

**IN THE COURT OF SH BALWANT RAI BANSAL,**  
**ADDITIONAL DISTRICT JUDGE-05, SOUTH WEST**  
**DWARKA COURTS, NEW DELHI**

**Civil Suit No. 284/18**

**Sh. Sanjeev Bindra**

R/o 5060 Everst Lane,  
North PlyMouth,  
Minnesota – 55446 (USA)  
Acting through

**Special Power of Attorney Holder**

**Sh. Jagdish Kumar Batra,**

S/o Late Sh. Dewan Chand Batra,  
R/o E-487, Greater Kailash – II,  
New Delhi – 110048.

**..... Plaintiff**

**Versus**

**1. Sh. Navneet Bhatia**

R/o Flat No. 9, Maya Apartment,  
Vikaspuri, New Delhi – 110018

Office at: Punyashiv Clothing Pvt. Ltd.  
107, 2<sup>nd</sup> Floor, Engineers Enclave,  
Pitampura, New Delhi – 110034.

**..... Defendant No. 1**

**2. Sh. Raja Vaneet Bhatia**

R/o MG-1/172, Vikaspuri,  
New Delhi – 110018

Office at: Punyashiv Clothing Pvt. Ltd.  
107, 2<sup>nd</sup> Floor, Engineers Enclave,  
Pitampura, New Delhi – 110034.

**..... Defendant No. 2**

**SUIT FOR RECOVERY OF RS. 41,70,000/-**  
**(RUPEES FORTY ONE LACS SEVENTY THOUSAND ONLY)**

|  |          |                     |
|--|----------|---------------------|
| <b>(a) Date of institution</b>         | <b>:</b> | <b>21.03.2018</b>   |
| <b>(b) Date when judgment reserved</b> | <b>:</b> | <b>Not reserved</b> |
| <b>(c) Date of Judgment</b>            | <b>:</b> | <b>02.04.2019</b>   |

**EX-PARTE JUDGMENT:-**

1. Vide this judgment I shall dispose of the present suit filed by the plaintiff against the defendant for recovery of Rs. 41,70,000/- alongwith pendente lite and future interest @ 24% per annum from filing of the suit till realization of the decretal amount.
2. The case of the plaintiff as averred in the plaint is summarized as under: -
  - 2.1. The plaintiff is currently residing in the United States of America and has authorized Sh. Jagdish Kumar Batra vide Special Power of Attorney dated 15.02.2018 to verify, sign and file the present suit and act on his behalf.
  - 2.2. Both the defendants, namely, Sh. Navneet Bhatia and Sh. Raja Bhatia are brothers and personally know the plaintiff for many years since 1990's before the plaintiff shifted to USA for work.
  - 2.3. In August 2014, the defendants approached the plaintiff and representing themselves to be under severe financial and emotional distress requested the plaintiff to extend a person loan to them for their personal and business needs. They assured the plaintiff that the loan amount shall be repaid within a period of approximately

8 months from the date of disbursement i.e. 31.03.2015.

2.4. The plaintiff in good faith agreed to extend a personal loan of Rs. 46,00,000/- to the defendants and as per their instructions, the plaintiff on 08.08.2014 electronically transferred via NEFT, the debt amount of Rs. 46,00,000/- from his account in Citi Bank to the account of defendant no. 1 Sh. Navneet Bhatia in HDFC Bank, subject to a clear understanding that the entire debt amount shall be repaid by the defendants on or before 31.03.2015 without any delay.

2.5. The aforesaid understanding and the receipt of the debt amount was reduced in writing on 08.08.2014, wherein the defendants provided an express undertaking to the plaintiff acknowledging the receipt of the debt amount. As per the said undertaking, the defendants through defendant no. 1 acknowledged the receipt of debt amount and they also explicitly agreed and committed to repay the same on or before due date i.e. 31.03.2015. The defendant no. 1 signed/executed the undertaking for the reason that the debt amount was transferred in his account by the plaintiff, which eventually was utilized by both the defendants.

2.6. The defendant no. 1 in addition to the aforesaid understanding, also furnished a security in the form of a post dated cheque No. 000010 dated 15.03.2015 for Rs. 46,00,000/-.

2.7. The plaintiff was under the honest belief that the defendants would repay the debt amount by the due date, but they failed to repay the debt amount by the due date despite expressly undertaking to do so.

2.8. The plaintiff repeatedly requested the defendants on several occasions to repay the debt amount but on every occasions they sought time to repay the debt amount. In the absence of any sign of repayment, the plaintiff decided to encash the post dated cheque furnished as security for the loan amount. On this, the defendants reassured the plaintiff of the repayment of the debt amount and sought one last opportunity for the same. Believing such assurance to be true, the plaintiff did not encash the cheque.

2.9. However, the defendants yet again failed to honour their commitment despite the lapse of due date. The plaintiff through repeated requests and reminders called upon the defendants to repay the debt amount but the defendants willfully ignored the lawful demand of the plaintiff.

2.10. Upon persistent reminders by the plaintiff, after a period of 2 years from the due date, the defendants while acknowledging their liability of the payment of the debt amount of Rs. 46,00,000/-, unilaterally made a small payment of Rs. 4,00,000/- on 20.02.2017 and Rs. 30,000/- on 23.02.2017 in the bank account of the plaintiff vide electronic transfer (NEFT) from defendant no. 1's account. However, the defendants failed to make the complete payment of debt amount despite repeated requests of the plaintiff.

2.11. The plaintiff ultimately issued a legal notice dated 14.10.2017 calling upon the defendants to repay the complete debt amount along with interest from 31.03.2015 within 10 days but the defendants ignored the same and even did not bother to respond the

same. The defendants though via Whatsapp messages to the plaintiff have expressly acknowledged in writing the obligation of payment of the outstanding debt amount to the plaintiff but they failed to do so. Hence, the present suit.

2.12. The plaintiff has prayed for passing a decree in his favour and against the defendants for a sum of Rs. 41,70,000/- along with interest @ 18% per annum on the principal amount of Rs. 46,00,000/- from 31.03.2015 till February 2017 and on Rs. 41,70,000/- from February 2017 till the date of filing of the suit and future and pendentlite interest @ 24% per annum.

3. It is pertinent to mention here that initially the present suit was filed by the plaintiff under Order XXXVII CPC as a summary suit against the defendants, but subsequently on the submissions of Ld. Counsel for the plaintiff, *the present suit was treated as an ordinary suit vide order dated 11.03.2019.*

4. The defendants were directed to be served with the summons of the suit vide order dated 26.03.2018. The defendants could not be served through ordinary process and on an application moved by the plaintiff under Order V rule 20 CPC, the defendants were directed to be served by way of publication in the newspaper vide order dated 10.09.2018. The defendants were served by way of publication in the newspapers “Veer Arjun” (Hindi) on 28.09.2018 and “The Statesman” (English) on 02.10.2018, but despite service, *the defendants failed to appear in the court and accordingly they were proceeded ex-parte vide order dated 11.03.2019* and the matter was

proceeded for ex-parte evidence by the plaintiff.

5. In order to prove its case, the plaintiff examined its Authorized Representative/Special Power of Attorney Sh. Jagdish Kumar Batra as PW-1, who filed his evidence by way of affidavit which is Ex.PW1/A, wherein he reiterated the averments made in the plaint. During his deposition, PW-1 has relied upon and exhibited the following documents:-

- Ex. PW1/1* : *Special Power of Attorney dated 15.02.2018 executed by the plaintiff*
- Ex. PW1/2* : *Company master data of the defendants' company*
- Ex. PW1/3* : *Certified copy of plaintiff's bank account statement for the period 01.04.2014 to 31.03.2015*
- Ex. PW1/4* : *Original signed undertaking issued by defendant no. 1*
- Ex. PW1/5* : *Original post dated cheque issued by defendant no. 1 dated 15.03.2015*
- Ex. PW1/6* : *Certified copy of plaintiff's bank account statement for the period April 2016 to February 2018*
- Ex. PW1/7* : *Office copy of legal notice dated 14.10.2017*
- Ex. PW1/8* : *Printout of the WhatsApp messages sent by the defendants to the plaintiff along with certificate u/s 65B of Indian Evidence Act.*

6. I have heard the Ld. Counsel for the plaintiff and perused the record carefully.

7. The plaintiff by way of present suit is seeking recovery of Rs. 41,70,000/- from the defendants on the ground that he granted a friendly loan to the defendants for a sum of Rs. 46,00,000/- subject to the undertaking given by the defendant no. 1 that the loan amount would be paid on or before due date i.e 31.03.2015 but the defendants failed to do so. The defendants after two years of the due date made payment of Rs. 4,30,000/- towards the repayment of the loan amount and after adjusting the said amount, the defendants are liable to pay the balance loan amount of Rs. 41,70,000/- along with interest.
8. The plaintiff has examined his Special Power of Attorney (SPA) Sh. Jagdish Kumar Batra as PW-1 in support of his case, who in his evidence has deposed as per the averments made in the plaint and has also placed on record the relevant documents to prove the same. The testimony of PW-1 Sh. Jagdish Kumar Batra has gone unrebutted and unchallenged as the defendants chose not to contest the case. Therefore, there is no reason to disbelieve the testimony of PW-1.
9. From the un-rebutted and un-challenged testimony of PW-1 and the documents placed on record by him, it stands proved vide Ex. PW1/1 that he has been duly authorized by the plaintiff to file the present suit and to depose in the Court on behalf of the plaintiff. It further stands proved that the plaintiff had advanced a loan of Rs. 46,00,000/- to the defendant no. 1 on 08.08.2014 by electronically transferring the said amount via NEFT from his bank account to the bank account of defendant no. 1, which is evident from the bank

account statement of the plaintiff Ex.PW1/3. The defendant no. 1 also acknowledged the receipt of the loan amount of Rs 46,00,000/- from the plaintiff vide Undertaking/Certificate Ex.PW1/4 and also undertook to repay the said loan amount to the plaintiff on or before 31.03.2015. Apart from the Undertaking/Certificate Ex.PW1/4, the defendant no. 1 also issued a post dated 15.03.2015 cheque equivalent to the loan amount i.e. of Rs. 46,00,000/- Ex.PW1/5 as a security towards repayment of loan amount. From the uncontroverted and unchallenged testimony of PW-1, it also stands proved that the loan amount was not repaid by the due date i.e. 31.03.2015 as agreed by defendant no. 1 vide Undertaking/certificate Ex.PW1/4. From the bank account statement of the plaintiff Ex.PW1/6, it is apparent that the defendant no. 1 made payment of Rs. 4,00,000/- on 20.02.2017 and Rs. 30,000/- on 23.02.2017 in the bank account of the plaintiff via NEFT and thereafter, no payment was made by the defendant no. 1. After adjusting the amount of Rs. 4,30,000/- paid by defendant no. 1 towards the loan repayment, an outstanding balance of Rs. 41,70,000/- is due against the defendant no. 1. The plaintiff got issued a legal notice dated 14.10.2017 Ex.PW1/7 to the defendants asking them to make the complete payment but in vain.

10. In view of above, since despite issuance of legal notice Ex.PW1/7, the defendant no. 1 has failed to make the balance loan amount of Rs. 41,70,000/-, the plaintiff is entitled to recover the said amount from the defendant no. 1. So far as the role of defendant no. 2 is concerned, the plaintiff though has claimed that loan was advanced

by him to both the defendants but not a single document has been placed on record to prove the same. Rather from the documents placed on record by the plaintiff, it has come on record that the plaintiff had transferred the loan amount in the account of defendant no. 1. From the Undertaking/Certificate Ex.PW1/4 also, it is evident that it was the defendant no. 1 who alone had taken the loan from the plaintiff and he alone undertook to repay the same. The same does not bear the signature of defendant no. 2. Further, the part payment towards the repayment of loan amount has been made by defendant no. 1 from his bank account. There is also not a single document which suggests that the defendant no. 2 stood guarantor for defendant no. 1 for repayment of loan amount. ***In the absence of any documentary evidence against the defendant no. 2, no case is made out against him and he cannot be fastened with the liability of defendant no. 1 to repay the loan amount. Hence, the suit is liable to be decreed against the defendant no. 1 only.***

11. So far as the interest claimed by the plaintiff is concerned, since the defendant no. 1 has failed to repay the loan amount of Rs. 46,00,000/- by the due date i.e. 31.03.2015 as agreed by him vide Undertaking Ex.PW1/4 and made the part payment of Rs.4,30,000/- in February 2017 i.e. after about two years of the due date and till then withheld the payment of loan amount, the defendant no. 1 is liable to pay the interest on the principal amount of Rs.46,00,000/- from 01.04.2015 till February 2017. Further, after making the part payment of Rs. 4,30,000/-, the defendant no. 1 did not

make the payment of balance loan amount of Rs. 41,70,000/- despite issuance of legal notice, the plaintiff is entitled to interest on the balance amount of Rs. 41,70,000/- from February 2017 till the date of filing the suit. However, the interest claimed by the plaintiff @ 18 % p.a. on principal amount of Rs. 46,00,000/- and 24% on the balance amount of Rs. 41,70,000/- appears to be on higher side in the absence of any agreement in this regard between the parties and to meet the ends of justice, the plaintiff is awarded interest @ 9% per annum.

12. Accordingly, the suit of the plaintiff is decreed in favour of the plaintiff and against the defendant no. 1 for a sum of Rs. 41,70,000/- along with interest @ 9% per annum on the principal loan amount of Rs. 46,00,000/- w.e.f. 01.04.2015 till February 2017 and @ 9% on the balance amount of Rs. 41,70,000/- from March 2017 till filing of the suit. The plaintiff is also awarded pendente lite and future interest on the balance amount at the same rate from the date of institution of the suit till realization of the decretal amount. The cost of the suit is also awarded to the plaintiff. Decree sheet be prepared accordingly.

File be consigned to Record-Room after necessary compliance.

**Announced in open Court  
on 2<sup>nd</sup> April, 2019**

**(Balwant Rai Bansal)  
Addl. District Judge -05 (South-West)  
Dwarka Courts, New Delhi**