NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 22-7-2019

Judgment delivered on 30-8-2019

FA No. 139 of 2005

- M/s Umesh Chandra & Company, a partnership firm duly registered under the Partnership Act carrying on the business at Gudhiyari, Raipur (CG).

---- Appellant/defendant

Versus

- Smt. Lavanya Patel aged about 32 years, wife of Dr. Manish Patel, resident of 174 Sundernagar Ward, Raipur. (CG).

---- Respondent./plaintiff

For appellant : Mr. Sameer Oran, Advocate.

For respondent : Mr. Prafull N. Bharat, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 31-3-2005 passed by 5th Additional District Judge, Raipur (CG) in Civil Suit No. 46-B/2003 wherein the said court decreed the suit filed by the respondent/plaintiff for recovery of money to the tune of Rs.1,50,000/- with interest of Rs.50,000/- and cost of the suit.

2. As per case of respondent/plaintiff, appellant/defendant borrowed money on different dates from the respondent/plaintiff totalling to Rs.1,50,000/- which was to be returned within three months and interest was 2.5% per month. Appellant/defendant paid

interest on various and at last he paid interest on 4-8-1999, thereafter he stopped paying the interest of the amount, therefore, respondent/plaintiff issued a legal notice to him on 30-5-2002 for repayment of the amount and when no amount has been paid she filed a civil suit for recovery of the amount which is decreed by the trial Court.

3. Learned counsel for the appellant would submit that PW/2 Prajay Gwalre who deposed before the trial Court on behalf of respondent/plaintiff is not competent to give evidence on her behalf, therefore, decree on the basis of his statement is not sustainable. He would further submit that the respondent/plaintiff is not registered under Money Lenders Act, therefore, she is not entitled to file civil suit against the appellant. He would further submit that finding of the trial court is not based on proper marshaling of the evidence, therefore, same is liable to be set aside.

4. On the other hand, learned counsel appearing for the respondent would submit that the appellant has admitted in his written statement (para 5 & 5-A) regarding loan transaction, therefore, finding of the trial court is proper. He would further submit that the respondent is not a money lender, therefore,she is not required to maintain record under the Act, 1934. The evidence adduced on behalf of the respondent is not rebutted by the

appellant, therefore, finding arrived at by the trial court is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. The first question for consideration of this court is whether the appellant has borrowed a sum of Rs.1,50,000/- from the respondent. From the written statement of respondent (para 5-A and 5-B) it is established that loan was advanced to the appellant through account payee cheque. As per version of PW/1 K.K. Dhan and PW/2 Prajay Gwalre (PW/2) deposed before the trial court on behalf of the respondent/plaintiff. PW/2 Prajay Gwalre deposed on the basis of Power of Attorney. This witness is brother of respondent/plaintiff and he is acquainted with the entire facts of the case, therefore, it is not a case where power of attorney holder has no personal knowledge about the transaction. PW/2 Prajay Gwalre deposed before the trial Court about personal knowledge and as per his evidence it is established that the appellant borrowed money from respondent and he paid interest on various dates. From the evidence it is established that the principal amount of Rs.1,50,000/- was not paid by the appellant and interest was also balance but the respondent side waived amount of interest to the tune of Rs.79,375/- and claimed interest only for Rs.50.000/-. The evidence adduced on behalf of the respondent side is unrebutted

by the appellant, therefore, the trial Court is right in holding that the appellant is under obligation to pay the principal amount of Rs.1,50,000/-, interest of Rs.50,000/- and cost of litigation.

7. The finding of the trial court is based on proper marshalling of evidence and after re-assessing the evidence this court has no reason to record finding that the respondent is a money lender. The evidence of respondent side is unrebutted that is why the trial court recoded finding in favour of the respondent. This court has no reason to record a contrary finding. Issue of limitation is also raised by the appellant before the trial court and the trial court after elaborate discussion opined that interest was paid through cheque on 4-8-1999 which is acknowledgement of debt and limitation is extended upto that date i.e., 4-8-1999. Suit was filed on 31-7-2002 which is within limitation. Finding of the trial court is based on proper reasoning, therefore, same is not liable to be interfered with while invoking jurisdiction of the appeal. Argument advanced on behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

8. Accordingly, the decree is passed against the appellant and in favour of the respondent as under:

i) The appeal is dismissed with cost.

ii) Appellant to bear the cost of respondent through out.

iii) Pleader's fee, if certified, as per schedule or whichever is less.

iv) A decree be drawn up accordingly.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju