October 10, 2023
Sl. No.36
Court No.19
s.biswas

CO 3085 of 2023

Sulochana Khaitan
vs.
Chandra Kanta Khemka

Ms. Sutapa Sanyal
Mr. Debrup Bhattacharjee
Mr. Pradeep Kr. Tulsyan

... for the petitioner

This revisional application arises out of an order dated August 14, 2023, passed by the learned Judge, 7th Bench, City civil Court at Calcutta in Money Suit No.1833 of 2022. The petitioner prayed for a judgment on admission, which was rejected by the learned trial court.

The petitioner filed the suit for recovery of money to the tune of Rs.5 lakhs and interest of Rs.1,94,055/-, aggregating to Rs.6,94,055/-, with further interest and cost etc. Schedule A of the plaint deals with the break-up of the interest claimed till the date of filing of the suit.

In the written statement, the defendant has inter alia stated that one Mohan Lal Bhatia representing himself as an agent of the plaintiff and her husband, approached the defendant to provide the defendant with some financial assistance. The defendant was carrying on a proprietorship business in the name and style of M/s. Mill Stores & Bearing Co. The defendant was told that the plaintiff and her husband were money lenders and in usual course of business provided interest bearing loan to eligible persons.

After a series of negotiations between the husband of the plaintiff and the defendant, the plaintiff provided a temporary loan of Rs.5 lakhs. The rate of interest was negotiated between the parties from 9% per annum to 7.5% per annum. It was agreed between the parties that the loan amount along with interest would be repaid by the defendant by way of instalments of Rs.22,500/-, upon expiry of every four months. The interest was to be calculated at reducing balance method.

In terms of such verbal contract, a cheque of Rs.5 lakhs was issued on May 19, 2016 in favour of the defendant. While providing the loan, the defendant’s signature was taken on a few blank pages and a stamp paper. The defendant depicted the amount paid in paragraph 5f and g of the plaint. According to the defendant, interest of Rs.1,10,871/- had been paid. Some portions of the principal amount had also been paid. The plaintiff had by fraud and misrepresentation demanded the principal amount over an above Rs.1,10,871/-. Disputes arose and further payment was stopped by the defendant. In paragraph 10 of the written statement, the defendant denied that the plaintiff was entitled to recover Rs.6,94,055/-.

Under such circumstances, this court finds that there was no clear and unequivocal admission that a sum of Rs.5 lakhs was due and payable to the plaintiff. The defendant has raised objections as to the method of calculation of the amount claimed by the plaintiff, the modus of repayment and the claim of the plaintiff for a portion of the principal amount over and above the interest of Rs.1,10,871/-.

There is also an allegation that the plaintiff, by taking advantage of the signed blank papers, had enhanced the rate of interest.

Under such circumstances, the learned court below has correctly held that the defendant did not admit either the rate of interest or the total amount payable. This is not a case for passing judgment on admission. The defendant had stated that the loan was repaid as per the schedule mentioned in paragraph 5f of the written statement and the closing principal amount was Rs.3,92,435/-.

Under such circumstances, the learned court below has rightly exercised the discretion in not allowing the application. The revisional application is thus dismissed.

The learned court below shall decide and dispose of the suit within a period of four months from the next date fixed. This order shall not be construed as an opinion of the court on the merits of the claims and counter-claims of the parties. The suit shall be decided independently and in accordance with law.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)