

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No. 53 of 2011****RESERVED ON 10-6-2020****DELIVERED ON 11-6-2020**

Trilokchand Jaiswal S/o Late Ganpatlal Jaiswal, aged about 47 years,
R/o Village, Post And Tahsil Sakti, Ward No. 9, District Janjgir Champa
(CG)

---- Appellant**Versus**

1. Manas Mishra son of Gangadhar Mishra, aged about 27 years
2. Gangadhar Mishra, son of not known to the appellant, aged about 55 years
3. Smt. Shail Bala Mishra, W/o. Gangadhar Mishra, Asstt. Teacher, M.L. Jain Higher Secondary English Medium School, Sakti

All above R/o Town Sakti, Ward No. 9, Ranisagar Mohalla, Police Station
And Tahsil Sakti, District Janjgir Champa (CG)

---- Respondents

For Appellant	: Mr. Prasoon Agrawal, Adv.
For Respondents	: None, though served.

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

1. Appellant has preferred this Appeal against the impugned judgment and decree dated 10-9-2010 passed by Additional District Judge, Sakti Distt. Janjgir Champa in Civil Suit No. 1-B/2006 whereby and whereunder he dismissed the appellant's suit.
2. This is admitted by respondent No. 1 Manas Mishra that he had given a stamp of Rs. 10/- to appellant. This is also admitted by respondent No. 2 and 3 that the appellant had sent them registered notice through his Advocate Shri Girdhari Gupta which was not replied by them.
3. In brief, the appellant's case is that on advice and recommendation of respondent No. 2 Gangadhar Mishra and respondent No. 3 Smt. Shailbala Mishra who are the parents of respondent no. 1 he had given Rs. 1 lac as loan to respondent no. 1 with interest at the rate of 1.50 % per month on 25-11-2004. On the same date, transaction was reduced in writing on the stamp

of Rs. 10/-. Respondent No. 1 signed on it. He had also given notice to respondent no. 1 but he did not reply to it.

4. In brief the respondents' case is that except the above mentioned admitted facts, other facts are denied by them. Neither respondent No. 1 had taken loan of Rs. 1 lac along with interest nor respondent No. 2 and 3 had recommended. Respondent No. 1 had not signed on the stamp of Rs. 10/-. The appellant is the owner of Vandna Engineering Industry and respondent No. 1 was working there as computer operator and also recovery worker. The appellant had demanded stamp of Rs. 10/- to complete the formality regarding his service. Thereafter, the appellant committed forgery by writing and making his forged signature in the said stamp. Respondent No. 2 and 3 are entitled to get compensatory cost from the appellant.

5. By the impugned judgment and decree the trial Court dismissed the appellant's suit. Being aggrieved the appellant preferred the instant appeal.

6. In brief the appellant's case regarding this appeal is that trial Court committed mistake by not believing statement of P.W. 2 Laxmikant Thawait. Respondents did not reply the notice given by the appellant, hence adverse inference may be drawn against them. The report of handwriting expert is not believable. The findings of the trial Court are perverse and erroneous.

7. **Points for determination:-**

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

- (i) Whether respondent No. 1 had taken loan of Rs. 1 lac along with interest at the rate of 1.50% per month from the appellant on 25-11-2004 ?
- (ii) Whether respondent No. 1 had executed promissory note on 25-11-2004?
- (iii) Whether the appellant is entitled to get Rs. 1,17,625/- from respondents ?
- (iv) Whether the appellant is entitled to get 1.50% interest per month from the date of filing of suit i.e. 23-11-2005 till realization of decretal amount ?
- (v) Whether respondents No. 2 and 3 are entitled to get Rs. 5,000/- as compensatory cost from the appellant ?
- (vi) Reliefs and costs.

Points for determination No.(i) and (ii)-Findings with reasons:-

8. Looking to the conveniences points for determination No. (i) and (ii) are being disposed of simultaneously.

9. Counsel for the appellant submitted that though Ex. P-1 is not signed by P.W. 2 Laxmikanth Thawait, but it is not sufficient to disbelieve the Ex. P-1. He placed reliance on para 8 of the judgment of coordinate bench of this Court passed in the matter of **Sachchanand Moolchandani -v- Dr. Meghraj Ramani** [2006 SCC Online Chh 60], which reads as under :-

“8 In the aforesaid judgment the definition of bond as given in Section 2(5) and promissory note as given in Section 2(22) of the Indian Stamp Act and further the definition of promissory note under Section 4 of the Negotiable Instruments Act have been reproduced and thereafter it has been held as under:

The essentials of a promissory note are:

- (1) An unconditional undertaking to pay;
- (2) The sum should be a sum of money and should be certain;
- (3) The payment should be to the order of a person who is certain, or to the bearer of the instrument; and
- (4) The maker should sign it. If these four conditions exist, the instrument is a promissory note.

The essentials of a bond are:

- (1) There must be an undertaking to pay;
- (2) The sum should be a sum of money but not necessarily certain;
- (3) The payment will be to another person named in the instrument;
- (4) The maker should sign it;
- (5) The instrument must be attested by a witness; and
- (6) It must not be payable to order or bearer.

On a comparison between the essentials of a promissory note and those of a bond, three distinguishing features have been enumerated as under :

- (1) If money payable under the instrument is not certain, it cannot be a promissory note, although it can be a bond;

(2) If the instrument is not attested by a witness, it cannot be a bond, although it may be a promissory note:

(3) If the instrument is payable to order or bearer, it cannot be a bond, but it can be promissory note.”

10. In para 8 of the aforesaid judgment, the coordinate bench of this Court dealt that what is the promissory note and what is the bond and what are the distinguishing features between them. Hence, appellant does not get any help from para 8 of the aforesaid judgment.

11. Any document cannot be disbelieved merely on the ground that it has not been signed by any witness.

12. P.W1 Trilok Chandra Jaiswal does not say clearly and strongly in his statement given on oath that at the time of alleged transaction P.W. 2 Laxmikant Thawait was also present. Moreover, P.W. 1 Trilok Chand Jaiswal says in para 1 of his statement given on oath during examination in chief that respondent No. 1 had come in his house along with respondents No. 2 and 3, but it has not been mentioned in Ex. P-1. For not doing so there is no explanation from the appellant. Moreover, there are no signatures of respondent No. 1 on receipt stamps of Ex. P-1. For not doing so, there is no plausible explanation from appellant. These circumstances are not simple.

13. P.W. 1 Trilok Chand Jaiswal says in para 2 during his cross-examination that he is the owner of Vandna Engineering Industry.

14. P.W. 1 Trilok Chand Jaiswal says in para 2 during his cross-examination that P.W. 2 Laxmikant Thawait was Computer Operator in his industry. P.W. 2 Laxmikant Thawait says in para 3 during his cross-examination that this is true that appellant had lodged report against him regarding beating. P.W. 1 Trilokchand Jaiswal says in para 7 during his cross-examination that it is wrong that respondent No. 1 was his employee, but on behalf of the appellant suggestion was given to D.W. 2 Manas Mishra during his cross-examination in para 19 that he had gone to industry of appellant to learn the work, D.W.3 Gangadhar Mishra during his cross-examination in para 1 that respondent No. 1 was working in the industry of appellant, D.W. 4 Smt. Shailbala Mishra during her cross-examination in para 3 that her son was working in the industry of appellant. These circumstances are not normal.

15. As per Ex. D-4 respondent No. 1 had lodged report on 23-11-2005 prior to filing of suit by the appellant against appellant and other persons regarding beating on account of not depositing recovery amount. This circumstance go against the appellant.

16. As per the report Ex. D-1 of handwriting expert D.W. 1 Ashok Kumar Swarnkar, the disputed signature of Ex. P-1 marked as 'A to A' and comparative signature marked as 'AS1 to AS 10' have not written by the same person.

17. Counsel for the appellant submitted that Ex. D-1 is not believable. He drew my attention on some questions and answers of the statements of D.W. 1 Ashok Kumar Swarnkar.

18. There is no such material available on record on the strength of which it can be said that Ex. D-1, photograph Ex. D-2, negative Ex. D-3 are not simple, not natural and not normal. Thus, this Court disallows the argument raised by counsel for the appellant regarding this matter.

19. Looking to the above mentioned facts and circumstances of the case this Court finds that appellant failed to prove that respondent No. 1 had taken loan of Rs. 1 lac along with interest at the rate of 1.50% per month from him on 25-11-2004 and he had executed promissory note on 25-11-2004. Thus, this Court decides points for determination No. (I) and (ii) accordingly.

Points for determination No.(iii) and (iv)-Findings with reasons:-

20. This has been earlier decided that on 25-11-2004 respondent No. 1 had neither taken any loan nor he had executed Ex. P-1.

21. More over, respondents No. 2 and 3 had not executed any guarantee. More over, P.W 1 Trilok Chand Jaiswal says in para 8 that he had not given money to respondent no. 1 on the guarantee of Respondents No. 2 and 3.

22. After the appreciation of the evidence discussed hereabove, this Court finds that the appellant is not entitled to get Rs. 1,17,625/- from the respondents and no question arises to get 1.50% interest per month from the date of filing of suit i.e. 23-11-2005 till realization of decretal amount. Thus, this Court decides points for determination No. (iii) and (iv) accordingly.

POINT FOR DETERMINATION No. (v) : FINDING WITH REASONS :-

23. The Trial Court has not framed issue regarding this point for determination though it ought to have been done by the Trial Court. The evidence available on record shows that the appellant and the respondents 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 issues regarding this point of determination does not cause any prejudice to either of the parties. Thus, looking to the provisions of 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.

24. This has been earlier decided that respondent No. 2 and 3 were not guarantor of alleged loan transaction hence this Court finds that respondents No. 2 and 3 are entitled to get Rs. 5,000/- as compensatory cost from the appellant. Thus, this Court decides point for determination No. (v) accordingly.

POINT FOR DETERMINATION No. (vi) : FINDING WITH REASONS :-

25. After complete and full appreciation of the evidence discussed herebefore, this Court finds that appellant has failed to establish his appeal.

26. The judgment and decree passed by the trial Court are hereby affirmed to the above extent.

27. The appeal is dismissed.

A decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge