

**(2012) 02 AHC CK 0361****Allahabad High Court****Case No:** Second Appeal No. 156 of 2012

Guru Swarup Bhasin

APPELLANT

Vs

Sunil Kumar

RESPONDENT

**Date of Decision:** Feb. 9, 2012**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 89
- Evidence Act, 1872 - Section 13

**Citation:** (2012) 3 AWC 2988 : (2012) 116 RD 268**Hon'ble Judges:** Sibghat Ullah Khan, J**Bench:** Single Bench**Advocate:** Indrasen Singh Tomar, for the Appellant; Krishna Shukla and S.K. Shukla, for the Respondent**Final Decision:** Disposed Of**Judgement**

Sibghat Ullah Khan, J.

Heard Shri Indrasen Singh Tomar, learned Counsel for the appellant and Shri Krishna Shukla, learned Counsel for the respondent who has appeared through caveat. This is defendant's Second Appeal arising out of Original Suit No. 1072 of 2004 which was dismissed by Civil Judge/Additional JSAC, Agra on 2.11.2010. The suit had been filed for recovery of Rs. 1 lac. Against the decree of the Trial Court plaintiff filed Civil Appeal No. 227 of 2010 which was allowed by District Judge, Agra on 10.11.2011 and suit for recovery of Rs. 1 lac along with 18% interest from the payment date of the loan till the date of filing of the suit was decreed. Interest thereafter at the rate of 9% per year was also awarded.

2. Both the parties deal in the business of shoes i.e. selling the commodities required for shoe making, getting the shoes made and selling the same. The case of the plaintiff was that on 25.10.2001 plaintiff advanced Rs. 1 lac to the defendant through his (defendant's) Karigar (artisan) and defendant acknowledged receipt of

the amount by giving three receipts on the said date one of Rs. 30,000/- and the other two of Rs. 35,000/- each. Plaintiff further pleaded that it was a custom in the shoe market of Agra (which is famous for shoe business), that the Karigars of the people who are in the business of making/ getting made the shoes obtain the commodities (raw material) required for shoe making and as a token of receipt the real businessman for whom the shoes are to be made by the karigar issues a receipt signed by him showing the name of the karigar which is handed over to the person supplying the shoe material on credit. The plaintiff in order to prove his case filed the three receipts which the defendant had signed and which bore the name of Pappu the karigar. It was further pleaded by the plaintiff that in Agra particularly in its locality Heeng Ki Mandi such custom is prevalent and against the receipt payment is made within two months.

3. The Trial Court dismissed the suit on the ground that the receipts were not negotiable.

4. Defendant was carrying on the business in the trade name of M/s. Rahul Enterprises which was his sole proprietorship. He categorically admitted that such practice was prevalent in Agra in the shoe making business and he often, gave such receipts to his karigars Pappu and Harichand. He also admitted his signatures on the receipts 30 ka, 31 ka and 32 ka. However, he stated that he had not authorised his karigars including Pappu to borrow the amount from the plaintiff.

5. The Appellate Court held that the custom as alleged by the plaintiff had been admitted by the defendant and it was quite relevant u/s 13 of Evidence Act The Lower Appellate Court accordingly decreed the suit.

6. I do not find least error in the findings recorded by the lower appellate Court". Custom was admitted by the defendant-appellant. He admitted that Pappu was karigar. He admitted his signatures over the receipt. He could not explain as to how the receipts were in possession of the plaintiff. Accordingly, the Trial Court was utterly wrong in dismissing the suit on the ground that the receipt did not amount to negotiable instrument. The Trial Court itself under Issue Nos. 1 and 3 categorically held that the defendant in his cross-examination clearly admitted that the receipts had been issued by him and given to Pappu still the suit was dismissed on the ground that the same was not negotiable under Negotiable Instruments Act. After clear cut admission of issuing receipt the transaction became a transaction of loan or commercial credit given by the plaintiff on the direction of the defendant to Pappu karigar as his agent hence defendant was clearly liable to pay the amount. Pappu was not examined by the defendant.

7. Accordingly, I do not find least error in the findings recorded by the lower Appellate Court.

8. However, in my opinion interest of 18% per year till the date of filing of suit and 9% thereafter as awarded by the Lower Appellate Court is excessive. Learned

Counsel for the plaintiff respondent categorically stated that in case Court was of the opinion that rate of interest was excessive then it might be reduced right now without admitting the appeal on the said question. The Court suggested reduction of interest rate, to 6% per year in terms of section 89 C.P.C. learned Counsel for the respondent categorically agreed to the said suggestion of the Court. Accordingly, Second Appeal is disposed of/decided in terms of above agreement of learned Counsel for the respondent to the suggestion of the Court. Impugned decree passed by the Lower Appellate Court is varied only in respect of interest which is reduced to 6% from the due date of payment i.e. 25.12.2001 till the actual payment.