

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 5-12-2018

Judgment delivered on 12-12-2018

FA No. 151 of 2004

- B.K. Mahobiya, Advcate, aged 49 years, s/o. Late C.R. Mahobiya, r/o. Lohar Chowk, Purani Basti, Raipur, Tahsil and District Raipur (CG).

---- Appellant

Versus

1. Lakhanlal Dewangan, aged 50 years, s/o. Late Nankuram Dewangan.
2. Savitri Bai, aged about 48 years, w/o. Lakhan Lal Dewangan.
3. Anand @ Raju Dewangan, aged 25 years, s/o. Lakhanlal Dewangan.

No.1 to 3 at present Resdient of near Danteshwari Mandir, Changorabhata, raipur, tahsil and District Raipur (CG)

4. Hundraj, aged 45 years.
5. Hiralal aged about 35 years.

No. 4 & 5 s/o. Bhojraj r/o. Om Kirana Stores, Mahadevghat Road, Lakhe Nagar, Raipur, Tahsil and District Raipur (CG).

6. Smt. Purnima Dewangan, d/o. Shri ramkumar Dewangan, through Jagdish Kirana Stores, Dhobipara, Brahamanpara Ward, Raipur, Tahsil and District Raipur (CG)

---- Respondents

For appellant	:	Mr. R.K. Tiwari, Advocate.
For respondents	:	None though served.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 27-3-2004 passed by 3rd Additional District Judge, Raipur, in Civil Suit No.98-A/2002 whereby the suit filed by the appellant/plaintiff for recovery of debt amount has been dismissed.
2. As per the case of the appellant/plaintiff, he filed a suit for recovery against the respondents on the pleading *inter alia* that respondents No. 1 to 3/defendants were residing Shanti Vihar Colony, Dagoniya from the year 1994-95 to 1998 and they were running business in the name and style of Jai Ambe Traders and Flour Mill. All these defendants were members of joint Hindu family. In order to commence the business of flour mill, the defendants took loan of Rs.50,000/- in instalments from the appellant and executed acknowledgement of receipt of the money advanced to them. They also created mortgage by deposit of title deed dated 30-8-1979 in respect of their house constructed over 1000 sq.ft of khasra No.1107 Mahadev Ghagt Road, Lakhe Nagar Ward, Raipur. Interest of 4% per month was to be charged in loan amount. When they did not return the amount, the appellant served registered notice on them, but

the amount was not returned that is why suit was filed which was dismissed as mentioned above.

3. Learned counsel for the appellant would submit as under:

- i) Learned trial Court committed grave error in holding that respondent No.1 had paid off the entire amount due and payable by them to the plaintiff.
- ii) The trial Court erred in holding that Ex.D/1 which is alleged receipt of the appellant given to the defendant, as proved.
- lii) Finding of the trial Court is contrary to the factual and legal aspect of the matter and same is liable to be set aside.

4. I have heard learned counsel for the appellant and perused the record in which judgment and decree has been passed.

5. Core issue for consideration of this court is whether the loan/interest was returned by respondent No.1 to the appellant or not. Admittedly, respondent No.1 borrowed a sum of Rs.50,000/- from the appellant. As per document Ex.D/1, it is only respondent No.1 Lakhanlal who borrowed a sum of Rs.50,000/- from the appellant. The appellant produced Ex.P/1 which is acknowledgement receipt of

borrowing money and this document is binding on the appellant. As per Ex.P/1, respondent No.1 borrowed a sum of Rs.50,000/- from the appellant on 31-7-1995 and in that document it is nowhere mentioned that any interest is to be paid for the sum borrowed by the said respondent. The respondent submitted document Ex.D/1 which is receipt of amount signed by the appellant. As per this document respondent No.1 has returned Rs.50,000/- to the appellant on 21-4-1997. In the said receipt it is clearly mentioned that no amount is due after payment of the said amount and on the basis of this receipt, respondent deposed before the trial Court that he discharged his liability towards appellant. Though the appellant denied the receipt of amount, but Ex.D/1 was examined by in writing expert DW/3 Dr. Ku. Sunanda Dange and as per report of this expert, the appellant appears to have signed in the said Ex. D/1.

6. Looking to the oral and documentary evidence adduced by the respondent No.1 which is supported by version of expert, finding of the trial Court is that the amount borrowed by respondent No.1 is returned to the appellant and no liability can be fastened on him.
7. After re-assessing the evidence, this court has no reason to record contrary finding. It is not a case where the trial Court

has come to conclusion with any irrelevant or extraneous matter. Finding of the trial Court is based on relevant facts placed on record and same is not liable to be interfered with while invoking jurisdiction of the appeal.

8. Accordingly, decree is passed against the appellant and in favour of respondent No.1 as under:

- (I) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of respondent No.1 throughout.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju