

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 15-4-2019

Judgment delivered on 09-05-2019

FIRST APPEAL No. 175 of 2006

1. (a) Sumat Prakash Jain aged about 47 years,

(b) Jai Prakash Jain, aged about 45 years.

(c) Om Prakash Jain, aged about 42 years.

All sons of Sheetal Prasad Jain, Ward No. 10,
Satyuanarayan Ward, House No. 151, Nawapara,
Rajim, District (CG).

(d) Smt. Santosh Jain, w/o. Narendra Kumar Jain, aged 40
years, resident of Jadi Buti Ji Dukan, Dongargarh, Dist.
Rajnandgaon (CG).

(e) Smt. Madhu Jain w/o. Mukesh Kumar Jain, aged about
35 years, r/o. Cashier Gramin Vikas Bank, Chhuriya,
Dist. Rajnandgaon (CG).

--Appellants/defendants.

Versus

M/s. Ghyanchand Jain, Partnership firm through partner Abhay
Kumar Jain, resident of Ganj road, Nawapara Rajim, District
Raipur (CG).

– Respondent/plaintiff

For appellants : Mr. Vivek Tripathi, Advocate

For respondent : Mr. Yash Mourya, 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/decreed dated 31-7-2006
passed by 11th Additional District Judge (FTC), Raipur (CG) in

Civil Suit No.4-B/2005 wherein the said court decreed the suit filed by the respondent against Sheetal Prasad Jain, Proprietor M/s Sheetal Prasad Jain to the tune of Rs. 3,00,000/- with interest.

2) Present appellants are legal representatives of said Sheetal Prasad Jain. Respondent/plaintiff filed a suit against M/s Seetal Prasad Jain, who is father of the appellants with an averment that M/s Sheetal Prasad Jain borrowed a sum of Rs.3,00,000/- for their business which was provided by the respondent vide cheque No. 997298 dated 30-3-1998 payable at State Bank of India, Branch Nawapara Rajim. It is alleged that interest @ 1.5% per month was settled. It is pleaded that Rs.54,000/- which is interest amount was repaid by way of cheque dated 3-7-1999 from appellant side, but principal loan amount was not paid.

3) Learned counsel for the appellants would submit as under:

- i) There is no promissory note or the written document regarding the aforesaid debt, therefore, finding of the trial Court is erroneous.
- ii) The cheque of Rs.3,00,000/- was issued by R.K. Jain and without impleading him as party in the suit, same is not maintainable.
- iii) Finding of the trial court that the suit is not barred by limitation is also not sustainable.
- iv) The transaction is not real transaction and

the trial Court wrongly held that Rs.54,000/- was repaid as interest, therefore, finding of the trial Court is liable to be set aside.

4) On the other hand, learned counsel for the respondent would submit that from the evidence of Abhay Kumar Jain (PW/1) and Regional Officer of Indian State Bank, Nawapara Branch namely J.S. Bhatra (PW/2) it is established that Rs.3,00,000/- was paid to Sheetal Prasad Jain as loan and it was granted as per cheque No. 997298 and the amount was transferred from the account of Ghyanchand Jain to the account of Sheetal Prasad Jain. The amount of Rs.54,000/- was transferred from the account of Sheetal Prasad Jain to the account of Ghyan Chand Jain on 3-7-1999 vide cheque No.081109. He would further submit that the finding of the trial court is based on proper marshaling of the evidence which 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 in which judgment and decree has been passed.

6) As the interest amount was paid on 3-7-1999, the same is acknowledgement of debt and even after notice dated 26--3-2002 the principal amount was not paid, the suit filed on 3-7-2002 is within limitation.

7) The first question for consideration of this court is whether Sheetal Prasad borrowed sum of Rs.3,00,000/- from Ghyan Chand Jain. From the statements of Abhay Kumar Jain (PW/1) and PW/2 J.S. Bhatra, it is established that Rs.3,00,000/- was transferred from the account of Ghyan Chand Jain to the account of Sheetal Prasad Jain which is clinching proof of transfer of fund of Rs.3,00,000/- to the account of Sheetal Prasad Jain, therefore, the trial Court is right in holding that Rs.3,00,000/- was borrowed by Sheetal Prasad Jain. From the statement of PW/2 J.S. Bhatra, it is established that Rs.54,000/- was transferred to the account of Ghyan Chand Jain from the account of Sheetal Prasad Jain as interest, therefore, the respondent's assertion proves that Rs.54,000/- was repaid as interest. Notice (Ex.P/5) was given to Sheetal Prasad Jain on 26-3-2002 but no amount was refunded inspite of notice, therefore, the appellants, who are legal representatives of Sheetal Prasad Jain are under obligation to repay the amount for which the decree has been passed by the trial Court.

8. The trial Court has elaborately discussed the entire evidence elaborately and recorded the finding in favour of the respondent. Finding of the trial court is based on proper marshalling of the evidence and after re-assessing the evidence, this court has no reason to substitute contrary finding.

9) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondent and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellants to bear the cost of the respondent through out..
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju