

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 09.05.2019****Judgment delivered on 21.6.2019****First Appeal No.79 of 2008**

SK Bhosle, son of Late KH Bhosle, aged about 51 years,
R/o. Block No.1, Plot No.7, In front of Dr. Anita Shukla's
Clinic, Nehru Nagar (East), Bhilai, Tahsil and District Durg
(CG)

---- Appellant**Versus**

RC Mishra, son of Late RD Mishra, aged about 71 years,
R/o. Kohaka Bhilai, Tahsil & Distt. Bhilai (CG)

---Respondent

For the appellant	: Shri HB Agrawal, Sr. Advocate with Smt. Meera Jaiswal, Advocate
For the respondent	: Shri Uttam Pandey, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against judgment and decree dated 17.11.2007 passed by Twelveth Additional District Judge (FTC), Distt. Durg (CG) in a Civil Suit No.33B/2007 wherein the said Court decreed the suit filed by respondent/plaintiff to the tune of Rs.1,25,000/-.

2. As per the plaint averments of the respondent/plaintiff, one stamp for Rs.100/- was purchased on 19.5.2003 in which promissory note was typed in favour of him on 22.10.2003 for taking loan of Rs.1,25,000/- by the appellant with interest @ 2% per month on demand. In the evidence of the respondent, it has come that the appellant did not come on 19.5.2003 and has not taken any loan on

that day, therefore, case of the respondent was not established, but the trial Court decreed the suit.

3. Learned counsel for the appellant submits as under:

(i) The appellant has taken loan of Rs.60,000/- and signature was obtained in the blank stamp paper by the respondent on 19.5.2003 which was repaid by him but neither any receipt nor the original stamp was returned to the appellant and the respondent has misused the blank stamp by putting date of 22.10.2003.

(ii) The document produced before the trial Court is manipulated and the trial Court is not right in rejecting the defence taken by the appellant.

(iii) No income tax record was produced by the respondent, therefore, case of the respondent is not established.

4. On the other hand, learned counsel for the respondent submits that the finding arrived at by the trial Court is based on proper marshaling of evidence which is not liable to be interfered with.

5. The respondent/plaintiff deposed before the trial Court that the appellant borrowed a sum of Rs.1,25,000/- from him on 22.10.2003 and one promissory note was executed which was signed by the appellant/defendant. Version of this witness is unrebutted during cross-examination and it is supported by document Ex-P/1. Version of this witness is again supported by notice(Ex-P/2) served on the appellant for refund of the said amount. It appears from the record that no reply was given by the appellant even after receiving the notice served to him by the respondent.

6. The respondent deposed before the trial Court that he took loan of Rs.60,000/- which was returned by him but no receipt was produced regarding refund of amount by the appellant, therefore, the trial Court is right in holding that no amount was repaid by the appellant. In absence of any document regarding taking of loan of Rs.60,000/- or any receipt of repayment of the amount, the trial Court recorded the finding that the story of the respondent/plaintiff is convincing and the appellant is under obligation to repay the amount to the tune of Rs.1,25,000/- . After reassessing the entire evidence, this Court has no reason to record a contrary finding. Therefore, arguments on behalf of the appellant is not sustainable. Accordingly, the appeal is liable to be dismissed

7. The decree is passed against the appellant and in favour the respondent as under:

- (i) The appeal is dismissed with cost.
- (ii) The parties to bear their own cost.
- (iii) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE