

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
**Judgment delivered on : October 27<sup>th</sup>, 2017**

+ RFA 110/2007

SUNIL R. MASIH

..... Appellant

Through Mr.Ramesh Kumar and Mr.Lavvrish  
Kumar, Advocates.

versus

UMESH KUMAR GUPTA & ANR.

..... Respondent

Through None.

**CORAM:**

**HON'BLE MR. JUSTICE P.S.TEJI**

**JUDGMENT**

**P.S.TEJI, J.**

1. The present appeal has been filed by the appellant against the judgment and decree dated 11.10.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/respondents for recovery of Rs 4,29,200/- had been decreed in favour of the plaintiff/respondents and against the defendant/appellant.

2. The facts enumerating from the plaint filed before the Court below are that the plaintiff/respondents being an old acquaintance of plaintiff approached the latter in the month of August-September 2000 and represented having been allotted an outlet by M/s

Bharat Petroleum Corporation Limited (BPCL). Appellant/defendant stated that he needed money to start the said outlet in Trans Yamuna Delhi and he also induced the plaintiff to become a partner in the said business for lucrative returns. The plaintiff/respondents handed over his and his family's savings to the defendant/appellant and also arranged a sum of Rs. 4,50,000/- from a finance company. The plaintiff/respondents also advanced a loan of Rs. 2,90,000/- out of his wife's account and Rs. 1,40,000/- out of his father's account to the defendant/appellant. The appellant/defendant executed a partnership deed with him and towards the partnership business also, the plaintiff/respondents contributed some money. The appellant/defendant issued cheques for Rs. 2,90,000/- and Rs 1,00,000/- in favour of the plaintiff/respondent and his father respectively but both the cheques got dishonoured due to insufficient funds in his account. Thereafter, the defendant/appellant issued three post dated cheques out of which a cheque of Rs 1,40,000/- in the name of father of the plaintiff and a cheque of Rs 20,000/- in the name of wife of plaintiff were duly encashed whereas the cheque for a sum of Rs. 2,90,000/- in the name of the plaintiff was returned dishonoured with the remarks that the signatures of drawer differ from specimen signatures with the bank.

3. In the written statement filed on behalf of the appellant/defendant, it was stated that the suit is barred by the provisions under Order II Rule 2 CPC as the present claim could have been raised at the

time of seeking Arbitration and Conciliation Act 1996. He thereafter, denied all allegations of the plaintiff/respondent.

4. Replications to the written statements were filed on behalf of the defendants. On the basis of pleadings of the parties, following issues were framed by the Court below :

(1)Whether the suit is barred under Order II Rule 2 CPC? (OPD)

(2)Whether the suit is barred by time? (OPD)

(3)Whether the defendant is liable to pay the suit amount? (OPP)

(4)Whether the defendant is liable to pay interest if yes at what rate? (OPP).

(5)Relief.

5. To prove his case, the plaintiff appeared as a solitary witness and no evidence was examined on behalf of defendant. The Court below decided issue nos.1 and 2 against the appellant/defendant and in favour of the respondent/plaintiff. Issue no.3 was decided partly in favour of the plaintiff holding that he is entitled to recovery a sum of Rs.4,20,500/- from the appellant/defendant. Issue no.4 was also decided in favour of the plaintiff and against the appellant/defendant. The suit was decreed for a sum of Rs.4,20,500/- with cost and interest @ 9% per annum from the date of filing of the plaint till the date of actual payment. Feeling aggrieved by the judgment and decree in the present suit, the present appeal has been filed.

6. During the course of arguments, the counsel for the appellant confined his arguments towards the rate of interest awarded by the court below. It was argued that the loan advanced to the appellant/ defendant was a friendly loan and there was no written agreement. There was no privity of contract between the parties with regard to interest part. There was no fixed rate of interest and it was on the mutual consent, the appellant/defendant had paid the interest for two months @ 18% per annum to the respondent/plaintiff. It was further argued that the pre-suit interest awarded @ 18% per annum is in excess and a prayer has been made to make it reasonable.

7. To appreciate the rival contentions of the parties, I have gone through the material placed on record. So far the advancement of loan amount is concerned, there is no dispute with regard to the same as the appellant has confined his challenge to the impugned judgment and decree only on the point of rate of interest awarded.

8. *Now coming to the interest part which is claimed to be on higher rate as awarded by the court below, a perusal of impugned judgment shows that the court below awarded the pre-suit interest @ 18% per annum and calculated the amount as Rs.2,90,000/- towards principal sum and Rs.1,30,500/- towards interest @ 18% per annum for the pre-suit period. The total decretal amount awarded is Rs.4,20,500/-. The court below awarded the interest @ 9% per annum from the date of filing of the suit till the date of actual payment. In the considered opinion of this Court, the interest awarded by the*

*Court below is at a higher rate and is required to be lowered keeping in view the prevailing rate of interest*

9. In view of the above discussion, the decretal amount awarded by the court below is modified to the extent that the respondent/ plaintiff/ is entitled for interest @ 9% per annum for the pre-suit period. By adding a sum of Rs.65,250/- (interest @ 9% per annum during the pre-suit period) with the principal sum of Rs.2,90,000/-, it comes to be Rs.3,55,250/- and by deducting Rs.4,350/- (interest for two months already paid by the appellant/defendant) total comes to be Rs.3,50,900/-. It is apparent from the record that after preferring the appeal by the appellant/defendant, he had deposited a pay order/ banker' cheque of Rs.4,29,000/- in favour of Registrar General of this Court vide cheque dated 07.05.2007. The appellant would be entitled for refund of the remaining amount, if any.

10. With the above observations, the present appeal is accordingly disposed of.

नित्यमेव जयते

**(P.S.TEJI)**  
**JUDGE**

**OCTOBER 27, 2017**  
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