AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 287/2019

Reserved on 3-3-2020

Delivered on 4-3-2020

Ashok Kumar Sharma S/o Manohar Lal Sharma Aged About 48 Years Occupation T.V. Repairing, Work Shop, R/o Shanichari Bazar Durg, Tahsil and District Durg CG

---- Appellant

Versus

Nirmaldas Manikpuri S/o Paltudas Mainkpuri Aged About 52 Years R/o Village Armari Khurd, Post Office Batrel, Police Station Ranchirai, District Durg CG

---- Respondent

For Appellant	:	Shri S.S. Masih, Adv.
For Respondent	:	Shri Praveen Dhurandhar, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV JUDGMENT

1. Appellant has preferred this appeal against the impugned judgment and decree dated 16-4-2019 passed by 1st Addl. Judge to the Court of 1st Addl. District Judge, Durg in Civil Suit No. 649-B/2012 whereby and whereunder, he partly decreed the suit of the appellant.

2. This is admitted by respondent that he had taken loan of Rs. 15,000/- on 26-3-2009 at the rate of 10% per annum in presence of Devdhar Sahu from appellant, appellant had taken his signature on blank promissory note without affixing receipt ticket, he had given him notice dated 17-3-2011 through his advocate which was not replied by him.

3. In brief the appellant's case is that he is money lender. On 26-3-2009 respondent had taken loan of Rs. 1,50,000/- from him at the interest rate of 2% per month and executed a promissory note. Thereafter, he did not repay him the loan amount as well as interest.

4. In brief the respondent's case is that except the admitted facts other

facts of plaint are denied by him. He never signed on receipt ticket of the promissory note. His signature on receipt ticket is forged. He has already repaid the appellant loan amount Rs. 15,000/- along with interest in front of Devdhar Sahu.

5. Trial Court by impugned judgment and decree partly allowed the suit of appellant. Being aggrieved he preferred this regular appeal.

6. In brief, the case of appellant regarding instant appeal is that the trial Court did not appreciate the evidence available on record in proper perspective.

7. **Point for determination :-**

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

(1) Whether respondent had obtained loan of Rs. 1,50,000/- from the appellant on 26-3-2009 along with 2% monthly interest and executed a 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') ? If yes, then effect.

(3) Whether appellant is entitled to get loan amount of Rs. 1,50,000/-, Rs. 5,100/- as interest, Rs. 400/- towards notice expense, total Rs. 1,55,500/- from respondent ?

(4) Relief and costs.

Point for determination No. (1)- Finding with reasons :-

8. The Trial Court has not framed issue regarding this point whether respondent had executed the promissory note, 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. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point 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.

9. P.W. 1 Ashok Kumar Sharma says in para 4 and 10 of his statement

given on oath that on 26-3-2009 respondent had taken loan of Rs. 1,50,000/- from him along with 2% monthly interest and executed a promissory note. Portion 'B to B' of Ex. P-2 bears signature of respondent.

10. D.W. 1 Nirmal Das Manikpuri says in para 4 of his statement given on oath that he had never taken loan of Rs. 1,50,000/- from the appellant. The appellant filled amount, rate of interest in the blank promissory note, prepared his forged signature on receipt ticket of it.

11. D.W. 2 Devdhar Prasad Sahu, in whose presence allegedly Rs. 1,50,000/- had been given to respondent, says in para 8 of his statement given on oath that when appellant had given Rs. 15,000/- to respondent, at that time he had many signed blank promissory notes without receipt tickets.

12. D.W. 3 Private handwriting expert Smt. Bhavna Mishra says in para 1 and 2 of her statement given on oath that she has 7 years experience of working as independent handwriting expert. She had given the report after examination of documents.

13. As per the report Ex. D-1 given by P.W. 3 Smt. Bhavna Mishra, she has done examination of document using minor scientific instruments.

14. As per the report Ex. D-1, P.W. 3 Smt. Bhavna Mishra opined that the writer of questioned signature marked as Q-1 (B to B) on document promissory note dated 26-3-2009 is not the same person who wrote the admitted signature marked as A-1 (A to A) on document promissory note dated 26-3-2009, on document A-2 order sheet dated 1-8-2015, on document A-3 order sheet dated 7-8-2018, on documents A-4, A-5, affidavit dated 27-12-2018, portion N-1 to N-15, S-1, S-3, S-4, S-5, S-7, S-8, S-10, S-11, taken on specimen sheet in the Court on 25-1-2019 namely as 'Nirmal Das', and the writer of questioned handwriting marked as Q-2 (B to B), on document Promissory note dated 26-3-2009 is not of the same person who wrote the admitted handwriting marked portion as N-16 to N-24, S-2, S-6, S-9, S-12 taken on specimen sheet in the court on 25-1-2019 namely as 'Nirmal Das'.

15. There is no such material available on record on strength of which it can be said that aforesaid statement of P.W. 3 Smt. Bhavna Mishra, her report Ex. D-1, specimen sheets Ex. D-2 Ex. D-3, Ex. D-4 are not simple, not natural, and not normal. Thus, this Court believes on aforesaid statement of

P.W. 3 Smt. Bhavna Mishra, Ex. D-1, Ex. D-2, Ex. D-3 and Ex. D-4.

16. Looking to Ex. D-1, this Court finds that aforesaid statement of P.W. 1 Ashok Kumar Sharma is not simple, not natural and not normal and aforesaid statements of D.W. 1 Nirmal Das, D.W. 2 Devdhar Prasad Sahu are simple, natural and normal in the reference that respondent had not taken loan Rs. 1,50,000/- along with 2 % monthly interest on 26-3-2009 from appellant and did not execute promissory note Ex. P-1. Thus, this Court disbelieves aforesaid statement of P.W. 1 Ashok Kumar Sharma and believes aforesaid statements of D.W. 1 Nirmal Das, D.W. 2 Devdhar Prasad Sahu in the reference that respondent had not taken loan Rs. 1,50,000/- along with 2 % monthly interest on 26-3-2009 from the appellant and did not execute Ex. P-1.

17. After the appreciation of the evidence discussed herebefore, this Court finds that respondent had not obtained loan of Rs. 1,50,000/- from the appellant on 26-3-2009 along with 2% monthly interest and executed promissory note Ex. P-1, but looking to the admitted facts this Court finds that respondent had taken loan of Rs. 15,000/- on 10% interest per annum from appellant on 26-3-2009. Thus, this Court decides point for determination No. 1 accordingly.

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

18. Trial Court had not specifically framed issue regarding this point for determination but the scope of issue No. 4 covers the scope of this point for determination.

19. 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 and its effect is that looking to the provisions of Section 7(b) of the Act of 1934, the appellant is not entitled to get any interest from 26-3-2009 till the disposal of the suit.

20. Thus, this Court decides point for determination No. (2) accordingly.

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

21. This has been earlier decided that respondent had taken loan of Rs.

15,000/- from the appellant.

22. D.W 1 Nirmal Das Manikpuri says in para 3 that on 25-12-2009 he had paid the Rs. 15,000/- to the appellant.

23. D.W. 2 Devdhar Prasad Sahu says in para 9 that on 25-12-2009 respondent had paid Rs. 15,000/- to the appellant.

24. Respondent has failed to prove any document regarding realisation of amount of loan Rs. 15,000/-. Moreover he has not replied the notice of appellant alleging that he has already paid loan amount Rs. 15,000/-. In these circumstances, this Court disbelieves aforesaid statement of of D.W. 1 Nirmal Das, D.W. 2 Devdhar Prasad Sahu.

25. This has been earlier decided that the appellant is not entitled to get any interest from 26-3-2009 till disposal of the suit.

26. Looking to the facts and circumstances of the case, appellant is entitled to Rs. 400/- as notice expense.

27. After appreciation of the evidence discussed herebefore, this Court finds that the appellant is not entitled to get loan amount Rs. 1,50,000/-, Rs. 5,100/- as interest but he is entitled to get loan amount Rs. 15,000/-, Rs. 400/- towards notice expense, total Rs. 15,400/- from the respondent.

28. Thus, this Court decides point for determination No. 3 accordingly.

<u>Point for determination No. (4) : Finding with reasons :-</u>

29. After appreciation of the evidence discussed herebefore this Court finds that appellant partly succeeds to prove his appeal hence, the appeal is partly allowed. Following orders and decree are passed :-

The respondent is ordered to pay Rs. 15,400/- (Rs. Fifteen thousand four hundred only) to the appellant. He shall also pay him 6% interest per annum from the date of judgment till realization.

Both the parties shall bear their own costs.

A decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge

Pathak