

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

**C.S. (Com) No. 370 of 2024
(Old No. CS 78 of 2022)**

Anil Agarwal

Versus

Uttam Chatterjee

Mr. Rachit Lakhmani

Mr. Ovik Sengupta

Mr. Anil Choudhury

... For the plaintiff.

Hearing Concluded On : 18.08.2025

Judgment on : 12.09.2025

Krishna Rao, J.:

1. The present suit is filed by the plaintiff for a decree of a sum of Rs.1,51,69,645.11 along with interest at the rate of 30% per annum and interest pendente lite.

2. The plaintiff carries on business under the name and style of “Dewesh Enterprises” as its sole proprietor and it is engaged in various kinds of businesses.
3. The defendant carries on business under the name and style of “U.K. Traders”, as its sole proprietor and is engaged in the business of investing money in several incomplete real estate projects and lends money from people for such purposes.
4. In or around the year 2016, the defendant had visited the office of the plaintiff and approached the plaintiff to visit the office of the defendant to have a discussion regarding investment opportunities.
5. In the month of July, 2016, the plaintiff had visited the office of the defendant, wherein the defendant showed the plaintiff, the incomplete real estate projects where the defendant has been investing money and also told the plaintiff that considering the market conditions, investing in such incomplete real estate projects ensure double or more returns. The defendant also proposed to the plaintiff that if the plaintiff invests some money with the defendant, the defendant would assure that the plaintiff at least gets 30% per annum return on such money being invested.
6. The plaintiff states that lured by such offer of the defendant, the plaintiff agreed to pay the defendant a sum of Rs.55,29,000/- and had paid such sum by way of RTGS transfer or cheques from time to time from 22nd November, 2017 till 17th January, 2019, which the defendant

was supposed to pay back by 30th November, 2019 along with interest at the rate of 30% per annum.

- 7.** The defendant had used the money given by the plaintiff to purchase or create right, title and interest in various immovable properties by executing registered conveyance deeds or agreements for sale.
- 8.** The plaintiff submits that after availing money from the plaintiff, the defendant enjoyed and used the said money to acquire properties and having also benefited therefrom.
- 9.** On 7th September, 2019, the plaintiff had lodged a formal complaint before the New Alipore Police Station regarding loss of several Cheque Books of the plaintiff and his other companies. On 24th October, 2019, the plaintiff received a notice from the defendant claiming that one cheque being numbered 969631 amounting to Rs.2,09,00,000/- has been dishonoured, which has already been reported lost to the New Alipore Police Station by the letter of complaint dated 7th September, 2019.
- 10.** The defendant had also filed a complaint case against the plaintiff and others being Case No. AC-5092/19 before the Learned Judicial Magistrate at Alipore alleging that the plaintiffs and others have lured the defendant to pay more than Rs.10,00,000/- and are trying to harass the defendant.

- 11.** The plaintiff had also filed a criminal complaint before the Officer-in-Charge, New Alipore Police Station, and on the basis of the complaint of the plaintiff, the New Alipore Police Station initiated FIR No. 280/2019 against the defendant.
- 12.** The plaintiff by a notice dated 20th December, 2021, had called upon the defendant to pay his outstanding dues to the tune of Rs.1,51,69,645.11 (principal as well as interest @30% per annum), which was duly received by the defendant on 27th December, 2021.
- 13.** The defendant in response to the notice dated 20th December, 2021, had sent a letter through his Advocate on 21st January, 2022, denied the claim of the plaintiff and have made a false story stating that the defendant had supplied shellac to the plaintiff for which the defendant is entitled to a certain amount from the plaintiff. The plaintiff says that shellac is natural resin which is used as a brush-on colorant, food glaze and wood finish and the plaintiff has no use for the same and the plaintiff had never received any goods from the defendant.
- 14.** The plaintiff came to know from reliable sources that the defendant is cancelling the agreement for sale in respect of the properties in which the defendant had invested the money of the plaintiff and is taking back the earnest money in respect of such properties without informing the plaintiff. After being searched by the plaintiff, the plaintiff came to know that in respect of seven of the properties in which the defendant had invested the money of the plaintiff, the defendant had cancelled

such agreement for sale and such properties have already been sold in favour of other parties and the defendant has neither informed the plaintiff nor has paid any amount to the plaintiff out of such sale.

15. The conduct of the defendant clearly shows that the defendant is siphoning off money from the investments made by the plaintiff and given such facts and circumstances, the plaintiff had lodged a criminal complaint before the Officer-in-charge, New Alipore Police Station.
16. The plaintiff in order to prove his case has examined one witness, namely, Mr. Anil Agarwal, who is one of the Directors of the plaintiff company. During his evidence, the plaintiff has produced eight (8) documents which were marked as “**Exhibit – A to Exhibit – F**” and “**Exhibit – X and Exhibit – X1**” which are as follows:

Exhibit – A (collectively): Copies of bank statements downloaded from the official website of United Bank of India, which shows payments made by the plaintiff to the defendant.

Exhibit – B: Copy of the General Diary lodged by the plaintiff at New Alipore Police Station, dated 7th September, 2019, reporting the cheques lost from the plaintiff's office.

Exhibit – C (collectively): Copy of notice dated 20th December, 2021, given by the plaintiff to Uttam Chatterjee requesting payment of money due along with its postal receipts.

Exhibit – D: Original copy of the letter dated 21st January, 2022, sent by the Advocate of Uttam Chatterjee, in reply to the plaintiff's letter dated 20th December, 2021.

Exhibit – E: Copy of the ledger account of the plaintiff company showing payments made by the plaintiff to the defendant.

Exhibit – F: Affidavit of the plaintiff for electronic evidence under section 63 of Bharatiya Sakshya Adhiniyam, 2023, corresponding to Section 65B of Evidence Act, 1872, prepared by the Advocate of the plaintiff.

Exhibit – X (for identification): Copies of the agreements for sale entered by Uttam Chatterjee with various sellers, downloaded from the official website of Directorate of Registration Revenue, Government of West Bengal.

Exhibit – X1 (for identification): Copies of two agreements for cancellation of agreement for sale, downloaded by the plaintiff from its Official Website of Directorate of Registration Revenue, Government of West Bengal.

17. To prove that the plaintiff has paid an amount of Rs. 55,29,000/- to the defendant, the plaintiff has exhibited documents being **Exhibit “A” (Collectively)** which established that from 22nd November, 2017 till 17th January, 2019, the plaintiff has transferred amounts in the account of the defendant from time to time.
18. As the defendant failed to pay the amount due along with interest at the rate of 30% per annum, the plaintiff had sent a notice to the defendant by postal services on 20th December, 2021, which were duly received by the defendant. The plaintiff has proved the said notice being **Exhibit “C” (Collectively)**. On receipt of the notice of the plaintiff, the defendant had sent a reply dated 21st January, 2022, by denying the

claim of the plaintiff. The reply of the defendant is marked as **Exhibit “D”**.

- 19.** The plaintiff to prove that the plaintiff has made payment to the defendant of an amount of Rs. 55,29,000/- and the defendant has not paid the amount back along with interest, the plaintiff has exhibited the ledger account of the plaintiff and the same is marked as **Exhibit “E”**. From the ledger account, it is proved that the plaintiff has paid the total amount of Rs. 55,29,000/-, the defendant had failed to return the same and also has not paid any interest accrued therein.
- 20.** This Court considered the case made out by the plaintiff in the plaint, affidavit of evidence of the plaintiff's witness and the documents which were marked as exhibits during the evidence of the plaintiff's witness. This Court finds that the plaintiff has paid total amount of Rs. 55,29,000/- in between 22nd November, 2017 to 17th January, 2019. This Court also finds that the defendant has not paid either principal amount or any interest accrued thereon.
- 21.** Though the plaintiff has claimed interest at the rate of 30% per annum but this Court did not find and evidence that there is any agreement between the parties for payment of interest at the rate of 30% per annum. As no interest is agreed between the parties but the defendant has invested the amount paid by the plaintiff for the purpose of its business thus the plaintiff is entitled to get interest at the rate of 15% per annum.

22. After filing of suit, the plaintiff has taken appropriate steps for service of summons upon the defendant through the Sheriff of this Court as well as through postal services but writ of summons could not be served upon the defendant with the reasons that the defendant was not found at the address and “left without information”. As per leave granted by this Court, the plaintiff has published the notice of the suit for the information of the defendant but inspite of publication of notice, the defendant failed to appear in the suit and accordingly, the suit is placed in the list of “Undefended Suit”.

23. Considering the above, this Court finds that the plaintiff is entitled to get principal amount of Rs. 55,29,000/-. The plaintiff is also entitled to get interest at the rate of 15% per annum in the following manner:

- (i) 15% per annum on Rs. 4,29,000/- from 22nd November, 2017 till realization,
- (ii) 15% per annum on Rs. 1,400,000/- from 11th December, 2017 till realization,
- (iii) 15% per annum on Rs. 1,000,000/- from 15th December, 2017 till realization,
- (iv) 15% per annum on Rs. 600,000/- from 20th February, 2018 till realization,
- (v) 15% per annum on Rs. 1,000,000/- from 3rd March, 2018 till realization,
- (vi) 15% per annum on Rs. 600,000/- from 5th March, 2018 till realization,

(vii) 15% per annum on Rs. 500,000/- from 17th January, 2019 till realization.

24. C.S. (Com) No. 370 of 2024 (Old No. C.S. 78 of 2022) is disposed of.

Decree be drawn accordingly.

(Krishna Rao, J.)