

Bhairo Singh Vs. Gulab

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Court : Madhya Pradesh

Decided On : Jun-25-2013

Appellant : Bhairo Singh

Respondent : Gulab

Advocate for Def. : Smt. Sarita Chourasiya

Advocate for Pet/Ap. : Shri. Ranjeet Singh

Judgement :

C.R. No.789/2003 (1) HIGH COURT OF MADHYA PRADESH: JABALPUR Single Bench: Hon'ble Mr. Justice N.K. Gupta Civil Revision No.789/2003 Applicant : Bhairo Singh Plaintiff Versus Respondent : Gulab Defendant
----- Shri Ranjeet Singh, counsel for the applicant. Smt. Sarita Chourasiya, counsel for the respondent.

ORDER

(Passed on 25.06.2013) The applicant has preferred a civil suit against the respondent for recovery of a sum of Rs.6,000/- and interest on the basis of the receipt taken in ledger, which was dismissed by the learned Civil Judge, Class-II, Nasrullahganj, District Sehore vide judgment and decree dated 7.12.1998 in Civil Suit No.10-B/1998. The Civil Appeal No.1-B/1999 preferred by the applicant was dismissed vide judgment and decree dated 31.3.2003 passed by learned

Additional District Judge, Nasrullahganj, District Sehore. Being aggrieved with the aforesaid judgment and decree the applicant has preferred the present revision. C.R. No.789/2003 (2) 2. The suit filed by the applicant, in short, was that on 30.4.1995 and 7.8.1995, he gave a sum of Rs.5000/- and Rs.1000/- respectively on loan to the respondent and the respondent affixed his thumb impressions in his ledger. After demand on various occasions the respondent did not repay the sum and therefore, a demand notice was given on 6.4.1998 by a registered post which was received to the respondent on 13.4.1998. Instead of repaying the loan the respondent gave a false reply to the notice of the applicant and therefore, the applicant filed a civil suit for recovery of Rs.6000/- with interest and thus, a suit for recovery of a sum of Rs.10,290/- was lodged.

3. The respondent in his reply denied the entire suit. He refused to have put his thumb impressions on the ledger book of the applicant. He has specifically pleaded that as and when he took the loan from the applicant some document was prepared. He has shown a document which was a pronote related to the previous transaction. Under such circumstances, it was prayed that the suit may be dismissed.

4. Learned Civil Judge, Class-II after framing the issues recorded the evidence of the parties and thereafter it was found that the applicant could not prove that a sum of Rs.6000/- was lent to the respondent and therefore, the suit C.R. No.789/2003 (3) was dismissed. The appeal filed by the applicant was also dismissed.

5. I have heard learned counsel for the parties.

6. Learned counsel for the applicant submits that the respondent admitted that he executed the receipt in the ledger of the applicant and put his thumb impressions on the ledger and therefore, in the light of the order passed by a Single Bench of this Court in the case of Paliwal Khad Bhandar v. Shri Ram Khad Kendra, 1996 (II) MPWN 105 burden of proof was on the respondent to show that he repaid the loan and therefore, it is prayed that the suit may be decreed.

7. On the other hand, learned counsel for the respondent has submitted that no admission has been made by the respondent and therefore, it was for the applicant to prove his case by reasonable evidence which he could not prove.

8. After perusal of the pleadings and evidence given by the respondent it cannot be said that he admitted the execution of the receipt or he admitted that he put his thumb impression for two times in the ledger of the applicant and therefore, the burden was not shifted upon the respondent. Law laid in the order passed by Single Bench of this Court in case of Paliwal Khad Bhandar (supra) is not applicable in the present case C.R. No.789/2003 (4) because there was no admission from the side of the respondent.

9. It is a matter of oath against oath. The applicant has stated on oath that he lent a sum of Rs.5000/- and Rs.1000/- to the respondent whereas the respondent has stated on oath that he did not take such a loan. It was for the Courts below to assess that whose statement on oath can be accepted. In support of the applicant, a notice was accepted but at the same time the respondent gave its reply and denied the averments made in the notice. He has also submitted a previous torn pronote to show that in the past the respondent took a loan from the applicant and a pronote was prepared. Under such circumstances, it was for the applicant to prove the transaction strictly.

10. The applicant has shown entry of the ledger (Ex.P-1) to show that on revenue stamp, thumb impression of someone was affixed. According to the applicant it was the thumb impression of the respondent. Comparison of thumb impression is a scientific method and it was for the applicant to apply before the learned Trial Court for comparison of the thumb impressions found on Exhibit P-1 and the thumb impression of the respondent but he did not apply for such comparison. It appears that thumb impressions taken by the C.R. No.789/2003 (5) applicant on the ledger were blurred and therefore, no comparison was possible. The conduct of the applicant indicates that either the thumb impressions were blurred and therefore, comparison was not possible or if thumb impressions would have been compared then those thumb impressions could not be found of the respondent and therefore, the applicant did not apply for the comparison of the thumb impressions.

11. The learned Civil Judge as well as the learned Additional District Judge have found that the applicant could not prove his ledger beyond doubt because the ledger was not kept according to Mahajani Procedure.. If a sum of Rs.5000/- was given to the respondent on a particular date then a daily ledger was also to be shown by the applicant which was kept on day to day basis that the applicant shown an expenditure of Rs.5000/- in that daily ledger on that particular date in the name of the respondent. Similarly, the daily ledger was to be proved for the second entry of Rs.1000/-. Unfortunately, the applicant did not produce the daily ledger of those entries which were shown in the name of the respondent.

12. It is true that the applicant was a reputed businessman, however, by such a fact his suit cannot be accepted. If he had given a loan of Rs.6000/- to the C.R. No.789/2003 (6) respondent then why he did not make any effort to get its repayment in three years. It appears that he kept silence till the completion of two-and-a-half years and at the fag end of period of limitation he gave a notice. If the respondent was his regular customer then in those three years the previous loan must have been repaid and a fresh loan was to be taken by the respondent. Looking to the overt act of the applicant that he did not make any transaction for further loan in those three years and he did not make any effort to get the loan recovered, his conduct goes against him and it cannot be presumed that the statement given on oath by the applicant was acceptable in comparison to the statement given by the respondent.

13. Under such circumstances, both the Courts below have rightly dismissed the claim of the applicant that he could not prove that, a sum of Rs.6000/- was given to the respondent by way of loan. There is no basis by which any interference can be done in the impugned judgment and decree passed by both the Courts below. Therefore, revision filed by the applicant cannot be accepted.

14. Consequently, the revision filed by the applicant is hereby dismissed with costs. He shall bear his own cost as well as the cost of the respondent. Advocate fees be computed C.R. No.789/2003 (7) @Rs.2500/-, if certified. Copy of the order be sent to both the Courts below along with record for information and compliance, if any. (N.K.GUPTA) JUDGE Sach. C.R. No.789/2003 (8)

