

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil First Appeal No. 872/2025

Damodar Prasad S/o Radhakishan, Aged About 50 Years, R/o
Lakhotia Bas, Nokha, District Bikaner

----Appellant

Versus

1. Meena Bagri W/o Late Shri Kishan, R/o Sujangarh Road
Bagri Complex Nokha District Bikaner
2. Surbhi D/o Late Shri Kishan, R/o Sujangarh Road Bagri
Complex Nokha District Bikaner
3. Sinomi D/o Late Shri Kishan, R/o Sujangarh Road Bagri
Nokha District Bikaner
4. Mahima D/o Late Shri Kishan, R/o Sujangarh Road Bagri
Complex Nokha District Bikaner

----Respondents

For Appellant(s)	:	Mr. Kaushal Gautam
For Respondent(s)	:	Mr. J.K. Bhaiya with Mr. Mayank Bhaiya

HON'BLE MS. JUSTICE REKHA BORANA

Order

23/03/2026

1. The present regular first appeal has been filed against Judgment & Decree dated 19.05.2025 passed by Additional District Judge, Nokha, District Bikaner (hereinafter referred to as 'the Trial Court') in Civil Original Suit No.55/2022 (CIS No.51/2021) whereby the suit for recovery of an amount of Rs. 50,50,515/- as filed by the plaintiffs, stood decreed for an amount of Rs.33,50,000/- with interest @ 6% per annum.
2. The facts as pleaded in the plaint are that Shri Kishan, deceased husband of plaintiff No.1 awarded a personal loan to the defendant for an amount of Rs.67,00,000/-. The said amount was

transferred to the account of the defendant vide digital transactions of different dates. As per the plaintiff, it was agreed between the parties that interest @ 12% per annum would be paid by the defendant on the said amount. However, before the amount could be paid, husband/father of the plaintiffs expired on 05.12.2018. After his death, the plaintiffs made a request to the defendant for repayment of the loan amount and the defendant even repaid Rs.16,75,000/- on 04.03.2020 and Rs.16,75,000/- on 05.03.2020 vide digital transactions. However, the remaining amount remained unpaid and despite continuous requests, when the same was not paid, registered notice dated 19.12.2020 was served on the defendant. When the defendant failed to repay the amount despite service of notice, the suit in question was filed.

3. The case of the defendant was that the complete amount remained paid to the plaintiffs. As admitted by plaintiff No.1 herself, an amount of Rs.33,50,000/- was paid through digital transactions. So far as the remaining amount is concerned, the same was paid to Vikash Toshniwal, Kanhaiyalal Chhipa, Raju Godara, Gopal Chhipa, Mahesh Kumar Pareek and Kailash Pareek in lieu of the construction work undertaken by them on the property of Shri Kishan, at the request and direction of Shri Kishan himself. The receipts qua the amount, as issued by the said persons were exhibited on record.

4. It was further averred by the defendant that Rs.1,00,000/- in cash was paid to plaintiff No.1 when her husband was hospitalised and further Rs.4,00,000/- was paid after the death of her husband. It was hence averred that the complete amount was paid and no amount remained due.

5. The learned Trial Court, on basis of the pleadings made by the parties, proceeded on to frame the following five issues:

"1— आया वादिया के पति स्व.श्रीकिसन बागड़ी द्वारा प्रतिवादी को 67,00,000/— रुपये उधार दिये गये जिसमें प्रतिवादी द्वारा 33,50,000/— रुपये का भुगतान किया। शेष रकम बावजूद तकाजा अदा नहीं की गई?

—वादीगण

2— आया वादिया के पति स्व.श्रीकिसन बागड़ी व प्रतिवादी के मध्य राशि उधार देते समय 12 प्रतिशत की वार्षिक दर से ब्याज देना तय हुआ?

—वादीगण

3— आया वादिया का वाद परिसीमा अवधि व्यतीत होने के बाद प्रस्तुत होने से राशि विधिनुसार वसूलनीय नहीं है?

— प्रतिवादी

4— आया प्रतिवादी द्वारा वादिया के पति के निर्देश पर विकास तोषनिवाल को तीन लाख रुपये, कन्हैयालाल छींपा को आठ लाख पचास हजार रुपये, राजू गोदारा को तीन लाख रुपये, गोपाल छींपा को तीन लाख रुपये, महेश कुमार पारीक को पांच लाख रुपये, कैलाश पारीक को पांच लाख रुपये अदा किये एवं इसके साथ ही स्व.श्रीकिसन बागड़ी को हार्ट अटैक हुआ तब वादिया को एक लाख रुपये नकद एवं बारह दिवस की अवधि में चार लाख रुपये नकद अदा करके हिसाब पूर्ण कर दिया?

—प्रतिवादी

5— अनुतोष?"

6. After hearing the parties and evaluating the evidence, the learned Trial Court proceeded on to decide issue No.1 in favour of

the plaintiff, issue No.2 against the plaintiff, and issue Nos. 3 & 4 against the defendants.

7. Counsel for the appellant submits that the learned Trial Court erroneously decided issue No.1 in favour of the plaintiffs and issue No.4 against the defendant whereas it was evident on record that some part of the due amount was paid to other persons qua the construction work of Shri Kishan. The said persons even entered the witness box and admitted the fact of payment to them by the defendant. Documentary evidence (Exhibits A/1 to A/4) was also led on the said aspect. Despite the said admitted evidence, the learned Trial Court erroneously held that the defendant failed to prove issue No.4, the burden of which was on him.

8. Counsel for the appellant also raised an argument to the effect that one property was sold out by Shri Kishan to the wife of the defendant. Had there been any dispute between the parties regarding the due amount, Shri Kishan definitely would not have executed any sale deed in favour of the defendant's wife. Further, had there been any dispute in existence, the same would even have been recorded in the sale deed.

9. Per contra, counsel for the respondents submits that the findings as recorded by the learned Trial Court on issue Nos.1 and 4 are in total consonance with the documentary evidence as available on record and hence, does not deserve any interference by this Court.

10. Heard the Counsels. Perused the record.

Issue No.1 & 4:

11. Both these issues being co-related, are being adjudicated together.

12. The fact of an amount of Rs. 67 lacs been lent to the defendant by the husband of plaintiff No.1 is not disputed. A part payment of the same, valuing to Rs.37,50,000/-, by the defendant to plaintiff No.1 is also not disputed. The dispute is qua the remaining principle amount of Rs. 33,50,000/- and interest thereupon. The whole case of the defendant is that the remaining amount was also repaid by him although not directly to Shri Kishan or his wife but to the other persons on the instructions of Shri Kishan. The said amount was paid to the artisan/contractor/electricity contractor etc. qua the work undertaken by them on the under construction premise of Shri Kishan.

13. The issue therefore is - Whether the burden to prove the said transactions was discharged by the defendant?

14. A bare perusal of the cross-examination of the defendant (DW-1) reflects that he specifically admitted that no document reflecting any such payment was got exhibited by him. Although he deposed that all the said payments were entered by him in his account books/income tax documents qua the account of Shri Kishan, but then, no such accounts/income tax record was exhibited. Further, the defendant specifically admitted that he did not remember the dates and time when Vikash Toshniwal, Gopal Chhipa, Kanhaiyalal Chhipa and Mahesh Kumar Pareek undertook the work on the property of Shri Kishan. Furthermore, the defendant specifically admitted that all the alleged receipts i.e. Exhibit Nos.A/1 to A/4 were printed from the same computer and the dates on each of the receipts had been entered subsequently

and the said dates were handwritten. Defendant (DW-1) specifically deposed and admitted as under:

“यह कहना सही है कि प्रदर्श ए1 लगायत ए4 की रसीदें एक ही कमप्यूटर पर छपी है। आजखुद कहा कि क्योंकि ऑफिस में एक ही कमप्यूटर होता है। यह कहना सही है कि प्रदर्श ए3 में मार्क एक्स व वाई तारीखें हाथ से लिखी हुई है। यह कहना सही है कि ए3 में मार्क एक्स व वाई स्थान में लघु हस्ताक्षर नहीं किये है। यह सही है कि प्रदर्श ए3 का मेटर टाईप होने के बाद एक्स व वाई स्थान पर तारीखें हाथ से लिखी है। यह कहना सही है कि प्रदर्श ए3 में जेड स्थान पर तारीख भी बाद में हाथ से लिखी गई है। प्रदर्श ए3 में तारीखें बाद में हाथ से क्यों लिखी मुझे आज याद नहीं है। यह कहना सही है कि विकास तोषनीवाल ने मुझे श्रीकिशन बागड़ी के बकाया बाबत नोटिस नहीं दिया। आजखुद कहा कि मैंने श्रीकिशन बागड़ी के कहने से पेमेंट किया। यह कहना सही है कि प्रदर्श ए1, व ए4 में मार्क एक्स तारीखें हाथ से रसीद होने के बाद लिखी गई है।”

15. The most relevant aspect is that although the defendant deposed that, part of the amount to the above persons was paid through account payee cheques, his bank account statement reflecting the same was not exhibited. The bank account statement of the defendant could have been the best evidence to prove the transactions, if any, made in favour of the persons as alleged by him. The non-production of the said statement and further, of any account details or income tax return, are sufficient enough to take an adverse inference against the defendant.

16. One more relevant aspect which deserves consideration is that the property qua the construction of which, the amount has

been averred by the defendant to have been paid to the above persons, was sold out by Shri Kishan to the wife of the defendant in the month of October 2018. Therefore, in absence of any specific date or time when the alleged amount was paid to the above persons, it cannot be concluded that the amount, even if any, was paid by the defendant qua the construction work undertaken by Shri Kishan and not qua any property/construction work undertaken by the defendant himself.

17. Coming on to evidence of the alleged persons to whom the amount was averred to have been paid by the defendant, so far as Vikash Toshniwal (DW-2) is concerned, he specifically admitted that he did not issue any receipt in favour of the defendant qua the alleged amount paid to him. Similar is the case of Kanhaiyalal Chhipa (D.W.4) who too specifically deposed that he did not issue any receipt qua the payment.

18. So far as the other witnesses are concerned, although they stated the amount to have been paid by Damodar Prasad, but they admitted that they did not remember the dates and the time when they undertook the construction/labour work on the property of Shri Kishan. Further, they admitted that they never called upon Shri Kishan to pay the due amount.

19. The learned Trial Court while taking into consideration the above statements of the defendant as well as the other defendant witnesses, specifically observed that the alleged repayment of the due amount of loan remained unproved and hence, the plaintiffs were entitled for a decree for the remaining amount.

20. In view of the above analysis, this Court is of the considered opinion that issue No.1 has rightly been decided by the learned

Trial Court in favour of the plaintiffs and issue No.4 has rightly been decided against the defendant. The plaintiffs have rightly been held entitled for the amount of Rs. 33,50,000/- with interest @ 6% per annum.

21. So far as the ground raised by counsel for the appellants to the effect that the sale deed was executed by Shri Kishan in favour of defendant's wife is concerned, it is undisputed on record that qua the said sale deed also a dispute arose between the parties and qua that too, a civil suit was filed by the present plaintiff. In the said suit proceedings, it is only after a compromise having entered into between the parties that the due consideration amount was paid by the defendant to the plaintiffs. Therefore, the said ground raised by counsel for the appellants also proves out to be fallacious.

Issue No.2:

22. So far as the interest @ 12% per annum as claimed by the plaintiffs is concerned, the learned Trial Court decided issue No.2 against the plaintiffs while holding that no such condition of the agreement was proved on record. No challenge to the finding on issue No.2 has been laid by the plaintiffs and hence, the finding thereby, is affirmed.

Issue No.3:

23. Similarly, no challenge to finding on issue No.3 has been laid by the appellant defendant and hence, the finding thereupon is also affirmed.

24. The findings on all the issues having been affirmed by this Court, no interference in Judgment & Decree dated 19.05.2025 is

called for. The same is hence, affirmed. As a consequence, the present first appeal stands **dismissed**.

25. Let the decree be drawn accordingly.

26. Stay petition and pending applications, if any, stand **disposed of**.

(REKHA BORANA),J

5-Arvind/-