NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 97 of 2003

K.C.Bharadwaj, aged about 52 years S/o Shivnarayan Bharadwaj, Proprietor Steel Industries, Industrial Estate, Banaras Road, Ambikapur, Dist. Surguja (CG) **---- Appellant/Defendant**

Versus

Jaybhagwan Agrawal, aged about 28 years, S/o Sevaram Agrawal Occupation Business, R/o Manendragarh Road, Ambikapur, Distt. Surguja (C.G.) **---- Respondent/Plaintiff**

For Appellant	:	Mr. Kishore Bhaduri with Mr. Pawan Kesharwani, Ms. Shriya Mishra, Ms. Juhi Jaiswal, Advocates
For Respondent	:	Mr. Sanjay Agrawal with Mr. Akhand Pratap Singh, Advocates

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S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

10/05/2018

Heard.

1. This appeal is directed against the impugned judgment and decree dated 17.03.2003 passed by the Second Additional Judge to the Court of District Judge Ambikapur in Civil Suit No.32-B/2002 by which the learned Trial Court has decreed the money suit in favour of the plaintiff/respondent for an amount of Rs.1,10,000/- along with interest.

2. The respondent/plaintiff filed a suit for recovery of amount of money on pleadings *inter alia* that the plaintiff and defendant both are businessman and in the course of business, the plaintiff had earlier taken a loan of Rs.2,50,000/- from the defendant in the month of April and May,1990 by three cheques. Further pleadings of the plaintiff was that later on, the plaintiff paid Rs.3,00,000/- to defendant vide cheque dated 10.01.91, out of which Rs.2,50,000/- was towards repayment of loan of the defendant and Rs.50,000/- was advanced by way of loan by the plaintiff to the defendant followed by another advancement of loan of Rs.60,000/- given by the plaintiff to the defendant for an amount of Rs.60,000/- vide account paying cheque dated 22.06.91. Thus, a total amount of Rs.1,10,000/- loan was advanced by the plaintiff to the defendant which was

payable by the defendant to the plaintiff. According to the plaintiff, in the business transaction between the plaintiff and defendant, interest was not payable.

3. The plaintiff's claim was rebutted by the defendant on the pleadings that the plaintiff and defendant both were running partnership business in the matter of collection, storage and distribution of t*endu leave* under a contract from the society in which the entire work of collection, transportation, storage was being done by defendant and in the records of business transaction of this partnership, various payments were to be adjusted between the parties. The amount of Rs.1,10,000/- was the share of profit of business which was paid by the plaintiff to the defendant.

4. Learned Trial Court after framing issues allowed the parties to lead oral and documentary evidence.

5. Having found proved payment of Rs.3,60,000/- by way of cheques received by defendant and that the defendant in his income Tax return Ex.P/10 & P/14 had mentioned having received loan of Rs.1,10,000/- decreed the suit in favour of plaintiff.

6. Learned counsel appearing for the appellant would argue that the defendant led overwhelming evidence which has been relied upon also by learned trial Court that both the plaintiff as well as defendant were carrying on a partnership business of collection/storage and distribution of t*endu leaves*. The plaintiff, in his evidence, has admitted various accounts prepared by plaintiff himself in Ex.D/2, D/3, D/4 & D/5. The defendant in his evidence, though, admitted having submitted income tax return stating Rs.1,10,000/- as loan, this was only a business understanding that after the work is over, the share of profit would be properly disclosed and till then, it would be disclosed only as loan. The aforesaid evidence was not properly appreciated by the learned Trial Court, therefore, the impugned judgment and decree may be set aside.

7. On the other hand, learned counsel for the respondent/plaintiff would submit that the defendant admitting receipt of Rs.3,60,000/- which was more than Rs.1,10,000/- of the amount of loan of Rs.2,50,000/- repaid by the plaintiff to defendant, read along with the defendant own income tax return in which this amount of Rs.1,10,000/- has been shown as loan, was rightly relied upon by the trial Court to record a finding of fact that Rs.1,10,000/- was not towards adjustment of accounts in the business transaction between the partners of the business of amount of loan.

8. The finding recorded by learned trial Court that the defendant/K.C. Bharadwaj was working in partnership with the plaintiff to carrying on business of collection, storage and distribution of t*endu leave* has not been assailed by the parties before this Court. Overwhelming evidence on record led by both the parties clearly proves that both the plaintiff and defendant were carrying on business of collection/storage and distribution of t*endu leave* in a kind of partnership.

9. However, question which arises for consideration is whether the amount of Rs.1,10,000/- paid by the plaintiff to the defendant was towards adjustment of accounts, therefore, business transaction or towards loan. In support of the plaintiff's claim, apart from the oral evidence led by the plaintiff, payment of Rs.3,00,000/- vide cheque dated 10.01.91 has not been disputed by the defendant. Moreover, receipt of a further amount of Rs.60,000/- vide accounts paying cheque dated 22.06.91 has not also been disputed by defendant. The plaintiff's case that he had taken a loan of Rs.2,50,000/- from the defendant in the month of April and May, 1990 has also not disputed by the defendant. Moreover, plaintiff's case that out of Rs.3,00,000/- paid vide cheque dated 10.01.91, Rs.2,50,000/- paid by the plaintiff to defendant was towards repayment of loan is also not in dispute.

10. The undisputed position, therefore, is that the plaintiff had taken loan of Rs.2,50,000/- from the defendant. This loan amount was returned. The plaintiff had paid a total amount of Rs.1,10,000/- to defendant by way of cheque on two different occasions.

11. Both the parties have led their respective oral evidence. While the deposition of plaintiff's witness is that the amount of Rs.1,10,000/- was paid towards loan, the defendant's evidence is that it was only towards settlement of accounts in business transaction.

12. The burden to prove that the amount of Rs.1,10,000/- received by the defendant was towards settlement in the accounts of business transaction between two parties was on the defendant. Though defendant filed number of documents proving that both the plaintiff and defendant were carrying on business and partnership and various calculation of business expenditure have been filed by the defendant, this Court does not find that in any of these documents, which purport to be entries made in the course of business transaction, there is any specific entry that the plaintiff was liable to pay as share of profit of business to the tune of Rs.1,10,000/- to the defendant.

13. As against this, Ex/P/10 and Ex.P/14 is the income tax return filed by the defendant, himself, clearly records that he had taken a loan of Rs.1,10,000/-. The income tax return having been filed and a statement made therein that Rs.1,10,000/- was taken as a loan, has also not been disputed by the defendant. DW-14 in his evidence in para 38 & 39, admits having submitted such return containing recital of loan of Rs.1,10,000/-. The explanation is that this actually was the amount received by the defendant as share of his profit but in an understanding under business transaction it was decided that until whole work is over, share of profit would be shown as a loan. This explanation of the defendant is wholly improbable. Income tax return of the defendant clearly shows Rs.1,10,000/- as a loan.

14. The defendant did not come out with any specific case in his pleadings that under settlement of accounts of business transaction, the defendant was entitled to receive of Rs.1,10,000/- from the plaintiff. The pleadings in this regard is very vague.

15. Though learned counsel for the appellant argued that the defendant has proved that certain amount which belong to the defendant and his brother were taken on rent for storage of *tendu leave* which were collected and were to be transported under the partnership business of the plaintiff and defendant, no such plea has been set up in the plaint. Therefore, in the absence of any such plea set up, the evidence in this regard is liable to be ignored.

16. The defendant could not lead any cogent evidence of having received Rs.1,10,000/- towards his share of profit in the business transaction. Having admitted plaintiff's plea that plaintiff had taken loan of Rs.2,50,000/- from the defendant in the month of April and May, 1990, it cannot be said to be wholly improbable that there was no loan transaction between the parties even though they were partners in a business. Therefore, this Court is not inclined to interfere with the finding recorded by learned trial Court. The appeal is, therefore, dismissed. The appellate decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Rekha