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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS) 1979/2011

% ***Judgment dated 23.05.2014***

PRANESH GUPTA & ANR ..... Plaintiff
Through: Ms.Vaishali Kakra and Mr.Ifran Ahmed, Advocates

versus

JAGDISH BANSILAL KHURANA ..... Defendant
Through:

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (***ORAL***)

1. Plaintiffs have filed the present suit for recovery of Rs.9,93,27,786.68/- against the defendant.

2. In the order dated 10.10.2013 Joint Registrar has noticed that affidavit of service has been filed, postal cover sent to the defendants have been received back undelivered either with the refusal report or unclaimed. The defendant was served through publication in the daily Newspaper 'Lok Satta', Mumbai Edition dated 2.5.2013. The defendant was proceeded ex parte on 18.11.2013. Plaintiff was directed to file ex parte evidence. Plaintiff has filed the evidence of Sh.Pranesh Gupta (plaintiff No.1 / PW-1).

3. PW-1 has deposed that he is one of the partners of plaintiff No. 2. The true copies of Forms 'A' & 'B' issued by the Registrar of Firms in respect of the plaintiff No.2 firm are exhibited as **EX PW1/1** and **Ex.PW1/2**, respectively.

4. PW-1 has deposed that the defendant had approached plaintiff No.1 for the grant of loans from time to time. Plaintiff No.1 on the aforesaid requests of the defendant granted loans to the defendant through cheques/RTGS for a total sum of Rs.4,83,75,000/- (Rupees four crores eighty three lacs seventy five thousand only) from time to time, as detailed in the Statement of Account.

5. It is also deposed by PW-1 that the defendant as borrower signed and executed the following documents for grant of loans from time to time:-

a. The defendant signed and executed in presence of the deponent a Loan Agreement dated 18.07.2008 for a sum of Rs. 60.00 lacs (Rupees Sixty Lacs only) in favour of the plaintiff No. 1 and agreed therein to pay interest @ 18% p.a. and such interest with monthly rests. In the event of the borrower committing a default or delay in the payment of any sum due shall pay additional interest compounded monthly @ 24% p.a. on the principal amount/interest due from the date of default till the date of payment The Loan Agreement dated 18.07.2008 is exhibited as **EX PW1/3**. The same also bears signatures of the deponent.

b. The defendant signed and executed in presence of the deponent a Demand Promissory Note dated 18.07.2008 for a sum of Rs. 60.00 lacs (Rupees Sixty Lacs only) in favour of the plaintiff No. 1 promising therein to pay on demand to Plaintiff No. 1 a sum of Rs. 60.00 lacs alongwith interest @ 18 % per annum with monthly rests. The Demand Promissory Note dated 18.07.2008 is exhibited as **EX PW1/4**.

c. That alongwith the D.P.Note, the defendant signed and executed in presence of the deponent a Letter of Continuity dated 18.07.2008 in favour of the Plaintiff No. 1 confirming that the Demand Promissory Note dated 18.07.2008 shall be a continuing security and be enforceable for all monies which now or may at any time became due and owing and payable to the Plaintiff No.1. The Letter of Continuity dated 18.07.2008 is exhibited as **EX PW1/5**.

d. That the defendant signed and executed in presence of the deponent on 22.08.2008 an Addendum to the Loan Agreement dated 18.07.2008 for a sum of Rs. 1.40 crore (Rupees One Crore forty Lacs only) in favour of the Plaintiff No. 1 alongwith interest @ 18 % per annum with monthly rests. The amount of loan as such stood amended to Rs.2.00 crores. The Addendum to the Loan Agreement dated 18.07.2008 is exhibited as **EX PW1/6**. The same also bears signatures of the deponent.

e. The defendant signed and executed in presence of the deponent a Supplementary Agreement dated 24.09.2008 for a sum of Rs. 1.00 crore (Rupees One Crore only) in favour of Plaintiff No. 1 alongwith interest @ 30% per annum with monthly rests.. The amount of loan as such stood amended to Rs.3.00 crores. The Supplementary Agreement dated 24.09.2008 is exhibited as **EX PW1/7**. The same also bears signatures of the deponent.

f. The defendant signed and executed in presence of the deponent on 24.09.2008 an Addendum to the Supplementary Agreement dated 24.09.2008 for a sum of Rs. 50.00 lacs (Rupees Fifty Lacs only) in favour of the plaintiff No.1 alongwith interest @ 30% per annum. The amount of loan as such stood amended to Rs.3.50 crores. The

Supplementary Agreement dated 24.09.2008 is exhibited as **EX PW1/8**. The same also bears signatures of the deponent.

g. The defendant signed and executed in presence of the deponent a Receipt dated 25.10.2008 for a sum of Rs. 20 lacs (Rupees Twenty lacs only) in favour of the plaintiff No. 1 alongwith interest @ 24% per annum with monthly rests. The Receipt dated 25.10.2008 for a sum of Rs. 20 lacs is exhibited as **EX PW1/9**.

h. The defendant signed and executed in presence of the deponent a Pro Note dated 07.01.2009 for a sum of Rs. 20 lacs (Rupees Twenty lacs only) in favour of the plaintiff No. 1 alongwith interest @ 24% per annum with monthly rests and penal interest thereafter. The Pro Note dated 07.01.2009 for a sum of Rs. 20 lacs is exhibited as **EX PW1/10**.

i. The defendant signed and executed a Pro Note dated 07.01.2009 for a sum of Rs. 30 lacs (Rupees Thirty lacs only) in favour of the plaintiff No. 1 alongwith interest @ 24% per annum and penal interest thereafter. The Pro Note dated 07.01.2009 for a sum of Rs. 30 lacs is exhibited as **EX PW1/11**.

6. PW-1 has also deposed that in consideration to the grant of the aforesaid loans the defendant had signed and executed the aforesaid loaning documents in favour of plaintiff No.1 at New Delhi. It was agreed by the defendant that the aforesaid loans were to carry interest as per the agreed rates as mentioned in the loan documents. The amounts were remitted by plaintiff No.1 to the defendant through the partnership account of plaintiff No.2, of which defendant is a partner.

7. PW-1 has further deposed that the following amounts were remitted by plaintiff No.1 to the defendant through the partnership account of plaintiff No.2, of which he is a partner:-

> “a. Rs. 60,00,000/- lacs on 16.07.2008 vide Pay Order No. “949775” drawn on State Bank of Indore.
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> b. Rs. 15,00,000/- on 01.08.2008 vide Cheque No. “546446” drawn on State Bank of Indore.
>
> c. Rs. 20,00,000/- on 07.08.2008 vide Cheque No. “948353” drawn on State Bank of Indore.
>
> d. Rs. 20,00,000/- on 12.08.2008 vide Pay Order No. “948363” drawn on State Bank of Indore.
>
> e. Rs. 3,50,000/- on 19.08.2008 vide Cheque No. “948404” drawn on State Bank of Indore.
>
> f. Rs. 20,00,000/- on 22.08.2008 vide Cheque No. “948436” drawn on State Bank of Indore.
>
> g. Rs. 30,00,000/- on 26.08.2008 vide Cheque No. “947534” drawn on State Bank of Indore.
>
> h. Rs. 20,00,000/- on 01.09.2008 vide Cheque No. “947536” drawn on State Bank of Indore.
>
> i. Rs. 25,00,000/- on 01.09.2008 vide Cheque No. “948417” drawn on State Bank of Indore.
>
> j. Rs. 50,00,000/- on 09.09.2008 vide Cheque No. “948378” drawn on State Bank of Indore.
>
> k. Rs. 60,00,000/- on 24.09.2008 vide Cheque No. “303726” by RTGS through State Bank of India.
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> l. Rs. 40,00,000/- on 24.09.2008 vide Cheque No. “303727” by RTGS through State Bank of India.

m. Rs. 50,00,000/- on 25.10.2008 by RTGS through State Bank of Indore.

n. Rs. 5,00,000/- on 29.10.2008 vide Cheque No. "305563" dated 20.08.2008 drawn on State Bank of India.

o. Rs. 35,00,000/- on 29.10.2008 vide Cheque No. "305564" dated 20.08.2008 drawn on State Bank of India.

p. Rs. 25,000/- on 29.10.2008 vide Cheque No. "305570" dated 20.08.2008 drawn on State Bank of India.

q. Rs. 30,00,000/- on 03.11.2008 by RTGS through State Bank of India."

The Statement of the account of State Bank of Indore is **EX PW1/50.**

8. PW-1 has also deposed that at the time of grant of the aforesaid loans to the defendant, the defendant promised to adhere to the financial discipline of the aforesaid loan facilities and maintain the regularity in repayment.

9. It is also deposed that the defendant duly availed the aforesaid loans granted to him, but became highly irregular in conduct of the same and neglected to maintain the financial discipline and regularity in repayment of the outstanding amount in respect of the aforesaid loans granted to defendant by the plaintiffs. The defendant remitted a sum of Rs.8,73,856/- by way of a cheque on 25.10.2008 towards part payment of the outstanding amount due and payable by him to the Plaintiffs. The defendant issued and handed over to the plaintiff No.1 at New Delhi a Cheque No. 530735 dated 07.01.2011 for a sum of Rs. 8,50,00,000/- (Rupees Eight Crores and Fifty Lacs only) favouring plaintiff No.1, drawn on ICICI Bank Ltd, payable at par at all branches of ICICI Bank Ltd in India, towards part payment of the outstanding amount. The defendant assured and represented to plaintiff No.1 that the said cheque was good

for realization and the same shall be honoured on its presentation, the Cheque No. 530735 dated 07.01.2011 for a sum of Rs. 8,50,00,000/- which has been annexed herewith as **EX. PW1/11.** Plaintiff No.1, believing the aforesaid representation of the defendant to be true, deposited the aforesaid Cheque No.530735 dated 07.01.2011 with his banker State Bank of India, Green Park, New Delhi and the same was returned back dishonoured by the banker of the defendant i.e. ICICI Bank through its service branch at Jhandewalan, New Delhi, when presented for encashment, with the remarks "Funds Insufficient". The aforesaid information of dishonour of the aforesaid Cheque No.530735 dated 07.01.2011 was received by plaintiff No.1 through his banker i.e. State Bank of India, S-31, Green Park, New Delhi, vide Return Memo Report dated 27.01.2011, the aforesaid Cheque No. 530735 dated 07.01.2011 which have been exhibited as **EX. PW1/12** and **EX. PW1/13** respectively.

10. PW-1 has also deposed that plaintiff No.1 had tried to contact the defendant, but the defendant intentionally and deliberately avoided the calls of plaintiff No.1. From the aforesaid conduct of the defendant, it became clear and evident that the intentions of the defendant, right from the beginning, were malafide, malicious with intent to cheat the plaintiffs. The Plaintiff sent a legal demand notice dated 16.02.2011 to the defendant under Section 138 of The Negotiable Instruments Act, 1881, as amended, calling upon the defendant to pay the amount of the dishonoured cheque within the time stipulated, but despite receipt of the aforesaid notice, the defendant failed to pay the said amount, the legal demand notice dated 16.02.2011, postal receipts, courier receipts and AD cards are exhibited as **EX. PW1/14 to Ex.PW1/33,** respectively.

11. It is also deposed that having no other option plaintiff No.1 was constrained to initiate criminal proceedings under the provisions of Section 138 of the Negotiable Instruments Act, 1881, as amended against the defendant and the same is pending in the court of M.M., Saket District Courts, Delhi.

12. PW-1 has also deposed that since the defendant remained irregular in conduct of the aforesaid loans and neglected to maintain its financial discipline, plaintiffs were forced to serve upon the defendant a notice dated 10.06.2011 calling upon the defendant to repay the outstanding amount of Rs. 9,60,44,578.68 (Rupees nine crores sixty lacs forty four thousand five hundred seventy hundred fifty eight and sixty eight paisa only) alongwith agreed rate of interest with monthly rests as on 31.05.2011, besides, the interest at the agreed rates with monthly rests from 01.06.2011 onwards within 7 days of the receipt of the said Notice dated 10.06.2011, failing which, plaintiffs shall be constrained to initiate appropriate proceedings against the defendant for recovery of the aforesaid amount, besides criminal proceedings under relevant provisions of the Indian Penal Code. However, the defendant despite receipt of the aforesaid notice dated 10.06.2011 failed to liquidate the outstanding amount. The notice dated 10.06.2011, postal receipts, courier receipts and AD cards are exhibited as **EX. PW1/34 to Ex.PW1/49,** respectively.

13. PW-1 has also deposed that now as per books of accounts maintained by the plaintiffs a sum of Rs. 9,93,27,786.68 (Rupees nine crores ninety three lacs twenty seven thousand seven hundred eighty six and sixty eight paisa only) is due and payable by the defendant to the plaintiffs, inclusive of the agreed rates of interest i.e. @ 18% p.a., 24% and 30% p.a. alongwith monthly rests, as, calculated upto 15.07.2011, which the defendant has failed to pay despite repeated requests and reminders of plaintiffs qua the

aforesaid loans. The statement of account of the plaintiff of the account of the defendant being maintained in the regular course of business is true and correct and shows the correct debits and credits. The same stands duly certified under Section 65 B of the Evidence Act, 1872 by Sh.Vipin Kumar, System Operator and Senior Accountant of the plaintiffs. The statement of account is exhibited as **Ex.PW1/51.**

14. I have heard counsel for the plaintiff and perused the record.

15. As per the plaint the defendant had approached the defendant no.2 for grant of loan from time to time. Loans were granted through cheques/RTGS transfers for total sum of Rs.4,83,75,000/-. The loan agreement dated 18.7.2008 has been marked as ***Ex.PW-1/3*****;** demand promissory note dated 18.7.2008 for a sum of Rs.16.0 lacs, promising to pay on demand a sum of Rs.16.0 lacs with 18% interest has been exhibited as ***Ex.PW-1/4***. Plaintiff has also placed on record letter of continuity dated 18.7.2008 in favour of plaintiff no.1, confirming that the demand promissory note dated 18.7.2008, shall be a continuing security and be enforceable for all moneys; the letter of continuity dated 18.7.2008 is exhibited as ***Ex.PW-1/5***. The defendant signed and executed on 22.4.2012 an addendum to the loan agreement dated 18.7.2008, which has been exhibited as ***Ex.PW-1/6***; the supplementary agreement dated 24.9.2008 is exhibited as ***Ex.PW-1/7***. The plaintiff has also been able to establish that the defendants signed and executed another addendum dated 24.9.2008 for a sum of Rs.50.0 lacs; supplementary agreement dated 24.9.2008 has been marked as ***Ex.PW-1/8***, receipt in the sum of Rs.20.0 lacs has been marked as ***Ex.PW-1/9*** and corresponding pronote dated 7.1.2009 for a sum of Rs.20.30 lacs and pronote dated 7.1.2009 for a sum of Rs.30.0 lacs have been exhibited as ***Ex.PW-1/10*** and ***Ex.PW-1/11***. Detailed statement of account of the amount remitted in the account have

been exhibited as ***Ex.PW-1/50***. The plaintiff has also established that a cheque in the sum of Rs.8.50 crores was handed over by the defendant to the plaintiffs towards part payment of the outstanding amount, which would show that the defendant admitted its outstandings. The cheque no.530735 dated 7.1.2011 for a sum of Rs.8.50 crores has been exhibited as ***Ex.PW-1/11***. The aforesaid cheque was deposited, however, the same was returned with the report "Funds Insufficient". The said cheque and the return memo report have been exhibited as ***Ex.PW-1/12*** and ***Ex.PW-1/13;*** a legal notice issued and the courier receipts have been exhibited as ***Ex.PW-1/14*** and ***Ex.PW-1/33*** respectively.

16. Taking into consideration the documents placed on record and the evidence which has gone unrebutted and unchallenged, the present suit is decreed in favour of the plaintiff and against the defendant in the sum of Rs.9,93,27,786.68/- along with future interest @ 8% per annum. Decree-sheet be drawn up accordingly.

G.S.SISTANI, J

MAY 23, 2014
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