IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO. 2051 OF 2014 (O&M)

RESERVED ON: JULY 16, 2018

DATE OF DECISION: DECEMBER 01, 2018

Sunil Sood and others ....Appellants

Versus

Nikhil Jaitwani and others ....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Ashish Aggarwal, Senior Advocate with
Mr.Kulwant Singh, Advocate for the appellants.

Mr.Akshay Bhan, Senior Advocate with
Mr.Santosh Sharma, Advocate for the respondents.

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TEJINDER SINGH DHINDSA, J.

Smt.Pushpa Devi (since deceased) filed Civil Suit No.225 dated 17.7.1984 seeking declaration to the effect that the sale-deeds dated 14.6.1976 and 12.1.1977 executed by her in favour of defendants No.1 and 2, namely, Vinod Kumar Jaitwani and Vijay Kumar Jaitwani, respectively, in respect of House No.BXIX-458, Green Park, Civil Lines, Ludhiana (hereinafter to be referred as the "suit property") were for the purpose of security for advancement of loan by defendants No.1 and 2 in favour of defendant No.3 and as such, only created a mortgage in favour of defendants No.1 and 2 for a sum of Rs.95,000/-. Prayer was made in the suit for redemption of the suit property. During the pendency of the suit, Vinod Kumar Jaitwani and Vijay Kumar Jaitwani also filed a suit for possession of the suit property and for recovery of Rs.72,000/- towards damages for use of occupation of the house for a period of three years i.e. from 11.6.1985 to 10.6.1988. Vide order dated 16.7.1990, both the suits were consolidated.

2. On 28.2.2011, the trial Court decreed the suit of plaintiff Pushpa Devi (since deceased) and held that the sale deeds dated 14.6.1976 and 12.1.1977 in favour of defendants No.1 and 2 were in the nature of security for re-payment of the loan amount advanced by defendants No.1 and 2 to defendant No.3 and would have no effect on the title/ownership of the suit property subject to the plaintiff making a payment of Rs.95,000/- along with interest @ 12% per annum from 12.1.1977 to defendants No.1 and 2 within a period of three months and failing which suit of the plaintiff would be deemed to be dismissed. The suit filed by Vinod Kumar Jaitwani and Vijay Kumar Jaitwani for possession of the suit property was, however, dismissed.

3. Two civil appeals arose from the judgment and decree dated 28.2.2011 passed by the trial Court. One appeal was against decree in the suit filed by Pushpa Devi (since deceased) and the second appeal was against dismissal of the suit filed by Vinod Kumar Jaitwani and Vijay Kumar Jaitwani for possession of the suit property. Both the appeals stand decided vide common judgment dated 12.2.2014 passed by the learned Additional District Judge, Ludhiana and in terms thereof, civil appeal arising out of Civil Suit No. 225 dated 17.7.1984 has

been partly allowed and the suit filed by Pushpa Devi (since deceased) has been decreed to the effect that the appellant/ defendants would execute sale-deed of the suit property in favour of Pushpa Devi/her LRs on payment of Rs.95,000/- along with interest @ 15% per annum with quarterly rests. Accordingly, directions were issued to the respondent/plaintiffs i.e. LRs of Pushpa Devi (since deceased) to deposit amount of Rs.95,000/- along with upto-date interest @ 15% per annum with quarterly rests within three months from the date of judgment, failing which suit of the plaintiff/respondents was to be dismissed and Civil Suit No.247 of 1998 filed by the appellants seeking possession of the suit property was deemed to have been decreed.

4. It is against such backdrop that the plaintiff/appellants are in second appeal before this Court assailing the judgment dated 12.2.2014 passed by the lower Appellate Court.

5. The brief factual matrix would be necessary at the outset.

6. Civil Suit No.225 dated 17.7.1984 was filed by Smt.Pushpa Devi (since deceased) on the averments that defendant No.3 is her husband. Defendants No.1 and 2 and their father Tulsi Dass Jaitwani were close friends of defendant No.3. Defendant No.3 in his business had suffered and had borrowed money from M/s New Bharat Chemical Industries which was owned and managed by defendants No.1 and 2 along with their father. Tulsi Dass Jaitwani is stated to have helped defendant No.3 and stood as a guarantor for him towards advancement of loan of Rs.20,000/- by the Punjab and Sind Bank. Such amount of

Rs.20,000/- was stated to have been paid by M/s New Bharat Chemical Industries to Punjab and Sind Bank on behalf of defendant No.3. Further financial dealings also took place between defendant No.3 and M/s New Bharat Chemical Industries and ultimately, total amount due from defendant No.3 in favour of New Bharat Chemical Industries came to Rs.55,000/-. Since defendant No.3 was in need of more money, defendants No.1 and 2 agreed to advance further loan to defendant No.3 on the arrangement that plaintiff Pushpa Devi (since deceased) would execute sale-deed of half portion of the suit property in favour of defendant No.1 and thereafter two other sale-deeds in respect of the balance half of the suit property in favour of defendants No.1 and 2. In lieu of such arrangement, defendants No.1 and 2 would pay to the plaintiff a further sum of Rs.40,000/- in cash for use by her husband i.e. defendant No.3. The total sale-consideration, as such, for the sale-deeds was determined as Rs.95,000/- including the earlier sum of Rs.55,000/- by way of adjustment. It was averred that such arrangement was devised as plaintiff Pushpa Devi (since deceased) could have not obtained loan from the Bank directly as she was neither an industrialist nor a business woman. As such, execution of the sale-deed in favour of defendants No.1 and 2 in respect of the suit property was merely to serve as security for the re-payment of the loan of Rs.95,000/- advanced in favour of defendant No.3 by defendants No.1 and 2. Towards partial implementation of the arrangement, plaintiff Pushpa Devi (since deceased) executed sale-deed dated 14.6.1976 in favour of defendant No.1 for a consideration amount of Rs.37,500/- in respect of half share of the suit property. The arrangement devised between the parties was reduced into writing in the form of agreement dated 2.7.1976. However, after putting down the agreement dated 2.7.1976 in black and white, the parties are stated to have mutually agreed that instead of two sale-deeds to be executed in favour of defendants No.1 and 2 in respect of the remaining half share of the suit property, a single sale-deed be executed by Pushpa Devi (since deceased) in favour of defendant No.2 alone for a consideration amount of Rs.35,000/-. Plaintiff is stated to have executed such sale-deed on 12.1.1977 and at such stage, 20 post-dated cheques for Rs.3,500/- each withdrawn on Punjab and Sind Bank by the plaintiff in favour of defendants No.1 and 2 were delivered to them. Defendants No.1 and 2 encashed three of the 20 cheques. As per agreement dated 2.7.1976, defendants No.1 and 2 were given the right to recover the balance due to them on expiry of five years beginning from 12.1.1977 through sale of property and the plaintiff had the right to pay the mortgage money in full during the period of five years and to redeem the property. It was stated that after encashment of the three cheques, the principal mortgage amount was reduced by an amount of Rs.10,500/- and, thus, came to Rs.84,500/-. The plaintiff was never informed as regards the 17 cheques and was not even aware as to whether the two sale-deeds executed by her had been used by defendants No.1 and 2 to avail of any loan from Punjab and Sind Bank. It is further stated that in the month of June, 1981, plaintiff wanted to pay back to defendants No.1 and 2 the amount of mortgage, but the precise amount was to be calculated by the addition of interest upon the sum of Rs.84,500/- and which was only to the knowledge of defendants No.1 and 2, but the same was not disclosed to her. Plaintiff even dispatched telegram and a registered letter to defendants No.1 and 2 each as regards her intention to pay back the amount in question, but since no response was forthcoming, suit was instituted for declaration as also for redemption of the suit property on payment of amount due to defendants No.1 and 2. Defendants No.1 and 2 upon being put to notice, filed a written statement. It was admitted that Tulsi Dass Jaitwani and defendant No.3 were close friends and that on account of suffering losses in business by defendant No.3, money had been borrowed from M/s New Bharat Chemical Industries, owned and managed by defendants No.1 and 2 along with their father. It was further admitted that Tulsi Dass Jaitwani had assisted defendant No.3 financially and even stood guarantor for him in the advancement of loan of Rs.20,000/- by Punjab and Sind Bank. The amount of Rs.55,000/- due from defendant No.3 to M/s New Bharat Chemical Industries was not disputed. It was also admitted that defendant No.3 was in need of more money and, accordingly, plaintiff Pushpa Devi (since deceased) had sold half share of the suit property to defendant No.1 for a sum of Rs.40,000/-. It was stated that defendants No.1 and 2 had offered that the plaintiff may re-purchase the property which she has sold to defendant No.1 after paying the total outstanding amount of Rs.95,000/- along with interest at the bank rate. Plaintiff and her husband/defendant No.3 sought a time-frame of five years to enable them to re-purchase the property and to pay back the entire amount along with interest as had been proposed by defendants No.1 and 2 and their father Tulsi Dass Jaitwani. It was stated in the written statement that for the remaining half share of the suit property, sale-deed dated 12.1.1977 was executed in favour of defendant No.2 for Rs.35,000/-. Even though actual possession of the suit property was delivered to defendants No.1 and 2, yet the plaintiff and defendant No.3 were permitted to reside in the suit property to enable them to arrange alternate suitable accommodation. Even though agreement dated 2.7.1976 was admitted, but the stand was taken that the same stood superseded upon execution of sale-deed dated 12.1.1977 for remaining half share of the suit property. It was denied that the first sale-deed dated 14.6.1976 was executed in pursuance to any arrangement/agreement and rather the agreement dated 2.7.1976 was entered into after the execution of the sale-deed dated 14.6.1976. It was stated that the sale-deed dated 12.1.1977 was executed in lieu of Rs.35,000/- and which amount was adjusted towards part payment of the amount due from defendant No.3 to the firm M/s New Bharat Chemical Industries. It was denied that the sale-deeds were to operate as mortgage-deeds. The option given by defendants No.1 and 2 in favour of the plaintiff to re-purchase the property within five years on payment of entire amount advanced as loan to plaintiff's husband with interest at bank rate was on account of friendship between the parties and such option, as such, stood elapsed with the passage of time. Assertion was made that defendants No.1 and

2 were the absolute owners of the suit property by virtue of the two sale-deeds. In the written statement, it was also stated that in case the Court comes to the conclusion that the agreement dated 2.7.1976 was not superseded by the parties and that the sale-deeds dated 14.6.1976 and 12.1.1977 were, in fact, mortgage-deeds, in such event a sum of more than Rs.6 lakhs is due from the plaintiff towards principal and interest and which be directed to be paid for redeeming the property. It was stated that the Bank charges interest at the rate more than 20% per annum with monthly rests on advances made against property and defendants No.1 and 2, in such eventuality, would be entitled to such interest as well. It was denied that the plaintiff had offered to pay back any amount to defendants No.1 and 2 in June, 1984. Defendant No.3 filed a written statement admitting the entire claim of the plaintiff.

7. From the pleadings of the parties, the following issues were framed by the trial Court:

> *"1. Whether the sale deeds dated 14.6.1976 and 12.1.1977 coupled with agreement dated 2.7.1976 create a mortgage regarding the property in dispute? OPP*
>
> *2. If Issue No.1 is proved, whether the plaintiff is entitled to redemption of the property described in the head note? OPP*
>
> *3. Whether the agreement dated 2.7.1976 was superseded by sale deed dated 12.1.1977, if so, its effect? OPD*
>
> *4. Whether the suit is not maintainable, as alleged in preliminary objections No.1 and 2? OPD*
>
> *5. Relief."*

8. During the pendency of the afore-noticed suit, defendants Vinod Kumar Jaitwani and Vijay Kumar Jaitwani filed Civil Suit No.247 dated 14.6.1988 seeking possession of the suit property on the averments that Pushpa Devi had sold half share of the suit property for Rs.40,000/- vide sale-deed dated 14.6.1976. Subsequently, on account of indebtedness of husband of Pushpa Devi and a sum of Rs.50,000/- being due, a second sale-deed was executed on 12.1.1977 as regards the balance half share of the suit property in favour of defendant No.2. The option to re-purchase the property with Pushpa Devi (since deceased) was within a period of five years upon return of the total outstanding amount along with interest. Even though Pushpa Devi (since deceased) had issued 20 cheques of Rs.3,500/- each, only three cheques were encashed, whereas remaining cheques bounced. Pushpa Devi, accordingly, forfeited her right to re-purchase the property. Even though, physical possession of the house had been delivered at the time of execution of the first sale-deed dated 14.6.1976, but on account of the friendly terms, Pushpa Devi and her husband were allowed to reside in the house as licensees. Upon being asked to vacate the suit property, Pushpa Devi and her husband refused and, accordingly, suit for possession of the suit property along with compensation for use and occupation was filed. Such suit was contested by Pushpa Devi and her husband Om Parkash Sood by filing a written statement and taking a stand in terms of the averments made in Civil Suit No.225 dated 17.7.1984 that had been filed by Pushpa Devi. Following issues were framed by the trial Court in Civil Suit

No.247 of 1988:

> *"1. Whether the plaintiffs are owners of the property and are entitled to possession of the same? OPP*
>
> *2. Whether the plaintiffs are entitled to recovery of account of use and occupation, if so, to what extent? OPP*
>
> *3. Whether the present suit is liable to be stayed under Sec.10 CPC? OPD*
>
> *4. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
>
> *5. Whether the sale deed executed by defendant No.1 in favour of plaintiff was a mortgage deed, if so, its effect? OPD*
>
> *6. Whether agreement deed dated 2.7.1976 and sale deeds were executed and sale deed was to have the effect only in terms of the agreement? OPD*
>
> *7. Whether the defendant No.1 had committed the breach of the agreement, in question, if so, its effect? OPP*
>
> *8. Relief."*

9. Trial Court vide judgment and decree, dated 28.2.2011, decided both the suits together and took a view that the agreement dated 2.7.1976 was not superseded and the sale-deeds dated 14.6.1976 and 12.1.1977 had been executed towards security of the loan amount advanced in favour of defendant No.3. As such, Issues No.2 to 5 in Civil Suit No.225 of 1984 were held in favour of plaintiff Pushpa Devi. Issues No.1 and 2 in Civil Suit No.247 of 1988 were held against the plaintiffs therein, namely, Vinod Kumar Jaitwani and Vijay Kumar Jaitwani and they were found not entitled to possession of the suit property. Civil Suit No.225 of 1984 was decreed subject to payment of Rs.95,000/- along with interest @ 12% per annum

w.e.f. 12.1.1977 by plaintiff Pushpa Devi to defendants No.1 and 2 within three months, failing which suit was deemed to be dismissed.

10. The two appeals filed by Vinod Kumar Jaitwani and Vijay Kumar Jaitwani stand decided vide common judgment dated 12.2.2014 passed by the lower Appellate Court and whereby civil appeal emanating from civil appeal No.225 of 1984 has been partly allowed and the suit filed by Pushpa Devi (since deceased) has been decreed to the effect that the sale-deeds pertaining to suit property would be executed in favour of Pushpa Devi/her LRs upon payment of Rs.95,000/- along with interest @ 15% per annum with quarterly rests. The lower Appellate Court has affirmed the findings of the trial Court on Issues No.1 to 4 of Civil Suit No.225 dated 17.7.1984 and has held that the sale-deeds dated 14.6.1976 an 12.1.1977 as also agreement dated 2.7.1976 had been executed only towards security for re-payment of the loan amount of Rs.95,000/-. The judgment of the trial Court has been modified to the extent that the liability of Pushpa Devi/her LRs as regards rate of interest has been varied and it had been held that such rate on the outstanding amount of Rs.95,000/- be enhanced from simple rate of interest of 12% per annum to 15% per annum with quarterly rests and calculated from the date of agreement dated 2.7.1976, Exhibit P1.

11. Plaintiff/appellants i.e. LRs of Pushpa Devi are in second appeal before this Court assailing the judgment dated 12.2.2014 passed by the learned Additional District Judge, Ludhiana.

12. Learned senior counsel representing the appellants has submitted that no loan was obtained by the defendant/ respondents from the Punjab and Sind Bank and neither was the suit property mortgaged with the Bank. It is urged that no evidence was adduced on record to substantiate that loan of Rs.95,000/- had been taken by the defendant/respondents in the year 1976 after mortgaging the suit property and under such circumstances, the trial Court had rightfully decreed the suit of the plaintiff/appellants to repay the loan amount of Rs.95,000/- along with interest @ 12% per annum w.e.f. 12.1.1977. It is vehemently contended that lower Appellate Court has grossly erred in modifying the judgment of the trial Court with regard to rate of interest of 12% per annum and enhancing the same to 15% with quarterly rests. Further argued that it is a clear case of mis-reading and mis-appreciation of evidence, inasmuch as, as per agreement dated 2.7.1976, Exhibit P1, the appellants herein were bound to pay the amount of interest that would accrue on the loan amount to be taken by the defendant/respondents from Punjab and Sind Bank. It is argued that the lower Appellate Court has completely overlooked the aspect that the defendant/ respondents did not raise any loan of Rs.95,000/- from Punjab and Sind Bank after mortgaging the suit property and, therefore, as per terms and conditions of the agreement dated 2.7.1976, Exhibit P1, the appellants could not have been made liable to pay the enhanced interest rate of 15% with quarterly rests. Yet another argument raised by learned senior counsel is that the lower Appellate Court has wrongfully relied upon the deposition of

DW5 Harish Sahi, CA as also the certificate, Exhibit DW5/2, and to have concluded that a loan of Rs.95,000/- has been raised from the Bank in October 1976. It is argued that such certificate was only indicative of the rates of interest prevalent at the relevant point of time in case loan amount of Rs.95,000/- had been availed of. Further contended that the enhanced rate of interest directed to be paid by the lower Appellate Court is highly exorbitant and, particularly, in the light of circumstances wherein the plaintiff within the stipulated period of five years i.e. in June, 1981 had clearly indicated to repay loan amount along with interest accrued thereupon, if any, and the defendant/respondents having refused to disclose the outstanding amount. In support of such contention, learned counsel has also adverted to the letters sent to the defendant/respondents under registered cover, postal receipts as also telegram, Exhibits P16 to P21.

13. Per contra, learned senior Advocate representing the defendant/respondents has submitted that the judgment passed by the lower Appellate Court is well-reasoned and based upon due appreciation of evidence adduced in Court. The findings of the trial Court have been affirmed by the lower Appellate Court and the only modification with regard to rate of interest is in line with the terms and conditions of the agreement dated 2.7.1976, Exhibit P1. Further argued that the loan amount having been advanced in favour of Om Parkash Sood i.e. husband of plaintiff Pushpa Devi (since deceased), under difficult financial times that he was passing through and the sale-deeds having been executed by Pushpa Devi pertaining to the suit property to serve as a

security for repaying the debt, the directions now being issued to redeem the property had to cater even for the interest component for the amount of money that had been raised to run the firm M/s New Bharat Chemical Industries.

14. Counsel for the parties have been heard at length and even the records of the case that had been requisitioned have been perused minutely.

15. A concurrent view has been taken by both the Courts below upon due appreciation of evidence that the sale-deeds in question dated 14.6.1976 and 12.1.1977 and also the agreement dated 2.7.1976 were only to secure the loan amount of Rs.95,000/- and the intention of plaintiff Pushpa Devi (since deceased) was not to sell the residential suit property. Rather, this was precisely the case of the plaintiff/appellants themselves.

16. Trial Court had decreed the suit of plaintiff Pushpa Devi (since deceased) and issued directions for redemption of the suit property subject to payment of Rs.95,000/- along with interest @ 12% per annum from 12.1.1977. While affirming the findings of the trial Court, the lower Appellate Court vide impugned judgment dated 12.2.2014 has modified the judgment and decree to the extent of enhancing the rate of interest from 12% to 15% per annum with quarterly rests. Such view has been taken by the lower Appellate Court in terms of the following reasoning adopted in the impugned judgment:

> *"Whereas there is no doubt about the fact that the agreement Ex.P1 was executed with an intention to come to the rescue of the husband of Pushpa Devi*

respondent and the sale transactions dated 14.6.1976 and 12.1.1977 were part of the said arrangement between the two friends, whereby title was transferred by the wife of one friend in favour of the sons of the other friend, it is apparent that plaintiff/respondent, by refusing to pay interest at the bank rate and by limiting her liability to pay interest @ 12% p.a. as ordered by learned trial Court, is acting against the spirit of the agreement Ex.P1 as per which the interest was to be paid as per bank rate. It needs to be added here that even though there is no independent evidence to show the exact amount of loan, availed by the appellants from the bank in order to hand over a sum of Rs.95000/- to Pushpa Devi, it is the admitted case of plaintiff/respondent that Sh.Tulsi Dass Jaitwani, father of appellants was running a concern in the name of New Bharat Chemical Industries and was having dealings with banks. Therefore, even if the appellants had availed the loan facility in the name of their own firm, the fact that out of the said loan transaction, Rs.95000/- were availed by the husband of plaintiff would show that the liability of plaintiff to pay interest at the Bank rate, which operates with monthly rests, cannot be denied."

17. The view taken by the lower Appellate Court would require to be examined in the backdrop of the agreement dated 2.7.1976, Exhibit P1, which concededly was entered into between

the parties. For facility of ready reference, the agreement in its entirety is re-produced hereunder:

"AGREEMENT

We, Vinod Kumar Jaitwani, Partner in Firm Tulsi Dass Jaitwani & Sons, Ludhiana and Shri Vijay Kumar Jaitwani son of Shri Tulsi Dass Jaitwani, 369, Industrial Area-A, Ludhiana (First Party) and Pushpa Devi Sood wife of Shri Om Parkash Sood son of Shri Amar Nath Sood, residents of 458-B-XIX, Green Park, Civil Lines, Ludhiana. That Shri Om Parkash Sood husband of First Party owes a loan amount of Rs.55,000/- to M/s New Bharat Chemical Industries, 369, Industrial Area-A. Presently, he does not have the amount in cash and moreover, M/s New Bharat Chemical Industries, Industrial Area-A, Ludhiana is in need of money. Therefore, the Second Party has offered its House No.B-XIX, 458, Green Park, Civil Lines, Ludhiana and on which M/s Bharat Chemical Industries, Ludhiana shall obtain loan from Punjab and Sind Bank Limited, Ludhiana and shall meet its present need. Thus, for this, the following Agreement has been entered into between us:-

Smt.Pushpa Devi, the Second party has executed a Sale Deed regarding ½ share of her above house on 14.6.1976 and has received an amount of Rs.37,500/- by way of Cheque No.516069.

Out of the remaining ½ share, 1/3rd share shall be transferred in the name of Shri Vinod Kumar Jaitwani and the amount of Rs.20,000/- for the above shall be kept by way of trust (amanat) with M/s New Bharat Chemical Industries in lieu of the loan amount due from Shri Om Parkash.

The remaining 2/3rd share in the above house shall be transferred in the name of Shri Vijay Kumar Jaitwani, 369, Industrial Area and the amount of the same of Rs.35,000/- shall be kept by way of trust *(amanat) with New Bharat Chemical Industries, Industrial Area-A, Ludhiana.*

The present amount comes to Rs.95,000/-. The said amount shall be taken as loan from Punjab and Sind Bank Limited by Serv Shri Vinod Kumar, Vijay Kumar Jaitwani and Kothi No.458 shall be mortgaged with the Bank.

The total amount of Rs.95,000/- along with the amount of interest levied by the Bank, the same shall be the responsibility of the second party. Whatever, monthly instalment shall be fixed, the Second Party shall keep paying the same. 20 Cheques of Rs.3500/- each by way of advance shall be given to First Party by the Second Party and for the balance amount, the cheque shall be given subsequently.

The responsibility shall be of the Second Party to repay the principal as well as the interest amount. Moreover, this amount shall be repaid within a period of 5 years. If the entire amount is not repaid within a period of 5 years, then the first party shall have the right to sell the above house and recover the balance amount. Within the period of 5 years, the first party shall have no right to sell the house.

The possession of House No.458-B-XIX, Green Park, Ludhiana shall remain with the Second Party, it shall not pay any rent to the First Party and regarding the Kothi, the Second Party shall keep depositing all the taxes.

If at any time, the Second Party wants to sell the Kothi to some third person, then before this, the Second Party shall pay the entire balance amount to First Party and obtain receipt from it and thereafter, the First Party, Vinod Kumar and Vijay Kumar shall be liable to execute the Sale Deed of their respective shares in favour of Second Party and the Second Party shall be entitled to receive the sale consideration.

If the Second Party deposits the entire amount and by which the loan amount of the Bank is repaid along with the amount of interest, then in that situation, the First Party, Vinod Kumar and Vijay Kumar shall get the Sale Deed of their respective shares executed in favour of the Second Party or their legal heirs and they shall be responsible to execute the said Sale Deed. The expenses of the Sale Deed shall be borne by the Second Party or their legal heirs. In this context, the First Party shall not raise any objections. If any objection has raised by the First Party, then the second party shall have the right to get the above implemented through the Court. If the Second Party has to file a suit, then the expenses of the suit shall be borne by the First Party.

Both the parties shall be bound by the contents of the above Agreement, which have been heard and understood and after understanding the contents, both the parties have signed the same.

Dated 2.7.1976

First Party *Sd/-Pushpa Rani*
Sd/-Vinod Kumar Jaitwani *Second Party*
Sd/-Vijay Kumar Jaitwani

Witness *Witness*
Sd/- Baldev Singh *Sd/-"*

18. The entire case of the appellants hinges on conditions No.4 and 5 of the agreement and whereunder the outstanding debt is indicated as Rs.95,000/- and it has further been mentioned that such amount would be taken as loan from Punjab and Sind Bank by Vinod Kumar Jaitwani and Vijay Kumar Jaitwani upon mortgaging the suit property. The liability of Rs.95,000/- along with the amount of interest to be levied by the Bank was the responsibility of the "second party" to the agreement i.e. Pushpa Devi (since deceased). The precise argument being raised on

behalf of the appellants is that the suit property had not been mortgaged and no evidence had been adduced in such regard and, as such, the enhanced rate of interest imposed by the lower Appellate Court upon the outstanding loan amount of Rs.95,000/- cannot sustain.

19. This Court cannot accept such restrictive reading of the agreement dated 2.7.1976, Exhibit P1.

20. The circumstances leading to the agreement dated 2.7.1976, Exhibit P1, and the spirit of such agreement would have to be kept in view. The fact of Om Parkash Sood, husband of Pushpa Devi (since deceased) being in a state of financial distress at the relevant point of time is admitted. Parties inter-se i.e. Om Parkash Sood being on friendly terms with Tulsi Dass Jaitwani, father of defendant/respondents herein is also admitted. Tulsi Dass Jaitwani helped Om Parkash Sood and having stood guarantor for Om Parkash Sood pertaining to a loan of Rs.20,000/- advanced by the Punjab and Sind Bank is also not in dispute. M/s New Bharat Chemical Industries was being run by the defendant/ respondents along with their father Tulsi Dass Jaitwani. Husband of Pushpa Devi (since deceased) owing a loan amount of Rs.55,000/- to M/s New Bharat Chemical Industries is also the conceded position on facts. It is common ground between the parties that Om Parkash Sood required more funds. It was on account of the proximity between the parties and with a view to assist Om Parkash Sood that an arrangement was worked out and which stood reflected in the agreement dated 2.7.1976, Exhibit P1. The agreement if read as a whole clearly spells out that M/s

New Bharat Chemical Industries was also in need of money. Accordingly, the second party to the agreement i.e. Pushpa Devi (since deceased) had offered the suit property to the defendant/ respondents and upon which it was open for the first party to obtain a loan from the Punjab & Sind Bank and to meet the "present need" of M/s New Bharat Chemical Industries. The agreement envisaged the execution of sale-deeds regarding different shares of the residential suit property for consideration indicated therein, and the amount outstanding against the second party came to Rs.95,000/-. Responsibility was foisted upon the second party i.e. Pushpa Devi (since deceased) to clear the outstanding amount of Rs.95,000/- along with amount of interest levied by the Bank within a period of five years and thereupon to have the suit property redeemed. Clearly, the object sought to be achieved in terms of agreement dated 2.7.1976, Exhibit P1, was two-fold i.e. to secure the amount advanced as loan in favour of Om Parkash Sood, husband of plaintiff Pushpa Devi (since deceased), as also to raise funds for M/s New Bharat Chemical Industries upon obtaining loan from the Bank against the suit property.

21. Records of the case would show that Tulsi Dass Jaitwani had appeared as DW4 and had deposed that Vinod Kumar Jaitwani and Vijay Kumar Jaitwani are his sons and that Om Parkash, defendant No.3 in Civil Suit No.225 of 1984 was previously known to him. DW4 further stated that he along with his sons was the partner of M/s New Bharat Chemical Industries and there was another firm S.V. Enterprises in which his sons

Vinod Kumar Jaitwani and Vijay Kumar Jaitwani were the partners. DW1 AS Grewal, Manager, Punjab and Sind Bank had deposed that loan of Rs.75,000/- had been availed of by the partnership of Vinod Kumar Jaitwani and Vijay Kumar Jaitwani. He further stated that till 31.3.1978 the rate of interest was 16.5% per annum with quarterly rests and thereafter the rate of interest was 15% per annum with quarterly rests. DW2 SK Mittal, official of the Bank of Baroda had deposed that M/s New Bharat Chemical Industries was having account in the Bank and that title deeds dated 14.6.1976 and 12.1.1977 were mortgaged pertaining to the suit property. The defendant/respondents have also relied upon Exhibit DW2/1 i.e. Bank statement of Punjab and Sind Bank which clearly indicated over-draft facility having been availed of by the defendant/respondents against property. In an overview of the matter, financial help having been extended in favour of Om Parkash Sood, husband of plaintiff Pushpa Devi (since deceased) and the defendant/respondents having raised funds by availing of over draft facility, the view taken by the lower Appellate Court to pay the outstanding debt of Rs.95,000/- along with interest at the bank rates prevalent cannot be faulted.

22. The feeble attempt made by learned counsel to avoid the burden of interest by contending that the plaintiff/appellant was ready to repay the loan amount along with interest accrued within the stipulated period of five years in June 1981 as per agreement dated 2.7.1976, Exhibit P1, and letters under registered cover and telegrams having been also sent does not cut much ice. If the entire outstanding amount along with interest

had been available with the plaintiff/appellant to seek redemption of the suit property in June 1981, she ought to have taken immediate legal redress if her version is to be believed that the defendant/respondents were not responding to her letters/ telegrams. The suit came to be filed by plaintiff/appellant Pushpa Devi (since deceased) in the month of July, 1984.

23. For the reasons recorded above, no infirmity is found in the impugned judgment dated 12.2.2014 passed by the lower Appellate Court.

24. There is no merit in the appeal and the same is dismissed.

(TEJINDER SINGH DHINDSA)
DECEMBER 01, 2018 JUDGE
SRM

Note: Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No