

**IN THE COURT OF SHRI SANJAY SHARMA-I
ADDL. DISTRICT JUDGE – 04 (WEST DISTRICT)
TIS HAZARI COURTS : DELHI**

Civil DJ No. 611023/2016

Shri Rajesh Bali

S/o late Shri CL Bali
R/o 1/20, Subhash Nagar,
New Delhi-110 027

.....Plaintiff

Versus

Smt. Rama Rani

W/o Shri Harish Kumar
R/o B-27, 1st Floor, Hari Nagar,
New Delhi – 110 064

.....Defendant

<i>Date of institution</i>	: 30.6.2015
<i>Date of reserving judgment</i>	: 28.3.2019
<i>Date of pronouncement</i>	: 24.4.2019

J U D G M E N T :

The present suit has been filed by the plaintiff against the defendant for recovery of a sum of Rs.3,10,000/- alongwith pendente lite and future interest.

2. Briefly stated, the facts of the case as stated in the plaint are that both the parties were well known to each other and were on visiting terms. In November 2012, at request of the defendant, the plaintiff gave a friendly loan of Rs.3,10,000/ to her which she promised to return within 30 months. A loan agreement as well as receipt, both dt. 27.11.2012,

were also executed. It has been averred that after 30 months, when the plaintiff approached the defendant to repay the loan amount, the defendant avoided the payment on one pretext or the other and on 30.5.2015, she finally refused to repay the same. Thus, the plaintiff served a legal notice upon the defendant dt. 01.6.2015 but again without any success and hence the suit.

3. Summons of the suit were served upon the defendant who put in her appearance and filed the written statement, wherein she had denied having taken any loan from the plaintiff or having executed any loan agreement or receipt. She denied her signatures on the said documents and termed them as forged and fabricated. She took a plea that she had taken a loan of Rs.2 lacs from one Shri Subhash Banga – a partner/friend of the plaintiff, and her neighbour who had obtained her signatures on a stamp paper of Rs.100/- without disclosing her the contents thereof and also obtained six blank cheques from the account of her son and two blank cheques from her own account as security. She claims to have returned the said loan with interest to Shri Subhash Banga but alleged that the said stamp papers and cheques were never returned by him on the plea that they were not traceable. It is alleged that the plaintiff and Shri Subhash Banga in collusion with each other, are blackmailing her by issuing false notices and by filing false cases. She also lodged complaints with the police about it but without any success. Hence, she claimed that she has no liability to pay the suit amount to the plaintiff. Rest of the contents of the plaint were specifically denied by

her.

4. Replication to the written statement was filed by the plaintiff wherein all the averments made in the plaint have been reiterated and reaffirmed whereas those made in the written statement have been denied.

5. From the pleadings of the parties, following issues were framed on 22.2.2016 :

ISSUES :

- 1) *Whether defendant has taken the loan of Rs.3,10,000/- from the plaintiff?*
- 2) *Whether plaintiff is entitled to recover a sum of Rs.3,10,000/- from the defendant alongwith interest? OPP*
- 2). *Relief.*

6. In order to prove his case, the plaintiff examined himself as PW1 and tendered his examination in chief by way of affidavit Ex. PW1/1 which is on the line of the averments made in the plaint. He relied upon the loan agreement, receipt, legal demand notice, speed post and courier receipts and reply of the defendant to the legal notice as Ex.PW1/A to PW1/E, respectively. He also filed voter I-card of the defendant as Mark X1.

7. The plaintiff also examined Shri Syed Faizal Huda – Forensic Expert as PW2 who also tendered his evidence by way of affidavit Ex.PW2/1 and relied upon his report dt. 31.5.2018 running into 26 pages including photographs, as Ex.PW2/A (colly.). The plaintiff then closed

his evidence.

8. The defendant examined herself as DW1 and relied upon the reply sent by her to the legal notice of the plaintiff as Ex.DW1/1 (already exhibited as Ex.PW1/E). Thereafter, she closed her evidence.

All the witnesses were duly cross-examined.

9. I have heard Shri Ritesh Oberoi - Ld. Counsel for the plaintiff, Shri PK Singhal – Ld. Counsel for the defendant and have gone through the records of the suit. My issue-wise findings are as under :

ISSUES No. 1 and 2 :

10. Both the issues are interconnected and therefore, are being decided together. The onus to prove these issues was upon the plaintiff who examined himself and deposed the facts as stated in the plaint, submitting that he had advanced a loan of Rs.3,10,000/- to the defendant on her request against loan agreement dt. 27.11.2012 Ex.PW1/A and receipt also dt. 27.11.2012 Ex.PW1/B which were duly executed and signed by her. However, she failed to repay the said amount within 30 months, as agreed upon by her and therefore, he was constrained to issue legal notice Ex.PW1/C.

11. In his cross-examination, the plaintiff/PW1 admitted that the said loan agreement and receipt Ex.PW1/A and PW1/B respectively, do not bear signatures of any witness. He earlier denied that any case filed by him is pending in any court except the present but later he admitted that he had filed another case against one Shri Rakesh Kumar Saluja for recovery of Rs.75,000/-. He also admitted that he had filed a civil suit

against one Shri Mukesh Sethi and further admitted that he had advanced loan to both the said persons but without any interest.

12. Ld. Counsel for the defendant argued that the plaintiff is a professional money lender who lends money on interest and therefore, is covered within its definition under Section 2(9) of The Punjab Registration of Money Lenders Act, 1938 and therefore, is barred from filing the present suit under Section 3 of the said Act.

13. This argument is not valid for two reasons. Firstly, the defendant has failed to prove that the plaintiff is engaged in the business of money lending. Occasional advancing of money to 2-3 persons does not make a person Money Lender. This view finds support from the judgment in *Khachen Vs. Ram Ditta Mal 1984 PLJ 408*, wherein it was held that :

“Casual advance of money to few persons does not make such a person a Money Lender within the meaning of Section 2(9) of the Punjab Registration of Money Lenders Act, 1938”.

14. Secondly, interest is a vital ingredient of loan as is clear from the definition of loan appearing in Section 2(8) of The Punjab Registration of Money Lenders Act, 1938 which reads as:

“Loan” means an advance whether secured or unsecured of money or in kind at interest and shall include any transaction which the Court finds to be in substance of a loan”.

15. Thus, it is clear from the said definition that a loan for the purposes of this Act should carry an interest. In the instant case, the case

of the plaintiff is that he had advanced the loan to the defendant without interest. Similarly, the other instances pointed out by Ld. Counsel for the defendant of the plaintiff having advanced loan to two other persons does not show that he had charged any interest from them against the loan given to them. Hence, the money so given by the plaintiff would not come within the definition of 'Loan' under the said Act and would thus, not make the plaintiff a money lender, as defined in the said Act.

16. It was admitted by the plaintiff in his cross-examination that Ex.PW1/A and PW1/B were neither notarized nor attested by any other agency. Simply because the said documents were not witnessed by any person or were not notarized, would not make them inadmissible in evidence if the contents of the same were duly proved by the plaintiff.

17. The plaintiff was cross-examined at length regarding the loan given by him to the defendant. He deposed that the loan was demanded by the defendant in October 2012 and he gave it in cash on 27.11.2012 at about 5.30 pm. It was pointed out by Ld. Counsel for the defendant that in the earlier cross-examination, PW1 deposed that the defendant and her son came to his house to take loan but in the later cross-examination, he deposed that only the defendant was present at his house to receive the loan which is a vital contradiction. I disagree with this contention as the loan was received by the defendant, according to the plaintiff and this part of the testimony remained unchallenged. It does not make any difference if her son was present or not, however, it has been clarified by PW1 in his earlier cross-examination that he met the son

of the defendant at about 11.00 am on 27.11.2012 and asked him to take the loan and this part was never clarified later and again remained unchallenged.

18. It was further pointed out by Ld. Counsel for the defendant that PW1 deposed that the loan was demanded by the defendant in October 2012 and that he was unaware if the defendant was working or was only a housewife. It was submitted that it is unbelievable that a person would lend money without ascertaining the status of the person to whom he was extending loan. I again disagree with this contention as it has been repeatedly stated by the plaintiff that he knew the defendant and further more, since the loan was secured by way of an agreement and receipt, the plaintiff was not required to make inquiries any further. Similarly, only the demand was made in October but loan was given in November.

19. Plaintiff/PW1 also deposed that he is an income tax assessee and that his wife was earlier employed in Super Bazaar till 2003. He also produced his ITRs for the year 2012-13 Ex.PW1/D1 (colly.) and pointed out that the said loan is reflected in his balance sheet in the column Sundry Debtors at point A as also in Ex.PW1/D2, i.e. ITRs for the year 2014-15 at point A in the entry of Sunder Debtors. However, he could not produce the details of the sundry debtors as shown therein but then the same were never demanded from him by the Ld. Counsel for the defendant.

20. PW1 also gave details of the preparation of the Loan

Agreement elaborately which could not be rebutted in cross-examination . It was pointed out by Ld. Counsel for the defendant that the stamp paper on which the loan agreement Ex.PW1/A was written was infact purchased by the defendant, but PW1 deposed that he purchased the said paper. It again makes no difference but rather shows that the defendant was intending to obtain the loan and thus, purchased the stamp paper.

21. Though PW1 admitted that he was known to Shri Subhash Banga but denied having any knowledge if he had filed any complaint case under Section 138 of the NI Act against the defendant. He also denied any knowledge if the defendant had taken a loan of Rs. 2 lacs from Shri Subhash Banga which had been repaid. He also denied if said Shri Subhash Banga obtained the signatures of defendant on blank stamp papers or obtained blank cheques from her son against security. Thus, nothing came out from his detailed cross-examination to discredit his testimony or to negate the fact of his having extended a loan of Rs.3,10,000/- to the defendant.

22. It was argued by Ld. Counsel for the defendant that no transaction of more than Rs.20,000/- is permissible in cash under The Income tax Act. That is true but that may attract separate action and would not bar the present suit or the right of the plaintiff to recover the loan amount.

23. The plaintiff also examined PW2 who proved that the signatures of the defendant appearing on Ex.PW1/A and PW1/B are her

signatures. He arrived at this conclusion after comparing her admitted signatures on record with the disputed signatures on the said documents by applying various scientific techniques and vide his comprehensive report Ex.PW2/A. This witness was also cross-examined at length but nothing came out from his cross-examination to doubt his knowledge, competency or qualifications. Ld. Counsel for the defendant pointed out that he failed to produce his degrees regarding his qualifications. He offered to produce them if required but then the Ld. Counsel never asked him to produce those degrees nor the court directed him to do so and therefore, this fact of his not producing the degrees cannot doubt his qualification and competence. It was further pointed out that in examination-in-chief, para 7, PW2 deposed that he examined and prepared the report dt.31.5.2018 individually as well as jointly with his colleague Shri Syed Faisal Huda – a Forensic Expert. Ld. Counsel submitted that it shows that he himself was not fully competent to give the opinion. Taking advise from anyone of equal competence does not make the person incompetent. Hence, this argument is of no help to the defendant since PW2 has otherwise proved his qualifications and has also deposed that he had individually examined the report.

24. The Ld. Counsel for the defendant then cross-examined PW2 upon the admitted and disputed signatures of the defendant on page 20 of the report Ex.PW2/A, pointing out that there is no hook in the letter 'ra' at point X and X1 in photograph D1 while it is so there at point Y and Y1 in photograph A1. The witness replied that it was only because of

natural variation. He further denied suggestions to the contrary and further denied that letter 'ma' as appearing in the said photographs is different from letter 'ma' in admitted signatures in photograph A1. PW2 admitted that in the vertical staff at point 7 in D1 is in straight stroke formation while in A1 it is written with bifurcation at the same point.

25. It was categorically deposed by the witness that signatures of any person cannot be copied successfully by any method. It was also deposed by PW2 that practically 100% accuracy report can be given regarding handwriting of a person. He was further cross-examined upon his working and experience but without any success.

26. The cross-examination of this witness upon the admitted and disputed signatures of the defendant, as aforesaid, was limited to only one signature, i.e. signatures D1 and A1. If multiple signatures, both admitted and disputed, are available on record, the differences as above pointed out by Ld. Counsel for the defendant, cannot be confined only upon one signature. All the signatures have to be carefully seen and compared to arrive at any just conclusion. This Court has itself carefully seen and compared all the admitted signatures of the defendant on record and has no reasons to differ with the opinion of PW2. In the opinion of this Court, PW2 has meticulously examined the signatures available on record in a very scientific manner regarding the flow of writing, stroke making, individual characteristics, reflexes, pen lift etc. It has been rightly observed by the witness that the flow of writing in both the admitted and disputed signatures is natural and there is no trembling in the disputed

signatures which confirms the flow of the writer and his brain reflexes. There is no undue or unwarranted pen lift which is found where the signatures are tried to be copied. The formation of the letters is similar except for some natural variations which occur at some places.

27. It is a scientific truth that no two signatures of a person, even if made at a same time would be exact replica of each other. There has to be some natural variation and if not, the chances of their being forged or fabricated are more. The Ld. Counsel for the defendant cross-examined the witness on the signatures A1 and D1 at page 20 of the report Ex.PW2/A . In the said signatures A1, the stroke for marking the sound 'ee' on the letter 'na' in the word 'Rani' has a bifurcation, also admitted by PW2. But no such bifurcation is noted on her another admitted signatures A2 at page 21 or even in specimen signatures S1 at page 25 of Ex.PW2/A. It is further observed that while giving specimen signatures, the defendant deliberately tried to improvise her signatures by creating a loop in the end of the letter 'ra' of her name 'Rama', which she never used in any of the admitted or disputed signatures. Thus, the defendant herself tried to create a dispute in her signatures and needless to say, it was a deliberate attempt on her part.

28. The conduct of the defendant in this regard is also noteworthy that she made a deliberate attempt to deny her signatures which has been recorded by the Court during her cross-examination . She was confronted with her signatures on the loan agreement and receipt Ex.PW1/A and PW1/B and was asked to identify her signatures

appearing on those documents at points A, A1, A2 and A3. It has been observed by the Court that - '*She first admitted her signatures at point A but thereafter, on again looking upon the signatures at above points, she denied the signatures appearing thereupon to be her signatures*'. It only shows the mindset of the defendant and an attempt on her part to dispute her signatures.

29. For the foregoing reasons, I do not find any reason to differ from the opinion of PW2 as given by him in Ex.PW2/A and conclude that the signatures appearing on Ex.PW1/A and PW1/B are that of the defendant.

30. The defendant in her testimony denied the transaction and reiterated the defence taken by her in her written statement. In her cross-examination, she admitted that she was in need of funds in October-November 2012. She further admitted to have taken loan from Shri Subhash Banga and denied that she knew the plaintiff and also deposed lack of knowledge if the plaintiff was residing near her previous residence at Subhash Nagar. She never summoned Shri Subhash Banga as a witness nor examined her son from whom said Shri Banga had taken blank cheques as security. She deposed that she had returned the loan so taken from Shri Subhash Banga, in cash but had not obtained any receipt from him upon repayment of loan . This is totally unbelievable. On one hand, she claims that she had signed blank stamp papers and had given blank cheques to Shri Banga as security for the loan taken from him and on the other hand, she failed to obtain those documents or any receipt for

repayment. She further failed to take any legal action said Shri Banga except for filing a police complaint which was also not followed up by her. It appears that she has concocted a story in this respect.

31. Apart from that, it is noteworthy that in the written statement as well as in her examination-in-chief vide Ex.DW1/A, the defendant herself admitted that the plaintiff and Shri Subhash Banga had obtained her signatures on stamp papers without mentioning that they were blank . Even in her reply to the legal notice of the plaintiff, she stated that her signatures on stamp papers of Rs.100/- were obtained. Thus, the defendant had candidly admitted having signed on the stamp paper/blank paper which are nothing but the loan agreement Ex.PW1/A and the receipt Ex.PW1/B. Though she alleged that her signatures were so obtained by Shri Subhash Banga against the loan given by him and on a stamp paper for Rs. 100/- but without any success. She has failed to prove her defence. Nevertheless, she had mentioned the name of the plaintiff to be present alongwith said Shri Subhash Banga when her signatures were so obtained though she denied that she was known to the plaintiff. Thus, it is clear that she has self contradicted herself. In her further cross-examination, she admitted that she had not taken any action against said Shri Subhash Banga for her not returning the signed documents or the blank cheques which again speaks volumes about her conduct.

32. It is, thus, clear from the above discussion that the plaintiff has been able to prove that he had lent a sum of Rs.3,10,000/- to the

defendant which has not been repaid by her till date and therefore, he is entitled for the said amount alongwith interest.

33. The plaintiff has sought interest @ 12% per annum on the said amount. There is no clause for interest in the loan agreement nor there is any other document on record to show that any rate of interest was agreed upon between the parties to the suit. However, still the plaintiff is entitled for interest in view of the judgment delivered in **South Eastern Coalfields Limited Vs. State of Madhya Pradesh 2003 Law Suit (SC) 992** where in para 19, it has been held that :

“19. Interest is payable in equity in certain circumstances. The rule of equity is that interest is payable even in the absence of any agreement or custom to that effect through subject, of Course, to a contrary agreement (See: Chitty on Contracts, Addition 1999, Vol. II, Part 38-248, at page 712). Interest in equity has been held to be payable on a market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many”.

34. Keeping in view the said judgment and the provisions of Section 34 CPC as also the prevailing rate of interest in Nationalized Banks, I am of the considered opinion that the interest of justice would be served if interest @ 6% per annum is given on the principle outstanding amount of Rs.3,10,000/- to the plaintiff, from the date of filing of the suit till its realization. These issues are answered accordingly.

ISSUE No. 3/Relief :

35. In view of the findings on the above issue, the suit of the plaintiff is hereby decreed in his favour and against the defendant for a sum of Rs.3,10,000/- along with interest @ 6% per annum from the date of filing of the suit till its realization, subject to payment of deficit Court fees, if any. Costs of the suit are also awarded to the plaintiff.

Decree sheet be prepared accordingly. File be consigned to Record Room.

***ANNOUNCED IN OPEN COURT
ON the 24th day of April 2019***

(SANJAY SHARMA-I)
Addl. District Judge-04 (West)
Tis Hazari Courts, Delhi.