

**(2010) 09 JH CK 0058**

**Jharkhand High Court**

**Case No:** S.A. No. 336 of 2005

Shiv Shankar Prasad Barnwal

APPELLANT

Vs

Deo Nandan Prasad Barnwal

RESPONDENT

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**Date of Decision:** Sept. 10, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 34

**Citation:** AIR 2011 Jhar 47 : (2011) 2 BC 508

**Hon'ble Judges:** Narendra Nath Tiwari, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Narendra Nath Tiwari, J.

This appeal is against the judgment and decree of the learned 1st Additional District Judge, Bokaro passed in Money Appeal No. 3 of 2003, whereby the learned Lower Appellate Court has set aside the judgment and decree of the learned Sub Judge-I, Bokaro passed in Money Suit No. 10 of 1992.

2. The Defendant is the Appellant in this second appeal.

3. The Plaintiff had filed Money Suit No. 10 of 1992 for a decree for realization of a sum of Rs. 65,294/- from the Defendant.

4. Plaintiff's case was that he had given friendly loan of Rs. 47,200/- to the Defendant, as he was in dire need of money for establishing business of wholesale tea leaves for his son. The Plaintiff had advanced the said friendly loan through account payee cheque on 18th May, 1990. The Defendant had assured to return the amount within a month. The cheque given by the Plaintiff was encashed by the Defendant and the money was utilized. The Defendant, however, did not keep his promise and failed to repay the loan amount. The Plaintiff had, thereafter, served a legal notice on 7th August, 1990, but even thereafter the amount was not paid. The

Plaintiff, thereafter, filed the said suit for realization of the said amount with interest.

5. The Defendant had contested the suit, denying the Plaintiff's claim. It was stated that the Plaintiff has no money lending licence and is not entitled to file suit for recovery of the amount. The suit is filed for oblique purpose. The Defendant claimed that the Plaintiff himself had taken Rs. 52,200/- from him for purchasing a piece of land from one Smt. Nihur Bala Paul. The Plaintiff returned that money by giving a cheque of Rs. 47,200/- and Rs. 5,000/- in cash. He totally negated the Plaintiff's case of giving him Rs. 47,200/-.

6. Learned Trial Court, on conclusion of the trial, dismissed the Plaintiff's suit. It was, inter alia, held that the Plaintiff had no money lending licence. He failed to establish that he had given loan to the Defendant. The Plaintiff has also claimed interest and damages for which there was no agreement.

7. Aggrieved by the said decree of the Trial Court, the Plaintiff preferred appeal before the District Judge, Bokaro, being Money Appeal No. 3 of 2003. The said appeal was finally heard and decided by the 1st Additional District Judge, Bokaro by the impugned judgment and decree.

8. Learned Lower Appellate Court thoroughly discussed and appraised the facts and evidences on record and came to the finding that the Plaintiff and the Defendant were in friendly term since long. No money lending licence was necessary to advance friendly loan, particularly when there was a single and isolated transaction without any motive for earning interest. It was not covered by the provisions of Money Lending Act. The Plaintiff established his case by adducing cogent and satisfactory evidences. He also considered the Plaintiff's claim of interest in accordance with Section 34 of Code of Civil Procedure, which provides for granting interest in such cases at the just and reasonable rate on the decreed principal amount together with future interest at the rate of 6% per annum from the date of decree. He decided almost all the issues in favour of the Plaintiff and set aside the judgment and decree of the learned Trial Court. Learned Lower Appellate Court decreed the Plaintiff's suit and also granted interest in accordance with the provision of Section 34 of Code of Civil Procedure.

9. Mr. Amar Kumar Sinha, learned Counsel, appearing on behalf of the Appellant, submitted that the learned Lower Appellate Court has committed serious error of law in reversing the finding of the learned Trial Court, particularly the finding recorded on Issue No. 3, as also in awarding interest on the decreed amount without any such agreement between the parties. It has been submitted that the learned Lower Appellate Court has awarded interest @ 12% per annum from the date of filing of the suit to the date of the decree and interest @ 6% per annum on the decreed amount from the date of decree till realization. He submitted that in absence of any bilateral agreement, the Court has no jurisdiction to award interest

beyond 6% per annum and the decree of learned Lower Appellate Court is illegal and unsustainable.

10. I have heard learned Counsel and perused the impugned judgment and decree of the learned Lower Appellate Court. In his judgment, the Lower Appellate Court has dealt with all the issues and the relevant aspects involved in the case, in detail. He has thoroughly discussed the evidences on record and given speaking reasons for arriving at his conclusion and setting aside the judgment and decree of learned Trial Court.

11. The finding based on appraisal of evidences by the Lower Appellate Court, which is final Court of fact, is binding on Second Appellate Court. Learned Lower Appellate Court has further held that the Plaintiff had advanced a friendly loan and that was an isolated transaction and for such single transaction, money lending licence is not necessary. Such transaction is not covered by the provisions of the Money Lending Act. No contrary legal provision has been placed before me to impeach the same. Therefore, I find no error in the said finding. Learned Lower Appellate Court has noticed and discussed the provisions of Section 34 of CPC and awarded interest @ 12% per annum on the principal sum decreed from the date of filing the suit till the date of the decree and interest at the rate not exceeding 6% per annum from the date of decree till realization.

12. Section 34 of the CPC provides for awarding interest on money decree. It runs as follows :

34. Interest- (1) 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 six per cent. 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 six per cent. 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 nationalized banks in relation to commercial transactions.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

13. On plain reading of the provisions of Section 34 of the Code of Civil Procedure, it is clear that while passing a decree for payment of money, the Court has discretion to 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 and also for the period from the date of the decree till the date of payment at such rate not exceeding 6% per cent per annum.

14. Learned Lower Appellate Court has awarded interest in accordance with the said provisions of Section 34 of the Code of Civil Procedure.

15. Therefore, there is no substance in the submissions of learned Counsel for the Appellant. I find no error in the judgment and decree of the learned lower Appellate Court, giving rise to any substantial question of law to be framed and decided in this second appeal.

16. This appeal is, accordingly, dismissed.