* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 24th August, 2026
Judgment pronounced on: 29th October, 2026

\# **CNR No. DLHC010118562016**

\+ RFA 67/2016 & CM APPL. 81531/2025

PREM PRAKASH MODI .....Appellant
Through: Mr. Hitender Kapur and Mr. Yatin Dhawan, Advocates.

versus

M/S ABSOLUTE CATERING SERVICES & ANR .....Respondents

Through: Mr. R.K. Rathore, Mr. Rakesh Chander Agrawal and Mr. Kartik Kumar Agarwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. This appeal has been filed under Section 96 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC') against the judgment and decree dated 28th November, 2015 passed in Suit No. 329/2013 titled '***Prem Prakash Modi* v. *M/s Absolute Catering & Anr.***' by the Court of Additional District Judge - 03, Central District, Tis Hazari Court, Delhi ('Trial Court').

2. The present appeal impugns the judgment and decree dated 28th November, 2015 passed by Trial Court whereby the suit filed by the

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appellant/plaintiff for recovery of a sum of Rs.10,00,000/- along with *pendente lite* and future interest was dismissed.

BRIEF FACTS

3. The appellant herein is the proprietor of M/s Murari Lal Prem Prakash and has been engaged in business of sale of *kiryana* items. It is the case of the appellant that respondent no.1, through respondent no.2 approached the appellant seeking financial help. The appellant agreed to advance a loan of Rs.10,00,000/- and, accordingly, on 27th January, 2012, the said amount was transferred by the appellant through banking channels to the account of respondent no.1. The amount so advanced was described as a friendly loan. In September 2013, the appellant demanded repayment of the loan amount. A legal notice dated 20th November, 2013 was issued by the plaintiff/appellant to the respondents demanding repayment of Rs.10,00,000/-. However, the same was returned as the defendants/respondents were not available at the said address.

4. A suit for recovery of Rs. 10,00,000/- were instituted by the appellant/plaintiff against the respondents/defendants on 12th December, 2013. The defendants/respondents entered appearance and filed their common written statement.

5. The Trial Court framed the following issues *vide* order dated 25th November, 2014:

> *i) Whether the plaintiff is entitled for the recovery of the suit amount of Rs.10,00,000/- along with interest @ 18% p.a., as prayed or if any, what amount with what interest, at what rate and for what period?*
>
> *ii) Whether there is no cause of action in the suit?*

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iii) Whether the plaint has not been properly signed and verified by the competent and authorised person?

6. After filing the written statement, the defendants/respondents failed to appear in the suit. Accordingly, the defendants/respondents were proceeded *ex parte vide* order dated 6th February, 2015.

7. Issue no.(ii) and issue no.(iii) were decided in favour of the plaintiff/appellant and against the defendants/respondents.

8. Trial Court decided the principal issue no.(i) against the plaintiff/appellant and dismissed the suit *vide* judgment dated 28th November, 2015.

9. In relation to issue no.1, the Trial Court held that the reference in the written statement to adjustment of a pending amount could not, in the circumstances of the case, be treated as an admission of the alleged friendly loan, particularly in view of the specific denial of the loan transaction in the written statement.

10. The Trial Court further found that Form No.16A (Mark 'A'), was in the name of M/s Madan Lal Shyam Sunder, which entity was not impleaded as a party to the suit. The Trial Court therefore did not find the said document sufficient to establish a nexus between the interest reflected therein and the alleged loan advanced to respondent no.2.

11. Additionally, the Trial Court found that the appellant/plaintiff's evidence did not sufficiently identify the person to whom the alleged loan had been advanced to. It was noticed that the suit impleaded both M/s Absolute Catering Services and Himanshu Goel, whereas the evidence referred to the loan having been advanced to respondent no.1 after it had

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approached the plaintiff through respondent no.2. The Trial Court also noticed the absence of pleadings explaining the basis of the personal liability of respondent no.2 for the alleged loan.

12. Trial Court further held that the statement of account, being a computer-generated copy, had not been proved in accordance with Section 65-B of the Indian Evidence Act, 1872. In the absence of the original account books and other supporting material, the Trial Court declined to rely upon the said statement for establishing the alleged advancement of the loan. Reliance was placed on the decisions in *Gopal Krishnaji Ketkar v. Mohamed Haji Latif & Ors.*, AIR 1968 SC 1413; *Parasnath Hiral Lal v. Kishan Lal Chuni Lal*, AIR 1965 All 189; *Trimbak Narayan Hardas v. Babu Lal Motaji*, AIR 1973 SC 1363

13. Aggrieved by the aforesaid finding, the appellant filed the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

14. A friendly loan of Rs.10,00,000/- was advanced to the respondent no.1. Interest was paid by respondents to the appellant for an initial period and thereafter the payments stopped. A Form No.16A was also issued in relation to deduction of tax on the interest amount.

15. The Trial Court erred in discarding the statement of account showing transfer of Rs.10,00,000/- on 27th January, 2012 on technical grounds without appreciating the same in the context of the other evidence on record, particularly the testimony of PW-1 (appellant/plaintiff) which was unrebutted. The Trial Court adopted an unduly technical approach in relation

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to the statement of account, despite the fact that the transaction itself was not effectively challenged by way of cross-examination.

16. Form No.16A proved deduction of tax in respect of interest paid to the appellant and, therefore, constituted corroborative material supporting the appellant's case that interest had in fact been paid upon the loan transaction. Merely because the Form No.16A was issued in the name of M/s Madan Lal Shyam Sunder, and the said entity was not impleaded as a defendant, could not by itself render the document irrelevant. The appellant's case was that the document reflected payment of interest upon the very amount advanced to the respondents and ought to have been considered along with his unrebutted testimony.

17. The Trial Court also failed to appreciate the contents of the written statement. The respondents had themselves pleaded that an amount was "pending" and had sought to explain the same by contending that such amount had subsequently been adjusted against the value of 50 bags of cloves lying in cold storage. The existence of the outstanding amount was, therefore, admitted and the respondents had set up a subsequent oral settlement to explain why the amount was no longer payable. Since the respondents neither entered the witness box nor led any evidence to prove the alleged settlement, the Trial Court ought to have drawn the necessary consequence from the unrebutted testimony of the appellant and the admission contained in the written statement.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

18. The respondent no.1 submits no friendly loan was advanced by the appellant, rather a business deal was in place. The joint venture run with M/s

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Madan Lal Shyam Sunder had been doing business deals with the appellant. The proprietor of M/s Madan Lal Shyam Sunder had bought 50 bags of clove from the appellant which was stored at Narang Cold Storage, Kundli, Sonipat and the same was illegally withheld by the appellant and Narang Cold Storage.

19. The appellant and respondent no.1 entered into an amicable settlement in 2013 where the parties agreed that the pending amount owed to the appellant by respondent no.1 would be adjusted against the value of the clove illegally withheld by the appellant and Narang Cold Storage.

20. The books of account as well as the original statement of account have not been produced to prove the entries in such statement of account. No certificate was furnished by the appellant in accordance with the Bankers' Book Evidence Act to prove the entries in the statement of account. Therefore, the said document is neither proved nor it is admissible in law.

ANALYSIS AND FINDINGS

21. I have heard the counsel for the parties and examined the record of the case.

22. Both sides have filed written submissions which have been duly considered.

23. The record of the case reveals that after filing the written statement, the defendants/respondents stopped appearing in the suit.

24. The plaintiff/appellant filed his affidavit of evidence, which remained unrebutted as the respondents failed to cross-examine the appellant. Further, the respondents did not lead any evidence on their behalf.

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25. In the affidavit of evidence filed by the appellant, it has clearly been stated that a sum of Rs.10,00,000/- was advanced by the appellant to the respondents on 27th January, 2012 as a friendly loan.

26. The appellant has also placed on record the bank statement (Mark B) of Murari Lal Prem Prakash, which is a proprietary concern of the appellant. The bank statement shows a debit entry of Rs.10,00,000 on 27th January, 2012, in favour of the defendant.

27. The appellant has also placed on record the TDS Certificate (Mark A) dated 30th June, 2012, in terms of which tax was deducted on the interest payable by the respondents to the appellant. The TDS Certificate clearly mentions the name of the deductor as Absolute Catering Services Private Limited, i.e. the defendant no.1.

28. As noted above, the respondents failed to cross-examine the appellant's witness and therefore, the aforesaid testimony of the appellant remained unrebutted.

29. The Trial Court de-exhibited the statement of account filed on behalf of the appellant on the ground that the original statement was not produced nor was the statement proved in accordance with law.

30. In the opinion of this Court, the proving of the bank statement would have been necessary if the respondents had denied the receipt of the sum of Rs.10,00,000/- from the appellant.

31. The respondents in their written statement, did not deny the receipt of Rs.10,00,000/- from the appellant and took the defense that the said amount was to be adjusted towards another transaction between the parties. Therefore, even if the bank statement was to be disregarded, it cannot be

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denied that the sum of Rs.10,00,000/- was received by the respondents through the appellant.

32. The Form 16A (Mark A) was also rejected by the Trial Court, as the same was issued by 'M/s Madan Lal Shyam Sunder', which was not a party in the suit.

33. No doubt, the issuer of the Form 16A was M/s Madan Lal Shyam Sunder. However, Form No. 16A clearly records the name of the deductor as Absolute Catering Services Private Limited, i.e. the defendant no.1. Once again, there was no cross-examination of the appellant's witness on behalf of the respondents on this aspect.

34. The appellant in his evidence has also deposed that legal notice dated 20th November, 2013 was sent to the respondents. However, the same was returned as the respondents were not available at the said address.

35. The evidence lead on behalf of the appellant clearly reveals that the respondents had taken a loan and failed to repay the same. There is no reason to disbelieve the deposition of appellant/plaintiff.

36. The respondents took a defense that the amount transferred by the appellant was in respect of a business transaction and was settled in 2013 through an amicable settlement between the parties.

37. In light of the defense taken by the respondents in the written statement, it was incumbent upon the respondents to enter the witness box and to lead evidence to show that the amount of Rs.10,00,000/- was adjusted towards another transaction. However, the respondents failed to lead evidence in this regard. Therefore, the Trial Court ought to have outrightly rejected the defense taken by the respondents.

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38. In light of the discussion above, it is clear that the appellant had discharged its onus to prove that the sum of Rs.10,00,000/- was advanced by the appellant to the respondents, which the defendant failed to repay. On the other hand, the respondents have failed to lead any evidence to show that the aforesaid amount was adjusted towards other transaction, in terms of settlement between the parties.

39. Accordingly, the impugned judgment and decree dated 28th November, 2015 passed by the Trial Court is erroneous and unsustainable and is consequently set aside.

40. Resultantly, the suit is decreed in favour of the appellant and against the respondents for a sum of Rs. 10,00,000/- along with interest @ 6% per annum, from the date of filing of the suit till the date of realization.

41. Decree sheet be drawn accordingly.

AMIT BANSAL
(JUDGE)

OCTOBER 29, 2026
at

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