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

***Date of Decision : 16th April, 2018***

\+ **RFA 585/2016**

OM PRAKASH ..... Appellant

Through: Mr. Shwetank Sailakwal, Advocate.(M:9990803222)

versus

RAJIV KUMAR ..... Respondent

Through: Mr. Sourabh Leekha, Mr. Kapil Dua and Mr. D. K. Gandhi, Advocates.(M:9811590282)

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This is an appeal arising out of the impugned judgment/decree dated 23rd March, 2016 whereby the suit for recovery filed by the Respondent/Plaintiff (*hereinafter, 'Plaintiff'*) was decreed in the following terms:

> "*In view of my above findings on the issues, the suit of plaintiff is decreed in favour of the plaintiff and against the defendant for a sum of Rs.3,86,000/- alongwith cost of the suit and interest pendentelite and future @ 8% p.a. till the actual realization of the amount.*
> *Decree sheet be prepared accordingly.*
> *File be consigned to the Record Room.*"

2. The case of the Plaintiff is that a sum of Rs.2 Lakhs was given as a friendly loan to the Appellant/Defendant (*hereinafter, 'Defendant'*) on 21st September, 2010. The loan agreement (Ex.PW 1/1) was entered into by the

parties which is captured in Hindi in the hand writing of the Plaintiff. Loan agreement has been captured in a page from a diary of 2007, though the document bears the date as 21st September, 2010. Loan agreement specifies that a sum of Rs.2 Lakhs has been given in cash to the Defendant and Rs.6,000/- per month is the interest payable on the same. It bears the signature of Mr. Ram Karan at point 'A' and of Mr. Manoj at point 'B', both of whom are the witnesses to the agreement. The signature of Mr. Om Prakash appears at point 'C' in the agreement. The agreement which is a page from a diary, records payments of interest as under:

Rs.6,000/- on 21st October, 2010
Rs.6,000/- on 21st November, 2010,
Rs.6,000/- on 21st December, 2010
Rs.6,000/- on 21st January, 2011
Rs.6,000/- on 21st February, 2011
Rs.12,000/- on 21st April, 2011 and
Rs.12,000/- on 25th December, 2011

3. A total amount of Rs.54,000/- was paid as interest as per Ex.PW-1/1. The case of the Plaintiff is that the last payment of interest was made on 25th December, 2011 and subsequent to the said date, no further payments were made despite repeated demands. The principal amount as well as outstanding interest was demanded by legal notice dated 7th August, 2014, Ex.PW-1/4. The original speed post receipts showing dispatch of the said legal notice are exhibited as Ex.PW1/2 & 1/3 and registered A.D. card is exhibited as Ex.PW-1/5.

4. Defendant sent a reply to the legal notice on 16th August, 2014, Ex.PW-1/6. The case of the Defendant in the reply is that the entire amount

of Rs.2 Lakhs has been repaid. It was also alleged that the signature of the Defendant had been obtained on blank papers. Defendant further alleged that the fact, that the loan had been repaid, is clear from return of the original documents relating to the suit property belonging to the Defendant, copy of which is Mark 'A'.

5. Before the Trial Court, the following issues were framed.

> "*1. Whether the plaintiff is entitled for a decree for recovery of Rs.3,86,000/- alongwith interest, pendentelite and future @ 3% pm against the answering defendant? OPP*
> *2. Whether the suit of the plaintiff is time barred? OPD*
> *3. Relief.* "

6. Plaintiff led the evidence of the following witnesses.

- PW-1 Rajiv Kumar/Plaintiff.
- PW-2 Witness to the loan agreement, Mr. Manoj Kumar
- PW-3 Witness to the loan agreement, Mr. Ram Karan.

7. On the other hand, Defendant appeared in the witness box as DW-1 in support of his case. The Trial Court, after perusing the documents and evidence on record, decreed the suit in favour of the Plaintiff.

8. In the present appeal, on 12th August, 2016, this Court stayed the impugned judgment subject to the decretal amount being deposited with the Registrar General of this Court. On 19th January, 2018, it was submitted that the decretal amount of Rs.4,67,321/- has been received by the Plaintiff before the Executing Court.

9. The main contention of learned counsel for the Appellant/Defendant is that Ex.PW-1/1, which forms the crux of the case, cannot be believed,

inasmuch as the entire diary of 2007 has not been produced and only one page has been torn from the said diary and has been produced. Further, according to the Appellant, it is highly unbelievable that a loan given in 2010 would be captured in a diary of 2007 and hence the diary should be disbelieved for these two grounds. Further, it is the contention of learned counsel for the Defendant that the Plaintiff had only retained a photocopy of the property documents and had not returned the originals at the time when the loan had been repaid. The mere factum of original documents of the property of the wife of the Defendant being returned, according to the Defendant, ought to lead to the deduction that loan had been repaid.

10. On the other hand learned counsel for Plaintiff submits that the loan agreement is admitted and the Defendant's signatures on the same have also been admitted. He also submits that the Plaintiff has produced two witnesses to the loan agreement who have confirmed the disbursement of the loan in their presence. This proves beyond any doubt that the loan was taken by the Defendant and since there is no evidence whatsoever by the Defendant to show that any amount was paid back, the suit is liable to be decreed.

11. The Court has perused the original trial court record. A perusal of the loan agreement which is one page of diary of 2007 clearly shows that all the signatures in the said agreement are admitted. The said document records the disbursement of the loan of Rs.2 Lakhs as also the interest amount. It also records the payment of interest of Rs.54,000/- on various dates between the disbursement of loan till 25th December, 2011. The witnesses have also confirmed that the loan was given in their presence and the interest amount was also agreed upon between the parties.

12. One important fact is the deposition of the Defendant whose

credibility is in serious question in this case. The Defendant on the one hand admits his signature in the loan agreement Ex. PW 1/1 and also admits that he had taken a loan of Rs.2 Lakhs. His cross examination, in fact, proves that he has not been candid with the Court. On the one hand, the Defendant – Mr. Om Prakash, in his affidavit stated in para 10 as under:

> *"............*
> *10. ........That the legal notice was duly replied by counsel denying the liability of deponent through reply dt. 16/08/2014, which is already exhibited as Ex.PW-1/6."*

13. On the other hand, in his cross examination he denies the factum of receipt of legal notice and reply thereto. His cross examination is significant and is set out herein below:

> *"..................I do not know either English or Hindi. I used to sign in Hindi. My signature was taken in diary by the plaintiff. I have taken Rs. Two lakhs as loan from the plaintiff. I have not given interest to the plaintiff. It is incorrect to suggest that I had given interest amount to the plaintiff lastly on 25.12.2011. It is incorrect that the loan was taken by me on interest of Rs.6000/- pm. It is incorrect that I had given the photocopy of ownership document of my wife's property as a security. It is incorrect that I had not given the original document of the property to the plaintiff at the time of taking loan. It is incorrect that I had never repaid the loan amount to the plaintiff. It is incorrect that I am liable to pay the suit amount to the plaintiff alongwith interest. It is incorrect that I had taken the loan on 21.09.2010 and I have signed the Ex.PW-1/1 in the presence of*

*witnesses, namely, Ram Karan and Manoj Kumar. I cannot tell the date and month when I had taken the loan from the plaintiff. It is incorrect to suggest that the loan was not taken by me in the year 2007, infact, the same was taken on 21.09.2010.*

*It is incorrect to suggest that before the filing the suit the plaintiff demanded the suit amount. The plaintiff had not sent any legal notice through his counsel before filing the present suit. It is incorrect to suggest that the loan was not interest free loan.*

*I do not know what is written in the Ex.DW1/1. Vol. It was written by my counsel. It is incorrect to suggest that I am deposing falsely."*

14. In his reply, therefore, the Defendant admits the following;

a) the factum of loan of Rs.2 Lakhs

b) signature in the diary.

15. But, contrary to his affidavit, he denies the receipt of the legal notice and that he had replied to the same. This is in glaring contradiction to what was stated in his Examination-in-chief.

16. Further, the case in the written statement is that the signatures were obtained on the blank papers, however there is no statement to this effect either in the affidavit or in the cross examination. All this goes to show that the Defendant is not being truthful and also that he does not have any proof whatsoever in support of the statement that the loan amount has been repaid. The factum of taking of the loan is fully established both by the Plaintiff and two other witnesses to the agreement as also the documents placed on the record. The Defendant has also admitted the same. The Trial Court has

rightly observed that the Defendant's testimony lacks credibility. A perusal of the diary Ex.PW-1/1, in fact, shows that the Plaintiff has been recording payment of interest regularly and this adds to the credibility of the Plaintiff's case. Under these circumstances, the Trial Court judgment does not warrant any interference.

17. Appeal is accordingly dismissed.

**PRATHIBA M. SINGH**
**JUDGE**

**APRIL 16, 2018/***dk*