AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 511 of 2018

Reserved on 7.2.2020

Judgment delivered on 11.2.2020

FA No. 511 of 2018

- Amarjeet Singh Saluja S/o S/o Late Malik Singh Saluja Aged About 59 Years R/o C-89, Sector-02, Devendranagar, Raipur, Tahsil And District Raipur, CG

Plaintiff
Appellant

Versus

- Ashok Kumar Navre S/o S/o Mansingh Navre Aged About 45 Years R/o House No. H-1, Public Works Department Colony, Sirpur, Bhawan, Beside Aakaswani, Tahsil And District Raipur, CG

Defendant.
Respondent

For appellant	Shri KPS Gadhi, Advocate
For respondent	None, though served

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV JUDGMENT

1. Appellant has preferred this Civil Appeal against the impugned judgment and decree dated 22-6-2018 passed by 8th Additional District Judge, Raipur in Civil Suit No. 27-B/2014 whereby and whereunder he dismissed the suit of appellant.

2. This is admitted by respondent that he had taken loan only Rs. 20,000/- from appellant, he had executed two promissory notes and given to appellant. The appellant had given him notice through his advocate. This is also admitted by appellant that respondent had given him the reply of his notice.

3. In brief the appellant's case is that respondent had taken loan of Rs. 49,900/- from him and on 10-06-2011 executed three promissory notes. Thereafter respondent did not pay him loan amount.

4. In brief the respondent's case is that one promissory note is forged. Appellant had taken his ATM as surety, by conspiracy he obtained the PIN number of ATM and withdrawn Rs. 2,18,400/- from his account on different dates between 18-03-2011 to 1-09-2012. He had withdrawn from his account Rs. 1,91,500/- in excess. Now nothing is due upon him. He had blocked his

ATM on 27-09-2012. He had also made a report in special Police Station (Scheduled Caste/Scheduled Tribes) but no action was taken against the appellant therefore he filed a compliant case before the Special Judge, Raipur.

5. By impugned judgment and decree, the trial court dismissed the suit of appellant.

6. Being aggrieved appellant preferred this appeal.

7. In brief the appellants' case regarding appeal is that the impugned judgment and decree passed by the trial Court regarding dismissal of his suit are illegal. Trial Court has not appreciated the evidence in proper perspective. Trial Court gave the wrong findings regarding issue No. 3 and 4.

8. **<u>Point for determination</u>** :-

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

(1) Whether appellant is entitled to get Rs. 49,900/-, expense of notice Rs. 2000/-, total Rs. 51,900/- from respondent ?

(2) Whether appellant is entitled 12% interest per annum from date of filing of suit till realization of decretal amount from respondent ?

(3) Whether respondent is entitled to get Rs. 3,000/- as compensation from appellant ?

(4) Relief and costs.

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

9. Trial Court has decided issues No. 1 and 2 in favour of appellant giving findings that respondent had taken loan Rs. 49,900/- from appellant and executed three promissory notes on 10-6-2011. The findings of issues No. 1 and 2 have not been challenged by the respondent.

10. D.W. 2 Ashok Kumar Navre says in para 3, 5 and 7 of his statement given on oath that, appellant had taken his ATM card by way of surety, he had also disclosed his PIN number of ATM to respondent, without his permission, he had withdrawn cash 26 times from 18-3-2011 to 1-9-2012, total amount withdrawn is Rs. 2,18,400/-. He had withdrawn excess amount of Rs. 1,98,400/-.

11. D.W. 1 Smt. Sona Navre who is the wife of respondent says in para 1 of her statement given on oath that appellant had taken the ATM card of her husband as surety and by misusing it withdrawn Rs. 2,18,400/- without consent of her husband.

12. Respondent did not file any complaint against the appellant

immediately after 18-3-2011 and before 1-9-2012 alleging said facts. He neither gave notice to appellant alleging said facts during said period, nor he filed any civil suit against him alleging said facts, during said period. For not doing so there is no plausible explanation from him.

13. As per the respondent's case he had blocked his ATM card on 27-9-2012.

14. As per the alleged passbook of respondent Ex. D-1 on 31-3-2013 fee was deducted for issuing duplicate ATM card.

15. As per the entries of Ex. D-1, on 4-11-2012 Rs. 10,000/- was withdrawn by ATM, on 6-11-2012 Rs. 1,000/- was withdrawn by ATM, on 21-11-2012 Rs. 2,000/-, Rs. 1,000/- were withdrawn by ATM, on 4-12-2012 Rs. 8,000/- and Rs. 2,000/- was withdrawn by ATM, on 5-3-2013 Rs. 11,000/- was withdrawn by ATM, on 14-3-2013, Rs. 1,000/- was withdrawn by ATM, on 26-3-2013 Rs. 10,000/-, Rs. 10,000/- and Rs. 10,000/- were withdrawn by ATM. Appellant failed to explain how the said transactions took place between 27-9-2012 to 31-3-2013.

16. As per Ex. D-1 on 30-6-2012 Rs. 10,000/- was withdrawn by ATM. This is not the respondent's case that said amount was also withdrawn by appellant through ATM. Moreover, as per the Ex. D-1 on 27-2-2012 Rs. 5,000/- was deposited in cash by respondent, when allegedly appellant was withdrawing cash from respondent's account by using his ATM card, then why he deposited said cash amount in his account.

17. It is emerged from the entries of Ex. D-1 that in so many dates falling between period of 18-3-2011 and 1-9-2012, respondent himself withdrawn Rs. 11,000/-, Rs. 10,000/-, Rs. 200/-, Rs. 300/-, Rs. 20,000/-, Rs. 11,000/-, Rs. 4,500/-, Rs. 1,500/-, Rs. 10,000/-. Respondent failed to show that why he had not withdrawn maximum amount looking to the fact that allegedly the appellant was withdrawing cash from his account without his consent by using his ATM card.

18. Trial Court has given observation in para 17 of the judgment that respondent had stated in examination in chief that his ATM was with the appellant and he did not return back despite of his demand, but no question was put during his cross-examination by the appellant.

19. During cross-examination of D.W. 2 Ashok Kumar Navre, on behalf of the appellant in para 18, it was suggested that appellant had not taken his ATM card as surety. Hence, aforesaid observation of the trial Court is not

sustainable.

20. D.W. 2 Ashok Kumar Navre says in para 19 that this is true that for household expenses he used to withdraw amount through ATM card. He does not say that such withdrawal of cash took place before the loan transaction. Trial Court has also not put any court question to clear this aspect.

21. Looking to the above mentioned facts and circumstances of the case, this Court disbelieves aforesaid statements of para 3, 5 and 7, D.W. 2 Ashok Kumar Navre and aforeaid statement of D.W. 1 Smt. Sona Navre and in that reference, reply of notice Ex. P-7, certified copy of application of respondent dated 10-10-2012 addressed to Special SO, Police Station SC/ST, Raipur, vide Ex. D-2.

22. After appreciation of the evidence discussed herebefore, this Court finds that appellant is entitled to get Rs. 49,900/- and expense of notice Rs. 2000/- total Rs. 51,900/- from respondent. Thus this Court decides point for determination No. 1 accordingly.

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

23. This has been earlier decided that appellant is entitled to get Rs. 49,900/- from the respondent.

24. In promissory notes Ex. P-1, Ex. P-2 and Ex. P-3, no rate of interest is mentioned.

25. Looking to the above mentioned facts and circumstances of the case, this Court finds that, appellant is entitled to get 6% interest per annum from date of filing of suit till realization of decreetal amount from respondent. Thus, this Court decides point No. 2 accordingly.

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

26. The Trial Court has not framed issue regarding this point for determination though it ought to have been by the Trial Court. The evidence available on record shows that the appellnant 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.

27. This has been earlier decided that the appellant is entitled to get Rs. 49,900/- along with 6% interest per annum. Thus, it cannot be said that the appellant had filed the civil suit on false or vexatious ground. Hence respondent is not entitled to get any amount as compensation from the appellant. Thus, this Court decides point for determination No. 3 accordingly.

Point for determination No. 4- Finding with reasons:-

28. After complete and full appreciation of the evidence discussed hereinbefore, this Court finds that appellant succeeded to prove his appeal. Hence, the impugned judgment and decree passed by the trial Court which relate to dismissal of the suit of the appellant, and these orders that he will pay Rs. 3,000/- to respondent, he will bear the cost of respondent, are hereby set aside. The suit of appellant is decreed and following orders are passed.

(i) Respondent is ordered to pay to the appellant Rs. 51,900/- (Rs. Fifty-one thousand and nine hundred only)

(ii) Respondent shall also pay 6% interest per annum from the date of filing of the suit i.e. 12-5-2014 till realization of decretal amount.

(iii) Respondent shall bear his own cost as well as the cost of the appellant.

29. The decree be drawn accordingly.

Sd/-

(Sharad Kumar Gupta)
Judge

Deshmukh/Pathak