

**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE/
GUARDIAN JUDGE / JUDGE SMALL CAUSE COURT: NORTH
EAST DISTRICT, KARKARDOOMA COURTS, DELHI.**

Presided by: Sh. Sujit Saurabh

Civil Suit No. 605/22

MAHESH Vs. JAVED HUSSAIN

Mahesh

S/o Sh. Tika Ram

R/o J-82, J-Block, New Seelampur,

North-East, Delhi-110053

..... Plaintiff

VERSUS

Javed Hussain

S/o Sh. Nabi Hussain

R/o J-76, J-Block, New Seelampur,

Delhi-110053

.....Defendant

Date of Institution of the Suit : 27.10.2022

Date of Judgment : 01.03.2023

Decision : Suit decreed

**SUIT UNDER ORDER XXXVII OF THE CODE OF CIVIL
PROCEDURE, 1908 FOR RECOVERY OF Rs.90,000/- (RUPEES
NINETY THOUSAND ONLY)**

JUDGMENT

1. This is a Suit for recovery of Rs.90,000/- (Rupees ninety thousand only). The plaintiff has filed the suit u/O 37 of The Code of Civil Procedure, 1908 (in short, 'CPC') on the basis of Agreement dated 29.11.2021.

2. Brief facts as set out in the plaint are as follows:

The plaintiff and the defendant are stated to be known to each other. The defendant took a friendly loan of Rs.90,000/- (Rupees ninety thousand only) in cash from the plaintiff for his business work with a promise to make payment within few days. An agreement dated 29.11.2021 was executed between the parties regarding the loan. As per terms and conditions of the agreement, the defendant had agreed to hand-over his bike make Bajaj Pulsar with registration No. DL-6SBF-7829 to the plaintiff as mortgage. However, the defendant neither returned the loan amount to the plaintiff nor transferred registration certificate of the aforesaid vehicle in the name of the plaintiff. The plaintiff served a demand notice dated 05.09.2022 upon the defendant. However, the defendant failed to make payment to the plaintiff. On these averments, the plaintiff has filed the instant suit for recovery of Rs.90,000/-.

3. I have heard arguments on behalf of the plaintiff.

4. Vide order dated 25.01.2023, summons in prescribed form were issued to the defendant. The summons received back served. As per report of process server, the summons were served on 08.02.2023. However, the defendant has not entered appearance yet. Apparently, the statutory time limit of 10 days for entering appearance by the defendant has already elapsed. Hence, the plaintiff has become entitled for decree in terms of Order 37 Rule 2(3) of CPC.

5. The plaintiff has filed documents *interalia* original Agreement / Ikrarnama dated 29.11.2021 and office copy of legal notice dated 05.09.2022 addressed to the defendant.

6. The Agreement dated 29.11.2021 is between Sh. Mahesh S/o Sh. Tika Ram i.e. the plaintiff and Sh. Javed Hussain S/o Sh. Nabi Hussain i.e. the defendant. The Agreement is Notarized and same has been attested by two attesting witnesses. As per para No.1 of the agreement, the defendant had taken Rs.90,000/- in cash from the plaintiff on 29.11.2021. As per para No.3 of the agreement, the defendant was supposed to return the aforesaid amount to the plaintiff on 14.12.2021.

7. I have considered materials on record. The plaint of the plaintiff as well as documents filed by him remained unchallenged. There is no reason to disbelieve the case of the plaintiff. Hence, the plaintiff is held entitled to decree of Rs.90,000/- as claimed.

8. The plaintiff has claimed interest @ 24% per annum. In my considered opinion, the rate of interest as claimed by the plaintiff is exorbitant. Considering the prevailing economic situation and bank rate, interest @ 10% per annum would meet the ends of justice.

9. Accordingly, the suit of the plaintiff is decreed. The defendant is held liable to pay Rs.90,000/- (Rupees ninety thousand only) along with simple interest @ 10% per annum from the date of institution of the suit till realization of the decretal amount.

10. Cost of the suit is awarded in favour of the plaintiff and against the defendant.

11. Deficient Court fee, if any be paid by the plaintiff before execution of the decree. Copy of the decree sheet shall be supplied to the plaintiff only after payment of deficient Court fee, if any.

12. Decree sheet be prepared in terms of the relief granted.

**Announced in the open court
today i.e. 01.03.2023**

**(SUJIT SAURABH)
ASCJ/GJ/JSCC-North East
Karkardooma Courts, Delhi
01.03.2023**