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

\+ RSA 224/2013

PARVEEN KUMAR ..... Appellant

Through: Mr.Rajiv Dewan, Advocate.

versus

NEHA KAPOOR ..... Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

O R D E R

% **20.03.2017**

RSA 224/2013

1. This second appeal is filed under Section 100 Code of Civil Procedure, 1908 against the judgment of the First Appellate Court dated 27th August, 2013 passed in RCA No.2/2013 whereby the judgment and decree dated 30th November, 2012, passed by the learned Trial Court in Civil Suit No.17/2009 has been upheld and the appeal filed by the appellant herein stands dismissed.

2. This regular second appeal has been argued for a limited point as notice limited to the aspect of pre-suit interest of 2% per month simple, was issued to the respondent but the respondent failed to appear despite service through publication.

3. The facts of the case are that the respondent herein filed a Civil Suit No.17/2009 for recovery of ₹1,50,000 under Order XXXVII CPC which was decreed by the learned Trial Court on 15th May, 1999.

4. On application filed by the appellant/defendant, the said decree was set aside and the suit was tried as an ordinary suit.

5. The above Civil Suit No.17/2009 was filed by the respondent/plaintiff Neha Kapoor pleading the following facts:

(i) The respondent/plaintiff was dealing in readymade garments and in the course of her business she got acquainted with the appellant/defendant and his other two brothers namely Sunil and Naveen.

(ii) In June-July, 1995 the appellant/defendant requested her to provide some financial help and arrange some loan for him from her market resources. He was ready to pay interest @5% per month for availing the loan for a period of one month. The respondent/plaintiff borrowed a loan of ₹67,000 from one Mr.Motilal Lal Rajora and executed documents in his favour. Thereafter she handed over the borrowed amount to the appellant/defendant.

(iii) At the time of receiving loan for a period of one month, the appellant/defendant also executed a promissory note and receipt in favour of the respondent/plaintiff and agreed to pay interest @5% per month for one month.

(iv) The appellant/defendant failed to honour his commitment and only partly paid the amount borrowed. An amount of ₹7,000 was paid in instalments of ₹1,000 each during 12th January, 1996 till 18th April, 1996. He further paid ₹5,000 on 14th September, 1996 and ₹10,000 on 21st October, 1996 against receipt.

(v) Thus, out of the amount borrowed by the appellant/defendant he returned only ₹22,000 and when the respondent/plaintiff insisted for return of the balance loan amount with interest, he threatened her resulting into registration of the criminal case against the appellant/defendant.

6. The suit was contested by the appellant/defendant taking the following defence:-

(i) The respondent wanted to invest the amount in the business of the appellant/defendant and invested ₹67,000 in his business to which he reluctantly agreed and agreed to repay the same on interest @2% per month.

(ii) The respondent/plaintiff was also running illegal committees of which the appellant was also made member and on 14th July, 1995 he paid ₹5,000 towards initial payment for the illegal committee.

(iii) The appellant/defendant has repaid the amount of ₹65,000 against money receipt and another sum of ₹10,000 vide receipts dated 14th September, 1996 and 21st October, 1996 respectively.

7. On the pleadings of the parties following issues were framed:

> *"1. Whether defendant has paid entire loan amount alongwith interest? OPD.*
> *2. Relief."*

8. Both the issues were decided against the appellant/defendant by learned Trial Court giving reasons for disbelieving the report of the handwriting expert as well failure on the part of the appellant/defendant to prove that he had repaid the borrowed amount or that the promissory note was not properly executed by him.

9. Learned Trial Court on the issue of interest declined to grant interest @5% per month to the respondent/plaintiff and awarded interest @2% per month for the following reasons:

> *"Relief:*
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> *35. In view of my findings on above issues, it is proved that the defendant has not paid the entire loan amount but only ₹22,000 which can be adjusted only towards the payment of*

interest. Therefore, the plaintiff is entitled to recover a sum of ₹67,000/- as principal amount. The plaintiff is also entitled to interest, however, since the rate of interest being 5% per month has not been proved and the defendant has admitted the interest @2% per month, which is also reasonable in comparison to 5% per month, therefore, the plaintiff is entitled to interest @2% per month w.e.f. 21.10.1996 i.e. the date of last payment till the date of filing of the suit. Plaintiff is also entitled to pendentelite and further interest @8% per annum from the date of institution of the suit till its realisation."

36. Accordingly, the suit of the plaintiff is decreed in her favour and against the defendant for a sum of ₹67,000 along with interest @2% per month w.e.f. 21.10.1996 i.e. The date of last payment till the date of filing of the suit. Plaintiff is also entitled to pendentelite and future interest @8% per annum from the date of institution of the suit till its realisation. Furthermore, the bank guarantee of ₹50,000/- furnished by the defendant shall also be released in favour of the plaintiff and this amount shall be adjusted towards the decretal amount. The costs of the suit are also awarded in favour of the plaintiff and against the defendant. Decree sheet be prepared accordingly."

10. The First Appellate Court concurred with the finding of the learned Trial Court on the award of interest @2% per month observing that the same has been awarded on the basis of the admission made by the appellant.

11. Learned counsel for the appellant/defendant has contended that the Courts below could not have awarded pre suit interest @ 2% per month (i.e. 24% per annum) and this Court has the power to reduce the rate of interest to 12% per annum in view of the decision of Division Bench in the case of ***Pandit Munshi Ram Associates vs. DDA*** reported as 2010 (9) AD (Delhi) 313, which was also argued before this Court when limited notice of this appeal was ordered to be issued to the respondent on 18th March, 2014.

12. Learned counsel for the appellant has relied upon the following judgments in respect of his contention:

(i) Judgment of High Court of Madras dated 29th July, 2013 in *Nallathambi Vs. Jaya; Saraswathy; Thamarai Shankar* 2013 Law Suit (Mad) 1242.

(ii) Judgment of High Court of Delhi dated 22nd March, 2013 in RFA No.245/2012 titled *M/s Jindal Realcon Pvt. Ltd. & Ors. Vs. M/s Laxmi Narain Ram Dass & Co.*

13. Both the Courts below have awarded pre-suit interest @2% per month on the basis of admission made by the appellant/defendant during trial of Civil Suit No.17/2009. Hence the case law relied upon by learned counsel for the appellant is not applicable to the facts of this case.

14. The regular second appeal has to be only entertained if there arises any substantial question of law. Appreciation of evidence is within the jurisdiction of the original Court and the Appellate Court, which cannot be lightly interfered with for maintaining the second appeal which can be entertained only when a substantial question of law is raised.

15. A decision based on admission does not give rise to any substantial question of law.

16. Finding no illegality in the judgments of the Courts below in awarding interest of 2% per month based on admission by the appellant/defendant, the appeal is dismissed.

17. LCR be sent back alongwith copy of this order.

<u>CM No.15191/2013</u>

The application is dismissed as infructuous.

PRATIBHA RANI, J.

MARCH 20, 2017/*'hkaur'*