

# **Mrs. Kamla Dhyani W/O Late Sh. M.N. ... vs Sh. Mohinder Srivastava S/O Late Sh. ... on 19 March, 2015**

IN THE COURT OF DR. ARCHANA SINHA  
ADDL. DISTRICT & SESSIONS JUDGE (CENTRAL - 03)  
TIS HAZARI COURT/DELHI

Date of institution : 30.05  
Judgment reserved on : 16.03.2015  
Judgment delivered on : 19.03.2015

Suit No.301/12

Unique Case ID No. 02401C0473582006

Mrs. Kamla Dhyani W/o Late Sh. M.N. Dhyani  
R/o A-86, HIG, Plot No. 17, Sector-13, Rohini,  
New Delhi.

.... Plaintiff

Versus

1. Sh. Mohinder Srivastava S/o Late Sh. H.P. Srivastava  
IX/3057, Gali No. 3, Dharampura, Gandhi Nagar,  
New Delhi-110031

2. M/s Mahindera Seat Coverings Pvt. Ltd.  
Through Director  
Mohinder Srivastava  
Regd. Office  
IX/3112, Gali No. 3, Dharampura, Gandhi Nagar,  
New Delhi-110031.

....

## **J U D G M E N T**

1. This is a suit for recovery of a sum of Rs.13,68,246/□

2. In nutshell, the case of the plaintiff as set out in the plaint, is that plaintiff has given a friendly loan of Rs. 7,50,000/□(Rs. Seven Lacs Fifty Thousand) to the defendants and the amount was paid to the defendants vide five cheques of the following details :

i) Cheque No. 750319 dated 05□1□2002 for the sum of Rs. 3,00,000/□

ii) Cheque No. 750317 dated 07□1□2002 for the sum of Rs. 1,00,000/□

iii) Cheque No. 750318 dated 20□1□2002 for the sum of Rs. 1,00,000/□

iv) Cheque No. 260503 dated 04□03□2003 for the sum of Rs. 1,00,000/□

v) Cheque No. 260514 dated 25/03/2003 for the sum of Rs. 1,50,000/- all five drawn on Oriental Bank of Commerce, duly credited in the account of defendant no. 2, a company duly incorporated under Companies Act and the defendant no. 1 was its director.

3. It is further submitted that an MOU dated 05/11/2002, was executed between the plaintiff and the defendant No. 1 who has agreed to pay the aforesaid loan amount to the plaintiff along with an interest @ 24% p.a. and further agreed to pay the interest on per day basis to be calculated from 10/11/2002 and to pay all outstanding amount which is left due whether principal and interest on or before 31/03/2005 to the plaintiff, but the defendants did not pay the loan amount or interest on or before 31/03/2005 as per agreed terms and the plaintiff was compelled to send a legal notice dated 03/10/2005 & again on 19/05/2006, the defendants did not pay any heed to clear the outstanding amount due and payable. Hence the suit.

4. The defendants were duly served with the summons of the suit and on causing appearance, preferred to file an application under order 37 Rule 3 (5) CPC seeking leave to defend the suit and vide order dated 16.08.2007, the leave was granted to contest the suit conditionally with the condition to deposit the entire principal amount within a month from the date of order but the condition was not so complied with and vide order dated 13.11.2007 the suit was decreed within the provisions of Order 37 Rule 3(6)(b) CPC. The defendants have preferred an appeal against the judgment / decree dated 13.11.2007 registered as RFA No. 500/2009 and the appeal was disposed of vide order dated 27.07.2010 of HMJ Sh. G. S. Sistani, with the directions to deposit the principal sum in a fixed deposit, to be renewed time to time with certain conditions imposed upon the defendants to be complied during the course of trial. Accordingly the trial had commenced.

5. The defendants have duly contested the suit through their contra pleadings in the form of written statement, raising preliminary objections of the limitation, non-maintainability of the suit on the basis of fictitious, fabricated, manipulated & unstamped Memorandum of Understanding, non-joinder of necessary party and on the ground of no privity of contract between the parties.

Also on merits submitting that nothing was due and payable against the defendants as the defendant no. 1 has never taken any loan from the plaintiff and the alleged Memorandum of Understanding was a manipulation and mischief of one Sh. V. P. Sharma, a close relative of the plaintiff who had created the fictitious entries for his own benefit, thereby, praying that the suit is liable to be dismissed with special compensatory costs.

6. Replication to the written statement was filed by the plaintiff, reiterating the facts as stated in the plaint and denied the averments made in the written statement of the defendant.

7. On the basis of the pleadings, vide order dated 23.11.2011, the following issues were framed :

(i) Whether the suit of the plaintiff is within the limitation? OPP

(ii) Whether the memorandum of understanding is not properly stamped, if so, its effect? OPD

(iii) Whether the memorandum of understanding is forged and fabricated document? OPD

(iv) Whether the plaintiff is entitled for recovery of suit amount ? OPP

(v) Relief.

8. For proving the case, the plaintiff has examined herself, as PW1 & Sh. Ved Prakash Sharma as PW2 who have filed their affidavits in evidence Ex. PW1/1 & PW2/A respectively. PW1 has relied upon the following documents:

Photocopy of statement of account is Mark A The MOU dated 05.11.2002 is Ex. PW1/2 The legal notice dated 03.10.2005 is Ex. PW1/3 The Postal Receipts , AD Card & returned envelopes are Ex. PW1/4, PW1/5 & PW1/6 Colly Copy of the plaint bearing suit No. 128/2007 is Ex. PW1/8 These witnesses have been cross examined at length by Ld. counsel for the defendants.

9. The defendants, in their defence, have examined Sh. Mohinder Srivastava, the defendant no. 1 as sole witness as DW1 who has tendered his affidavit in evidence Ex. DW1/A and was cross examined at length by Ld. counsel for the plaintiff.

10. I have given my thoughtful considerations to the submissions / contentions of Sh. Puneet Bhatnagar & Sh. Abhishek, Ld. counsels for the plaintiff and Sh. J.C. Mahendroo & Sh. Gavender Nath, Ld. counsels for the defendants and I have gone through the records consisting of the ocular as well as documentary evidence, placed with the file, in the light of the submissions of the parties

11. My issue wise findings are as follows:

Issue No. (i) Whether the suit of the plaintiff is within the limitation?OPP The onus to prove this issue is laid on the plaintiff.

12. A preliminary objection regarding limitation has been taken by the defendants submitting that the alleged loan has allegedly been given to the defendants through five cheques dated 05.11.2002, 07.11.2002, 20.11.2002, 04.03.2003 and 25.03.2003 and thus, the suit filed on 30.05.2006, is clearly beyond the period of three years and that the claim is hopelessly time barred.

13. The plaintiff, to establish that the suit is within limitation, has submitted that as per the Memorandum of Understanding dated 05.11.2002 the defendant no. 1 had agreed to pay the outstanding amount along with interest by 31.03.2005 and thus the cause of action in the suit has arisen only on the date of 31.03.2005 when the amount was not paid as per agreement as prior to such date, there was no occasion to raise the cause of action, and thus a demand was raised vide

legal notice dated 03.10.2005 and 19.05.2006 was sent to the defendants but the amount remained unpaid despite demand/legal notice, therefore the suit is within the period of limitation.

14. It is observed that the claim is based on the loan agreement i.e. Memorandum of Understanding dated 05.11.2002 & according to which, the amount was to be repaid by 31.03.2005 but that remained unpaid, despite demand/legal notice, thus filing of suit on 30.05.2006 is not beyond limitation as the cause of action for the purpose of reckoning the period of limitation could have arisen only after the date of payment and not prior to that date as per the agreement, for the purpose of limitation.

15. Here, I get the strength of the legal view taken in RFA No. 684/2006 titled as Sh. Satish Kumar Vs. Smt. Reena Bhoumik decided on 18-04-2012 (unreported) from the court of HMJ Sh. Balmiki Mehta, wherein it was observed, 'Limitation to recover the loan on the cause of action will arise on the date when the loan is not repaid that is not from the date of the grant of the loan but after one year or two years or three years of the grant of loan when cause of action will arise to file the suit for recovery. The period of limitation will be three years from the date of default i.e. the date when the loan ought to have been repaid but is not repaid'.

Such suit for recovery of loan granted will not be governed by Article 19 of the Limitation Act, 1963 but shall be governed by Article 113 of the Limitation Act, 1963 which states that a suit has to be filed within three years from the arise of the cause of action'.

16. Thus, the filing of the suit on 30.05.2006 was well within the limitation as the limitation for such suit is for 3 years that starts reckoning from 31-03-2005, the date of default of payment as per agreement as prior to that there was no occasion for the plaintiff to raise cause for action of non payment as it could have been claimed only on expiry of such date.

Thus, it is established that the suit is filed well within the period of limitation, hence, issue no.1 is decided in affirmative & in favour of plaintiff and against the defendants.

17. Issue no.(ii) Whether the memorandum of understanding is not properly stamped, if so, its effect? OPD The onus of proving this issue is laid on the defendants as the defendants have raised a preliminary objection to that effect in their written statement.

18. To establish the plea, the defendant no. 1 as DW1 in his testimony in para 7 of his affidavit in evidence Ex.DW1/A deposed that, the Memorandum of Understanding was an unstamped document and cannot be looked into.

It is observed that vide order dated 30.05.2006 the Memorandum of Understanding dated 05.11.2002 was sent to the collector for the certificate under Section 38 of the Stamp Act & the plaintiff has paid the amount of stamp duty as well as penalty, in accordance within the provisions under Section 37 and 35 of Stamp Act 1899 and thus, the document i.e. Memorandum of Understanding was duly stamped by the collector of stamps on 22.08.2006, thereby this issue needs no further observation of findings, in view of compliance of the orders dated 30-05-2006, by the

plaintiff. Thus, issue no. (ii) is accordingly decided in negative, in favour of the plaintiff and against the defendants.

19. Issue no. (iii) & (iv)

(iii) Whether the memorandum of understanding is forged and fabricated document? OPD

(iv) Whether the plaintiff is entitled for recovery of suit amount ? OPP Both these issues are taken up together being interlinked as issue no. (iv) is relating to the claim of the plaintiff based on Memorandum of Understanding and issue no. (iii) is the contest / defence to such claim by challenging such Memorandum of Understanding, also the evidence led by the parties for both these issues is the same.

The onus to prove issue no. (iii) is laid on the defendants being such issue is framed on the plea of the defendants in their Written Statement, whereas for the issue no. (iv), the onus is laid on the plaintiff to establish his claim in the suit.

20. The plaintiff's claim is basically for the recovery of the loan amount that was allegedly paid through the five cheques bearing no. 750317 - 19, 260503 and 260514 along with the Memorandum of Understanding dated 05.11.2002 Ex. PW1/2, to state that the loan amount of Rs. 7,50,000/- was received by the defendants through above noted five cheques that were duly credited from her account as per document Mark A showing transfer entries to the account of M/s. Mahindra Seat Coverings Pvt. Ltd., the defendant no. 2 and that the defendant no. 1 has agreed to pay the same as he was the Director of defendant No. 1.

21. The defendants have not disputed either the cheques or the statement of account or the transfer entries of the amount, from the account of plaintiff to the defendant no. 2 but have contested the claim on questioning the loan agreement i.e. Memorandum of Understanding.

22. Further, the plaintiff has relied on the loan agreement i.e. Memorandum of Understanding dated 05.11.2002 vide which not only the mode of payment was detailed but also the mode of repayment of the loan amount by the defendant No. 1 was described that it would be paid by 31.03.2005 personally by defendant no. 1 who was the director of the company M/s. Mahindra Seat Coverings Pvt. Ltd., defendant no. 2.

23. It is also not in dispute that M/s. Mahindra Seat Coverings Pvt. Ltd., defendant no. 2 is the company duly incorporated with Registrar of Firms, with its director Sh. Mahinder Shrivastva, the defendant no. 1.

24. The defendant no. 1 has not disputed even his signatures at point B on the Memorandum of Understanding dated 05.11.2002 Ex. PW1/2, nor it is being disputed that it bears the signatures of two witnesses Sh. V. P. Sharma and Sh. Pawan Goel at point C and D.

25. The contest to the claim was basically on the execution of document i.e. Memorandum of Understanding Ex. PW1/2. The defendant no. 1 has pleaded and deposed as DW1 that such document is fictitious, fabricated and manipulated and it was created on a paper already bearing his signatures, which was lying blank with Sh. V. P. Sharma, the nephew of the plaintiff who was looking after his accounts and was inducted as one of the directors in the defendant no. 2 company being his friend and that he was instrumental in cheating and defrauding him for which the defendant No. 1 has already initiated criminal proceedings and that such loan agreement/Memorandum of Understanding dated 05-11-2003 was never executed by him. Further that the cuttings on such document do not bear his signatures.

26. Ld. counsel for the defendants has submitted that such loan agreement namely Memorandum of Understanding was created by Sh. V.P. Sharma, in connivance of the plaintiff to cheat the defendant no. 1 and that the amount, if any, so credited to the account of M/s. Mahindra Seat Coverings Pvt. Ltd., the defendant no. 2, was manipulated by Sh. V. P. Sharma who was looking after the accounts of such company as director appointed by the defendant no. 1 in the defendant no. 2 company at one point of time.

Also that any such amount has never been received by defendant no. 1 nor he has any privity of contract with the plaintiff as no such loan agreement has ever been executed by defendant no. 1 with plaintiff.

27. It is observed that the period of the directorship of Sh. V. P. Sharma in the defendant no. 2 company is admittedly from 20.02.2003 to 08.02.2005, as being referred in the documents / judicial record / complaints, produced and relied upon by the defendant no. 1.

28. Also, it is observed that the defendant no. 1 has shown his ignorance about the execution of such Memorandum of Understanding and even about the payments of the total sum of Rs. 7,50,000/- transferred as loan amount, credited to the account of defendant no. 2, through five cheques from the account of the plaintiff as shown in bank statement Marked 'A' drawn on 10.04.2003 by Oriental Bank of Commerce against account no. SB7114, produced on behalf of the plaintiff. The defendants are denying any terms of the agreement of repayment of such loan amount with an interest @ 24% p.a. on alleged date of 31.03.2005, personally by defendant No. 1.

It was further submitted that as such neither defendant no. 1 was in need of any money at any point of time nor he had ever borrowed any such money in any loan agreement as he had a bank limit upto Rs. 1 crore during that period.

29. Ld. counsel for the defendants has also submitted that any company incorporated under Companies Act cannot take financial loan or raise any such transaction without any resolution passed by its Board of Directors of defendant No. 2 and as such no such resolution was passed by defendant No. 2, thus the plaintiff's claim for sanctioning of the alleged loan was false.

30. On appreciation of evidence on record led by the parties, it is observed that apart from the Memorandum of Understanding dated 05.11.2002, the plaintiff has shown the transfer of the

amount duly credited in favour of defendant no. 2, through a bank statement of account marked A showing the necessary transfer entries with details of the transfer of the cheque amounts from the account of plaintiff to the defendant no. 2 and to controvert any such transfer no cross examination of PW□ has been conducted that such amount was not transferred to the account of defendant no. 2 from the account of the plaintiff.

31. The best evidence could be of the bank record of defendant no. 2, to prove the contrary, if any, that an amount of Rs. 7,50,000/□ was not credited to defendant no. 2 against the transfer entries in such document Marked A for the amount through cheques detailed above & the cheques issued in favour of defendant no. 2 but neither any statement of account of defendant no. 2 has been produced in the court rather it was withheld nor any bank official has been produced with the bank records to show that such amount was not transferred in the account of the defendant no. 2.

32. It is a well settled principle of law that for not producing the best evidence by any party, an adverse inference can be drawn against the party who takes a plea to counter the claim of the plaintiff but does not produce the corroborated supporting evidence in his possession and control.

The reliance is placed on the case titled as Gopal Krishnaji Ketkar V/s Mohamed Haji Latif & Ors. cited as AIR 1968 SC 1413 wherein it was observed that :

"Even if the burden of proof does not lie on a party the court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to reply upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issue in controversy and to rely upon the abstract doctrine of onus of proof. ..."

33. Further, the Memorandum of Understanding dated 05.11.2002 Ex. PW1/2 is produced in original and the signatures of the defendant no. 1 on such document are not denied rather the signatures are admitted, however, it is pleaded that the typing over his signature shows that the blank signed paper was used. But prima facie, it may be considered that the name typed under the signature of defendant no. 1 is an adjustment of contents but it itself cannot be said that the document was not executed by defendant no. 1 and if such plea has been taken, the onus was heavily on the defendant no. 1 to prove that execution of document was not done by him or it was not executed by him or with his consent or in his presence or that it was executed at his back or was fictitiously one. Mere plea that under the cutting he did not sign will not make such document fictitious or fabricated.

34. The document Ex. PW1/2 is witnessed by two persons namely Sh. V.P. Sharma and Sh. Pawan Goel. Even if for the sake of arguments, it is assumed that Sh. V.P. Sharma was instrumental for execution of such document then the defendant no. 1 could have produced at least the another witness, Sh. Pawan Goel, to prove the genuineness or falseness of the execution of such document. But the defendant has not taken pain to produce even such best evidence and withholding of such vital piece of ocular evidence of Sh. Pawan Goel, whose signatures appear on the document in

question as witness & the same were not even questioned at any point of time, it leads to an adverse inference that in case of his production in the court, he may not support the case of defendant no. 1.

35. So far as the contents of such document are concerned, it details the mode of payment of Rs. 7,50,000/□ by the plaintiff to the defendants, through five cheques of different dates against which even the transfer entries of the amounts in the account of the plaintiff in favour of defendant no. 2 from her account has been proved through her bank statement marked A.

36. It is worth to mention that para□2 of the document Ex. PW1/2 clearly mentions the payment of Rs. 2,50,000/□ on a future date in the month of March, 2003 and such amount was paid in the month of March, 2003 as agreed & not before that, through two cheques bearing nos. 260503 and 260514, for the amounts of Rs. 1,00,000/□ and Rs. 1,50,000/□ respectively, entries of which to show the transfer of such amounts in favour of defendant no. 2 are clearly mentioned as marked A and nothing contrary could prove on record to show that such transfer of amounts was not made or that the statement of account Marked 'A' produced by the plaintiff was not correct.

37. Further, it is a well settled principle of law that if a signed document is handed over to somebody consciously and knowingly then in financial transactions it is assumed that the person who is holding such document for framing the contents was duly authorised to write the contents with the implied 'consent' and 'knowledge' of the person signing such document.

38. For these observations, the reliance is placed on the law settled in Jai Rajanna Vs. Patel Thimmegowda II (1998) BC 343 (1998 ISJ (Banking) 728), wherein it is held :

‘The defendant after admitting his signature on the promissory note cannot escape his liability in view of Section 20 of Negotiable Instruments Act, 1881, by saying that he signed blank note.’ Further it is also well settled principle of law on promissory note that:

‘Once the defendant admit signature, his liability cannot be denied.’ As held in Mohd. Ali Vs. Abdul Sind, II (2000) BC 188 (Mad).

39. The Memorandum of Understanding dated 05.11.2002 Ex. PW1/2 is basically in the form of promissory note though it was not in the prescribed format of such negotiable instrument but the 'contents' and 'the promise' is on the similar lines and the law above discussed, as a corollary would have an application of the above stated law with respect to the liability of the signatory of such document i.e. Memorandum of Understanding.

40. Further, the defendants have raised a contention that Sh. V.P. Sharma who was working as director was in control of the accounts of the defendant no. 2 and had manipulated certain signed documents of defendant no. 1 for his benefits and against the mischievous activities of Sh. V.P. Sharma a criminal proceeding were initiated against him before the court of the Ld. MM, Karkardooma Courts, Delhi.



41. It is observed that such judicial proceedings were not proved on record during trial, however in the anxiety of searching of the truth as the basic purpose of the trial is to unearth the truth, a cursory perusal of such proceedings has been given, and it is observed that the complainant in such complaint no. 8/1/07.01.2006 filed by defendant no. 1 against the State and Sh. V.P. Sharma and Sh. Rakesh Sharma, has pleaded that, 'the complainant (defendant no. 1 herein) was the director of M/s Mahendra Seat Coverings Pvt. Ltd. (defendant no. 2 herein) and Sh. V.P. Sharma approached the State Bank of India, Chandni Chowk on behalf of the company (defendant no. 2 herein) and the bank sanctioned loan in favour of the company for purchase of machinery, dies and mouldes etc. and he forged the false and fake bills from M/s Rakesh Machine Mart in collusion with Sh. Rakesh Sharma□□□□'

42. The complaint dated 13.12.2005 attached with such record, addressed to the SHO, P.S. Gandhi Nagar, mentions, 'that Sh. V.P. Sharma□□□ had joined the company (defendant no. 2 herein) of the complainant (defendant no. 1 herein) as director on 20.02.2003 and resigned on 08.02.2005□□□'

43. The entire criminal record does not mention anything regarding the transaction in question of the suit and is not at all relevant, however it shows one fact that Sh. V.P. Sharma was working as director during the period between 20.02.2003 and 08.02.2005, whereas the Memorandum of Understanding was dated 05.11.2002, a date prior to his joining and was to be concluded on 31.03.2005 i.e. a date after his resignation.

Thus, using a signed document of defendant no. 1 by Sh. V.P. Sharma on 05.11.2002 appears improbable as by that date, he may a friend of defendant no. 1 and a relative of the plaintiff but could not be in control and possession of such document of his company, i.e. defendant no. 2.

44. The best evidence could be the income tax record of defendant no. 2 as the company of defendant no. 1 was admittedly an income tax assessee and its record was testified in testimony of DW1 to have been well maintained by a chartered accountant's company namely Jaina Associates, as disclosed during the cross examination of DW□, the defendant no. 1, but surprisingly the defendant no. 1 did not take any pain either to produce the income tax records of his company (the defendant no. 2) for the relevant period nor even produced anyone from the office of CA to show that any such amount was credited or not in the account of defendant no. 2 or manipulated by Sh. V.P. Sharma in any manner or to show that it was reflected in the income tax records or in the balance sheet of defendant no. 2 or mentioned in its assets / liabilities statement in the creditors list. The non□ production of such vital piece of evidence by the defendants leads to an adverse inference that such evidence, if produced was non supportive of the stand taken by the defendants, in view of the law settled in Gopal Krishnaji Ketkar V/s Mohamed Haji Latif & Ors. cited as AIR 1968 SC 1413 (Supra).

45. Further, the defendants have raised a contention that defendant No. 1 was not in need of money as his company, the defendant No. 2 was having a credit bank limit of Rs. 1 crore but unfortunately & to the surprise of the court, it was mere depositions in para□B of his affidavit in evidence Ex. DW1/A & he has not produced any corroborative documentary evidence of such bank limit on record through any bank records to prove the contrary, of not taking of the loan of Rs. 7,50,000/□ from the plaintiff.

46. During the course of argument, in support of the contentions regarding the aspects of the document Ex. PW1/2 as 'fictitious, fake and fabricated' document, a photocopy of another Memorandum of Understanding dated 30.03.2001 is produced in which one Sh. Jagmohan Sharma had allegedly paid a loan amount of Rs. 6,00,000/□through three cheques in the name of company, defendant No. 2 submitting that this was another similar document that was prepared & manipulated by Sh. V.P. Sharma as that of the plaintiff's Memorandum of Understanding dated 05.11.2002 Ex. PW1/2 by using signed blank papers.

47. It is observed that this document was also not proved on record during trial but on having a look on such document & on the cursory perusal & comparison of two documents, it is clear that the contents of both the documents are different and for such document Sh. V.P. Sharma is neither the witness nor any person mentioned therein and this pertains to the year 2001 and was allegedly executed for five years and it is also not known as to whether any such three cheques as shown of Rs. 2,00,000/□each were also ever credited to the defendant no. 2 company or not but one thing is clear that the defendant no. 1 who was the director of defendant no. 2 company and even on date, is functioning without showing any records of company account i.e. being looked after by a CA and as to why any police complaint or criminal proceedings were ever lodged against such two Memorandum of Understanding as was done in cases of Bills raised before the Bank.

48. It is observed that or not but these papers are of no help to the defendants in the present case as the defendants have miserably failed to prove that the Memorandum of Understanding dated 05.11.2002 was a forged and fabricated document as nothing substantive or positive evidence could be produced on record to establish even the preponderance of probabilities to the extent of moral certainty to reach to the one and only conclusion that such Memorandum of Understanding Ex. PW1/2 was not executed between the plaintiff and the defendant no. 1.

Thus, defendants have miserably failed to establish issue No. (iii).

Thus issue no. (iii) is decided in negative and against the defendants and goes in favour of the plaintiffs.

49. Further, it is observed that the plaintiff's claim was based on the loan agreement Ex. PW1/2 entered between the plaintiff and defendant no. 1 as director of defendant no. 2 for loan of Rs. 7,50,000 for business purpose and an amount of Rs. 3,00,000/□was paid on the date of loan agreement vide cheque no. 750319 dated 05.11.2002 drawn on Oriental Bank of Commerce in favour of M/s Mahindra Seat Coverings Pvt. Ltd. and relevant transfer entries has been shown through the bank statement marked A showing the transfer of such amount on 07.11.2002 to the defendant no. 2 from the account of the plaintiff.

50. Similarly as per such loan agreement another amount of Rs. 2,00,000/□was paid through two cheques nos. 750317 & 750318 of Rs. 1,00,000/□each dated 07.11.2002 and 20.11.2002 respectively and the transfer entries of such amount in the statement of account marked A are shown for clearing on 21.11.2002 & 22.11.2002 and nothing contrary has been proved on record that such amount was not transferred to the account of defendant no. 2.

51. It is also observed that vide such agreement in para 2 the plaintiff had agreed to give the amount of Rs. 2,50,000/- in the month of March, 2003 and in pursuance of such agreement the statement of account marked A reflects two entries of dated 06.03.2003 and of 27.03.2003 for transfer of the amount of Rs. 1,00,000/- and Rs. 1,50,000/- respectively to the defendant no. 2.

52. Thus, the plaintiff has duly established on record that as per the agreed terms of loan agreement i.e. Memorandum of Understanding dated 05/11/2002 regarding payment of the loan amount of Rs. 7,50,000/- that it was paid through five cheques of different dates. Also transfer of such amount to defendant no. 2 is also proved through the corroborative documents Ex. PW1/2 and marked A. To the contrary, neither the defendants no. 1 who allegedly entered into such loan agreement as director of defendant no. 2 nor anyone for defendant no. 2 has proved anything to prove the contrary of not receiving of any such amount by the defendant no. 2, in any manner, apart from questioning the execution of Memorandum of Understanding and in view of the findings of the court on issue no. (iii), the defendants failed to establish their plea of non-execution of such Memorandum of Understanding dated 05/11/2002.

53. It is observed that as per terms of the agreement Ex. PW1/2 the defendant no. 1 has agreed to pay such amount with an interest @ 24% per annum alongwith the principal, that was to be repaid on 31.03.2005 personally but nothing has been proved on record that such loan amount was ever repaid wholly or in part by the defendants at any point of time in terms of agreement or otherwise.

54. The defendants have not been even successful to produce any statement of account or the records of personal accounts of the defendant no. 2, the company of defendant no. 1 or any income tax records to show the financial transactions qua such loan amount, for proving any contrary that such loan amount was not taken from the plaintiff at the relevant Financial Year of 2002 - 2003 nor any evidence ocular or documentary has been produced to show the repayment of the loan amount or the interest as agreed in terms of agreement.

55. The defendants have raised a contention that any financial transaction by any duly incorporated company has to be made according to the Board Resolution of such company and that no such resolution was ever passed for raising of such funds for the company by way of any such loan agreement.

It is observed that to the surprise of the court, the defendants have not taken any pain to produce the book of resolutions of the relevant period to support or corroborate their plea that no such resolution was passed by the Board of Directors of the Company i.e. defendant no. 2. Thus, such contention is not established on record and has remained mere plea, therefore, is declined.

56. Thus, the plaintiff has duly established on record that in pursuance of the loan agreement Ex. PW1/2, she has paid an amount of Rs. 7,50,000/- to the defendant No. 2, payable by defendant No. 1 personally & that such amount was not paid on the agreed date, in terms of agreement and that the principal amount of Rs. 7,50,000/- remained unpaid and outstanding on the date of filing of the suit for which the plaintiff is entitled for recovery of the same from the defendants jointly and severely.

57. The plaintiff has also claimed an interest @ 24 % per annum on the principal sum of Rs. 7,50,000/□on the basis of the loan agreement.

58. So far as the interest claimed on the loan amount above mentioned is concerned, the word 'interest' as defined in the mandatory terms is related to the definition as inferred by the commercial banks which are in the business of earning interest on the money lent by them to public or payment of interest on the amount deposited by the public.

"The word 'interest' as defined by the Oxford dictionary is 'money paid for the use of money lent'.

In common parlance and in monetary terms, the 'interest' is basically a charge over the use of money by any person, during a specified period. The money used is always inferred by the person who keeps the money in his possession during a particular period on the principle of 'money multiplier'.

The concept of 'money multiplier' clarifies that with every use of money, the money multiplies and grow and even if the money is kept by a person retain it illegally, not used by the person, the person who possesses such money is liable to pay such charge to the person whose money is being retained during a specified period.

Thus, an Interest is a charge over the amount that was due against anyone as the real owner of such money could not use such money for the reasons of retention of such money by the person against whom, it is due and on the principles of money multiplier, the plaintiffs is duly entitled for the interest over the principle amount legally recoverable by him from the defendants.

59. So far as the `rate' is concerned, the legal propositions within the provisions of Section 34 CPC is as under:

#### Section 34 : Interest -

Where and in so far as a decree is for the payment of money, The Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, (with further interest at such rate not exceeding 6 % per annum, as the Court deems reasonable on such principal sum), from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed 6 % per annum, but, shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

60. Considering that the nature of transaction in the instant suit as it was commercial loan in nature, and that the contractual rate of interest @ 24% p.a. as claimed appears unreasonable in view of Section 34 of CPC, thus, I feel it reasonable and appropriate that an interest @ 12.5% per annum would be appropriate and reasonable rate of interest on the basis of bank rate on which commercial loan is lent by the banks or non-financial institutions on the basis of Prime Lending Rate, prevalent during the period of calculation of the amount to be legally recoverable from the defendants & only for the period it became due till its realization.

Thus, an interest @ 12.5% per annum on the principal amount of Rs. 7,50,000/- is granted to the plaintiff for the period w.e.f. 31-03-2005, the date it became due till its realization.

Thus, issue no. (iv) is decided accordingly in affirmative and in favour of the plaintiff and against the defendants to that extent.

61. Issue No.(v) Relief.

On the findings of issues above mentioned, the suit of the plaintiffs is partly decreed.

Accordingly, the plaintiffs are entitled for a money decree against the defendants for:

- (i) An amount of Rs.7,50,000/- against the defendants, jointly and severally along with,
- (ii) An interest @ 12.5 % p.a. w.e.f. 31-03-2005, it became due till the date of its realisation.

No order as to costs.

Decree sheet be drawn accordingly.

File be consigned to record room.

Announced In the open Court (Dr. Archana Sinha) Day of 19 March 2015. Addl. District Judge (Central-03) th Tis Hazari Courts/Delhi 19.03.2015