

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 18.7.2019****Judgment delivered on 19.8.2019****First Appeal No.06 of 2011**

- K.V. Narsaiah S/o Late K.V. Bramaiah, Aged about 70 years, Local Residence Cinu Niwas, Shop No. 3, Approach Road Camp-1, Bhilai, Distt. Durg, Perm. Add. Through Manoj Kumar, House No. 302, Flat No. 77, S.V. Residency, Madhavi Nagar, Kukkut Palli Hyderabad – 72 (A.P.)

---- Appellant**Versus**

- V. Venkat Rao S/o Achari Soni, Aged about 60 years, Gajlaxmi Jewellery Works, In Front Of Vijay Dal Mill, Shivpara, Durg, R/o Near Sharda Maharaj Dairy, Shivpara, Durg (CG)

---Respondent

For the appellant	: Shri Vivek Shrivastava, Advocate
For the respondent	: Shri Mayank Chandrakar, Advocate

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

1. This appeal is preferred against judgment and decree dated 26.10.2010 passed by Seventh Additional District Judge (FTC), Durg (CG) in a Civil Suit No.27B/2009 wherein the said Court dismissed the suit filed by the appellant/plaintiff against respondent/defendant for recovery of amount to the tune of Rs.67,000/-.

2. As per the appellant/plaintiff's averments, both the parties are originally from the State of Andhra Pradesh. They had business relation for long past. The appellant decided to reside permanently in Andhra Pradesh and sold his firm Sinu Engineering Works and was negotiating for sale of his house. In the meantime, final settlement of the transactions between the plaintiff and the

defendant took place on 15.3.2008 and the appellant received final cheque on that day. On 15.4.2008, the respondent came to the appellant and requested for lending him Rs.50,000/- as he needed the same for some business requirements. The appellant paid him Rs.50,000/- through bearer's cheque bearing cheque No.417908 of ICICI Bank dated 15.4.2008. When the aforesaid amount was not paid back in time, the appellant contacted the respondent for refund of the amount, but the amount was not returned. Thereafter the appellant sent a registered notice through counsel on 27.7.2009, even then the amount was not refunded, hence, suit for recovery was filed.

3. The respondent denied all the allegations. As per the case of the respondent, there was some problem in the eyes of the appellant and he was not in a position to move, therefore, the respondent went with the cheque to the Bank along with one Rajesh Gupta and after withdrawing the money of the appellant, he handed over the same to him and no money was borrowed by the respondent. The trial Court after hearing both sides, dismissed the suit that is why this appeal is preferred.

4. Learned counsel for the appellant submits as under:

(i) The appellant paid the amount to the respondent through bearer cheque and the amount was withdrawn by him but he did not return the amount to the appellant.

(ii) The trial Court has not considered the evidence of the appellant and the substantive evidence of Harish Chandra Godeshwar in its true perspective, therefore, the finding of the trial Court is liable to be set aside.

5. On the other hand, learned counsel for the respondent submits as under:

(i) There was no document to prove that the amount was advanced as loan to the respondent.

(ii) As per the version of his substantive evidence Rajesh Gupta, he accompanied the respondent to the bank and after withdrawing the amount the same was returned to the respondent.

(iii) There was transactions after 15.4.2008 and in subsequent transactions there is no mention of borrowing money to the tune of Rs.50,000/-.

(iv) If the loan would have been advanced to the respondent, cheque ought to have been issued in the name of the respondent, but no such cheque was issued in favour of the respondent, therefore, finding of the trial Court is not liable to be interfered while invoking the jurisdiction of the appeal.

6. The first question for consideration before this Court is whether the respondent had borrowed a sum of Rs.50,000/- from the appellant. As per the version of the appellant, he had given a bearer cheque to the respondent, but his witness Harish Chandra Godeshwar has not deposed that any cheque was given to the respondent in his presence, therefore, version of the appellant is not supported by the version of Harish Chandra Godeshwar. Admittedly, no account payee cheque was issued in favour of the respondent, there is no bank account to show that any amount is transferred from the account of the appellant to the account of the respondent. There is no document written by the appellant to the respondent regarding loan of Rs.50,000/-. The cheque was a bearer cheque and as per

the evidence of the respondent and his witness Rajesh Gupta, after withdrawing the bearer cheque, the respondent has returned the amount to the appellant.

7. After assessing the entire evidence, the trial Court recorded finding that advancing loan to the respondent by the appellant is not established after going through the entire documentary and oral evidence. After reassessing the entire evidence, this Court has no reason to record a contrary finding in absence of any documentary evidence. Verbal evidence is contrary to each other, but the evidence of respondent's side is establishing that it was a bearer cheque and the amount was returned to the appellant after encashing the cheque. In view of the above arguments advanced, the appeal is not sustainable and the same is liable to be dismissed.

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

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

Sd/-
(Ram Prasanna Sharma)
JUDGE