IN THE COURT OF SH. HEM SINGH, DISTRICT JUDGE-01, (EAST), KARKARDOOMA COURTS, DELHI

CS No. 584/17
CNR NO. DLET010101602017

In the matter of :-

Sh. Ahmed Mauji Khan
S/o Mauji Khan
R/o B-1/101, Taj Enclave,
Geeta Colony, Delhi-110060

……..**Plaintiff**

Versus

Toshin Khan (Since Deceased)
Through LRs

1. **Zarina Begum (Since Deceased)**
   W/o Late Shri Toshin Khan
   Through LRs
   (Defendant no. 2 to 6)

2. **Vakil Ahmed**
   S/o Late Toshin Khan
   R/o B-1/101, Taj Enclave,
   Geeta Colony, Delhi-110060

3. **Sh. Shakeel Khan**
   S/o Late Sh. Toshin Khan
   R/o H. No. A-10, DDA Flats,
   Mata Sundri Road,
   New Delhi-110001

4. **Sh. Sammo**

W/o Akhtar
D/o Late Shri Toshin Khan
R/o H. No. N-77/A-431,
Sawan Park, Ashok Vihar
Delhi-110052

5. Smt. Shabee
W/o Sh. Saleem
D/o Late Shri Toshin KHan
R/o Kela Bhatta,
Ghaziabad, U.P.

6. Smt. Shabina
W/o Shri Parvez
D/o Late Shri Toshin Khan
R/o H.No. X-73, Welcome Colony
Photo Chowk, Delhi

.........Defendant

Date of Institution	:	04.09.2017
Date of Reserving Order	:	16.05.2026
Date of Decision	:	02.06.2026

SUIT FOR RECOVERY OF RS. 7,87,500/- (RUPEES SEVEN LAKH EIGHTY SEVEN THOUSAND FIVE HUNDRED ONLY)

JUDGMENT

A) BRIEF FACTS:

1. The plaintiff has instituted the present suit for recovery of Rs. 7,87,500/-. It is the case of the plaintiff that in July 2016, the defendant, on account of the illness of his son-in-law, was in urgent need of money and approached the plaintiff for a loan of Rs. 6,25,000/-. It is stated that considering the request, the plaintiff advanced Rs. 3,90,000/- through RTGS from the plaintiff's bank account maintained at State Bank of India, Geeta

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Colony, Delhi, to the account of the defendant and Rs.90,000/- was paid in cash on 21.07.2016 and Rs.1,45,000/- was also paid in cash on 30.07.2016.

2. It is further stated that at the time of advancement of the said loan, the defendant assured the plaintiff that the amount would be repaid within one year along-with prevailing market interest. However, upon expiry of the said period, when the plaintiff demanded repayment, the defendant avoided the same on one pretext or another. Despite repeated requests, no payment has been made till date.

3. Accordingly, the plaintiff has filed the present suit seeking recovery of Rs. 6,25,000/- towards principal and Rs. 1,62,500/- towards interest calculated @ 24% per annum from the date of advancement of the loan till August 2017. The plaintiff has also claimed future interest @ 24% per annum.

4. Upon service of summons, the defendant filed a written statement contesting the suit and raising a preliminary objection that no cause of action exists in favour of the plaintiff. It is the case of the defendant that a property bearing Khasra No. 1477 Min, Plot No. A-56, admeasuring 500 sq. yards, situated at Roop Nagar Industrial Estate, Village Pragana, Loni, Ghaziabad, Uttar Pradesh, was agreed to be sold to him by the plaintiff's sister, vide Agreement to Sell dated 17.12.2012. The said agreement to sell was also signed by the plaintiff and plaintiff's brother as witnesses. Pursuant thereto, the entire sale consideration was paid by the defendant to them in installments.

5. It is further the case of the defendant that subsequently, at the

request of the parties, the said Agreement to Sell was cancelled, and it was agreed that the plaintiff would refund/pay the consideration amount to the defendant. As per the defendant some amount was paid by the plaintiff and the plaintiff agreed to pay the remaining sum of Rs. 18,60,000/- to the defendant, out of which only Rs. 3,90,000/- was paid through RTGS, and the remaining amount of Rs. 14,70,000/- remains unpaid. Along with the written statement, the defendant has also filed a counterclaim seeking recovery of Rs. 14,70,000/- along with interest @ 24% per annum. The record reveals that the said counterclaim was already dismissed in default on 10.11.2021.

6. During the pendency of the proceedings, the defendant expired, whereupon an application under Order XXII Rule 4 of the Code of Civil Procedure, 1908 was moved for bringing on record the legal representatives of the deceased defendant. The said application was allowed, and the legal heirs were directed to be impleaded.

B) <u>ISSUES:</u>

Following issues were framed vide order dated 17.07.2023:

(1) Whether the plaintiff is entitled to the decree for recovery of Rs. 7,87,500/-, as prayed for ? OPP

(2) Whether the plaintiff is entitled to any interest, if yes, at what rate and for what period? OPP

3) Relief.

C) <u>EVIDENCE:</u>

1. To prove his case, the plaintiff filed his evidence affidavit, tendered the same as **Ex. PW1/A** and relied upon the following documents:

i) **Ex.PW1/1** is de-exhibited and now marked as Mark-A which is copy of account statement.

ii) **Ex.PW1/2** is de-exhibited and now marked as Mark-B which is counterfoil payment.

PW1 was not cross-examined as defendant were already proceeded ex parte.

2. Plaintiff also examined Sh. Riyaz Mohammad as PW2. He tendered his evidence by way of affidavit Ex.PW2/A and relied upon his evidence affidavit

PW2 was also not cross-examined as defendants were already proceeded ex-parte.

4. Thereafter, on the statement of plaintiff, PE was closed vide order dated 01.08.2024 and the matter was fixed for ex-parte final arguments

E) I have heard final arguments addressed by Ld. Counsel for the plaintiff and perused the record and considered the same.

F) <u>ISSUE-WISE FINDINGS:</u>

ISSUE No. 1: **Whether the plaintiff is entitled to the decree for recovery of Rs. 7,87,500/-, as prayed for ? OPP**

(i) The plaintiff has filed the present suit for recovery of Rs. 7,87,500/-, stating that in July 2016 the defendant borrowed Rs. 6,25,000/- due to urgent financial need. The amount was paid partly i.e. Rs. 3,90,000/- through RTGS and partly in cash i.e. Rs. 90,000/- on 21.07.2016 and Rs. 1,45,000/- on 30.07.2016. It is stated that the defendant failed to repay the

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loan despite assurance and demands, leading to the present suit including interest @ 24% per annum.

(ii) The defendant, in his written statement, denied the claim and filed a counterclaim for Rs. 14,70,000/- with interest. He contended that the amount of Rs. 3,90,000/- was not a loan but part payment arising out of cancellation of an Agreement to Sell dated 17.12.2012 concerning a property transaction with the plaintiff's sister, and that the remaining agreed amount was not paid by the plaintiff.

(iii) In order to prove the RTGS transaction of Rs. 3,90,000/-, the plaintiff has relied upon Mark-A, i.e, a printout of his bank account statement. However, the said document is only a photocopy/printout and is not accompanied by a certificate U/s 65B of the Indian Evidence Act, and therefore, the same cannot be read in evidence.

(iv) Nonetheless, a perusal of the written statement filed by the defendant reveals that the defendant has admitted receipt of Rs. 3,90,000/- from the plaintiff through RTGS. The defence taken is that the said payment was made pursuant to cancellation of an Agreement to Sell dated 17.12.2012, and not as a loan.

(v) In considered opinion of this court once the receipt of Rs. 3,90,000/- stands admitted, the burden shifts upon the defendant to establish the nature of the transaction, i.e, that the amount was paid towards settlement of a prior property transaction and not as a loan. However, the defendant has failed to lead any evidence in support of this plea.

(vi) It is the case of the plaintiff that he advanced a total sum of Rs.

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6,25,000/- to the defendant, out of which Rs. 3,90,000/- was transferred through RTGS into the account of the defendant and the remaining amounts of Rs. 90,000/- and Rs. 1,45,000/- were paid in cash.

(vii) However, insofar as the cash payments of Rs. 90,000/- and Rs. 1,45,000/- are concerned, the plaintiff has not placed on record any receipt or documentary proof evidencing such transactions. The absence of any written acknowledgment or receipt assumes significance, particularly in the context of cash transactions.

(viii) In order to support his case, the plaintiff examined PW-2, Mr. Riaz Mohammed, who deposed by way of affidavit that the plaintiff had advanced sums of Rs. 90,000/- and Rs. 1,40,000/- on 21.07.2016 and 30.07.2016, respectively, and that he had accompanied the plaintiff at the relevant time. However, a careful perusal of his testimony reveals that PW-2 has not specifically stated as to whom the said amounts were paid.

(ix) Furthermore, there are material inconsistencies between the testimony of PW-2 and that of the plaintiff, inasmuch as the plaintiff claims to have paid Rs. 1,45,000/-, whereas PW-2 refers to Rs. 1,40,000/-. These discrepancies, coupled with the absence of documentary evidence, render the version of the plaintiff qua the cash payments doubtful and unworthy of reliance.

(x) It is a settled principle of law that merely because the defendant has failed to cross-examine the plaintiff and his witnesses, or has been proceeded ex-parte, the plaintiff is not automatically entitled to a decree. The plaintiff must independently establish his case on the strength of his own evidence.

(xi) In view of the aforesaid discussion, this Court is of the considered view that the plaintiff has been able to prove advancement of Rs. 3,90,000/- only. The claim regarding the remaining cash is not proved. Accordingly, the plaintiff is held entitled to recovery of Rs. 3,90,000/- from the defendant. This issue is decided accordingly.

ISSUE No. 2: **Whether the plaintiff is entitled to any interest, if yes, at what rate and for what period? OPP**

(i) The plaintiff has claimed interest @ 24% per annum for the pre-suit period as well as pendente-lite and future interest. However, no agreement or document has been placed on record to show that there was any stipulation between the parties regarding payment of interest at the said rate. In the absence of any contractual stipulation, the plaintiff is not entitled to pre-suit interest.

(ii) However, considering the admission made by the defendant in written statement qua the amount of Rs. 3,90,000/-, the plaintiff is entitled to reasonable interest for the period i.e, from filing of the suit till realization of the decreetal amount. This Court deems it appropriate to award interest @ 6% per annum, which is in consonance with prevailing bank deposit rates. This issue is decided accordingly.

Relief

In view of the above discussion, the suit of the plaintiff is accordingly decreed against the defendant for a sum of Rs. 3,90,000/- along-with simple interest @ 6% per annum from the date of filing of this suit till the date of realization of entire decreetal amount.

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Parties to bear their costs.

Decree sheet be prepared accordingly.

File be consigned to record room as per rules.

Announced in the open
Court on 02.06.2026

(Hem Singh)
District Judge-01
(East)/KKD/Delhi

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