

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 508 of 2018

- Anil Tripathi S/o Chandrashekhar Dutta Tripahi Aged About 32 Years R/o Ganjpara, Durg Tahsil And District- Durg, Chhattisgarh. ---- Appellant/defendant

Versus

- Ashok Sharma S/o Manohar Lal Sharma Aged About 46 Years R/o Jagdambe T.V. Centre, Sanichari Bazzar, Durg, Tahsil And District- Durg, CG. ---- Respondent/plaintiff

For appellant : Mr. Arvind Dubey, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

Oral Judgment

04-09-2019

1. Heard on I.A.No.1 of 2018 which is an application for condonation of delay in filing the present appeal supported with an affidavit of Anil Tripathi.
2. For the reasons mentioned in the application, I.A. No. 1 of 2018 is allowed and delay of 270 days in filing the instant appeal is condoned.
3. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 29-8-2017 passed by 6th Additional District Judge, Durg (CG) in Civil Suit No. 13-B/2009 wherein the said court decreed the suit filed by the respondent/plaintiff for recovery of Rs.70,000/- from appellant/defendant with interest.

4. As per suit averment, appellant/defendant was in need of money on 10-3-2007 and he asked the respondent/plaintiff to provide Rs.1,50,000/-. Rs. 70,000/- was given to the appellant in cash and Rs.80,000/- was given to him through cheque bearing No.2127764 issued by Bank of Maharashtra. As the cheque issued by the appellant is dishonoured, a complaint was filed against him under Section 138 of Negotiable Instruments Act, 1881 and for Rs.70,000/- which was given in cash, the trial court decreed the suit.

5. Learned counsel for the appellant would submit that the respondent is in business of TV and repairing the same from whom the appellant purchased TV on credit for which he had signed a blank paper over stamp. It is further case of the appellant that respondent has given Rs.80,000/- on 21-8-2007 and for refund of the same amount cheque was issued in his favour as mentioned. The respondent has not followed mandatory provisions of Money Lenders Act, 1934, therefore, suit was not maintainable and decree is liable to be set aside.

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

7. Respondent adduced evidence of himself as PW/1 and Jay Joseph (PW/2) and produced document Ex.P/1. The appellant side adduced evidence of Arun Dwivedi (DW/1), Anil Tripathi (DW/2)

and Sharada Prasad Tripathi (DW/3). From the evidence of respondent and his witness Jay Joseph (PW/2), it is established that Rs.70,000/- was paid to appellant in cash which is unrebutted and supported by the document (Ex.P/1) in which it is clearly mentioned that Rs.70,000/- was given in cash. The witnesses of the appellant side deposed that Rs.80,000/- was given to respondent by the appellant for purchase of land but it is not clear from their evidence as to which land was to be purchased. No particulars have been submitted by any of the witnesses and their version is not supported by any of the documents.

8. After assessing the oral and documentary evidence on record, the trial court recorded a finding that the respondent advanced a sum of Rs.70,000/- to the appellant and the appellant is liable to repay the same. After reassessing the evidence, this court has no reason to take a contrary view. It is not a case where respondent should be called for full consideration of this appeal.

9. Accordingly, the appeal is dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju