



IN THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

RFA No. 03 of 2019

Ms. Dinku Khati, aged about 41 years,
Daughter of late Tek Bahadur Khati,
R/o Utpal Nagar, Road No. 4,
Siliguri-734003, P.O. Anchal,
P.S. Pradhan Nagar, West Bengal
C/o Ms.Shanti Ramudamu,
Near Tathangchan School,
Upper Tathangchan.
Gangtok, East Sikkim.

...Appellant/Plaintiff

Versus

Smt. Kamal Kumari Subba,
Wife of Shri Ashok Kumar Subba (Tsong),
R/o National Highway 10,
Sisa Golai,
P.O. Gangtok & P.S. Sadar,
East Sikkim.

...Respondent/Defendant

BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, C.J.

For Appellant : Ms.Gita Bista, Advocate.

For Respondent : Mr. Vivek Anand Basnett, Advocate.

Date of Hearing : 17.03.2020.

Date of Judgment : 24.03.2020

JUDGMENT

This appeal is preferred by the plaintiff against the judgment and decree dated 27.02.2019 passed by the learned District Judge, East Sikkim at Gangtok, in Money Suit No. 14 of 2015, dismissing the suit of the plaintiff, whereby recovery of Rs.32,47,200/- was prayed for along with interest of 18% from date of filing till final execution.

2. The case of the plaintiff, in a nutshell, as projected in the plaint is as follows:



(i) The plaintiff, who is a practicing Advocate, was introduced to the defendant by the husband of the defendant, Mr. Ashok Kumar Subba (Tsong), in the year 2009 and she had rendered legal assistance to the husband of the defendant and his other family members. Husband of the defendant had started a company in the name of M/s Zingtang Consultancy & Service Pvt. Ltd. and she had accepted the post of Legal Advisor in that company. It is pleaded that the defendant had approached the plaintiff in and around August, 2009 for a loan of Rs.2,00,000/- for the purpose of payment of fees of the daughter of the defendant who was studying in Australia with a promise to repay the loan within two months. With much difficulty, the plaintiff managed to collect the said amount and delivered the same to the defendant without executing any document. Though the plaintiff had asked for repayment of the loan after two months, the amount was not paid. Nevertheless, the plaintiff arranged one rented flat belonging to one Nima Gurung at Siliguri for the defendant and her family members to stay at Siliguri.

(ii) In respect of default of payment of loan of Rs.90,00,000/- taken by the defendant from the United Bank of India, Deorali Branch, a notice under Section 13(2) of SARFAESI Act, 2002 was issued to the defendant as well as to her husband, who was the guarantor and an amount of Rs.18,41,540/- was paid by Mr. Ashok Kumar Subba (Tsong) from the account of the company towards loan repayment. The bank loan dues of the defendant mounted to Rs.1,42,00,000/- and to save the property, the defendant requested the plaintiff to manage a loan of Rs.6,00,000/- which she stated would be paid with interest along with Rs.2,00,000/- taken earlier. It is the further case of the plaintiff that she mortgaged a plot of land along with two dwelling flats belonging to her late father, namely, Tek Bahadur Khati to one Chandra Bhusan Tiwari for Rs.6,00,000/- which was to be repaid by her within a period of six months. The plaintiff paid the defendant the amount of Rs.6,00,000/- in two installments: one of Rs.5,00,000/- on 25.05.2011 and the other a sum of Rs.85,000/- out of Rs.1,00,000/- on 22.12.2011 after deducting 15% interest



the source itself. The defendant, despite approaches made by the plaintiff, did not repay the loan with interest accrued thereon forcing the plaintiff to borrow money from her brothers, namely, Mr. Amit Khati and Mr. Manish Khati, to pay the accrued interest.

(iii) A Possession Notice as well as a Sale Notice dated 26.03.2012 were served on the defendant on 23.02.2012 by the Bank in connection with the loan taken by the defendant and in the aforesaid situation, the defendant approached the plaintiff expressing her inability to repay the loan and to protect the building constructed by her husband before the Debt Recovery Tribunal, the defendant had taken a loan from the plaintiff amounting to Rs.6,79,000/-. It is pleaded that the plaintiff paid the aforesaid amount from the amount received by her by cheque dated 10.04.2012 from one of her clients, namely, Ashok Lama.

(iv) A sum of Rs.35,000/- was also stated to be paid by the plaintiff by cash and another sum of Rs.5,000/- was deposited in the account of Mr. Yehang Subba, son of the defendant, on 20.04.2012, on being requested by the defendant when her son had gone to Delhi for his treatment of Tuberculosis.

(v) The plaintiff also stated to have mortgaged her gold ornaments for a sum of Rs.2,45,305/- to safeguard the property of the defendant and handed over the said amount to the defendant.

(vi) It is stated that plaintiff had borrowed a sum of Rs.72,895/- on 19.04.2012 from Leela Shilal, Rs.2,20,000/- on 11.07.2012 from Manju Khati, Rs.2,00,000/- on 04.09.2012 from Sashi Khati and Rs.8,50,000/- on 29.04.2012 from Jyoti Subba, totaling Rs.13,42,895/- and the said amount was given to the defendant on various dates by executing a Hand Note/Money Receipt dated 16.07.2013. In the meantime, though the plaintiff continued to appear in the legal proceedings, due to non-payment of dues, physical possession of the mortgaged building was taken over by the Bank on 20.03.2014.



(vii) It is further pleaded that by an Agreement dated 21.04.2013, the defendant had sold the property, namely, M/s Hotel Golmaheem for a consideration amount of Rs.3,00,00,000/- and received an advance amount of Rs.1,56,00,000/-, but in spite of that, the loan amount was not paid to the plaintiff. It is stated that as despite the execution of Hand Note dated 16.07.2013, the defendant did not pay the amount to the plaintiff for long two years, the plaintiff was compelled to file the suit.

3 (i) In the written statement filed by the defendant, it is stated that the plaintiff was introduced not by her husband, but by Mr. B. Sharma, Senior Advocate, with whom the plaintiff was working as a junior and the family members of the defendant had only formal relation as she often came with Mr. Ashok Kumar Subba, who used to extract money from the defendant. Many cases were filed against the plaintiff and Mr. Ashok Kumar Subba in connection with the functioning of the company and they were also arrested on allegation of cheating people of various places.

(ii) It is categorically stated that she had never approached the plaintiff for any loan and the plaintiff had made a fabricated story. It is pleaded that it was Mr. Ashok Kumar Subba, who rented a flat for himself and not for the defendant and her family members. The defendant had admitted about availing of loan and issuance of notice under Section 13(2) of the SARFAESI Act. The defendant denied that she ever received any amount from the plaintiff and she also stated that she had not received any amount from her husband. Rather, it was Mr. Ashok Kumar Subba, who had taken a sum of more than Rs.10,00,000/- from the defendant for the purpose of a case in the Gauhati High Court.

(iii) It is pleaded that she had never taken or agreed or promised to pay the amount of Rs.6,00,000/- with interest of 5% and Rs.26,47,200/-. She also denied her signature on the said hand-note. It is submitted that the plaintiff, in collusion with Mr. Ashok Kumar Subba, had been maliciously and



deftly trying to extract money and accordingly, a false and concocted case has been filed.

4. On the basis of the pleadings, learned trial Court framed the following two issues:

- (i) Whether the defendant is liable to pay a sum of Rs.32,47,200/- to the plaintiff, and
- (ii) Relief, if any.

5. During trial, plaintiff examined herself as PW1 and Ashok Kumar Subba as PW2. In support of her case, she exhibited a number of documents.

6. The defendant examined herself as DW1 and her sons as witnesses in the form of DW2 and DW3.

7. The learned trial Court held that the plaintiff could not prove advancing a loan amount of Rs.2,00,000/- by her oral evidence. Learned trial Court also held that advancing of loan amount of Rs.6,00,000/- is also not proved. It was observed that Exhibit-4 contains names of other persons and there is no indication that any money was received by the defendant from the plaintiff to substantiate her claim. Exhibits - 5, 6, 7 and 8 show that the plaintiff received certain amounts from different persons. None of the persons from whom the plaintiff received the amount has been examined and therefore, the said exhibits have no relevance in respect of the claim of the plaintiff. The learned trial Court also noticed that plaintiff failed to exhibit any document to show mortgage of gold ornaments of plaintiff for giving a sum of Rs.2,43,305/- to the defendant. With regard to the Hand Note dated 16.07.2013, the learned trial Court observed as follows:

"The evidence of the Plaintiff and her witness is in contrary with respect to the documents i.e. Hand Note dated 16.07.2013. Further, it may be noted here that although the Plaintiff heavily relied the Hand Note document i.e., Exhibit-9, however, on careful perusal of the content of the evidence-on-affidavit of the Plaintiff at paragraph 24 and the content of the Hand Note Exhibit-9, is contrary. Further, it may be noted



here that content of the Hand Note Exhibit-9 is no consonance with the contents of the plaint. There is serious materials contradiction.

On careful perusal of the evidence of the Plaintiff and her witness, it is seen that the Plaintiff failed to prove the content of Exhibit-9, simply on mere exhibiting the document is not sufficient to grant any relief in favour of the Plaintiff. Further, the Defendant denied the execution and her signature appeared in Hand Note Exhibit-9. However, the Plaintiff did not make any effort to examine the handwriting expert to prove its contents. It is to be noted here that although the expert opinion supported the case of the Plaintiff that the signature affixed in written statement marked A1 to A15 and the specimen signatures affixed marked S-1 to S-20 are similar in nature and characteristic. However, on the basis of the handwriting expert, case of the Plaintiff would be succeeded unless the document and its content is verified and proved. It is seen on record that the opinion of handwriting expert is inadmissible since the contents of the same is not proved by either of the party."

8. Ms. Gita Bista, learned counsel for the appellant has submitted that the learned trial Court failed to appreciate the evidence on record in its correct perspective. It is submitted by her that the learned trial Court erred in law in holding that Exhibits-4 series, 5, 6, 7 and 8 do not substantiate the claim of the plaintiff. While candidly admitting that there was some confusion with regard to the marking of the Hand Note as Exhibit as at various places the same is referred to as Exhibit-9 or Exhibit-10, the same does not go to the root of the matter and in that background, learned Court below failed to appreciate the Hand Note. It is submitted that the learned trial Court was seriously in error in holding that the plaintiff failed to prove the contents of the Hand Note. She contends that it was the defendant who had requested the learned trial Court to send the Hand Note for the opinion of the hand-writing expert and the hand-writing expert having opined that the signature of the defendant in the Hand Note matches with her admitted signature, the learned trial Court



ongly shifted the burden to the plaintiff and drew adverse presumption for not examining the hand-writing expert. She submits that this Court may also compare the specimen signature of the defendant with the admitted signature of the defendant. The learned trial Court was wrong in holding that Exhibit-9 was not proved by either of the parties. According to her, the plaintiff had proved by leading cogent evidence that a sum of Rs.32,47,200/- is payable by the defendant to the plaintiff and as such the learned Court below was not justified in dismissing the suit of the plaintiff. Ms. Bista has cited a judgment of the Hon'ble Supreme Court in the case of **H.K.N. Swami vs. Irshad Basith (Dead) By LRS.**, reported in **(2005) 10 SCC 243**.

9. While supporting the impugned judgment, Mr. Basnett submits that entirely a false case has been filed by the plaintiff and there is no pleading even to show as to how a sum of Rs.32,47,200/- was due and payable by the defendant to the plaintiff. There is not even one single document other than the so called Hand Note evidencing receipt of money by the defendant from the plaintiff. Bald statements have been made without any material particulars regarding payment of money by the plaintiff to the defendant as loan. None of the persons from whom the plaintiff stated to have received money for the purpose of making available loan to the defendant has also been examined. It is submitted that there is no cordial relation between the defendant and Ashok Kumar Subba, who stood as alleged witness in the Hand Note.

10. Drawing attention of the Court to paragraph 21 of the plaint, he submits that the Hand Note dated 16.07.2013 was stated to be executed for an amount of Rs.13,42,895/-, which is contradicted in paragraph 26. In that Hand Note, reference is also made to the civil case of T. Lachungpa, B. Jain, etc. about whom there is no pleading whatsoever. He has submitted that the Hand Note was exhibited as Exhibit P-9 and the FIR was exhibited as Exhibit P-10 and therefore, it has to be understood that the plaintiff did not prove the Hand Note when repeatedly reference was made to Exhibit-10.



He has submitted that it is true that the Hand Note was sent for the opinion of the handwriting expert on the request of the defendant. However, as the defendant was not satisfied with the report, prayer was made for sending the same to another handwriting expert but such prayer was rejected by an order dated 05.12.2017 on the ground that the defendant would get an opportunity to cross-examine the said expert. In view of the aforesaid order, it was for the plaintiff to have examined the handwriting expert, if so desired, but the plaintiff did not examine him and therefore, no reliance can be placed on the so called report of the handwriting expert. In support of his submissions, he places reliance on the cases of ***Bhagwan Kaur v. Shri Maharaj Krishan Sharma and others***, reported in ***AIR 1973 SC 1346*** and ***Life Insurance Corporation of India and another vs. Ram Pal Singh Baisen***, reported in ***(2010) 4 SCC 491***.

12. I have considered the submissions of learned counsel for the parties and have perused the materials on record.

13. ***H.K.N Swami*** (supra), relied on by Ms. Bista, lays down that the first appellate Court has to deal with all the issues and the evidence laid by the parties before recording findings.

14. The plaintiff submitted her evidence on affidavit, reiterating the version put forward in the plaint.

15. PW2 referred to the Hand Note dated 16.07.2017 as Exhibit P10 and he deposed that Exhibit P10 (a) is the signature of the defendant, which was signed in his presence. In cross-examination, he denied the suggestion that Exhibit 10(a) is not the signature of the defendant.

16. The DW1, in her evidence stated that the plaintiff had never provided any financial assistance to her and she had also not asked for any financial help. She denied execution of the Hand Note. It is stated that the plaintiff and her estranged husband had maliciously connived and filed the suit with ulterior motive. In her cross-examination she stated that her relation with the husband was cordial till the end of 2013. The suggestion given to her that the plaintiff



nsferred a sum of Rs.2,00,000/- to her daughter in Australia through Western Union Money Transfer, Nepal was denied. The suggestion that she had borrowed money from the plaintiff's mother was also denied. She also denied the suggestion that she was in Guwahati from 15.07.2013 to 17.07.2013.

17. DW2 deposed that his estranged father and the plaintiff had never looked after him and had not taken care of his medical expenses as alleged. He stated that signature appearing in the Hand Note is not that of his mother. He denied taking of any loan by his mother. It is stated that his mother did not go to Guwahati on 16.07.2013 and because of her illness whenever she travels long distance his elder brother or his wife mostly accompanies DW1 and sometimes he also accompanied her.

18. The evidence of DW3 is also more or less the same line as that of DW2. He also denies that the signature appearing in the Hand Note is not of his mother and that mostly he or his wife and, occasionally, DW2 accompanies DW1 on her long distance travel and that she did not go to Guwahati on 16.07.2014 (apparently year is wrongly written). He denied the suggestion that on 15.07.2014 (year again wrongly written), DW1 had boarded the flight to Guwahati with Senior Counsel B. Sharma. DW3 had denied the suggestion that plaintiff had transferred Rs.2,00,000/- from Nepal in the bank account of his sister, who was then studying in Australia.

19. Law is well-settled that the plaintiff has to succeed on his own strength and not on the weakness of the case of the defendant.

20. A perusal of the evidence goes to show that the plaintiff claims to have given a loan of Rs.2,00,000/- for payment of fees of her daughter, who was studying in Australia. When the said loan was given and in whose presence, if any, is, however, not indicated. This amount of Rs.2,00,000/- is the first loan claimed to have been advanced by the plaintiff to the defendant. The suggestion given to DW1 that money was transferred to her daughter through Western Union Money Transfer, Nepal gives a different dimension which was



: pleaded. If money was transferred in the above manner, the plaintiff could have definitely pleaded so and also adduced documentary evidence.

21. Another loan of Rs.5,00,000/- was said to have been given on 25.05.2011 and an amount of Rs.85,000/- was handed over on 22.11.2011 out of an amount of Rs.1,00,000/- from which 15% was deducted. These amounts were said to have been given on the basis of a sum of Rs.6,00,000/- received by the plaintiff by mortgaging a plot of land with two dwelling flats belonging to her father to one Chandra Bhusan Tiwari. No mortgage deed is exhibited by the plaintiff. How plaintiff could have mortgaged her father's land is not explained. Four receipts are collectively marked as Exhibit-4. By the Exhibit-4 series, one Bushan Tiwari acknowledges receipt of interest of various amounts of from one Bidhya Khati, who is the mother of the plaintiff. In all these receipts, loan amount was shown as Rs.5,00,000/-, contrary to the stand of the plaintiff that she had obtained a loan of Rs.6,00,000/- through the mortgage. Bushan Tiwari and Chandra Bhusan Tiwari, evidently, in absence of any explanation, have to be treated as different persons. That apart, name of the plaintiff does not figure in the said receipts. Signatures appearing therein are not proved. It is also significant to note that in one of the receipts dated 19.06.2011 Ashok Kumar Subba signed on 13.09.2011 as a witness. Exhibit-4 series do not substantiate taking of loan by the plaintiff for the purpose of making available the amount as loan to the defendant.

22. Another sum of Rs.6,79,000/- was said to have been taken on loan by the defendant from the plaintiff. It is the stand of the plaintiff that the said amount was paid by the plaintiff after receiving the amount by cheque from one of her clients, namely, Ashok Lama on 10.04.2012. How the amount is paid to the defendant is not indicated. The cheque was not exhibited and Ashok Lama was also not examined. It is a self-serving statement.

23. With regard to the loan amount of Rs.35,000/- as well as Rs.5,000/- also, no date has been mentioned as to when the loan was paid.



With regard to the amount of Rs.2,45,305/-, there is no evidence that the defendant asked for the amount as loan as the aforesaid amount was only handed over to the defendant thereby signifying a voluntary act. The said amount was stated to have been obtained by the plaintiff by mortgaging her gold ornaments. It is not stated to whom gold was mortgaged. No document is produced demonstrating that she had pledged or mortgaged or pawned some gold for obtaining some amount.

25. The plaintiff also said to have given to the defendant a sum of Rs.13,42,895/- on various dates after collecting the same from Sashi Khati, Manju Khati, Jyoti Subba and Leela Shilal. The plaintiff had exhibited Exhibits-5, 6, 7 and 8, which are receipts signed by her and stated to have been signed by Sashi Khati, Manju Khati, Jyoti Subba and Leela Shilal, respectively. As none of them have been examined, Exhibits-5, 6, 7 and 8 cannot lead to a conclusion that the plaintiff had taken money from them.

26. The plaintiff exhibited the Hand Note dated 16.07.2013 as Exhibit-9. Where this document was executed is not mentioned in this document. PW1 stated in her cross-examination that the document was executed in Guwahati. The address of the defendant was shown at Sikkim in the said document. No cogent and reliable evidence was led by the plaintiff to establish that she was in Guwahati on that date.

27. In cross-examination of the plaintiff, the Hand Note was referred to as Exhibit-10. She admitted that apart from the Hand Note, she does not have any other document to support her claim for a sum of Rs.32,47,200/-. She denied a suggestion that the defendant did not execute or sign the Hand Note and that she had forged the signature of the defendant. It is noted earlier that PW2 had exhibited the same as Exhibit-10 and DW1, 2 and 3 had also referred to the Hand Note as Exhibit-10. This Court will not hazard a guess how it has happened. The learned trial Court, though had given much emphasis on the above discrepancy, I am of the considered opinion that the said discrepancy



not have any bearing as evidently the parties were aware that they were referring to the Hand Note.

28. The plaintiff had to, in the first place, prove that she was capable or was in a position to, may be by herself obtaining loans from others, to provide loans to the defendant. Giving a go by to the case projected in the plaint, suggestion was given to DW1 that she had borrowed money from the mother of the plaintiff. In the context of the case projected by the plaintiff that no documents were executed at the time when defendant had received the amounts as stated by the plaintiff and when substantial amount of loan which the plaintiff claims to have advanced to the defendant as loan was received by the plaintiff herself from others, it was necessary for the plaintiff to have examined persons from whom she had availed loan to lend credence to the fact that she had, at least, obtained some loan though the same may not have proved advancing of loan to the defendant.

29. In **Ram Pal Singh Baisen** (supra), the Hon'ble Supreme Court held mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. Contents of the documents are required to be proved either by primary evidence or by secondary evidence. Admission of documents may amount to admission of contents but not its truth.

30. It is evident from the evidence on record that though a report of hand-writing expert was received by the learned trial Court, the hand-writing expert was not examined. The Court cannot rely on the report of the handwriting expert unless he is examined and unless the same is admitted by the parties. It is to be noted that Expert evidence, though relevant in view of Section 45 of the Evidence Act, is not conclusive. It can rarely, if ever, take the place of substantive evidence. As stated in **Bhagwan Kaur** (supra), evidence of handwriting expert is of a frail character unlike that of a fingerprint expert. A Court is competent to compare the disputed writing of a person with others



ich are admitted or proved to be his writings. However, it may not be safe for a Court to record a finding about a person's writing in a certain document merely on the basis of expert comparison, but a Court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard.

31. The Hand Note (without the signatures) reads as follows:

"HAND NOTE DOCUMENT"

I, Kamal Kumari Subba, wife of Shri Ashok Kumar Subba (Chong), resident of Sisa Golai, NH31A, Gangtok, East Sikkim, do hereby undertake I shall pay a sum of Rupees 6,00,000/- (six lakhs) with interest of 5% and Rs.26,47,200/- (twenty six lakhs fourty seven thousand and two hundred) only, on or before 15th September, 2013 to Ms, Dinku Khati, which I have borrowed to same from Dinku Khati as my legal expenses incurred in DRT case at Guwahati, Civil Cases of T. Lachungpa, Binod Jain, at Gangtok and for the study of my daughter Ningwaphuma Subba at abroad (Australia).

I DO HEREBY PROMISE to pay the aforesaid loan to Ms. Dinku Khati, D/o Late Tek Bahadur Khati, resident of Utpal Nagar, Road No. 4, Siliguri, P.O. Anchal & P.S. Pradhan Nagar, District Darjeeling, West Bengal, on or before 15th of September, 2013, and if I fail to repay the same amount she can recovered the same by filing money recovery suit in the competent court of law.

I FURTHER UNDERTAKE to pay the said amount on or before the said date failing which I shall be held liable for criminal breach of trust, cheating and other penal provisions also.

I sign this document on this date 16th day of July, 2013 in presence of witnesses."

32. It will be appropriate to extract the relevant part of paragraph 21 of the plaint, which is as follows:



"xxxxxxx For this purpose, the plaintiff borrowed some amount from her friend and relatives, details of which are as under:

- 1. Leela Shilal Rs.72,895/- on 19/04/2012*
- 2. Manju Khati Rs.2,20,000/- on 11/04/2012*
- 3. Sashi Khati Rs.2,00,000/- on 04/09/2012*
- 4. Jyoti Subba Rs.8,50,000/- on 29/04/2012*

A sum of Rs.13,42,895/- (Thirteen Lacs Forty Two Thousand Eight Hundred and Ninety five) was borrowed as above and the said money has been given to Defendant on the various dates and further executing Hand note(s) Document/Money Receipt on 16/07/2013.

The copy of the Money receipts are annexed herewith and marked collectively as Annexure-14 (Colly)."

It is to be noted that the above extract without the annexure part was repeated in the evidence in affidavit of the PW1 at paragraphs 23 and 24.

33. Paragraph 26 of the plaint reads as follows:

"That after much pursuance by the plaintiff and after several request, the defendant issued the Hand Note Document dated 16.07.2013 wherein she has agreed and promise to pay the amount of Rs.6,00,000/- (six lacs) only with interest of 5% and Rs.26,47,200/- only to the plaintiff on or before 15.09.2013. The said Hand Note was signed before the witnesses, Shri Ashok Kumar Subba (Tsong) the husband of the defendant and Ms. Usha Khati, sister of the plaintiff.

Copy of the Hand note Document dated 16/07/2013 is annexed herewith and marked as ANNEXURE-17."

It is to be noted that the aforesaid paragraph without the annexure part was repeated in the evidence in affidavit of the PW1 at paragraph 29.

34. In the pleadings, there is no explanation how the amount of Rs.32,47,200/- was accounted for. Perusal of the aforesaid paragraphs would go to show that the pleadings and evidence in respect of the Hand Note cannot be reconciled. It is also on record that the defendant has an estranged



relationship with Ashok Kumar Subba, husband of the defendant. The other witness in the Hand Note is also an interested witness, being the sister of the plaintiff. It is not pleaded what was the rate of interest on the loan amount of Rs.6,00,000/- though a statement is made in the plaint that the amount will be paid with interest. In the Hand Note, rate of interest is shown as 5% for the amount of Rs.6,00,000/-. It is somewhat odd that plaintiff had claimed that the amount of Rs.5,00,000/- and Rs.1,00,000/-, which she had obtained on mortgaging her father's property, carried an interest of 8% on Rs.5,00,000/- and loan of Rs.1,00,000/- was to be repaid with interest of 15%. In the pleadings as well as in evidence, there is no reference to any civil cases of T. Lachungpa, Binod Jain, at Gangtok. How the amount of Rs.26,47,200/- has been calculated has not been explained. The loans stated to have been advanced by the plaintiff, without taking into account Rs.6,00,000/-, comes to Rs.25,05,200/- only.

35. In view of the discussions above and taking note of the evidence adduced by the plaintiff, I am of the considered opinion that the learned trial Court was correct in holding that plaintiff had failed to prove her case.

36. Resultantly, finding no merit, the appeal is dismissed.

37. No cost.

38. Lower Court records be sent back.

Chief Justice

jk/