

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

CS 193 of 2017

IA No: GA/3/2019

Bhola Yadav

Versus

Rani Jena

Mr. S.E. Huda

.....For the Plaintiff

Heard on : 04.11.2022

Judgment on : 10.11.2022

Krishna Rao, J.:

The plaintiff has filed the instant suit praying for a sum of Rs. 27,44,000/- against the defendant along with interest @ 15 % per annum with effect from 19.08.2017.

The family of the plaintiff and the family of the defendant's sister had a cordial relationship, being neighbors. In the month of January, 2012, the defendant had disclosed to the plaintiff that the defendant is in need of a residential accommodation and he had a talk with a developer with respect of Premises No. 88, Viveknagar, Titagarh, Khardah, West Bengal for the

purpose of purchasing of a residential flat measuring 850 sq.ft. (approx) on the 3rd floor of the said building. The defendant had informed the plaintiff that the cost of the flat is about Rs. 18,20,000/-. Defendant has requested the plaintiff to pay Rs. 18,20,000/- and had assured that the amount will return within two and half years by selling his landed property situated at Orissa. Taking into consideration of the request made by the defendant and the relationship between the plaintiff and the defendant, the plaintiff and the defendant had entered into an agreement on 14.03.2012 wherein the plaintiff had agreed to pay Rs. 18,20,000/- to the defendant and the defendant had assured that the said amount will return within two and half years from the date of execution of the agreement. At the time of execution of the agreement, plaintiff has paid an amount of Rs. 1,00,000/- to the defendant and the defendant had acknowledged the receipt of the same. Subsequently, the plaintiff has paid the remaining amount of Rs. 17,20,000/- on the following dates :-

Sl. No.	Date	Amount Disbursed
1.	10.09.2012	Rs. 1,50,000/-
2.	29.11.2012	Rs. 1,50,000/-
3.	09.01.2013	Rs. 2,00,000/-
4.	17.02.2013	Rs. 1,00,000/-
5.	19.04.2013	Rs. 2,00,000/-
6.	18.06.2013	Rs. 2,00,000/-
7.	25.07.2013	Rs. 1,50,000/-
8.	09.08.2013	Rs. 1,00,000/-
9.	29.09.2013	Rs. 1, 20,000/-
10.	22.09.2013	Rs. 2,00,000/-

11.	05.01.2014	Rs. 1,50,000/-
<i>Total</i>		Rs. 17,20,000/-

After receipt of the said amount, the defendant had purchased the flat on 30.01.2014. Even after completion of two and half years, the defendant has not paid the said amount to the plaintiff as assured by the defendant. On 15.12.2016, the defendant had again approached the plaintiff for further loan of Rs. 80,000/- for the purpose of meeting, the expenses of the last rites of her deceased father and assured that the said amount will be returned to the plaintiff as early as possible. As per the request made by the defendant, the plaintiff has further paid an amount of Rs. 80,000/- to the defendant. On 01.02.2017, the defendant had again approached the plaintiff for a loan of Rs. 25,000/- for the purpose of urgent medical treatment of her uncle with the promise that she will return the said amount within three (3) months. As per the request made by the plaintiff, the plaintiff has again paid the amount of Rs. 25,000/- to the defendant. Altogether, the plaintiff has paid the total amount of Rs. 19,25,000/- to the defendant out of the total amount, the defendant has returned only Rs. 44,000/- to the plaintiff in the following manner : -

Sl. No.	Date	Amount
1.	13.06.2016	Rs. 18,000/-
2.	23.12.2016	Rs. 6,000/-
3.	07.02.2017	Rs. 20,000/-
<i>Total</i>		Rs. 44,000/-

The defendant has paid the said amount of Rs. 44,000/- to the plaintiff by depositing the same in the bank account of the plaintiff. Thereafter, the defendant has not paid/returned any further amount inspite of several requests made by the plaintiff and accordingly the plaintiff has filed the instant suit.

As per record, after receipt of writ of summons, the defendant entered appearance in the instant suit through the Learned Advocate on 29.08.2018 but the defendant has not filed written statement. Vide order dt. 11.11.2019, this Court has fixed the case as undefended suit. The plaintiff has adduced one witness and during the examination of the plaintiff's witness altogether seven documents were exhibited.

Exhibit – '1' : General Power of Attorney executed by the plaintiff in favour of the one Sumit Mukhopadhyay to represent the instant suit before this Court.

Exhibit – '2' : Agreement dt. 14.03.2012 entered between the plaintiff and the defendant along with the money receipt of Rs. 1,00,000/-.

Exhibit – 3 Collectively : Money receipt of Rs. 1,50,000/- dt. 10.09.2012 executed by the defendant, money receipt for an amount of Rs. 1,50,000/- dt. 29.11.2012 executed by the defendant, money receipt for an amount of Rs. 2,00,000/- dt. 09.01.2013 executed by the defendant, money receipt for an amount of Rs. 1,00,000/- dt. 17.02.2013 executed by the defendant, money receipt for an amount of Rs. 2,00,000/- dt. 09.04.2013 executed by defendant, money receipt for an amount of Rs. 2,00,000/- dt.

18.06.2013 executed by the defendant, money receipt for an amount of Rs. 1,50,000/- dt. 25.07.2013 executed by the defendant, money receipt for an amount of Rs. 1,00,000/- dt. 09.08.2013 executed by the defendant, money receipt for an amount of Rs. 1,20,000/- dt. 29.09.2013 executed by the defendant, money receipt for an amount of Rs. 2,00,000/- dt. 22.11.2013 executed by the defendant, money receipt for an amount of Rs. 1,50,000/- dt. 05.01.2014 executed by the defendant.

Exhibit – ‘4’ : Certified copy of the Deed of Conveyance dt. 30.01.2014.

Exhibit – ‘5’ : Money receipt for an amount of Rs. 80,000/- dt. 15.12.2016 executed by the defendant.

Exhibit – ‘6’ : Money receipt for an amount of Rs. 25,000/- dt. 01.02.2017 executed by the defendant.

Exhibit – ‘7’ : Bank Passbook of the plaintiff.

As per the case of the plaintiff, the defendant had borrowed an amount of Rs. 18,20,000/- from the plaintiff for the purpose of purchase of flat and an agreement was entered between the parties. As per agreement, the plaintiff has paid Rs. 18,20,000/- to the defendant. Subsequently, also the defendant has borrowed an amount of Rs. 80,000/- and Rs. 25,000/- from the plaintiff and had executed the money receipts. After receipt of the amount from the plaintiff, the defendant has purchased one flat by entering into Deed of conveyance. Out of the total amount of Rs. 19,25,000/-, the defendant has paid only Rs. 44,000/- and the remaining amount was

unpaid. The plaintiff has made several requests to the defendant but the defendant has not paid the amount to the plaintiff. The documents established that the defendant has borrowed an amount of Rs. 19,25,000/- on different occasions and out of which only Rs. 44,000/- was repaid and the balance amount has not been paid by the defendant to the plaintiff. It is also proved through the Exhibit – '4' that after receipt of the amount from the plaintiff, the defendant had purchased the flat. Though the defendant had entered appearance but has not filed the written statement and subsequently he failed to appear in the suit and the suit proceeded undefended against the defendant.

After going through the averments of the plaint, the evidence and the documents exhibited by the plaintiff, it is proved that the plaintiff has paid the total amount of Rs. 19,25,000/- to the defendant and the defendant had acknowledged the same by way of various money receipts inspite of receipt of the said amount and inspite of the assurance given by the defendant, the defendant failed to repay the said amount except Rs. 44,000/-.

In view of the above, this Court finds that the plaintiff is entitled to get an amount of Rs. 18,81,000/- along with interest from the defendant.

The plaintiff may get a decree for an amount of Rs. 18,81,000/- against the defendant and the defendant is directed to pay the said amount to the plaintiff within sixty (60) days from date. The plaintiff is also entitled

to get interest on an amount of Rs. 18,81,000/- @ 12% per annum with effect from 19.08.2017 till the realization of the said amount.

CS 193 of 2017 along with **IA No. GA 3 of 2019** are **disposed of**.

Decree be drawn accordingly.

(Krishna Rao, J.)