved by the oral testimonies of the respondent (PW-1) and his wife (PW-2). The Trial Court was of the opinion that even in the absence of documentary evidence, friendly

loan having been advanced by the respondent to the appellant could be presumed as there was no discrepancy in the deposition of either PW-1 or PW-2 for the Court to disbelieve them. The aforesaid witnesses were not cross-examined with respect to their capacity to advance loan or of proving the bank account, as well as the demand notice for return of the loan. The Trial Court took the view that even if the loan amount is not reflected in the Income Tax Returns of the respondent/plaintiff, that by itself would not render the claim of the respondent/plaintiff nugatory or be taken as an illegal transaction which could not have been enforced. The opinion of the Trial Court was reinforced by the fact that if there were lack/paucity of evidence for the claim of the respondent/plaintiff to be sustained, the appellant/defendant also could not put up any better case and the preponderance of probability weighed/tilted heavily in favour of the respondent/plaintiff.

9. The First Appellate Court, though took note of the fact that there was no written agreement of the loan, the respondent/plaintiff had failed to prove the source from where money was given to the appellant/defendant and such loan was not reflected in the Income Tax Return and that no specific date when the loan was advanced also was provided, but still countenanced and accepted the findings returned by the Trial Court.

10. After going through the records of this case and hearing the parties, this Court is of the opinion that only because there was no written agreement with respect to grant of loan, the claim of the respondent/plaintiff could not have been discarded. The respondent, PW-1 and his wife, PW-2 have categorically stated that because of the

friendly relation existing between the respondent/plaintiff and the appellant/defendant, Rs.1 lakh loan was given to the appellant. The complaint discloses that initially the appellant demanded financial help of Rs.5 lakhs but later agreed for accepting even Rs.1 lakh for bailing himself out of financial difficulties. More often than not, such friendly loans are given without taking resort to documentation and, therefore, no written agreement need be insisted for in all cases of friendly loan.

11. Once the respondent/plaintiff proved his claim of having advanced loan of Rs.1 lakh, in cash, to the appellant/defendant through his oral evidence and the evidence of his wife, PW-2, it would not matter if source of collection of amount for the sum to be disbursed to the appellant/defendant is not disclosed. The judgment of the First Appellate Court reveals that there was no challenge to the capacity or the lack of it of the respondent/plaintiff to advance loan to the appellant/defendant.

12. The relationship between the appellant and the respondent were friendly as they were neighbours and residing in the same building. The appellant has admitted before the Court below that he attended the house warming ceremony at the respondent's house and was also a witness to the documentation for issuance of passport in favour of the respondent/plaintiff. These are sufficient indices of good and cordial relations between the parties. When the aforesaid factors are proved, now, it would be a matter of common knowledge that in a friendly relationship loans are advanced without documentation and without the same being reflected in the Income Tax Returns. The amount, as

stated by the respondent was paid in cash.

13. Though the specific date on which the loan was given has not been indicated in the complaint, but the instances have been listed as to when demands for repayment were made on three occasions and on the last occasion, the appellant is said to have bluntly and impolitely refused to return the loan amount.

14. The appellant made an effort, before the First Appellate Court to produce additional document for proving the statement of his bank account in order to establish that he did not require loan from anybody, much less the respondent/plaintiff. The aforesaid document was not, admitted by the First Appellate Court for the reason that such documents were available with the appellant even during the trial of the case and no good and sound reason was suggested by the appellant in not putting it forth and withholding the same.

15. The First Appellate Court, nonetheless took note of the aforesaid document, only to find that the bank account at the relevant time showed a balance of Rs.13,807.87/- which was not, in the estimation of the First Appellate Court a reasonably high amount to display the financial strength of the appellant in not requiring any loan at any period of time.

16. It is submitted on behalf of the appellant that both the Courts below wrongly applied the principles of preponderance of probability in favour of the case of the respondent/plaintiff and that PW-2, being the wife of the respondent/plaintiff was an interested person whose deposition ought to have been seen with greater circumspection and caution. These are not the substantial questions of law as between the

parties.

17. I do not find any reason to interfere with the judgment of the First Appellate Court and the Trial Court.

18. For the aforestated reasons, this second appeal is dismissed.

CM Appln. No.13365/2015

1. In view of the appeal having been dismissed, this application has become infructuous.

2. This application is disposed of accordingly.

MARCH 23, 2016

k

ASHUTOSH KUMAR, J