



notice, respondents no. 2-4 entered appearance through counsel. At their request, I heard final arguments advanced by learned counsel for both sides and also examined the trial court record filed with the appeal.

2. Briefly stated, relevant circumstances leading to the present appeal are enumerated hereafter.

2.1 The present appellant filed a suit for recovery of Rs. 11,00,000/- against the present respondent no.1 company and its Directors respondents no. 2-4, pleading as follows. The respondents no. 2-4, being the Directors of respondent no.1, are supervising, controlling and looking after day to day business affairs of respondent no.1. Respondents no. 2 and 3 had friendly relations with him and in the first week of April 2015, they requested him to advance a friendly loan of Rs. 11,00,000/- in the name of respondent no.1 company, whose business was undergoing financial stress and they promised repayment of the loan by 31.12.2016. Considering his friendly relations with respondents no. 2 and 3, he agreed and advanced the friendly loan of Rs. 11,00,000/- to respondent no.1 by way of cheque dated 07.04.2015 drawn in favour of respondent no.1, which cheque was duly honoured by his bank. In the first week of January, 2017, he contacted respondents no. 2 and 3 for repayment of the said loan, and they assured to do so within 2-3 days. But thereafter, when on 12.01.2017 he again requested respondents no. 2 and 3 for repayment of the loan, they refused to do so and rather threatened him. Therefore, he issued demand notice dated





was advanced only to respondent no.1 company, the remaining respondents cannot be held liable in view of independent identity of the Company. Accordingly, the impugned judgment and decree was passed against the respondent no.1 company only and not against the remaining respondents.

2.5 Hence, the present appeal.

3. During final arguments, learned counsel for appellant took me through above pleadings and evidence and contended that the impugned judgment and decree is not sustainable in the eyes of law. It was contended on behalf of the appellant that he advanced the loan consequent upon “misrepresentation” by respondents no. 2 and 3. It was contended that respondents no. 2 and 3 “induced” the appellant into advancing the loan to respondent no.1, so they cannot be absolved of their liability. Learned counsel for appellant also argued that this is a fit case to lift corporate veil and hold all respondents jointly and severally liable to pay back the loan amount to the appellant.

4. On the other hand, learned counsel for respondents supported the impugned judgment and decree, contending that the appeal is totally devoid of merits. Learned counsel for respondents referred to the judgment of a coordinate bench of this court in the case of *Tristar Consultants vs M/s V Customer Services India Pvt. Ltd. & Anr.*, ILR (2007) I Delhi 1053 and contended that respondents no. 2-4 cannot be held jointly and severally



liable to pay back the loan amount to the appellant, as the loan was advanced only to the respondent no.1, which is a separate legal entity.

5. Thence, the short question involved in the present appeal is as to whether liability of its Directors is coextensive with liability of the Company.

6. It is trite that a Company is a juristic entity, which acts through living human beings, collectively referred to as the Board of Directors of the Company. Unless specifically authorized, no individual Director has powers of act on behalf of the Company. Director of a Company can act on behalf of the Company only if empowered to do so by the Articles of the Company or a specific resolution passed by the Board of Directors. The Directors are understood as agents of the Company because qua the Company, they act in fiduciary capacity, thereby acting to the benefit of the Company, and those acts have only to be to the extent they are authorized to act. Such fiduciary duty owed by the Directors are to the Company and not to the third party, dealing with the Company. The Directors cannot be treated as agents of the Company in the conventional sense of an agent *vis-a-vis* third party. In this regard, Section 230 of the Indian Contract Act, 1872 stipulates that unless he personally binds himself, an agent is not personally liable for contracts entered into by him on behalf of his principal.

7. In the present case, admittedly, none of the respondents no. 2-4



personally bound himself to ensure that the respondent no. 1 company pays back the loan amount. Also admittedly, none of the respondents no. 2-4 issued any guarantee or indemnity etc as regards assurance that they would pay back the loan amount.

8. In the absence of guarantee/indemnity, the liability to pay back the loan amount could be fastened on respondents no. 2-4 only in case they were guilty of tort of malfeasance and misfeasance, which has not been pleaded by the appellant. Where a Director is guilty of causing injury to a third party by committing a tort, the Director may be personally liable. It is not the case of the appellant that the respondents no. 2-4 or any of them made false representation and induced him to advance loan to respondent no. 1. Mere use of expressions “misrepresentation” and “inducement” during arguments does not make out a case in that regard.

9. As mentioned above, the only pleadings of the appellant in this case were that on account of his friendly relations with respondents no. 2 and 3, he acceded to their request for grant of loan to respondent no. 1. Mere request to advance loan cannot be overstretched to be read as an inducement. It is nobody's case that the respondents no. 2-4 or any of them painted any false picture of the financial status of the respondent no. 1 company and allured the appellant with higher returns or even with assurance of repayment. The appellant has not even whispered any action on the part of any of respondents no. 2-4, which could fall in the domain of tort.

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10. The irresistible conclusion is that neither there is any contract in the form of guarantee/indemnity between the appellant and respondents no. 2-4 nor there is any pleading of any act of tort alleged against any of respondents no. 2-4 in order to make them liable to pay back the loan amount to the appellant.

11. I am unable to find any infirmity in the impugned judgment and decree, so the same are upheld. The appeal is dismissed.

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(JUDGE)**

FEBRUARY 25, 2025/rk/as