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

Present:

The Hon'ble Justice Krishna Rao

CS 58 of 2019
Sumit Resorts & Farms Pvt. Ltd.

Versus

Nice Vanijya Pvt. Ltd.

Mr. Sourojit Dasgupta
Mr. Shourjyo Mukherjee
Mr. Joydeep Guha
.....For the Plaintiff

Heard on : 18.11.2022 & 20.01.2023

Judgment on : 07.02.2023

Krishna Rao, J.:

The defendant had approached the plaintiff for financial assistance and accordingly the plaintiff had agreed to lent an advance amount of Rs. 2,00,00,000/- (Rupees Two Crore Only) to the defendant. The plaintiff has paid the said amount to the defendant by way of six cheques from 20th January, 2011 to 16th March, 2011. All the amounts paid by the plaintiff to the defendant was by cheques and the said cheques were duly encashed and credited in the account of the defendant. The lent and advance was in the form of an inter corporate deposit. The plaintiff and the defendant mutually agreed that the said amount will carry interest at the rate of 18% per annum and would become payable within six months from the date of receipt of the said amount.

On receipt of the total amount of Rs. 2,00,00,000/- (Rupees Two Crore only) and as per the mutual agreement between the parties, the defendant had deposited quarterly interest in the account of the plaintiff on the principal amount. The defendant had paid interest to the principal amount to the plaintiff till 24th November, 2011 after deducting TDS at the rate of 10%. The defendant had paid TDS only with respect to first payment of interest and no further TDS has been paid for subsequent transfer of interest.

The defendant had paid interest only till the month of November, 2011 and thereafter the defendant has neither paid interest nor had returned the principal amount to the plaintiff.

As the defendant has neither paid interest after 24th November, 2011 nor had returned the principal amount and accordingly the plaintiff had made several requests to the defendant for return of principal amount along with interest as agreed between the parties but the defendant has failed to pay the said amount and accordingly the plaintiff has filed the instant suit.

The plaintiff had presented the plaint before this Court on 1st April, 2019 and accordingly leave under Section 12A of the Commercial Courts Act, 2015 and Order 2, Rule 2 of the Code of Civil Procedure was granted to the plaintiff as at the relevant point of time, no mechanism for holding pre-institution mediation was available.

After grant of leave, the plaintiff had taken steps for issuance of writ of summons upon the defendant but the said writ of summons were returned unserved, thereafter the plaintiff was allowed for substituted service and accordingly the plaintiff had published the notice of the instant suit in the newspaper but even thereafter the defendant has not entered appearance in the suit. Subsequently, the suit was transferred to this Court and the same is proceeded as un-defended suit.

The plaintiff has examined one witness namely Sumit Ajit Saria to prove his case and during the examination of the plaintiff's witness, eight documents were exhibited which are as follows :

> *"Exhibit – '1' collectively i.e. the statement of accounts proves that the plaintiff has paid the following amount to the defendant and the defendant has withdrawn the said amount from the account of the plaintiff :*
>
> *a. Rs 75,00,000/- on 14th March, 2011*
> *b. Rs. 40,00,000/- on 24th February, 2011*
> *c. Rs. 10,00,000/- on 28th February, 2011*
> *d. Rs.75,00,000/- on 16th March, 2011.*
>
> *Exhibit – '2' proves that the defendant has paid interest of Rs. 3,28,068/-after deducting TDS by depositing the same in the account of the plaintiff on 21st April, 2011, Rs. 8,10,000/- on 18th August, 2011 and an amount of Rs. 13,50,000/- on 24th November, 2011.*
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> *Exhibit – '3' is the balance sheet of the defendant's company which proves that as on 31.03.2011 the unsecured amount was 2,03,64,520/- being the part of outstanding amount of the plaintiff. As on 31.03.2014 the short term borrowing was Rs. 2,76,80,000/-.*
>
> *Exhibit 4 is the Excel Sheet showing the outstanding of the party towards receivable total amount of Rs. 6,84,11,231.25/- wherein Rs. 2 crore is the principal amount and balance is the interest.*

Exhibit 5 is the TDS Certificate showing that the defendant had paid TDS on behalf of the plaintiff.

Exhibit 6 is the e-mail received by the plaintiff from the defendant wherein the defendant had provided his account details for transfer of fund.

Exhibit 7 is the e-mail sent to the defendant informing the defendant about the deposit of the amount in the account of the defendant.

Exhibit 8 is the e-mail of the defendant wherein the defendant had informed the plaintiff about creation of new e-mail and requested to make all communication be done in the new e-mail and also informed that the defendant had deposited an amount of Rs. 8,10,000/- in the account of the plaintiff as interest."

As per the evidence of the plaintiff and the exhibits it reveals that the plaintiff has transferred an amount Rs. 75,00,000/- on 14th March, 2011, Rs. 40,00,000/- on 24th February 2011, Rs. 10,00,000/- on 28th February, 2011, Rs. 75,00,000/- on 16th March, 2011 total amounting to rupees two crores in the account of the defendant.

On receipt of the above mentioned amount, the defendant had paid interest on the said amount on 21st April, 2011 amounting to Rs. 3,28,068/-, on 18th August, 2011 amounting to Rs. 8,10,000/- and on 24th November, 2011 amounting to Rs. 13,50,000/- to the plaintiff. After 24th November, 2011, the defendant had stopped payment of interest to the plaintiff. Exhibit 3 proves that the defendant has shown the loan amount in the balance sheet. As per balance sheet as on 31.03.2014, the defendant had shown the loan amount of Rs. 2,76,80,000/-. Exhibit 8 also proves that the defendant had borrowed an amount of rupees two crore and had paid interest on the said amount.

Considered the evidence of the plaint, evidence and the documents, this Court finds that the plaintiff has been able to prove the case and is entitled to get decree as prayed for.

In view of the above decree in terms of prayers (a) and (b) of the plaint is granted. Decree be drawn accordingly.

C.S. 58 of 2019 is thus **disposed of**.

(Krishna Rao, J.)