

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.176 of 2011****Reserved on 08.12.2020**
Pronounced on 11.12.2020

1. Ganpat Lal Sahu, S/o Anandram Sahu, aged about 55 years (Dead) (Defendant No.1)
- 1-A Smt. Homin Bai, Wd/o Late Shri Ganpat Lal Sahu, aged about 52 years, R/o village Aargaon, Post Office-Bankal, Tahsil-Dongargaon, Distt.-Rajnandgaon (C.G.) (Defendant No.1-A)
- 1-C Smt. Kumbhbai W/o Girish Sahu, aged about 28 years, R/o Village Kiragi, Post Office Pendri, Tahsil-Dongargaon, Distt.-Rajnandgaon (C.G.) (Defendant No.1-C)
- 1-D Smt. Gita Sahu, W/o Ramesh Sahu, aged about 24 years, R/o village Farhad, Post Office-Jangalpur, Tahsil & Distt. Rajnandgaon-(C.G.) (Defendant No.1-D)
- 1-E Smt. Chandrika Sahu, W/o Jagannath Sahu, aged about 29 years, R/o village Mokhali, Post Office-Karamtara, Tahsil-Dongargaon, Distt.-Rajnandgaon-(C.G.) (Defendant No.1-E)
2. Teerath Das Sahu, S/o Late Shri Ganpat Lal Sahu, aged about 25 years, R/o village Aargaon, Post Office-Aaragaon, Tahsil-Dongargaon-(C.G.)

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1. Manrakhan Kannauje, W/o Late Shri Chandulal Kannauje, aged about 50 years, R/o village Barahapur, Post Tumadibod, Tahsil-Dongargaon, Distt. Rajnandgaon (C.G.) (Plaintiff)
2. Phuldas Sahu, S/o Late Shri Ganpat Lal Sahu, aged about 42 years, R/o village Aargaon, Post Office Bankal, Tahsil – Dongargaon, Distt.- Rajnandgaon – (C.G.) (Defendant No.1-B)

---- Respondents

For Appellants	:	Shri Rishi Rahul Soni, Advocate.
For Respondent No.1	:	Shri Abhishek Sharma, Advocate.
For Respondent No.2	:	Shri Malay Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V. Judgment/Order**

1. The Legal Representatives of deceased Defendant No.1 Ganpat Lal Sahu, except Defendant No.1-B Phuldas Sahu, and Defendant No.2 Teerath Das, have preferred this appeal under

Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), questioning the legality and propriety of the judgment and decree dated 29.06.2011 passed in Civil Suit No.8-B/2008, whereby the learned Additional District Judge, Rajnandgaon, has decreed the Plaintiff's claim for recovery of a sum of Rs.60,000/- with 6% interest per annum from the date of institution of the suit till its realization. The parties to this appeal shall be referred hereinafter as per their description before the Court below.

2. Briefly stated the facts of the case are that the Plaintiff instituted a suit claiming recovery of Rs.60,000/- submitting, inter alia, that on 28.03.2008, the Defendants had borrowed from him the said amount on loan in order to meet out their household affairs, like marriage purpose, and executed an 'Ikrarnama' in this regard agreeing to refund the same within a period of two months. It is pleaded further that despite of his oral demand of the said loan amount and also of issuing a demand notice dated 18.06.2008 immediately after completion of the said period of two months, it was not refunded. Therefore, he has been constrained to institute the suit in the instant nature, instituted on 26.07.2008.
3. While denying the execution of the alleged 'Ikrarnama', it is pleaded by the Defendants that they have never obtained any loan amount, much less, a sum of Rs.60,000/- from the Plaintiff, as alleged by him. It is contended further that they, in fact, obtained the loan amount from the Durg Rajnandgaon Gramin Bank in order to run the hotel business where the plaintiff was made as a guarantor. According to them, the plaintiff, in order to

secure his amount, if required to be paid by him as a guarantor in case of their default in squaring up the loan of the said Bank, obtained their signatures on a blank stamped paper worth Rs.50/- at that particular time. It is contended further that the alleged 'Ikrarnama' was a forged and fabricated document, and therefore, the claim as made based upon it, deserves to be dismissed.

4. The Plaintiff has examined himself as P.W.1 and the attesting witness of the alleged 'Ikrarnama', namely, Ramji Sahu (P.W.2) in support of his claim, while defendants have examined as many as three of their witnesses in rebuttal.
5. After considering the evidence led by the parties, it was held by the trial Court that on 28.03.2008, the Defendants have borrowed the alleged loan amount of Rs.60,000/- from the plaintiff after executing an 'Ikrarnama' (Ex.P.6) and has failed to refund the same despite of his demand. In consequence, decreed the claim.
6. Shri Rishi Rahul Soni, learned counsel appearing for the appellants, while inviting attention to the statement of the Plaintiff Manrakhan (P.W.1), particularly para – 6, submits that at the most the transaction was made some time in the year 2005 and cannot be said to be made in the year 2008, and therefore, the Court below has erred in decreeing the claim of the Plaintiff based upon the alleged deed of 'Ikrarnama' executed on 28.03.2008. Further contention of him is that the trial Court, while placing the burden of proof upon the Defendants with regard to the execution of the alleged 'Ikrarnama' has committed

a serious illegality in decreeing the Plaintiff's claim.

7. On the other hand, Shri Abhishek Sharma, learned counsel appearing for Respondent No.1/Plaintiff, has supported the judgment and decree under appeal as passed by the trial Court.
8. I have heard learned counsel for the parties and perused the entire record carefully.
9. Perusal of the record would show that the case of the Plaintiff is based upon the deed of 'Ikrarnama' (Ex.P.6), purported to have been executed on 28.03.2008 by Defendant No.1 Ganpat Lal (since deceased now represented by his legal representatives) and his son Teerath Das Sahu (Defendant No.2). According to the Plaintiff, the defendants have borrowed from him the loan amount of Rs.60,000/- in presence of the witnesses while executing the alleged 'Ikrarnama' whereby they have assured him for its refund within a period of two months. It appears further that when it was not refunded, a notice dated 18.06.2008 (Ex.P.1) was issued by the Plaintiff and demanded the alleged loan amount from the Defendants, who have refused by saying that the alleged loan amount was never received by them. In order to establish the execution of the alleged transaction (Ex.P.6), it was stated by the Plaintiff Manrakhan (P.W.1) in his evidence that he lent the alleged loan amount in presence of the two witnesses, namely, Ramji Sahu and Shyam Sundar and the alleged document (Ex.P.6) was got it prepared by the Defendant Teerath Das Sahu himself. In his cross-examination, he denied specifically that the alleged amount of Rs.60,000/- was not given to the Defendants.

10. It is true, as reflected from para – 6 of his testimony, that it was given around a year ago to the Defendants prior to the alleged transaction, but merely on this one line statement of him would not be sufficient to hold that the Defendants have not taken the alleged loan amount from him, particularly, when he deposed very specifically that the alleged sum was paid in presence of the witnesses, which was duly corroborated by the attesting witness Ramji Sahu (P.W.2). According to the said attesting witness (Ramji Sahu), the alleged transaction was made on 28.03.2008 and the alleged loan amount was given to the Defendants in his presence. It appears further from his testimony that the alleged stamp paper (Ex.P.6) was brought by the Defendant Teerath Das himself and which has not been controverted by the Defendants and that apart no question was, however, put to him by the Defendants that the Plaintiff has obtained their signatures on the blank stamp paper, as alleged by them in their written statement. The initial burden was thus discharged by the Plaintiff regarding the execution of the alleged 'Ikrarnama' (Ex.P.6) whereby the alleged loan amount of Rs.60,000/- was given to the Defendants in presence of the two witnesses. Since the Defendants have admitted their signatures on it, therefore, it was the duty of the Defendants to disprove its execution by way of cogent and reliable evidence. However, the witnesses of theirs, namely, Than Singh (D.W.2) and Ramsukh (D.W.3) are the hearsay witnesses and based upon their testimonies, it cannot be said that the alleged deed of 'Ikrarnama' (Ex.P.6) was a forged and fabricated one, as alleged by the defendants.

11. Consequently, the trial Court has not committed any illegality in upholding the due execution of the alleged document by decreeing the Plaintiff's claim and I do not find any infirmity in the same.
12. In view of above, the appeal, being devoid of merit, is hereby dismissed.
13. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge