

(2008) 12 DEL CK 0159

Delhi High Court

Case No: Regular First Appeal 331 of 2007

Shobha Rani Sah

APPELLANT

Vs

P.S. Verma

RESPONDENT

Date of Decision: Dec. 16, 2008

Hon'ble Judges: Pradeep Nandrajog, J; J.R. Midha, J

Bench: Division Bench

Advocate: S.K. Sharma and Dhruv Kumra, for the Appellant; Party-in-Person, for the Respondent

Final Decision: Allowed

Judgement

Pradeep Nandrajog, J.

Heard learned Counsel for the appellant and the respondent who appears in person.

2. We note that the respondent is a banker having retired as Deputy Manager from the Chandni Chowk Branch of the State Bank of India and understands the commercial laws.

3. The appellant was the defendant. The respondent was the plaintiff.

4. Suit was filed on the allegation that on various dates between September 2000 till April 2001 the plaintiff advanced loan aggregating Rs. 3,80,000/- (Rupees Three Lacs and Eighty Thousand only) to the defendant and it was agreed that the same shall carry interest @ 2% per month. It was pleaded that interest till June 2001 was paid by the defendant and from the month of July 2001 none was paid. It was stated that to clear the outstanding loan and interest which had accrued thereon till the month of November 2001, the defendant issued a cheque to the plaintiff bearing No. 486047 dated 30.11.2001 in sum of Rs. 4,25,000/- (Rupees Four Lacs and Twenty Five Thousand only). The cheque was stated to be drawn on Jai Laxmi Cooperative Bank Ltd., Fateh Puri. It was pleaded that when presented for encashment the cheque was returned with the remark "account closed". Suit was filed seeking recovery of

Rs. 4,25,000/- (Rupees Four Lacs and Twenty Five Thousand only) and pre-suit interest in sum of Rs. 1,50,000/- (Rupees One Lac and Fifty Thousand only). Total value of the suit was Rs. 5,75,000/- (Rupees Five Lacs and Seventy Five Thousand only).

5. Defence taken was that no loan was ever taken and no interest was ever paid. The cheque was explained as without consideration. It was pleaded that the late husband of the defendant was having an account with State Bank of India, Chandni Chowk Branch and that in said connection the husband of the defendant came into contact with the plaintiff who was working as a manager in the Chandni Chowk Branch of State Bank of India. It was stated that the husband of the defendant was in business and as per the dictates of her husband the defendant would sign blank cheques from her account maintained with the Jai Laxmi Cooperative Bank and would hand over the same to her husband for being utilized by him during course of his business. It was pleaded that the plaintiff appears to have got hold of the cheque in question which was signed blank and after filling up the same has presented the same for encashment. It was further pleaded in the written statement that after the unfortunate demise of the husband of the defendant on 22.9.2001, the plaintiff started visiting the residence of the defendant and started sympathizing her and desired intimate relations with her. She was tempted with money to overcome the difficulties in the life of a widow. The defendant pleaded that she declined to have relations with the plaintiff and that the suit was filed as a pressure tactic; intention being to some how or the other pressurise the defendant to succumb to the oblique desires of the plaintiff.

6. On the pleadings of the parties, it is apparent that the main issue which was debated before the learned Trial Judge was whether the cheque in question on which the suit was founded was issued by the defendant towards return of the loan and interest for the months of July 2001 till November 2001.

7. The plaintiff examined himself as his witness and proved Ex.PW-1/1 a legal notice dated 16.10.2004 posted at 2 addresses of the defendant. Posting receipts pertaining to the notices being dispatched under Regd. A.D. Post were proved as Ex.PW-1/2 and Ex.PW-1/3. A certificate of posting was proved as Ex.PW-1/4. The A.D. Card relatable to one out of the two addresses at which the notice was sent i.e. D-9, South Ganesh Nagar, Mansarovar Road was proved as Ex.PW-1/5; purporting to bear the acknowledgment by the defendant of having received the postal docket. The postal envelope which was returned unserved at the second address being Camera Market, IIInd Floor, Kucha Chaudhary, Chandni Chowk, Delhi was proved as Ex.PW-1/6.

8. The defendant examined herself as DW-1. She deposed in lines of her defence taken in the written statement and proved Ex.DW-1/1 to Ex.DW-1/6 being certain complaints which she had lodged with the police pertaining to the theft of her cheque book containing cheques including the cheque on which the suit was

founded.

9. Defendant also examined DW-2 Sh. Yashpal an employee of Jai Laxmi Cooperative Bank who proved the statement of account pertaining to the account maintained by the defendant with the said bank as Ex.DW-2/1 and Ex.DW-2/2.

10. Constable Haider Ali was examined. He was also referred to as DW-2. He corroborated receipt of the complaint Ex.DW-1/1 with the police station. DW-3, Daya Nand was examined to prove that the defendant used to receive letters at shop No. 39/40, Kucha Chaudhary, Dharba Kalan, Delhi. DW-4, ASI Harbhan Singh proved having received the complaint Ex.DW-1/5.

11. DW-5 S.I. Bhaskar Sharma proved the order Ex.PW-5/1 being a report to the DCP North West to the effect that the complaints by the defendant be consigned to the record room without registration of any case for the reason opinion given was that the dispute between the parties was of a civil nature.

12. The suit filed by the plaintiff has been decreed.

13. Principally, two reasons have been given by the learned Trial Judge. Firstly that the plaintiff was not cross examined on the line of the defence projected by the defendant in the written statement and secondly for the reason the notice Ex.PW-1/1 being held duly served upon the defendant evidenced by the A.D. Card Ex.PW-1/5; notice not being replied to, an adverse inference was to be drawn against the defendant that she had cooked up a false story; projecting the same in the written statement.

14. Decree has been passed in sum of Rs. 4.25 lacs holding that the cheque was for consideration. Interest has been granted @ 6% per annum.

15. In appeal it is urged that the learned Trial Judge has ignored the admissions of the plaintiff in cross examination to the effect that neither the loan nor interest received was ever disclosed by him in this income tax return which were being filed by him because he was assessed to income tax. It is further urged that the learned Trial Judge failed to appreciate that the plaintiff failed to prove the advancement of loan in sum of Rs. 3,80,000/- and that pertaining to the cheque in question reaching the hands of the plaintiff learned Trial Judge ignored the circumstances of the defendant being a widow and the plaintiff being a banker and possibility of the plaintiff (a male) attempting to exploit the defendant (a female).

16. Learned Counsel further urges that another material circumstance ignored by the learned Trial Judge was the statement in the plaint that interest till the month of June 2001 was received and that interest from the month of July 2001 was payable till the month of November 2001; meaning thereby calculated @ 2% per month, the stated agreed rate at which interest had to be paid, for a period of 5 months, interest came to Rs. 7,600/- x 5 = Rs. 38,000/-. Counsel urges that if this be so, the cheque in question had to be Rs. 3,80,000/- + Rs. 38,000/- = Rs. 4,18,000/-.

17. The defendant who appears in person states that he advanced the loan after withdrawing the money from his account and that since he was helping a destitute lady he did not obtain any receipt from her when he advanced the loan of Rs. 3,80,000/- to the defendant.

18. On being cross examined the plaintiff deposed as under:

I am retired Bank employee. I had been an employee of S.B.I Chandni Chowk, Delhi. Since, it was a transferable job, therefore, I had remained in different branches of S.B.I. I had remained in S.B.I. Chandni Chowk Branch from 1998 to March, 2001. I know the Defendant who is present today in the court.

Q. How do you know her?

Ans. She used to come to the bank.

x x x x

Q. What is your scale of salary?

Ans. I am unable to recollect the exact basic salary at the time of my joining the service. However, my approximate salary on the date of the transaction in question was about Rs. 20,000/-.

The loan to the Defendant had been given in cash.

Q. Can you produce any documentary evidence to substantiate the fact that you had advanced loan to the Defendant?

Ans. I had withdrawn the amount from the bank and had paid it to the Defendant. However, no document had been prepared at that time.

The amount was paid to the Defendant in the bank itself. Other employees were present in the bank but they were not made witness of the loan as it was given personally by me to the Defendant.

x x x x

Q. What was the amount of interest on the date on which the alleged cheque had been issued?

Ans. It can be calculated.

Q. Is it correct that the principal amount and the interest thereon calculated at the rate, as claimed by you, will not tally with the amount of cheque?

Ans. It is a matter of calculation.

I file income tax return. I had not shown the loan amount in the income tax return. Volunteered, it is not shown in the income tax return.

I am not aware of any rule which prohibits advancement of loan by a employee to its customer.

Do you have money lending licence?

No.

Q. Had you ever advanced loan to anybody else?

Ans. No.

19. The learned Trial Judge has not referred to the said aspect of the cross examination of the plaintiff. We note that the plaintiff was cross examined as to how would he justify the amount shown in the cheque towards principal and interest; to which he replied that the same was a matter of calculation. It is apparent that the plaintiff ducked the issue. It is further relevant to note that the plaintiff admitted not having shown the loan amount in his income tax return. The plaintiff who appears in person, on being questioned by us, admits that the stated interest which he had received till the month of June 2001 was not reflected by him in his income when he filed his income tax return.

20. The testimony of the plaintiff establishes that he had no proof of having advanced any loan. His statement that he had withdrawn the money from his account maintained by him in the bank has remained a mere statement for the reason the statement of account has not been proved on record.

21. We are surprised at an officer of the bank holding the post of a Deputy Manager conducting business without taking the basic precaution of obtaining receipt of the person to whom a loan is advanced. Who other than a merchant banker would know the importance of a receipt?

22. The fact that the plaintiff has not shown the stated interest received ostensibly till the month of June 2001 in his income tax returns as income requires an adverse inference to be drawn that no such income had accrued to be paid.

23. This in turn leads to the plaintiff being discredited vis-à-vis his version.

24. It would not be out of place to note that the cross examination of the plaintiff has been directed towards testing his veracity on the twin issue of loan being advanced; stated interest being received and the hiatus between the cheque amount and the amount due and payable as per the version pleaded in the plaint. The learned Trial Judge is completely wrong when he has recorded a finding that the plaintiff has not been cross examined on material points.

25. Non-response to a legal notice is merely a piece of presumptive evidence to hold against the noticee. By its very nature, presumptive evidence is weak evidence and needs to be corroborated by independent and unimpeachable evidence.

26. While deciding a suit the totality of the circumstances have to be kept in mind. It may be impermissible to pick on only one circumstance and rest the reasoning thereon.

27. Noting the stand of the defendant that she was a widow and that the plaintiff tried to physically exploit her; noting that the plaintiff is a merchant banker; noting that the plaintiff has no proof of ever having advanced any loan to the defendant; noting that the stated interest received by the plaintiff has not been reflected in his income tax returns; noting that there is a hiatus in the cheque amount vis-à-vis the amount which was payable as per the version pleaded in the plaint till 30.11.2001; noting that no details of the stated interest received i.e. what amount and when was it paid has come on record; noting that the plaintiff has not brought on record his passbook to evidence withdrawals by him from his bank account when stated loan was advanced from time to time, we are of the opinion that the appeal has to be allowed and impugned judgment and decree dated 6.12.2006 has to be set aside.

28. The appeal is allowed. Impugned judgment and decree dated 6.12.2006 is set aside. Suit filed by the plaintiff is dismissed with costs all throughout.