

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 22-7-2019

Judgment delivered on 30-8-2019

FA No. 142 of 2005

- M/s Umesh Chandra & Company, a partnership firm duly registered under the Partnership Act carrying on the business at Gudhiyari, Raipur (CG).

---- Appellant/defendant

Versus

- Smt. Pramila Gwalre aged about 60 years, wife of Shri R.S. Gwalre, resident of 174 Sunder Nagar, Raipur (CG).

---- Respondent./plaintiff

For appellant : Mr. Sameer Oran, Advocate.

For respondent : Mr. Prafull N. Bharat, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 31-3-2005 passed by 5th Additional District Judge, Raipur (CG) in Civil Suit No. 50-B/2003 wherein the said court decreed the suit filed by the respondent/plaintiff for recovery of money to the tune of Rs.1,00,000/- and interest with cost of the suit.

2. Respondent/plaintiff filed a civil suit for recovery of a sum of Rs.1,25,000/- stating that she has advanced a loan of Rs.1,00,000/- with interest @ 2.5% monthly payable in advance to the appellant. The amount of interest has been paid from time to time, but

subsequently appellant/defendant stopped paying the interest of the amount, therefore, respondent/plaintiff issued a legal notice to him on 30-5-2002 for repayment of the amount and when no amount has been paid she filed a civil suit for recovery of the amount which is decreed by the trial Court.

3. Learned counsel for the appellant would submit that the respondent is not registered under Money Lenders Act, 1934 (for short, the Act, 1934"), therefore, she is not entitled to file a suit against the appellant. He would further submit that as the account of interest is not provided by the respondent, therefore, interest cannot be recovered by her as per the provisions of the Act, 1934.

4. On the other hand, learned counsel appearing for the respondent would submit that the appellant has admitted in his written statement that the appellant is under obligation to repay the amount. He would further submit that the respondent is not a money lender, therefore, she is not required to maintain record under the Act, 1934. The appellant has not rebutted the evidence adduced by the respondent side, therefore, finding arrived at by the trial court is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. The first question for consideration of this court is whether the appellant has borrowed a sum of Rs.1,00,000/- from the respondent. From the written statement of respondent (para 5-A and 5-B) it is established that loan was advanced to the appellant through account payee cheque. As per version of PW/1 K.K. Dhan and PW/2 Prajay Gwalre, Rs.1,00,000/- was given to the appellant by way of account payee cheque. Statement of these witnesses is unrebutted. Looking to the evidence and statements of the parties, it is established that loan was advanced to the appellant. It is not a case of the respondent that she is a money lender, therefore, he is not required to maintain record as per Act, 1934. From the statements of K.K. Dhan (PW/1) and Prajay Gwalre (PW/2) it is established that even after notice the amount was not repaid. As per plaint averment, interest of the amount was Rs. 86,250/- but respondent claimed interest to the tune of Rs.25,000/-.

7. The trial Court after assessing the evidence recorded finding that the appellant is liable to pay the principal amount and interest to the tune of Rs.25,000/- with cost of litigation. After re-assessing the evidence this court has no reason to record finding that the respondent is a money lender. The evidence of respondent side is unrebutted that is why the trial court recorded finding in favour of the respondent. This court has no reason to record a contrary finding. Issue of limitation is also raised by the appellant before the

trial court and the trial court after elaborate discussion opined that interest was paid through cheque on 4-8-1999 which is acknowledgement of debt and limitation is extended upto that date i.e., 4-8-1999. Suit was filed on 31-7-2002 which is within limitation. Finding of the trial court is based on proper reasoning, therefore, same is not liable to be interfered with while invoking jurisdiction of the appeal. Argument advanced on behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

8. Accordingly, the decree is passed against the appellant and in favour of the respondent as under:

- i) The appeal is dismissed with cost.
- ii) Appellant to bear the cost of respondent throughout.
- iii) Pleader's fee, if certified, as per schedule or whichever is less.
- iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju