**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**FIRST APPEAL No. 155 of 2007**

**Reserved on 27.02.2020**

**Delivered on 02.03.2020**

Badri Prasad Mishra, aged about 45 years, son of Late Shankarlal Mishra, R/o. Amanaka, Kota, Raipur, Tahsil and District Raipur (CG)

**--- Appellant**

**versus**

Moti Singh, aged about 45 years, S/o. Shri Manku Singh Thakur, R/o. Near Government Primary School, Kota, District and Tahsil Raipur (CG)

**---- Respondent**

| | | |
|---|---|---|
| For Appellant | : | Shri Shubham Pandey, Adv appearing on behalf of Shri Kishore Bhaduri, Adv. |
| For Respondent | : | Shri Sachin Singh Rajput, Adv. and Shri Sharad Mishra, Adv. |

**Hon'ble Shri Sharad Kumar Gupta, Judge**

**CAV JUDGMENT**

1. Appellant has preferred this appeal against the impugned judgment and decree dated 30.08.2007 passed by 1st Addl. District Judge, Raipur in Civil Suit No. 12-B/2005 whereby and whereunder, he dismissed the suit of appellant.

2. This is admitted by respondent that name, address and other particulars of him and appellant shown in the title of the plaint are true, he is posted at Bajaj Electrical Company Limited, Dungaji Colony Raipur, he and appellant had good relations because they were resident of same colony, appellant had taken his sign on white paper, appellant had sent him a registered notice dated 06.08.1999 through advocate, he had replied the said notice on 24.08.1999.

3. In brief the appellant's case is that on 11.01.1997 respondent had taken loan of Rs.2,00,000/- from him and executed a promissory note. The interest was 2% monthly. He paid him interest till December, 1998. Despite the demand he did not pay the due amount, appellant is money lender.

4. In brief the respondent's case is that except the admitted facts other facts of plaint are denied by him. He had never taken Rs.2,00,000/- as loan from appellant, he had not signed any promissory note, he had signed on a white paper as a witness regarding loan transaction of Shri K.K. Mukherjee, to whom loan was given by appellant.

5. Trial Court by impugned judgment and decree dismissed the suit of appellant, being aggrieved he preferred this regular appeal.

6. In brief, the case of appellant regarding instant appeal is that as per the requirement of the Section 47 of the Evidence Act he has proved the execution of promissory note, respondent had not specifically stated that his sign is not on allegedly disputed promissory note. His application for examination of hand writing expert was opposed by him. In Ex.D-1 it has been mentioned that appellant had a blank promissory note on which the signature was similar to his signature. Trial Court overlooked presumption under Section 118 of Negotiable Instrument Act.

7. **<u>Points for determination :-</u>**

There are following points for determination in the case in hand-

(1) Whether respondent had obtained loan of Rs. 2 lacs from the appellant on 11-1-1997 along with 2% monthly interest and executed promissory note ?

(2) Whether appellant had not complied with the provision of Clause (a) and Clasue (b) of sub-section (1) of Section 3 of CG Money Lenders Act, 1934 (in short 'Act of 1934') ?

(3) Whether suit of appellant is not maintainable as per the provision of Section 11-H of the Act of 1934 ?

(4) Whether appellant is entitled to get Rs. 2,48,000/- from respondent ?

(5) Relief and costs.

**<u>Point for determination No. (1)- Finding with reasons :-</u>**

8. P.W. 2 Badri Prasad Mishra says in para 2 of his statement given on oath that on 11-1-1997 he had given loan of Rs. 2 lacs to respondent who executed promissory note Ex. P-1, Ex. P-1 was written by P.W. 1 Ashok Kumar Jaiswal. Respondent singed on it which is shown by “B to B”, he also

wrote date in his handwriting shown by “A to A”, rate of interest was 2% monthly.

9. P.W. 1 Ashok Kumar Jaiswal says in para 1 and 2 of his statement given on oath that in his presence appellant had given Rs. 2 lacs to respondent, the interest was fixed 2% monthly. Ex. P-1 was written by him. Respondent endorsed date on it as “A to A” and signed on “B to B”.

10. D.W. 1 Moti Singh says in para 2 and 3 of his statement given on oath that he had not taken any loan from the appellant, he had signed as surety on paper of loan transaction of K.K. Mukharjee, who absconded, appellant threatened him by showing some document bearing signature like his that he will proceed for recovery of money against him.

11. D.W. 2 Kunwar Lal Sahu says in para 1 and 2 of his statement given on oath that respondent had not taken any loan from appellant, respondent had provided the loan to Mukharjee from appellant, when Mukharjee did not pay the loan amount, appellant told respondent that he shall pay the amount other wise he will initiate proceeding against him.

12. D.W. 3 Francis David says in para 2 of his statement given on oath that appellant had given loan to some Mukharjee on security of respondent, at that time respondent himself had not taken any loan from appellant.

13. Counsel for the appellant placed reliance on the judgment of Hon'ble High Court of Madhya Pradesh in the matter of **Tejumal -v- Ram Prasad Jaiswal** [ MPWN 2003(II) Note No. 133 pg. 319] wherein it has been held that if plaintiff proves execution of Hundi by producing a witness, then burden shift on defendant to examine an expert.

14. Trial Court had rejected the application filed by respondent for examining the handwriting expert on 23-2-2007. Hence, appellant does not get any help from the aforesaid judicial precedent laid down by Hon'ble M.P. High Court in the matter of **Tejumal** (supra).

15. In the case in hand both appellant and respondent are literate persons.

16. P.W. 2 Badri Prasad Mishra says in para 10 and 17 of his statement that he had told respondent to write Ex. P-1 but he told that he is counting cash, he may write Ex P-1. P.W. 1 Ashok Kumar Jaiswal says in para 1 of his

statement that respondent had told to write the promissory note. There is no such material available on record on strength of which it can be said that said statement of para 10 and 17 of P.W. 2 Badri prasad Mishra, para 1 of P.W. 1 Ashok Kumar Jaiswal are not simple, not natural, hence this Court believes aforesaid statements of Para 10 and 17 of P.W. 2 Badri Prasad Mishra and para 1 of P.W. 1 Ashok Kumar Jaiswal. Thus, the explanation for not writing Ex. P-1 by respondent himself is satisfactory. Moreover, if Ex. P-1 is not written by appellant or respondent then this circumstance is itself not sufficient to discard the aforesaid statements of Para 2 of P.W. 2 Badri Prasad Mishra and para 1 and 2 of P.W. 1 Ashok Kumar Jaiswal.

17. P.W. 2 Badri Prasad Mishra says in para 15 and 24 that there is no entry regarding receiving of interest from respondent in Ex. P-2, the entries of loan given by him to other person are in Ex. P-2. But there is no entry of loan transaction of respondent in Ex. P-2.

18. P.W. 2 Badri Prasad Mishra gives explanation in para 24 that promissory note was executed, hence there is no entry in Ex. P-2 regarding loan transaction of respondent. There is no such material available on record on strength of which it could be said that said explanation is not satisfactory. Hence, this Court finds that said explanation is satisfactory.

19. Moreover, if there is no entry in Ex. P-2 regarding loan transaction of respondent, receiving of interest from him then on the basis of these circumstances, aforesaid statements of para 2 of P.W. 2 Badri prasad Mishra, para 1 and 2 of P.W. 1 Ashok Kumar Jaiswal cannot be thrown down in dust bin.

20. P.W. 2 Badri Prasad Mishra says in para 31 that Ex. P-1 was written at the counter of the hotel, whereas P.W. 1 Ashok Kumar Jaiswal says in para 10 that Ex. P-1 was written on table. These circumstances are negligible and do not affect the credibility of aforesaid statement of para 2 of P.W. 2 Badri Prasad Mishra, para 1 and 2 of P.W. 1 Ashok Kumar Jaiswal.

21. There is no such evidence on record on strength of which it can be said that P.W. 1 Ahok Kumar Jaiswal had stated aforesaid statement of para 1 and 2 because he was interested with appellant for any reason or he was prejudiced with respondent for any reason.

22. In Ex. D-1 written by respondent to SHO Saraswati Nagar, Raipur

dated 31-10-1998, affidavit of respondent addressed to Executive Magistrate Raipur dated 24-10-1998, reply of notice of appellant Ex. D-3, Ex. D-4 written by respondent addressed to SHO Saraswati Nagar received on 18-7-2006, this is not mentioned that appellant is trying to recovery of money from him because he was the surety of loan transaction of K.K. Mukhrjee, to whom appellant had given loan and who absconded.

23. As per the provision of Section 73 of the Evidence Act, 1872, from comparison of admitted signatures of respondent on Ex. D-1, Ex. D-2, Ex. D-4 with disputed signature of Ex. P-1, this Court prima facie finds that disputed signature of Ex. P-1 is identical to admitted signatures of respondent on Ex. D-1, Ex. D-2,Ex. D-4. Thus, this Court prima facie finds out that alleged disputed signature of Ex. P-1 belongs to appellant.

24. After the appreciation of the evidence discussed herebefore, this Court believes on Ex. P-1, aforesaid statements of para 2 of P.W. 2 Badri Prasad Mishra and para 1 and 2 of P.W. 1 Ashok Kumar Jaiswal in the reference that respondent had obtained loan Rs. 2 lacs from the appellant on 11-1-1997 along with 2% monthly interest and executed promissory note Ex. P-1 and disbelieves aforesaid statements of para 2 and 3 of D.W. 1 Moti Singh, para 1 and 2 of D.W. 2 Kunwar Lal Sahu, para 2 of D.W. 3 Francis David, Ex. D-1, Ex. D-2, Ex. D-3 and Ex. D-4 in the reference that allegedly respondent had not taken aforesaid loan from appellant and did not execute Ex. P-1, appellant had filed false suit against him only because the borrower K.K. Mukharjee absconded and in his loan transaction he was surety.

25. After the appreciation of the evidence discussed herebefore this Court finds that respondent had obtained loan Rs. 2 lacs from the appellant on 11-1-1997 along with 2 % monthly interest and executed promissory note Ex. P-1. Thus this Court decides point for determination No. 1 accordingly. Hence, the finding given by the trial Court regarding this matter is hereby set aside.

**Point for determination No. 2 : Finding with reasons :-**

26. The issue no. 5 covers the scope of this point for determination.

27. There is no such material available on record on strength of which it can be said that appellant had complied with the provisions of Clause (a) and Clause (b) of Sub-section (1) of Section 3 of Act of 1934. Thus this Court finds that appellant had not complied with the provisions of Clause -a

and Clause -b of sub-section (1) of Section 3 of Act of 1934. thus, this Court decides point for determination No. (2) accordingly.

**Point for determination No. (3) : Finding with reasons :-**

28. The Trial Court has not framed specific issue regarding this point for determination though issue No. 5 covers the scope of this point for determination. The evidence available on record shows that the appellant and the respondent have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point for determination does not cause any prejudice to either of the parties. Thus, looking to the provisions Order 41 Rule 24 of the Civil Procedure Code, 1908 (in brevity ' the CPC'), this Court finds that it may pronounce the judgment in this appeal.

29. It would be pertinent to mention the provision of Section 11-H of Act of 1934 which reads as under :-

> “11-H- Suit not to proceed without registration certificate etc. -
>
> No suit for the recovery of a loan advanced by a money lender shall proceed in a civil Code until the court is satisfied that he holds a valid registration certificate or that he is not required to have a registration certificate by reason of the fact that he does not carry on the business of money lending in any of the district of (CG)
>
> Provided that this Section shall not apply to a suit instituted before the 1st October, 1940.”

30. This is admitted by appellant that at the time of said loan transaction he was money lender.

31. In the case in hand respondent failed to prove that on 11-1-1997 he had valid registration certificate.

32. Looking to the above mentioned facts and circumstances of the case this Court finds that suit of appellant is not maintainable as per the provisions of Section 11 -H of the Act of 1934.

**Point for determination No. (4) : Finding with reasons :-**

33. Though trial Court has not specifically framed issue regarding this point for determination but the scope of issue no. 3 covers the scope of this

point for determination.

34. This has been earlier decided that suit of appellant is not maintainable thus this Court finds that the appellant is not entitled to get any amount from respondent. Thus, this Court decides point for determination No. (4) accordingly.

**Point for determination No. (5) : Finding with reasons :-**

35. Looking to the above mentioned facts and circumstances of the case, this Court finds that instant appeal deserves to be and is hereby dismissed because the suit of appellant is not maintainable.

Both the parties shall bear their own costs.

A decree be drawn up accordingly.

**Sd/-**
**(Sharad Kumar Gupta)**
**JUDGE**

Pathak