

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 26th September, 2022

Decided on: 11th November, 2022

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CS(OS) 1239/2008

SHRI RAMESH CHANDER GOEL

S/o Shri R.N. Aggarwal,
R/o BT-61, Shalimar Bagh,
Delhi-110088.

..... Plaintiff

Represented by: Mr. P.D. Gupta, Sr. Advocate
with Mr. Abhishek Gupta,
Advocate.

versus

MASTER CHIRAG GOEL (MINOR)

S/o Shri DayaKishan Goel,
R/o 45-D, Venus Apartments,
Flat No. 49, 13th Floor,
R.G. Thadani Marg, Worli Sea Face,
Mumbai-400018,
Through his father & natural gurdian,
Shri Daya Kishan Goel Defendant

Represented by: None.

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CS(OS) 1240/2008 & I.A. 20868/2015

SHRI RAMESH CHANDER GOEL

S/o Shri R.N. Aggarwal,
R/o BT-61, Shalimar Bagh,
Delhi-110088.

.....Plaintiff

Represented by: Mr. P.D. Gupta, Sr. Advocate
with Mr. Abhishek Gupta,
Advocate.

versus

SHRI DAYA KISHAN GOEL

Alias Dinesh Goel,
S/o Shri R.N. Aggarwal,
R/o 45-D, Venus Apartments,
Flat No. 49, 13th Floor,
R.G. Thadani Marg, Worli Sea Face,
Mumbai-400018.....Defendant

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

1. The two suits are being decided together since they involved common issues and common transactions and were consolidated by Order dated 1st May, 2019.
2. The plaintiff has sought recovery of sum of ₹3,15,57,680/- against the defendant, his brother Daya Krishan Goel in Suit bearing No. 1240/2008 and Recovery of sum of Rs. 1,54,43,120/- from the defendant, his nephew Chirag Goel through his father Daya Krishan Goel in Suit bearing No. 1239/2008. *Pendente lite* and future Award interest @ 18% per annum has also been claimed from the date of filing of the Suit till its realization.
3. **Facts in brief** are that the plaintiff and the defendant Daya Krishan Goel are the real brothers while Chirag is the nephew. They had been doing business together and eventually the plaintiff shifted his business to Sri Lanka. The family business continued. According to the plaintiff on the request of defendant Daya Krishan Goel, he gave him (in CS(OS) 1240/2008) and his minor son defendant Chirag Goel (in CS(OS) 1239/2008) a personal loan in the sum of **US \$ 4,70,000/-, equivalent to**

INR Rs. 2,04,92,000/- and of US \$ 2,30,000/-equivalent to INR Rs. 1,00,28,000/-calculated @ 43.60 paise per US\$ as prevalent on 01st July, 2005 respectively. The sum is calculated @ 43.60 paise per US \$ as prevalent on 01st July, 2005. The money was transmitted by the plaintiff from his personal bank account maintained with the State Bank of India, Colombo, Sri Lanka by using SWIFT Banking Channel to the two accounts of the defendant Daya Krishan Goel and Chirag Goel, minor (maintained by his father Daya Krishan Goel) in ABN Amro Bank, NV, New Delhi on 01st July, 2005.

4. The plaintiff has claimed that the defendant had promised to return the loan amount within six months and had also agreed to pay interest @18% per annum from the date of receipt of the amount till its repayment. However, despite expiry of the period of six months followed by repeated requests, the defendant has failed to pay the amount.

5. Left with no option, the plaintiff issued a Legal Notice dated 27th March, 2008 calling upon the defendant Daya Kishan Goel to refund/pay the amount along with interest @18% per annum w.e.f.01st July, 2005 till the date of payment. The defendant avoided to receive the Notice sent through registered post but was duly served through UPC despite which the defendant has failed to pay/refund the loan amount. Hence, the present Suit has been filed for Recovery of the loan amounts along with the *pendente lite* and future interest @ 18% per annum from the date of filing of the Suit till its realization.

6. **The defendant in the respective Written Statement** in the two Suits has taken the preliminary objection that the Suit of the plaintiff is based on absolute falsehood. It is admitted that the amount of USD 469,980.00 was

remitted to the account of the defendant Daya Kishan Goel and USD 229,980.00 was remitted to the account of the Chirag Goel which is maintained by his father-Daya Kishan Goel, but it is claimed that it was not by way of personal loan, but on account of gift. The plaintiff in a planned manner used the defendant's account for his illegal gains. The *modus operandi* of the plaintiff was that the money would first be remitted to the account of the defendant which in turn on the instructions of the plaintiff, would be remitted to Dinesh International Ltd. and Vipin Enterprises a Partnership concern, both owned by the family members of the plaintiff and the defendant. Thereafter, the money would again be remitted to the plaintiff via his hundred per cent owned Sri Lankan Company, namely, Sri Chirag Pvt. Ltd.

7. It is submitted that the money received on 05th July, 2005, on the instructions of the plaintiff was remitted to the Dinesh International Ltd. and the Vipin Enterprises by way of cheques amounting to Rs. 2,00,00,000/- . Likewise, Rs. 1,00,00,000/- by way of cheque(s) was remitted to Dinesh International Ltd. Both the amounts were then remitted to the plaintiff's Company, namely, Sri Chirag Pvt. Ltd. in Sri Lanka. In this circuitous manner, the entire amount which was initially remitted to the defendant as a gift, was returned to the plaintiff.

8. It is further asserted that neither the defendant resides in Delhi nor work for gain in Delhi, nor any cause of action has arisen in Delhi and this Court has no territorial jurisdiction to entertain the Suit.

9. It is also asserted that the Suit has been filed after three years from the alleged date of transaction and is barred by limitation.

10. **On merits**, the defense as stated in the preliminary objections, is reiterated. It is reaffirmed that the money was received by way of gift but it is claimed that it was remitted back to the Company of the plaintiff located at Sri Lanka and that the Suit has not merit and is liable to be dismissed.

11. **The plaintiff in his Replication** has reaffirmed that his assertions as stated in the plaint.

12. The issues on the pleadings in both the Suits were framed on 01st May, 2009 which read as under:

“1. Whether the plaintiff had given a loan to the defendant in each of the suits and if so, on what terms, if any, as to repayment and interest? OPP

2. Whether the defendant in each of the suit had received the monies as gift? OPD

3. Whether the defendant in each suit is not liable for refund of the monies, also for the reason of transfer of monies at the instance of the plaintiff, as averred in the written statement? OPD

4. If under issue No. 1 the plaintiff is found entitled to recovery of money but no agreed term of rate of interest is proved, whether the plaintiff is entitled to any interest, and if so, at what rate and for what period? OPP

5. Relief.”

13. While framing the issues on 01st May, 2009, it was observed that from the documents produced by the plaintiff which were admitted by the defendant reflected that the amount was received in the bank account of the defendant in Delhi, which was not disputed by the defendant. This Court thus, held that it had territorial jurisdiction.

14. The plaintiff as **PW1** tendered his consolidated affidavit of evidence as Ex.PW1/A. The payment instructions dated 01st July, 2005 issued by the

plaintiff from his account maintained with the State Bank of India, Colombo, Sri Lanka as Ex.PW1/1, the Certificate of payment dated 22nd December, 2008 obtained from the State Bank of India, Colombo, Sri Lanka as evidence of the remittance to the account of the defendant is Ex.PW1/2, the Statement of Account No. 918415 of the defendant for the period of 16th February, 2005 to 31st August, 2005 of ABN Amro Bank, NV, New Delhi is Ex.PW1/3, payment instruction dated 01st July, 2005 in favour of the defendant, Chirag Goel as Ex.PW1/4. The Legal Notice dated 27th March, 2008 Ex.PW1/5 demanding the money was served to the defendant Daya Kishan Goel, through Postal Receipt Ex.PW1/6 and the returned envelope is PW1/7 .

15. The defendant Daya Kishan Goel filed a consolidated affidavit of evidence as DW-1 in both the Suits and admitted the remittance of the respective amounts in his account and in the account of his son Chirag Goel acting for him as his natural guardian. However, he deposed that the said amounts were received as a gift and not as the loan as alleged by the plaintiff. The amounts which came to their account were reflected as a Gift. However, the account of the defendants have been used for foreign remittance and the money was subsequently, routed to the accounts of the Company owned by the plaintiff. It was **deposed that the USD\$ 4,70,000/-** on 05th July, 2020 in his bank account at ABN Amro Bank, NV, New Delhi was remitted and the remittance certificate is Ex.DW1/3. The letter of accounts of Vipin Enterprises is DW1/4 & DW1/5 to show that the money was transferred back on the same date to the Company of the plaintiff i.e., Sri Chirag Pvt. Ltd. at Sri Lanka. The ledger account of Sri Chirag Pvt. Ltd. is DW1/6. The original copy of Statement of Account of Daya Kishan Goel

with ABN Amro Bank, NV, New Delhi is DW1/2. The duplicate original copy of the Remittance Certificate in the sum of USD 4.7 Lakhs credited in the account of Master Chirag Goel on 05th July, 2005 is DW1/7 and the Account Statement of Master Chirag Goel is DW1/8.

16. However, the defendant stopped appearing in the matter and was proceeded ex parte on 16th April, 2019. The defendant failed to appear for his cross-examination and his affidavit of evidence cannot be read.

17. Submissions heard. My Issue wise findings are as under:

ISSUE NO. 1:

1. Whether the plaintiff had given a loan to the defendant in each of the suits and if so, on what terms, if any, as to repayment and interest? OPP.

18. The plaintiff as PW-1 tendered his affidavit of evidence Ex.PW1/A, wherein he deposed that he had remitted USD 4,70,000.00 equivalent to INR 2,04,92,000/- calculated @ Rs.43.60 paise per USD from his personal account maintained with the State Bank of India, Colombo, Sri Lanka to the defendant's Bank i.e., ABN Amro Bank, NV, New Delhi on 01st July, 2005. The payment instructions dated 01st July, 2005 is Ex.PW1/1 and the certificate dated 22nd December, 2008 issued by the State Bank of India, Columbo, Sri Lanka evidencing the remittance is Ex.PW1/2. The statement of savings account No. 918415 of defendant obtained from ABN Amro Bank, NV, New Delhi for the period from 01st June, 2005 to 31st August, 2005 is Ex.PW1/3.

19. Likewise, in CS(OS) 1239/2008, he has deposed that he had given a personal loan of Rs. 1,00,28,000/- equivalent to USD 2,30,000 for a short term of six months to Chirag Goel, son of his younger brother/defendant

Daya Kishan Goel, which was remitted using SWIFT Bank Channel to New Delhi from his personal account in State Bank of India, Columbo, Sri Lanka to ABN Amro Bank, NV, New Delhi. The pay instructions dated 01st July, 2005 are Ex.PW1/4.

20. It is further deposed by him that Daya Kishan Goel had assured on his behalf as well as his son, Chirag Goel that the loan amounts would be returned within six months with the interest @18% per annum.

21. The defendant had extensively cross-examined the plaintiff Ramesh Chander Goel from where it emerged that the plaintiff and the defendant were jointly doing business and had a Company by the name of Dinesh International in which the plaintiff and his family members owned approximately 58 to 60% shares. It has also emerged that the son of the plaintiff was a partner in Vipin Enterprises though the plaintiff himself was never personally a partner in Vipin Enterprises.

22. It has further been disclosed in the cross-examination that the defendant Daya Kishan Goel shifted to Mumbai in the year 1987-88 and started taking care of the business at Mumbai. The plaintiff continued to look after the family business at Delhi. It has also emerged in the cross-examination that the relationship between them got acrimonious since 2006 when a Civil Suit bearing No. CS (OS) 645/2006 was filed by the defendant against the plaintiff, but the plaintiff has denied that, since then he was not on speaking terms with him. However, it was admitted in the cross-examination that he presently was not on talking terms with his brother Daya Kishan Goel.

23. Though the defendant had extensively cross-examined and had put the questions in regard to the shareholding in the Family Company i.e., Dinesh

International and the Partnership Firm i.e., Vipin Enterprises and had also suggested that the amounts had been remitted to Chirag Private Limited, a Company owned by the plaintiff in Sri Lanka, but no concrete evidence in respect of the return of the amount could be established from the cross-examination.

24. The plaintiff was confronted with his affidavit Ex.PW1/D2 filed by him in another Civil Suit bearing No. CS (OS) 645/2006, in support of the application under Order 23 Rules 1 and 3 of CPC, 1908, wherein some settlement had been arrived between the parties. However, merely because there was some Settlement arrived at in the said Suit, the same can be of no significance and relevance, as it does not state that the Settlement included the present Suit. The plaintiff when confronted with the Settlement, admitted his signatures on the affidavit of Settlement Ex. PW1/D2, but had denied that *vide* this Agreement dated 08th June, 2006, all the accounts between him and his brother were fully and finally settled. It may be significant to observe that this Settlement was of 08th June, 2006, while the entire trial in this case has happened practically after the date of alleged Settlement.

25. This Settlement was neither ever mentioned in the pleadings nor was any defence taken by the defendant in the Written Statement that any Settlement in respect of the present Suit ever took place or that the amount has already been returned to the plaintiff, pursuant thereto.

26. The defendant in the Written Statement filed in the two suits has admitted that the claimed amounts were received in the account of the two defendants respectively, from the bank account of the plaintiff in Sri Lanka.

27. The defendant had set up a sole defence that the amounts were being remitted by the plaintiff regularly to the accounts of various family members as gift, but the entire amount was being credited back to the Chirag International Pvt. Ltd., a Company held by the plaintiff in Sri Lanka. It was his defence that the money, though being shown as a gift to defendant and other family members, was being remitted back immediately to the plaintiff in a circuitous manner. It was first transferred to Vipin Enterprises and the Dinesh International Pvt. Ltd. which were the family Companies/Partnership Firms and thereafter, transferred to Chirag Pvt. Ltd. located in Sri Lanka and owned by the plaintiff.

28. While this defence has been taken and the affidavit of evidence was tendered by the defendant, but he failed to step into the witness box for cross-examination and, therefore, failed to tender any evidence in proof of his defence. No admissible evidence has been led by the defendant to prove that the money received from the plaintiff was returned.

29. It is thus held that it is proved by the evidence on record that the plaintiff had admittedly remitted a sum of USD \$ 4,70,000/- (in CS(OS) 1240/2008) to the defendant Mr. Daya Kishan Goel and a sum of 2,30,000 \$ to the defendant (in CS(OS) 1239/2008) through his father which the defendants have failed to return.

30. Issue No.1 is decided in favour of the plaintiff.

ISSUE NO. 2:

Whether the defendant in each of the suit had received the monies as gift? OPD

31. The defendant had taken a specific plea that the money was received by him as gift, but no such evidence could be brought forth from the

extensive cross-examination PW-1. Further, the defendant himself has failed i.e., admissible evidence to substantiate his defence that the amount had been received as a gift. However, as already discussed above, he himself has admitted that the amount received by him was intended to be returned to the plaintiff in a circuitous manner through the partnership firms/Companies of the family members and the plaintiff and the defendant in India, to Chirag Pvt. Ltd.

32. The defendant has failed to prove his defence of the money having been received as gift which was not intended to be returned. The issue is decided against the defendant.

ISSUE NO. 3:

“Whether the defendant in each suit is not liable for refund of the monies, also for the reason of transfer of monies at the instance of the plaintiff, as averred in the written statement? OPD”

33. In view of the findings on Issue No.1 & 2, it is held that the defendant was liable to refund the monies to the plaintiff which he failed to do.

34. The issue no.3 is decided against the defendant.

ISSUE NO. 4:

“If under issue No. 1 the plaintiff is found entitled to recovery of money but no agreed term of rate of interest is proved, whether the plaintiff is entitled to any interest, and if so, at what rate and for what period? OPP”

35. The plaintiff has further asserted that the defendant had agreed to pay an interest @18 per annum from the date of transmitting the loan amount to his account, but there is no cogent evidence produced in this regard. The

Legal Notice Ex.PW1/5 demanding the money and the interest was served upon the defendant Daya Kishan Goel only on 27th March, 2008. The plaintiff has not been able to prove that there was any agreement to pay interest @18 per annum.

36. Considering the prevailing market situation, rate of interest is assessed @ 6% per annum from the date of institution of the Suit till the date of recovery.

37. It is, therefore, held that the plaintiff is entitled to interest @ 6% from the date of institution of the Suits till the realization of the amount.

RELIEF:

38. In view of the findings on the issues as discussed above, it is held that plaintiff is entitled to recovery of Rs.1,00,28,000/- in CS(OS) 1239/2008 and to Rs. 2,04,92,000/- in CS(OS) 1240/2008 along with *pendete lite* and future interest @ 6% p.a. from the date of institution of the suit till the date of payment in both the suits. The two Suit of the plaintiff are accordingly decreed. Parties to bear their own costs.

39. Decree sheet be prepared accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 11, 2022

S.Sharma