Suhdir Jain vs R.P. Mittal on 4 August, 2023

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Pronounced on: 04th A

\+ CS(OS) 386/2012 & IA 17697/2022

SUDHIR JAIN
R/o 2596, Oak Hills Drive,
Ann Arbor, Michigan 48103 USA ....
Through: Mr. Neeraj Sharma, Ms. Arch
Lakhotia, Mr. Bikram Bhatt
and Ms. Prachi Jain, Advoc

versus

R. P. MITTAL
R/o 81 Sainik Farms,
Mehrauli Badarpur Road, New Delhi ....
Through: Mr. Adarsh Priyadarshi, Ms.
Dayal and Ms. Shivleen, Ad

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

1.

The plaintiff has filed a suit for recovery of Rs.7,44,00,000/- along with interest against the defendant.

2. "Law: in its nature the noblest and most beneficial to mankind, in its abuse and debasement the most sordid and the most pernicious" observed Henry St. John, Lord Viscount Bolingbroke in Letters on the Study and Use of History (1739). This adage of 1739, holds ground even today and is manifested in its full majesty in this case. The plaintiff prompted by his goodness, agreed to give a loan of Rs. 2.4 crores to the defendant, a friend and a person known to him, inter alia on the following terms as reflected in his e-mail dated December 28, 2006:-

> "a. The Defendant would pay one time transaction fee of 7.5% on the principal amount of the loan. b. The Defendant would pay interest @ 5% per month on the principal loan amount of Rs. 2.40 crores. c. The loan will be secured by the Plaintiff's lien on the receivables from the sale of the said property at 32-F, Sainik Farms, New Delhi, which according to the Defendant was under process of sale and by a mortgage of the said Karnal Property by registered mortgage in favour of the Plaintiff. d. The

principal amount together with interest and fee (collectively "loan") would be repaid by the Defendant preferably within 30 days but definitely within 90 days."

3. Upon acceptance of the above terms by the defendant, vide an email on the same date viz. December 28, 2006, a sum of Rs.2,40,00,000/- was credited to the account of the defendant in Axis Bank, New Delhi through a Bank Draft issued by the Union Bank, Gurgaon on the directions of the plaintiff. As per the terms, the repayment of the entire loan amount was to be made by 01.04.2007. However, the last payment was made by the defendant on 01.03.2007 and a total amount of Rs.88,00,000/- was repaid. The defendant also defaulted in executing a Mortgage Deed in respect of Karnal property in favour of plaintiff. Further, though the defendant had represented himself to be the owner of property No. 32E, Sainik Farms, New Delhi but the defendant was unable to sell the property on account of some defect in the title deeds. The plaintiff has claimed that the defects in title deeds imply that the defendant had wrongly represented himself to be the owner of Sainik Farms property.

4. The plaintiff wrote various emails and made telephonic calls to the defendant for repayment of the loan, but the defendant failed to refund the entire loan amount by 31.01.2012.

5. The total sum claimed from the defendant is as under:

Particulars	Amount
Principal Amount	Rs.2,40,0
One time transaction of 7.5%	Rs.18,00,
Interest at the rate of 5% p.m. from 29.12.2006 to 31.01.2012	Rs. 6,04,
Total	Rs. 8,62,
Amount paid already	(-)Rs.88,
Amount Due	Rs.7,74,0

6. The plaintiff has thus sought recovery of Rs. 7,74,00,000/- along with the interest @ 5% p.m. and costs.

7. The defendant who was extended financial assistance by the plaintiff to bail him out of a tricky financial situation, felt cornered and decided to exploit the most "pernicious and sordid" aspect of Law and delayed the admitted loan amount by pulling out all kinds of arrows of objections from his quiver of Code of Civil Procedure. He in his Written Statement, took various preliminary objections. The first objection was that the plaintiff had alleged that loan transaction took place on 28.12.2006 as confirmed by the e-mail of the same date. However, the suit has been filed in the year 2012 i.e. beyond the period of three years from the date of cause of action and therefore, suit is patently barred by limitation.

8. The second preliminary objection is that the plaintiff has filed an earlier Civil Suit bearing No. CS OS 777/2011 for the recovery of sum of Rs.5,00,00,000/- which is pending. While instituting the said suit, plaintiff did not seek permission from the court under Order II Rule 2 of Schedule 1 of

Code of Civil Procedure,1908 (hereinafter referred to as CPC) and having omitted to sue the defendant for the present amount, the suit is barred under Order II Rule 2 of Code of Civil Procedure. Since the plaintiff had relinquished the amount claimed in the present suit in his earlier Civil Suit, the present suit for recovery of Rs.7,74,00,000/- is not maintainable.

9. The third objection taken is that the suit is barred under the provisions of the Punjab Registration of Money Lender s Act, 1938 since the plaintiff is engaged in the business of money lending without having a license as a money lender.

10. It is further asserted that plaintiff has claimed the principal amount of Rs.2,40,00,000/- along with the interest at the rate of 5% p.m. to be compounded monthly and this alleged transaction is „substantially unfair and the interest is „excessive within the meaning of Section 3 of the Usurious Loans Act, 1918 read with Section 5 and 6 of the Punjab Relief of Indebtedness Act, 1934 as applicable to Delhi. Therefore, the relief claimed by the plaintiff is unsustainable and unfair and suit is liable to be rejected.

11. It is further claimed that the plaintiff s stand is that the loan was payable by 27.03.2007. However, no steps have been taken for recovery of the loan amount after the expiry of the loan period. The plaintiff has therefore, excused the defendant of his alleged obligation in terms of Section 37 and 39 of Indian Contract Act and the suit is therefore, liable to be dismissed on this ground as well.

12. A further objection is taken that the plaintiff has failed to specify the amount in words as mandated under Order VI Rule 2(3) of CPC. The plaint therefore suffers from an inherent defect and is liable to be dismissed.

13. An objection as also been taken that the valuation of the suit as per Paragraph 12 of the plaint comes to Rs. 46,37,15,484.53 while the court fee of Rs.7,60,550/- only has been paid. The suit has not been correctly valued, and the deficient court fee has not been paid on which ground the suit is liable to be dismissed as per Order VII Rule 11 of CPC.

14. On merits, defendant has denied that he has ever made any request for loan or sent any email dated 27.12.2007 as alleged by the plaintiff. He also denied having received any loan amount from the plaintiff. It is claimed that the payment of Rs.2,40,00,000/- had been made by the plaintiff not for its use by the defendant, but for investment in Hotel Queen Road Pvt. Ltd on behalf of the plaintiff himself. The defendant permitted the plaintiff to use his bank account as he was a foreign national who was not entitled to invest directly in India. The Hotel Queen Road Pvt. Ltd. purchased the erstwhile Ashok Yatri Niwas upon disinvestment of ITDC by the Government. In the books of account of this Company, even today, this amount has been reflected as an investment by the plaintiff. Since the present owners of the Hotel have refused to return the investment of the plaintiff, he as an alternative method to get back his investment, has filed this suit albeit against the wrong person.

15. The defendant has denied that he ever undertook any obligation under the Loan Agreement and claimed that there is no question of him having defaulted in repayment. He has also denied that he ever agreed to mortgage the property or to arrange the return of money by sale of the Sainik Farm Property. It is asserted that the suit is without merit and is liable to be dismissed.

16. The plaintiff in his replication not only reaffirmed his assertions as made in the plaint but also repelled the preliminary objections taken by the defendant. He has denied that he is a money lender as provided under the Punjab Registration of Money Lender s Act, 1938 as he is not engaged in the business of money lending and had given the loan to the defendant on his insistence in good faith as he was known to him through common friends/relatives. Further, he has denied that he at any time excused the defendant of his liability to repay the loan amount in terms of Section 37 and Section 39 of the Indian Contract Act, 1872, as alleged. He has further denied that the suit is not maintainable on the preliminary objections raised by the defendant.

17. It is claimed that the defence set up by the defendant is frivolous, vexatious, sham and ex-facie bogus. The defendant had sent emails dated 29.04.2009 and 05.01.2010 confirming the loan transaction. The assertions made in the plaint are reaffirmed and it is claimed that he is entitled to the decree for the claimed amount.

18. Issues were framed by this on 01.09.2014 as under :-

> 1. Whether the plaintiff is entitled to decree in his favour and against the defendant for an amount of Rs.7,74,00,000/-? OPP
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> 2. Whether the plaintiff is entitled to pendent lite and future interest at the contractual rate of 5% per month? OPP
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> 3. Whether the suit is barred by limitation? OPD
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> 4. Whether the suit barred by Order II Rule 2 CPC? OPD
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> 5. Whether the suit is barred by Section 3 of the Punjab Registration of Money Lenders Act, 1938 as applicable to Delhi? OPD
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> 6. Whether the suit is barred by Section 3 of Usurious Loans Act 1918 and read with Sections 5 and 6 of the Punjab Relief of Indebtedness Act 1934 as applicable to Delhi? OPD
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> 7. Whether the suit is not maintainable as per Sections 37 and 39 of the Indian Contract Act 1872? OPD
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> 8. Whether the suit is in non compliance of requirement of Order VI Rule 2(3) of the CPC? If so, its effect? OPD

9. Whether the suit has been properly valued for the purposes of court fee and jurisdiction? OPD

10. Relief.

19. The plaintiff Shri Sudhir Jain in support of his claim appeared as PW1 and tendered his evidence by way of affidavit Ex.PW1/A and relied upon the documents Ex.PW1/1 to Ex.PW1/13.

20. Mr. Mukesh Kukreti, Finance Manager of the Plaintiff appeared as PW2 and he confirmed the transaction of Rs 2.4 crores undertaken by the plaintiff.

21. The defendant Mr. R.P. Mittal appeared as DW1 and deposed about his defenses in his affidavit of evidence. The defendant, however, did not appear for cross-examination and accordingly, his right to lead evidence was closed vide the order dated 21.10.21.

22. Submissions heard. My issuewise findings are as under:

Issue No. 4: Whether the suit is barred by Order II Rule 2 of Code of Civil Procedure?

23. The defendant has taken a preliminary objection that the plaintiff filed an earlier suit bearing No. CS OS 777/2011 for recovery of the alleged loan amount of Rs.5,00,00,000/- which had been given to the defendant. It is asserted that the alleged loan of Rs.2,40,00,000/- which is the subject matter of the present suit is part of the same transaction and the plaintiff could not have split the amount in two suits. Since he has failed to claim this amount of Rs.2,40,00,000/- in his earlier Civil Suit and has not even sought permission of the court under Order II Rule 2 of CPC, the present suit is barred.

24. From a perusal of the pleadings and the documents filed, it is gathered that the plaintiff in his plaint as well as in his affidavit of evidence Ex.PW1/A has explained that the defendant had contacted him in July 2006 for a personal loan of Rs. 10,00,00,000/- for making this hotel project operational by the end of the year 2006. He had also agreed to pledge his three properties, all at Sainik Farms at Delhi, as collateral/security for the loan. The plaintiff, after discussion, agreed to give a loan of Rs.5,00,00,000/- to the defendant and his wife, Sarla Mittal, which was released to him as per Loan Agreement dated 30.10.2006. Thereafter, the defendant again approached him through email dated 27.12.2006 for a further loan of Rs.2,50,00,000/- which he required immediately as on his representation, the Bank had agreed to provide him a further nine months moratorium only if he paid a sum of Rs.2,50,00,000/-.The defendant assured that he would repay this loan by selling his property bearing No. 32-E Sainik Farms, New Delhi and also asserted that he would return the money within the maximum period of 90 days.

25. Thus, it is observed that the earlier civil suit bearing No. 777/2011 pertains to the earlier loan amount of Rs.5,00,00,000/- which had been granted under an independent Loan Agreement dated 30.10.2006, while the present suit pertains to an independent transaction initiated on the basis of the email of the defendant dated 27.12.2006. Though the parties are the same, but it is evident that

there were two independent loan transactions and the cause of action in both the suits is different.

26. Consequently, it is held that the present suit being based on an independent cause of action, it is not barred under Order II Rule 2 of CPC. The issue no.4 is decided against the defendant and in favour of the plaintiff.

Issue No. 5: Whether the suit is barred by Section 3 of the Punjab Registration of Money Lenders Act, 1938 as applicable to Delhi?

27. A preliminary objection has been taken by the defendant that the plaintiff is engaged in the business of money lending in India which is established from the fact that he had extended a loan of Rs.2,50,00,000/- to the defendant. Since he does not have the requisite license as a money lender, the present suit is barred under the Punjab Registration of Money Lending Act, 1938.

28. The case of the plaintiff is that the defendant was known to him through friends and relatives and the loan was extended to the defendant as a friend in good faith and not because he was in the business of money lending. Hence, the provisions of the Punjab Registration of Money Lending Act, 1938 would not be applicable.

29. To examine whether the plaintiff lent money to the defendant as a money lender, it may be pertinent to refer to the e-mail dated 24.08.2007 Ex.PW1/10 which shows that defendant is the father- in-law of the daughter of the plaintiff and that he had tried to bail out the defendant in his time of financial distress, having invested in Hotel project but being unable to meet his financial obligations. The defendant has not been able to show from the evidence or documents that the plaintiff is in the business of money lending; rather it is evinced that the plaintiff had given the loan to the defendant being a friend/relative.

30. In the present case, no evidence whatsoever has been led by the defendant to show that the plaintiff has been lending money to various persons pursuant to his business as a money lender to earn money/ interest. Merely because the plaintiff had given a friendly loan (may be) twice to the defendant would not make him a money lender as defined under the Punjab Registration of Money Lender s Act, 1938. Since the defendant has failed to establish that the plaintiff is in the business of money lending, the provisions of Punjab Registration of Money Lending Act, 1938 are not attracted.

31. The issue no. is 5 is answered in favour of the plaintiff and against the defendant.

Issue No.7: Whether the suit is not maintainable as per Section 37 and 39 of the Indian Contract Act 1872? OPD

32. A preliminary objection has been by the defendant that the suit is not maintainable in terms of Section 37 and 39 of the Indian Contract Act, 1872.

33. Section 37 of the Indian Contract Act, 1872 provides for obligation of the parties to the contract. It postulates that parties to the contract must perform their respective promises unless such

performance is dispensed with or excused under the provisions of this Act.

34. Section 39 of the Indian Contract Act, 1872 postulates the effect of refusal of a party to perform promise wholly. It specifies that if a party refuses or is disabled from performing his part or promise in its entirety, the promisee may put the same to an end, unless he has signified, by words or conduct, his acquiescence in its continuance.

35. As already discussed above, while extending the loan to the defendant it was specifically stipulated that the Agreement shall be honoured and the repayment of loan shall be made within ninety days which was subsequently promised by the defendant to be paid in twelve months i.e. up to December 2007. The obligation to return the money, thus ended in December 2007. The defendant had sought several extensions of time for repayment of loan from the plaintiff and there is nothing to reflect that plaintiff ever acquiesced to extend the time or accepted the non-performance of the contract by the defendant. Rather, it is reflected from the emails as discussed, that the plaintiff was persistent and insistent throughout the year and after the expiry of twelve months for the return of loan money in terms of the Agreement which the defendant failed to pay despite seeking extension of time again and again.

36. Neither Section 37 nor Section 39 of the Indian Contract Act comes to the rescue of the defendant in the light of the specific conduct of the plaintiff who after the expiry of date for repayment of loan, had persisted and repeatedly requested for return of money, it cannot be held that Plaintiff ever abandoned the contract or absolved the defendant of his liability under the Loan Agreement. The filing of the suit for recovery itself reflects his intention of not assenting to a never-ending extension of time for the repayment of loan as sought by the defendant but intended to get the back the loan amount.

37. Issue No.7 is accordingly decided against the Defendant. Issue No.8: Whether the suit is in non-compliance of requirement of Order VI Rule 2(3) of the CPC? If so its effect? OPD

38. Order VI Rule 2(3) of CPC provides that all the amounts mentioned in figure must also be expressed in words. It may be observed that while interpreting the pleadings, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes pleadings are expressed in words which may not expressly make out a case in accordance with interpretation of law. In such a case a duty is cast on the Court to ascertain the substance of the pleading to determine the question, as was observed by the Apex Court in the case of Ram Swarup vs. Bishun Narain AIR 1987 SC 1242 which was followed in D.M. Deshpande vs. Janardhan Kashinath Kadam (1998) 8 SCC 315. The true spirit behind the pleading is that it should be read as a whole as a pleading is not an expression of art of science, but pleadings are the words to place facts and law of one s case for a relief that may at times may be pointed, precise or vague. Moreover, such a defect in the plaint is not fatal to the suit as it does not go to the root of the matter.

39. In the present case, the amounts have been stated explicitly and there is neither any confusion nor any ambiguity on this aspect. Merely because the amounts are not stated in figures as well, though desirable, but in the present case, it cannot be held to be a ground for rejection of the plaint.

40. The issue is decided in favour of the plaintiff and against the defendant.

Issue No.9: Whether the suit has been properly valued for the purposes of court fee and jurisdiction? OPD

41. The defendant has alleged that the plaintiff has paid court fee of Rs. 7,60,550/- while as per paragraph12 of the plaint, the value of the suit comes to Rs. 46,37,15,484.53 (Rupees Forty-Six Crores Thirty Seven lakhs Fifteen thousand Four Hundred and Eighty Four and paise Fifty Three only) including interest claimed @ 5%p.m. compounded for 61 months. Hence, the suit having been filed on deficiently stamped court fee, the valuation of the suit must be corrected and deficiency in court fee (which is to the extent of more than Rs. 1.75 Cr) must be ordered to be made up, failing which the suit be dismissed as barred by Order VII Rule 11 CPC.

42. The plaintiff has valued the suit at Rs. 7,74,00,000/- which is inclusive of simple interest at the rate of 5% p.m. from 29.12.2006 to 31.01.2012(6,04,00,000/-) and based on this amount the court fee of Rs. 7,60,550/- has been paid on the suit amount.

43. Section 7 of the Court Fees Act, 1870 provides for computation of fees payable in suits. It envisages the calculation of the suit value to be done by the plaintiff himself according to the amount claimed in the relief. Section 7(i) states that the value of suit is decided as per the amount claimed in a suit for money.

44. Further, Section 8 of Suit Valuation Act, 1887 puts an obligation on the plaintiff to value the suit for the purpose of court fee and jurisdiction identically except for suits provides under Section 7 paragraph 5, 6, 9, 10 Clause (d) of the Court Fee Act, 1870.

45. The Apex Court in the case of Sri Ratnavaramaraja vs Smt. Vimla AIR 1961 SC 1299 determined how the valuation of court fees is to be done and observed that, whether proper Court Fees is paid or not is primarily a question between plaintiff and the state. It is not to arm the contesting party (defendant) with a weapon of defence to obstruct the trial. Further, the plaint allegations alone are decisive to determine Court fees and not written statement, pleas or final decision in the suit on merits.

46. Hence, it is observed that though, the plaintiff may not have worded the relief correctly, but he has paid the court fee in accordance with the amount claimed by him in his plaint. Since, the plaintiff has paid court fees as per his valuation of the suit, it is held that there is no deficient Court fee that is payable.

47. The issue is decided in favour of the plaintiff and against the defendant.

Issue No.1: Whether the plaintiff is entitled to decree in his favour and against the defendant for an amount of Rs.7,74,00,000/-? OPP AND Issue No. 6: Whether the suit is barred by Section 3 of Usurious Loans Act 1918 and read with Sections 5 and 6 of the Punjab Relief of Indebtedness Act 1934 as applicable to Delhi?

48. The plaintiff in his testimony as PW-1 has deposed that in the month of July 2006 the defendant had contacted him for a personal loan of Rs.10 Crores for making his Hotel project operational by the end of the year 2006. The defendant had offered to pledge three of his properties situated at Sainik Farm, Delhi. The plaintiff in good faith, agreed to give a loan of Rs.5 Crores as per Loan Agreement dated 30.10.2006. Thereafter, the defendant again contacted him through his email dated 27.12.2006 seeking another loan of Rs.2.5 Crores.

49. The claim of the plaintiff is supported by various emails Ex.PW1/1 to Ex.PW1/13 which were exchanged between the parties and are duly supported with a Certificate under Section 65B of the Indian Evidence Act. The plaintiff has relied upon the email dated 27.12.2006 Ex.PW1/1 which reads as under:

> "Dear Sudhiijee, Once again i write to seek your help in bailing us out of a very sticky situation. Sapna must have spoken to you and its really an emergency. We never wanted to trouble you but this has to be arranged by us as now the hank has agreed to provide 9 months moratorium (No repayment till August 2007 of the monthly installment of 1.2 crores and this will really help us) only if we remit 2 months installment or Rs 2.5 crores before 29 December 2006. We had made alternative arrangements by selling our property at 32E sainik farms, Delhi. Payment for which was to be received today but got held up most unexpectedly and now purchasing party has requested for lime to pay.
>
> We will return you this money within maximum 90 days although we might be able to pay you earlier also as we propose to repay you this loan from the sales proceeds of this sale. Kindly inform us what extra financial cost wc have to pay and we would be willing to pay die same. We are ready for any legal documentation as may be needed by you.
>
> We will never forget this favor from you. Look to meet you on your India visit."

50. This e-mail proves that the defendant was in a sticky situation and sought financial help in the sum of Rs.2.5 crores. The bank had agreed to provide him a nine-month moratorium (no payment till August, 2007 on the monthly installments of 12 Crore) only if Rs.2.5 Crore were deposited before 29.12.2006. The defendant assured the plaintiff that he has made an alternative arrangement for the sale of his property at 32-E, Sainik Farms, New Delhi from which the payment was expected to be received and the loan of Rs.2.5 Crores would be returned within a maximum of 90 days, though the defendant may be able to pay it earlier from the sale proceeds.

51. It is quite evident from this email, the authenticity of which has been challenged unsuccessfully by the defendant, as no evidence was led to disprove the same, that initially a loan of Rs.5 Crores was taken and since the defendant was unable to pay the bank installments for the loan taken by him, the bank had agreed to give him a nine-month moratorium provided he deposit Rs.2.5 Crores by 29.12.2006. Faced with this financial crisis, he requested the plaintiff for grant of a loan of Rs.2.5 Crores to which the plaintiff agreed and accordingly, he issued directions to his Axis Bank for

releasing Rs.2.5 crores in favour of the defendant for which the cheque was to be collected by the defendant from UTI Bank, Gurgaon in the morning of 29.12.2006.

52. The testimony of plaintiff coupled with the emails proves that a loan of Rs.2.5 crores was given by the plaintiff to the defendant in December 2006.

53. While granting the loan, the plaintiff had proposed the following terms vide his email dated 28.12.2006 Ex.PW1/3 :

> "I would like to receive
>
> a) one time transaction fee of 7.5% plus
>
> b) a monthly flat fee equal to 5% of loan amount plus
>
> c) 100% of the appreciation on the re-sale of the 32 Sainik Farms property over the 3.15 crore existing net sale price. The re-sale transaction should be transparent to me, a new buyer should bring a higher price.

Since you have already sold the property, this is a fair deal to allow me to recover some money for my trouble. [I will incur 35% taxes (US and India) and have some foreign exchange and repatriation issues]. The existing buyer should be penalized for not delivering the funds, that is why I am suggesting a new buyer and a higher price, especially after 30/60/90 days. If the resale is not possible for a higher price within the short time period, then I will forgo the price appreciation.

Please let me know if you think anything is not workable and send me a confirming email. I don t want to be perceived as doing anything unfair."

54. These terms were accepted by the defendant vide his return email on 28.12.2006 at 10:45 A.M which is Ex.PW1/4.

55. The plaintiff has proved his Account Statement of Axis Bank as Ex. PW1/5 wherein according to transaction dated 29.12.2006, Rs.2.4 Crore has been transferred to the account of the defendant Mr. R.P. Mittal, which is corroborated by the letter of the Axis Bank dated 18.03.2011 Ex.PW1/6 confirming this bank transaction.

56. The plaintiff has also examined PW2 Sh. Mukesh Kukreti, Finance Manager of the plaintiff at Dehradun who has deposed that he, on the instructions of the plaintiff to arrange a loan of Rs.2.4 crores to be given to the defendant, had followed it up with the plaintiff s Axis Bank and the entire loan amount was duly disbursed to the account of the defendant with Axis Bank, New Delhi. The witness was duly cross-examined by the defendant though nothing contradictory could be brought forth in the cross- examination.

57. The testimony of the plaintiff which is corroborated by the documents and the admissions of the defendant as reflected in the emails, proves that a loan of Rs.2.4 crores was given by the plaintiff to the defendant.

58. Interestingly, though the defendant denied the entire loan transaction in his Written Statement and in his affidavit of evidence, he failed to appear for cross-examination time and again and hence, the right of the defendant to lead evidence was closed vide Order dated 21.10.202. No evidence whatsoever has been led by the defendant to rebut the case of the plaintiff or to prove his defence.

59. The defendant in his Written Statement had taken a plea that the payment of Rs.2.4 crores that was made by the plaintiff was not intended for the utilization by the defendant but had been transmitted by the plaintiff through his account for investment in Hotel Queen Road Pvt. Ltd. The defendant had granted the permission for using his bank account to the plaintiff as he was a foreign national and was not entitled to invest directly in India. The Hotel Queen Road Pvt. Ltd. had purchased the erstwhile Ashok Yatri Niwas upon disinvestment of ITDC by the Government in the books of account of Hotel Queen Road Pvt. Ltd. The defendant claimed that even today this amount has been reflected in his Books of Account as an investment by the plaintiff. Since the present owners of the Hotel have refused to return this investment of the plaintiff, he has filed this suit as an alternative to recover his amount though against the wrong person.

60. The defendant had admittedly received the money in his account which was invested in Hotel project by the defendant through Hotel Queen Road Pvt. Ltd. for purchase of Ashok Yatri Niwas upon its disinvestment by Government of India. It was for the defendant to have proved that it had no interest in Hotel Queen Road Pvt. Ltd, or that the investment was made by the plaintiff himself for the purchase of Ashok Yatri Niwas, though had used the account of the defendant. No account books have been produced or proved by the defendant to corroborate his defence.

61. A reference may also make to the email dated 05.01.2010 Ex.PW1/13 written by the defendant Mr. R.P. Mittal to the plaintiff. The relevant part of the email reads as under :

> "I had to receive huge sums from the hotel where sums borrowed from you are also invested and I was hoping to get an indication by February, 2010 about the receipt of this money and then would have communicated my repayment plan but I feel now that you have lost all patience, there is no point in referring to it."

62. There could not have been a more explicit admission that the loan amount taken by the defendant was invested by him in the hotel project on his own behalf and not on behalf of the plaintiff as is asserted by him.

63. It is evident that not having any explanation for having received the money from the plaintiff in his account as loan, which is also proved by the various emails discussed above, the defendant tried to justify the same by asserting that it was a direct investment by the plaintiff. However, no evidence whatsoever has been led by the defendant in his defence.

64. Pertinently, the defendant had suggested to the plaintiff in his cross- examination that he had paid an amount of 1 (one) crore in cash to the plaintiff in India. However, no evidence has been led by the defendant in proof thereof. The plaintiff has fairly admitted that an amount of Rs. 88 lacs had been received which he has already adjusted while making a claim for the suit amount.

65. It is thus proved that the defendant had taken a loan of Rs.2.4 crores from the plaintiff and the plaintiff is entitled to recover the same from the defendant.

66. The plaintiff has also claimed a one-time Transaction fee of 7.5%on the loan granted, however, no evidence whatsoever has been led by the plaintiff to prove the basis on which he was claiming the 7.5% transaction fee. However, judicial notice can be taken that while getting a draft prepared, transaction fee is payable. Therefore, a transaction fee of 2% is awarded to the plaintiff which comes to Rs.4,80,000/-.

67. In the Loan Agreement, it was also stipulated that the plaintiff would have lien on the receivable from the sale of the property bearing No.32-E, Sainik Farms, New Delhi. However, the various emails, as discussed above, reflect that though earnest money was accepted by the defendant for its sale, but because of want of proper title documents, the sale could not be effected. Once the sale itself did not fructify, the plaintiff cannot claim a lien on the amount received from the sale of the property.

68. The defendant had also agreed to mortgage Karnal property in favour of the plaintiff and also agreed that requisite Mortgage Deed in respect of the same would be executed. However, admittedly, no registered mortgage was executed between the parties and thus, thought there was an agreement for execution of registered mortgage deed, no relief can be granted to the plaintiff in respect of Karnal property in the absence of the Mortgage Deed.

69. The plaintiff is thus entitled to recover Rs.2.4 crores towards the loan amount and a transaction fee of 2% on the loan amount which comes to Rs.4,80,000/- from the defendant.

70. The third component of the claimed amount is the interest claimed @5%p.m. The defendant has relied upon Section 3 of the Usurious Loans Act, 1918 to assert that the contractual interest is unfair.

71. Section 3 of the Usurious Loans Act, 1918 reads as under :-

> "Re-opening of transactions (1) Notwithstanding anything in the Usury Laws Repeal Act, 1855 (28 of 1855), where, in any suit to which this Act applies, whether heard ex parte or otherwise, the Court has reason to believe,
>
> (a) that the interest is excessive; and
>
> (b) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely, may,

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

Provided that, in the exercise of these powers, the Court shall not--

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than 1[twelve] years from the date of the transaction;

(ii) do anything which affects any decree of a Court.

Explanation.--In the case of a suit brought on a series of transactions the expression "the transaction"

means, for the purposes of proviso (i), the first of such transactions.

(2) (a) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation.--Interest may of itself be sufficient evidence that the transaction was substantially unfair. (3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan 2[or for the redemption of any such security].

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was bona fide, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section. For the purposes of this sub-section, the word "notice" shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Act, 1882 (4 of 1882).

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court."

72. This Act provides that if the court finds that the transaction in respect of interest was substantially unfair, it may revise the entire transaction and the interest rate as provided therein, and relieve the debtor of all the liability in respect of the interest amount.

73. In the present suit, the entire loan transaction cannot be categorized as unfair and liable to be re-opened by the court. The loan transaction per se is not shown to be unfair. The circumstances as brought on record rather show that the plaintiff had extended monetary help at the time of his need. The Loan transaction cannot be held to be void by referring to the Usurious Loans Act, 1918.

74. The plaintiff has also claimed that a monthly flat fee equivalent to 5% of the total amount on the loan amount. The bare perusal of the Loan transaction would show that this is in fact, the interest amount which has been claimed by the plaintiff from the date the loan was disbursed to the defendant.

75. At this point it is pertinent to refer to Section 3 of the Usurious Loans Act, 1918 which gives the power to the Court to re-open any account already taken between the parties and relieve the debtor of all liability in respect of any interest where it has reason to believe that the interest is excessive. While considering the excessive nature of such an interest, the court can take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be to have been expected from the transaction.

76. The "excessive nature of interest" as under Section 3 of the Usurious Loans Act, 1918 was explained by the Apex court in the case of Baidyanath Mandal and Others vs Gajadhar Marwari and Others (1953) 1 SCC 772. It was observed that there were two requirements under Section 3; i) the interest is excessive and ii) the transaction was unfair. In cases where the interest stipulated under the contract was higher than the rate of interest prevalent on the date of transaction, was sufficient evidence to hold that the transaction was sufficiently unfair.

77. In the case of Geetu Lakhpat and Ors. Vs. Jaipal 2011 (105) AIC 936 this Court had taken into account the provisions of the Usurious Loans Act, 1918 and also the economic scenario, to arrive at this conclusion that the contractual interest of 2% per month was exorbitant and usurious and instead granted interest @ 7&1/2% p.a..

78. It is quite evident that the stipulated rate of interest @ 5% p.m. is excessive within the meaning of the Usurious Loans Act, 1918 as the general rate of interest at the time the transaction was entered into was in the range of 6-8% p.a. There is no evidence led by the plaintiff to justify such an excessive rate of interest and there is no basis for claiming interest of 5% p.m. on the loan amount and the same is hereby declined.

79. Thus, the plaintiff is granted interest @ 6% per annum from the date of disbursement of loan till the date of institution of the suit.

80. Issue no.5 and 6 are decided in favour of plaintiff and against the defendant.

81. The issue No.1 is accordingly, decided in favour of the plaintiff. Issue No.2: Whether the plaintiff is entitled to pendente lite and future interest at the contractual rate of 5% per month? OPP

82. The aspect which arises for consideration is whether the plaintiff is entitled to pendente lite and future interest and at what rate.

83. In the case of Y.P. Ganesan vs T.N. Civil Supplies Corpn Ltd. (2006) 1 CTC 277 (Mad) it was observed that interest is generally not awarded by way of damages and there has to be a stipulation to that effect in the Agreement. However, when money is wrongfully withheld, interest can be claimed despite there being no Agreement for the same. In such a scenario, the plaintiff was held entitled to interest at the rate of 6% p.a.

84. In the present case, there was no Agreement between the parties regarding payment of interest by way of damages. However, it is clear that the money has not been repayed by the defendant. Considering the nature of transaction which was a friendly loan, and the general Bank rates of interest, pendente lite and future interest is granted@ 6% p.a. from the date of institution of the suit till the date of payment by the defendant.

85. The issue is decided accordingly.

Issue No.3: Whether the suit is barred by limitation? OPD

86. A preliminary objection has been taken on behalf of the defendant that the present suit is barred by limitation. The loan amount was taken in December 2006, while the suit has been filed in January 2012, which is beyond the period of three years and, therefore, is barred by limitation.

87. In the first instance the objection taken by the defendant may appear attractive, but after the loan was disbursed in December, 2006 there was an exchange of emails. On 02.04.2007 Ex.PW1/8, which was written by the defendant to the plaintiff asserting that he is expecting to raise extra funds from his resources including sale of plot at 32-E, Sainik Farms and that because of shortage of money, he was unable to meet his commitment and sought an extension of time. A similar email was written by the defendant on 11.08.2007 Ex.PW1/9, wherein again he has stated that the repayment of loan funds taken in December 2006 shall be paid by December 2007 along with interest. Again, on repeated emails by the plaintiff in 2009, the defendant had responded vide email dated 29.04.2009 Ex.PW1/11 assuring that though there has been an inordinate delay, he has been working seriously to get the loan amount repaid at the earliest and hopes to respond by the next month with a clear payment schedule. Similarly, in the email dated 05.01.2010 Ex.PW1/13, the defendant has sought further extension of atleast six months for vacating the Sainik Farms property and for repayment of the full and final amount of the loan taken by him. These acknowledgments made by the defendant from time-to-time amount to acknowledgement of debt in terms of Section 18 of the Limitation Act, thereby extending the period of limitation.

88. A reference may also be make to Section 25(3) of the Contract Act, 1872 which provides as under :

> "Section 25(3) (3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.

Explanation 1.--Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.--An Agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations

(a).....

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract. (e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a

contract.

....."

89. The admissions made by the defendant about the outstanding liability amounts to a fresh Contract in terms of Section 25(3) of the Indian Contract Act, 1872 entitling the plaintiff to the recovery of the loan amount.

90. In the case of R. Madesh vs. M. Rathinam 2015 SCC OnLine Mad 3094, the court extrapolated on the interplay between the law on limitation and a promise to pay. It held that where the acknowledgement of liability made after a period of limitation, creates a new cause of action providing a fresh start to the limitation period i.e., from the point of promise, a new limitation period commences.

91. A reference may also be made to Kapaleeswarar Temple vs. T. Tirunavukarasu AIR 1975 Mad 164, wherein it was observed that a debt may have become time-barred, but when the debtor admits his liability beyond the period of limitation in writing, it creates a fresh obligation in favour of the creditor and would amount to a fresh contract which can certainly be made a basis for an action for recovering the amount promised and acknowledged therein by the debtor.

92. In the emails as stated above, the defendant not only admitted his liability but also sought for extension thereby promising to repay the loan which formed a new promise to pay in terms of Section 25(3) of the Indian Contract Act. The suit of the plaintiff is thus, within limitation.

93. The issue no.3 is decided in favour of the plaintiff and against the defendant.

Relief:

94. In view of the findings on the Issues as discussed above, the suit of the plaintiff is decreed for a total amount of Rs.2,44,80,000/- (Rupees Two Crore Forty Four Lakhs and Eighty Thousand only) towards the loan amount and Rs.4,80,000/- (Rupees Four Lakh Eighty Thousand) as transaction fee of 2% on the loan amount along with interest @ 6% per annum on the loan amount from the date of disbursement of loan till the date of payment (i.e., including pendente lite and future interest) by the defendant. The amount of Rs 88 lakhs as repaid by the defendant on 01.03.2007 shall be adjusted accordingly.

95. While considering the entire defence of the defendant wherein the facts were admitted and documented, the defendant has successfully used all tactics to drag the trial for about eleven years, this Court cannot but observe that such dilatory tactics adopted by the defendant to delay the repayment needs to be deprecated in strongest words to uphold the majesty of Law and to save it from becoming a haven for unscrupulous litigators. Accordingly, the plaintiff is also awarded the costs of the suit.

96. Decree Sheet be prepared accordingly.

97. Pending application is also disposed of.

(NEENA BANSAL KRISHNA) JUDGE AUGUST 04, 2023 AT/VA/NK