

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 02.05.2019****Judgment delivered on 21.6.2019****First Appeal No.40 of 2006**

1. Ballumal Parmanand Firm, Ramsagarpara, Raipur, Thro. No.2 Proprietor
2. Mansharam S/o Ballumal Khetpal, Aged About 57 Years R/o Ganjpara, Ramsagarpara, Raipur(Defendant No.4)

---- Appellants**Versus**

1. Nemichand Bhansali Dead Through Lrs -
 - 1.a - Umrao Bhansali Wd/o Late Nemichand Bhansali, Aged About 77 Years, R/o. Edward Road, Raipur (CG)
 - 1.b - Umesh Bhansali S/o Late Nemichand Bhansali, Aged About 51Years, R/o. Edward Road, Raipur (CG)
 - 1.c - Roshan Bhansali S/o Late Nemichand Bhansali, Aged About 35 Years, R/o. Edward Road, Raipur (CG)
2. Khetpal Traders Firm, Ganjpara, Raipur, Thro No.3 Proprietor(Defendant No.1)
3. Parmanand S/o Ballumal Khetpal, Aged About 62 Years R/o Ganjpara, Ramsagarpara, Raipur(Defendant No.3)

---Respondents

For the appellants : Shri Amrito Das, Advocate
 For respondents 1a to 1c : Smt. Hamida Siddique and Shri Sumit Singh Rathore, Advocates

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

1. This appeal is preferred against judgment and decree dated 16.11.2005 passed by Fourth Additional District Judge Raipur (CG) in a Civil Suit No.5B/2005 wherein the said Court decreed the suit filed by original respondent No.1 against the appellants for recovery of amount to the tune of Rs.1,90,000/-.

2. Civil suit for recovery of money was instituted by original respondent No.1/plaintiff who was a money lender and primarily governed by the CG Money Lenders Act, 1934. As per the version of said respondent No.1, the appellants are the proprietors of firm namely Khetrapal Traders and Ballumal Parmanand Firm and appellant No.2 borrowed money to the tune of Rs.15,000/- on 05.4.1989, Rs. 20,000/- on 04.01.1990, and Rs.25,000/- on 01.6.1991. Respondent No.3/defendant No.3 Paramand also borrowed sum of Rs.9000/- on 03.4.96, Rs.9000/- on 02.5.96 and Rs.7000/- on 01.6.96. Interest was to be charged @ 1.75% per month. Some amount was paid against the loan on behalf of the firm Khetrapal Traders and some amount was paid on behalf of Ballumal Parmanand Firm. After calculation of balance amount, it was found that Rs.41,809/-. Rs.51,050 and Rs.58,425/- was due against firm Khetrapal and balance of Rs.37,971/- was due against firm Ballumal Parmanand. The balance amount was not paid that is why suit was filed which was decreed by the trial Court.

3. Learned counsel for the appellants submits as under:

(i) Original respondent Nemichand Bhansali (PW-1) admitted (para 7) before the trial Court that no promissory notes were executed in the name of the firm Ballumal Parmanand therefore, firm Ballumal Paramanand is not liable to pay the sum to respondent No.1.

(ii) Present appellants who had not assumed any liability with respect to the loans cannot be directed to repay the loan,

therefore, making party to Khetpal Traders and firm Ballumal Paramanand in suit is misjoinder of the parties.

(iii) Rate of interest is not mentioned in Ex-P/1 to P/3 signed by Manshraram, therefore, finding of the trial Court regarding interest is not sustainable

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is based on proper marshaling of evidence and the same is not liable to be interfered with while invoking the jurisdiction of appeal.

5. Original respondent Nemichand Bhansali appeared before the trial Court as PW-1 and adduced oral evidence and produced documents (Ex-P/1 to P/48). This witness deposed before the trial Court that loan was advanced to Mansharam on behalf of the firm Khetpal Traders as per Ex-P/1 to P/3 again loan was advanced to Parmanand on behalf of the Khetpal Traders as per Ex-P/4 to P/6. Version of this witness is supported by version of Trilok (PW-2). Mansharam appeared before the trial Court as DW-2 and he admitted signature on documents Ex-P/1 to P/3. Though Parmanand (DW-1) deposed that no amount was received by him against documents (Ex-P/4 to Ex-P/6) but the fact remains that mere denial is not sufficient to discard the oral and documentary evidence adduced by original respondent No.1/plaintiff side. The trial Court has elaborately discussed the entire evidence and recorded finding that Mansharam borrowed sum as per Ex-P/1 to P/3 and firm Khetpal Traders and appellant Parmanand also borrowed sum on behalf of Khetpal Traders.

Both Manhsaram and Parmanand are liable to repay the amount because the loan is advanced to them whether they have taken the loan for firm Kheapal traders or for firm Ballumal Parmanad. When Mansharam and Parmanand have signed documents for borrowing loan, they are personally liable to repay the same. The trial Court has made responsible the firm and Parmanand and Mansharam jointly and severally, therefore, Parmanand and Mansharam are under obligation to repay the amount even the amount is not used for the purpose of the firm. As per documents (Ex-P/1 to P/3) and as per the statement of respondent No.1 and other witnesses, it is established that rate of interest is 1.75 % per month and Mansharam is under obligation to pay the principal amount with interest. The calculation of amount which advanced to Mansharam and expenses of notices comes out to Rs.1,51,785/- and calculation of principal amount and interest which was advanced to Parmanand as per Ex-P/4 to P/6 comes out to Rs.38,175/-.

6. In view of the above, arguments advanced on behalf of the appellants is not sustainable and the appeal filed on behalf of the appellants is liable to be dismissed subject to modification of the decree. Accordingly, while dismissing the appeal, the decree is modified against the appellants and in favour of the respondents as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant Manshram shall pay Rs.1,51,785/- to the respondents/plaintiffs with interest @ 6% from the date of

institution of the suit i.e. 09.11.1998 to the date of realization of the full amount.

(iii) Defendant No.3 Parmanand shall pay to the respondents/plaintiffs a sum of Rs.38,175/- with interest @ 6% from 09.11.1998 till realization of the full amount.

(iv) The appellants to bear the cost of respondents 1a to 1c throughout.

(v) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.

(vi) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE