NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 149 of 2003

Order reserved on 01.08.2018

Order pronounced on 29.10.2018

Narsingh Lal Agrawal (dead) through Legal Representatives

(1) Shyam Sundar Agrawal son of late Narsingh Lal Agrawal, aged about 55 years, R/o Ravi Nagar, Raipur, CG

(2) Gaurishankar Agrawal son of late Narsingh Lal Agrawal, aged about 53 years, R/oHIG – 30, Shailendra Nagar, Raipur, CG

(3) Ashok Kumar Agrawal son of late Narsingh Lal Agrawal, aged about 48 years, R/o B-28, Sector – 2, Devendra Nagar, Raipur, CG

(4) Kisan Kumar Agrawal son of late Narsingh Lal Agrawal, aged about 46 years, R/o Jawahar Nagar, Opposite Radhakrishna Market, Raipur, CG

---- Appellants/plaintiffs

Versus

1. M/s Bansal Ispat Udyog, Ahiwara Road, Post Kumhari, District Durg, CG

2. Gulabchand Bansal, aged 78 years, son of Shri Motilal Ji Bansal

3. Girish Kumar Bansal, aged about 50 years, son of Gulab Chand Bansal

4. Anil Kumar Bansal, aged about 45 years, son of Gulab Chand Bansal

5. Sudhir Kumar Bansal, aged about 40 years, son of Gulab Chand Bansal

6. Vinit Kumar Bansal, aged about 34 years son of Gulab Chand Ji Bansal

Respondents 2 to 6 are partners of M/s Bansal Ispat Udyog, Ahiwara Road, Post Kumhari, District Durg, CG – Respondents 2, 3, 5 and 6 R/o HIG 13 and Respondent No. 4 resident of HIG 11, Padmanabhpur, District Durg, CG

Respondents/defendants

FIRST APPEAL UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE

For Appellants - Shri Shri Ram Kumar Tiwari Advocate.
For Respondents - Shri MPS Bhatia, Advocate

Hon'ble (Smt.) Justice Vimla Singh Kapoor

CAV order

This appeal arises out of the judgment and decree dated 12.05.2003 passed by Additional District Judge (FTC) Raipur, CG in Civil Suit No. 13-B/2002 decreeing the suit in favour of the appellant/plaintiff and also awarding the interest upon the loan amount of Rs. 1,00,000/- at the rate of 2% per annum instead of it being per mensem. Aggrieved by this portion of the judgment impugned awarding the per annum interest at the rate of 2%, this appeal under Section 96 CPC has been preferred by the appellant/plaintiff.

2. According to the appellant/plaintiff, he was the proprietor of the Firm styled as Narsinghlal Agrawal & Sons. Respondent No.1 – M/s Bansal Ispat Udyogis is also a registered partnership firm and respondents No. 2 to 6 are its partners carrying on its business. On 08.11.1995 respondent No. 4 took a loan of Rs. 1,00,000/- from the plaintiff for the business purpose of respondent No.1 by executing a promissory note (Ex. P-5). By way of said promissory note, payment of interest at the rate of 2% per annum on the entire loan amount was agreed upon by respondent No.4. Thereafter, as per the case of the plaintiff, the respondents kept on making payment of interest at the rate of 2% per mensem till 03.04.1997 in pursuance of the

document of Ex. P-5 but thereafter they stopped paying the interest and also did not pay the principal amount. Even on demand, the respondents/defendants remained persistent in not making the payment either towards interest or the principal amount. Being aggrieved by this indifferent attitude of the respondents, the appellant/plaintiff filed a suit on 21.07.1997 which was decreed in his favour, however, the Court below has awarded the interest on the loan amount at the rate of 2% per annum.

3. Heard counsel for the parties and perused the documents on record including the judgment impugned.

4. Learned Court below has clearly held in the judgment impugned that in view of the promissory note dated 08.11.1995 (Ex.P-5) stipulating the rate of interest on the loan amount as 2% per annum, oral testimony of Kishan Kumar (AW-1) to the effect that the interest fixed on the loan amount was 2% per mensem, cannot be accepted in view of the provisions of Section 92 of the Evidence Act. Learned Court below has also clarified that as is evident from the document of Ex. P-1 an amount of Rs. 6000/- paid to the plaintiff by the defendants on 13.11.1995 through cheque was not towards interest as till then that much interest did not fall due for because the promissory note Ex. P-5 itself was of 08.11.1995.

5. It is a settled legal position that the plaintiff himself has to prove his case by leading cogent and reliable evidence admissible in law. However, in the case in hand the plaintiff has orally contradicted his own document (Ex.P-5) in a bid to prove that the interest fixed on the loan amount was 2% per mensem though Ex. P-5 speaks to the contrary that it was per annum. While deciding issue No.3 the trial Court has given a finding that the oral evidence cannot be accepted

as per the provisions of Section 92 of the Evidence Act particularly when there is a promissory note standing in black and white. Moreover, Ex. P-1 – the bank ledger pertaining to the account of appellant/plaintiff shows that the entry made on 13.11.1995 showing deposit of Rs. 6000/- towards interest has been found to be the part of principal amount which has been dealt with by the Court below while deciding issue No.5.

6. Thus, in aforesaid view of the matter, the Court below has not committed any illegality in awarding interest to the plaintiff on the loan amount at the rate of 2% per annum in view of the unambiguous promissory note Ex. P-5 warranting interference by this Court. Appeal therefore, has no substance and is liable to be dismissed. It is dismissed as such. Let decree be drawn accordingly.

7. Parties to bear their own cost throughout.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi