

**IN THE COURT OF SHRI NAVEEN KUMAR-I, CIVIL JUDGE
(JUNIOR DIVISION), FARIDABAD (UID:HR0461)**

HRFB020037932023



C.I.S. No. : CS/2618/2023.
C.N.R. No. : HRFB020037932023.
Date of Institution : 19.08.2023.
Date of Decision : 11.09.2024 (11th September, 2024).
Duration : 1 years, 0 months, 23 days.

Ashok Kumar S/o. Sh. Jagram, R/o. Village Bhatola, Tehsil & District
Faridabad, Haryana.

.....Plaintiff.

VERSUS

Kapil S/o. Sh. Ashok Kumar R/o. Village Bhatola, Near Hanuman Mandir,
Shamshan Ghat Rasta, Tehsil & District Faridabad, Haryana.

.....Defendant.

Suit for Recovery of Rs. 5,00,000/-

Present:- Ms. Sandhya Gupta, Advocate for plaintiff.
Defendant proceeded against ex-parte vide Order dated
28.11.2023.

J U D G M E N T :

The present suit has been filed by the plaintiff seeking a
decree for recovery of Rs. 5,00,000/- alongwith interest @ 24% per
annum against the defendant from the date of institution of suit till
realization of decretal amount as a whole.

2. In brief, it is averred that in the month of December, 2022 the
plaintiff's son i.e. defendant was in need of Rs. 5,00,000/- for business

purpose and requested financial help from him. On the request of his son i.e. defendant, he paid an amount of Rs. 5,00,000/- vide cheque bearing No. 659962 dated 11.12.2022 drawn by Sarva Haryana Gramin Bank, Tigaon Branch, Faridabad from his savings account bearing No. 77190100027744 without any interest. The said cheque was encashed on 13.12.2022. The defendant used the said money for his own purpose but has not returned the same to him till date. The plaintiff requested many times to defendant to make payment of above-said outstanding amount but he delayed the matter on one pretext or the other. The plaintiff had also issued a legal notice dated 29.07.2023 to the defendant through registered post to make the payment of Rs. 5,00,000/- but after receiving the said notice the defendant sent a false and frivolous reply dated 10.08.2023 which was received by him on 12.08.2024 the defendant did not pay any amount to him. Hence, the plaintiff has construed to file the present suit.

3. Upon notice, the defendant failed to put his appearance despite due and proper service through registered post and resultantly, he was proceeded against *ex-parte* vide order dated 28.11.2023.

4. In order to prove its case, the plaintiff Ashok Kumar has examined himself as PW1 who tendered his **affidavit Ex. PW1/A reiterating the averments of the plaint**. The plaintiff has also tendered the following documents into his evidence :-

Ex. P1: Copy of bank passbook of plaintiff.

Ex. P2: Copy of legal notice dated 29.07.2023.

Ex. P3: Original postal receipt.

Ex. P4: Copy of reply dated 10.08.2023 to legal notice dated 29.07.2023 given by defendant.

Ex. P5: Copy of Aadhar Card of plaintiff.

Thereafter, plaintiff has closed his *ex-parte* evidence, vide making a separate statement to this effect.

5. I have given the thoughtful consideration to the contentions raised by Ld. counsel for plaintiff and have gone through the records very carefully and minutely.

6. After hearing Ld. counsel for plaintiff and having gone through the case file particularly the documentary evidence carefully, it is observed that the fact of borrowing the amount of Rs. 5,00,000/- from the plaintiff by the defendant is duly proved from the account statement of the plaintiff (Ex. P1). As per said account statement, the plaintiff has transferred Rs. 5,00,000/- through cheque No. 659962 dated 11.12.2022 to his son i.e. defendant on 13.12.2022. Admittedly, the plaintiff is the father of the defendant. Furthermore, when the defendant failed to pay the outstanding amount to the plaintiff then he has construed to serve a legal notice dated 29.07.2023 (Ex. P2). However, instead of clearing the outstanding amount the defendant had sent a reply dated 10.08.2023 (Ex. P4) to the plaintiff. In said reply, the defendant has taken the contention that the said amount of Rs. 5,00,000/- was spent in construction of residential house at the instructions and asking of the plaintiff only and the plaintiff is residing over the said house and some portion has also been rented out by the plaintiff. However, in support of said construction being

taken in the reply dated 10.08.2023, the defendant has neither filed his written statement nor led any evidence to controvert the pleadings/case of the plaintiff. Furthermore, no proof of alleged spending of Rs. 5,00,000/- in construction work has been sent long with said reply.

7. Further, if the defendant could not have any liability towards the plaintiff then no circumstance had arisen for him to send the reply dated 10.08.2023 to the plaintiff. Furthermore, defendant has not come forward to contest the present suit and in this manner, the purpose of transferring the amount of Rs. 5,00,000/- through legal transactions by the plaintiff directly into the bank account of the defendant shall be presumed to have been given for the business purposes of the defendant.

8. In the opinion of the court, the documentary evidence relied upon by the plaintiff manifest and support its claim and contention and nothing has been left to be proved. The defendant has substantially admitted the claim of the plaintiff by not appearing before the court and to rebut the contentions of the plaintiff. A perusal of above detailed documentary evidence specifically clears and proves the facts of the advancement of loan of Rs. 5,00,000/- through bank transfer to the defendant but he failed to repay the same. Since the defendant has not specifically denied about the outstanding due amount and neither any evidence has been lead by the defendant to rebut the claim of the plaintiff, then in such circumstances, it is proved on the record that the defendant has not paid the due outstanding amount of Rs. 5,00,000/- plus interest to the plaintiff.

9. Further, there is nothing on record which could show that the defendant has never borrowed the said amount from the plaintiff and the outstanding amount alleged by the plaintiff is not due towards him. There is nothing on record which could show as to why the unrebutted statement of the plaintiff be not accepted. The defendant has not appeared into the witness box to prove his stand and to rebut the contentions of the plaintiff. The evidence led by the plaintiff could not be rebutted and therefore, same goes unchallenged and by relying upon the oral as well as documentary evidence placed on record by the plaintiff, this Court has arrived to the conclusion that it is certainly entitled to the decree for recovery of an amount of Rs. 5,00,000/- along with certain future interest from the defendant.

RELIEF :-

10. As a sequel to afore-said discussion, **the suit of the plaintiff succeeds and the same is hereby decreed ex-parte with costs to the effect that the defendant is directed to make the payment of outstanding amount of Rs. 5,00,000/- along with future interest @ 6% per annum from the date of filing of present suit till its realization to the plaintiff within two months from today, failing which the plaintiff shall be at liberty to recover the aforesaid amount from the defendant by way of filing an execution, through the agency of Court. Decree-sheet be drawn accordingly. File by consigned to record room after due compliance.**

Before consigning the file to record room, the Civil Ahlmad is

directed to ensure that 'Nathi A' and 'Nathi B' part of the file are separated. She shall present the file to the reader to this court within 3 days who shall personally check and ensure that the papers required to be kept in 'Nathi A' and 'Nathi B' are in order. She shall append a certificate with the file to this effect which is also shown to be and signed by me.

Pronounced in open Court:

Dated: 11.09.2024

Naveen Kumar-I,
Civil Judge (Jr. Divn.),
Faridabad. UID:HR0461

Note:- All the **Six Pages** of this Judgment have been
Checked and signed by me.

Naveen Kumar-I,
Civil Judge (Jr. Divn.),
Faridabad. 11.09.2024.

Tushar Kumar
Stenographer