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**(2000) 05 DEL CK 0048**

**In the Delhi High Court**

**Case No : S. No. 166/77**

Bharat Nidhi Limited

APPELLANT

Vs

Shital Prasad Jain

RESPONDENT

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**Date of Decision : 02-05-2000**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1  
Negotiable Instruments Act, 1881 (NI) — Section 4  
Stamp Act, 1899 — Article 49

**Citation :** (2000) 4 AD 485 : (2000) 54 DRJ 1

**Hon'ble Judges :** Kripa Shankar Gupta, J

**Bench :** Single Bench

**Advocate :** Sh. K.K. Jain and Sh. Rakesh Aggarwal, for the Appellant;

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## **Judgement**

K.S. Gupta, J.—plaintiff filed this suit inter alias alleging that it is a Public Limited Company incorporated under the Companies Act and carries on business of investment and finance. V.N. Bhasin is the Secretary of company and is authorised to file the suit. By a letter dated 14th December 1974 the defendant requested the Board of Directors of plaintiff company for a loan of Rs. 2 lacs. In the Board's meeting held on 21st December, 1974, loan in the said sum carrying interest @ 17% p.a. with monthly rest was sanctioned to the defendant. The plaintiff company thereafter advanced loan of Rs. 2 lacs to the defendant who in consideration thereof executed a promissory note dated 23rd December, 1974 and also a receipt dated 24th December 1974. It is alleged that the plaintiff had been issuing to the defendant on the expiry of every month the statement indicating the amount of interest due on loan amount. By a letter dated 8th January, 1976 it was brought to the notice of defendant by the plaintiff company that a sum of Rs.37,660.30 was outstanding by way of interest. On 16th October, 1976 the plaintiff through its advocate sent a notice to the defendant to pay the amount of Rs.2,69,767.80 due from it as on 1st October, 1976 within a period of two weeks of the receipt of that notice failing which suitable legal proceedings were to be initiated for recovery of the said amount. However, said notice was

received back undelivered. A sum of Rs. 2,85,557.35 inclusive of interest up to 31st January 1977 was due to the plaintiff company from the defendant which he has failed to pay despite repeated reminders. It is prayed that decree for recovery of Rs. 2,85,557.35 with interest pendente lite and future @ 17% may be passed in favor of the plaintiff company and against the defendant.

2. In the amended written statement by way of preliminary objections it is alleged that the suit is bad for non-joinder of Ashok Kumar Jain and Shanti Prasad Jain; that the document purported to be the promissory note, is not a promissory note nor is it stamped sufficiently; that the alleged promissory note is devoid of consideration and is not legally enforceable. On merits, although it is admitted that the plaintiff is an existing company within the meaning of Companies Act, 1956 but for want of knowledge it is denied that V.N. Bhasin is the Secretary thereof and competent to file the suit. It is further alleged that it was decided by said A.K. Jain and Shanti Prasad Jain on their behalf and on behalf of the plaintiff and PNB to pay certain amounts to the defendant in lieu of the services rendered by him in the past. Ashok K. Jain as Chairman of the plaintiff company told the defendant that the said amount of Rs. 2 lacs was to be shown ostensibly as loan for accounting convenience by the plaintiff but the same would never be recovered from him and written off. Ashok K. Jain further told the defendant to give certain writings including the purported promissory note and as directed by him, certain writings including the purported promissory note were executed in good faith by the defendant in favor of the plaintiff company. It is stated that the assurance to the said effect was also recorded in writings signed by Ashok Kumar Jain and handed over to the defendant. The same were also confirmed by said Shanti Prasad Jain. It is alleged that on the night of 8th June, 1975 a large number of armed persons entered into the house of defendant bearing No. 6, Hastings Park Road in Alipore, Calcutta and they forcibly opened the locked rooms, almirah etc and forcibly took away numerous documents which were in the possession of the defendant. The defendant had reason to believe that the raid at his house and attempt on his life on that night was a pre-arranged planning of said Ashok K. Jain and Shanti Prasad Jain. defendant thus instituted certain proceedings in the court of First Subordinate Judge, Alipore, criminal proceedings in the court of Executive Magistrate, Alipore, Calcutta and also in the Calcutta High Court against said Shanti Prasad Jain, Ashok K. Jain and their associates. Thereafter Sahu Shriyans Prasad Jain, Sahu Bajendra Prasad Jain and Sahu Ramesh Chandra Jain, common relatives of the parties approached the defendant and wanted him to withdraw the court proceedings to pave way for amicable settlement. Accordingly, the court proceedings were got withdrawn by the defendant. It is further alleged that the documents forcibly taken away on the night of 8th June, 1975 also included the writings referred to above executed by Ashok K. Jain. Liability to pay the suit amount is emphatically denied.

3. In the replication filed to the amended written statement, the plaintiff company has controverted the averments made therein besides reaffirming those

made in the plaint.

4. On the pleadings of the parties, the following issues were framed :-

1. Whether the plaint has been signed, verified and the suit instituted by a duly authorised person ? OPP

2. Whether the promissory note in suit is inadmissible in evidence because it is not properly stamped ? OPD

3. Whether the promissory note in suit is without consideration and otherwise unenforceable for the reasons stated in the written statement ? OPD

4. To what amount is the plaintiff entitled ?

5. Relief.

ISSUE NO. 1

5. It is in the deposition of V.N. Bhasin, PW-1 that he was the Secretary of plaintiff company from 1974 to 1977 when he retired. He was competent to do certain acts on behalf of the plaintiff company by the resolution passed by the Board of Directors. Ex. P-5 is the copy of resolution No. 19 dated 27th September, 1974 while Ex. P-6 is the copy of another resolution No. 21 dated 28th October 1976. The plaint has been signed and verified by him so is the vakalatnama. Statement of this witness to that said effect goes unchallenged as no question was put to him in cross-examination that either he was not the Secretary of the plaintiff company during the said period or the resolutions Nos. 19 and 21 were not passed by the Board of Directors of the plaintiff company. In terms of the resolution passed on 27th September, 1974 PW-1 was authorised generally to institute legal proceedings of every description-civil, criminal or revenue and to engage lawyer(s) on behalf of the company. By virtue of another resolution passed on 28th October, 1976 PW-1 was in particular authorised to file the present suit for recovery of the amount due from the defendant on behalf of the plaintiff company. Rule I of Order 29 CPC empowers the Secretary or any director or other principal officer of the Corporation who may be able to depose to the facts of the case, to sign and verify the pleadings in a suit by or against the Corporation. Considering the said evidence and provisions of Rule I of Order 29 CPC, the plaint must be held to have been signed and verified and suit instituted by a duly authorised person on behalf of the plaintiff company.

ISSUE NO. 2

6. Ex. P-3 is the purported promissory note for Rs.2 lacs bearing three revenue stamps of the denomination of 0.10 paise each. Under Article 49 of the Stamp Act, 1899 duty chargeable in respect of a promissory note payable on demand exceeding the amount of Rs. 1,000/- is 0.25 paise. Obviously, Ex. P-3 is sufficiently stamped and is admissible in evidence. Issue is decided against the defendant.

### ISSUE NO. 3

7. Ex. P-1 is the application made by the defendant to the Board of Directors of plaintiff company requesting it to lend him Rs. 2 lacs on usual interest against demand promissory note. Ex. P-7 is the copy of resolution dated 21st December, 1974 passed by the Board of Directors of plaintiff company sanctioning loan of Rs. 2 lacs to the defendant repayable on demand and carrying interest @ 17% p.a. with monthly rest. Ex. P-3 dated 23rd December 1974 is the alleged purported promissory note while Ex. P-2 is the receipt dated 24th December, 1974, both in the sums of Rs.2 lacs each executed by the defendant in favor of plaintiff company. Receipt of the said amount of Rs.2 lacs is admitted by the defendant. However, the defense raised in the amended written statement, in short, is that Ashok k. Jain and Shanti Prasad Jain decided on their behalf and on behalf of the plaintiff and PNB to pay certain amounts to the defendant in lieu of the services rendered by him in the past and the payment of said amount was to be shown ostensibly as loan by the plaintiff for accounting convenience but the same was to be written off in due course. It is further pleaded that in regard to the said payment at the instance of Ashok k. Jain the defendant gave certain writings including the promissory note in question to the plaintiff company, that Ashok k. Jain expressly recorded in writings signed by him on behalf of the plaintiff in his capacity as Chairman thereof, confirming that liability for payment of the said amount would never be enforced against the defendant and he personally handed over those writings to the defendant which were forcibly taken away Along with other documents by the armed persons who barged into his house at Calcutta on the night of 8th June, 1975. In support of the said plea the statement of the defendant was recorded on commission on various dates. It is pertinent to note that neither in the amended written statement nor in his deposition the defendant has disclosed the date of the writings absolving him of the payment of said amount allegedly signed by Ashok k. Jain which are stated to have been forcibly taken away by the armed persons from the defendant's house at Calcutta on the night of 8th June, 1975. Further, although Shanti Prasad Jain, father of Ashok K. Jain who is alleged to have confirmed the said writings, was cited as a witness in the list of witnesses by the defendant but he was not examined by him and an adverse inference, Therefore, will have to be drawn against him.

8. In para No. 6 of the plaint it is alleged that the plaintiff company had been issuing to the defendant at the expiry of every month a statement indicating the amount of interest due on the loan granted. It is also in the examination-in-chief of V.N. Bhasin, PW-1, that the plaintiff had been sending statement every month to the defendant to pay the amount of interest. Ex. P-4 dated 8th January 1976 and Ex. P-8 dated 31st January 1977 are the copies of such statements maintained by the plaintiff company sent to the defendant. In reply to question No.73 put in examination-in-chief and question No.61 put in cross examination the defendant has admitted the receipt of the original of said Ex. P-4. In response to question No. 55 in cross examination the defendant has further

admitted the receipt of the original of said Ex. P-8. However, the Explanation given by the defendant was that after the receipt of said statements he had contacted Ashok k. Jain and brought to his notice that these statements were in contravention of the understanding, assurance and the promise given by him and he was told to ignore him. It is further in his statement that taking any action in the matter at that time would have jeopardised his interest. In terms of Ex. P-4 the defendant was informed that a sum of Rs. 37,660.30 was due from him towards interest from 24th December 1974 to 31st December 1975 and he was asked to pay that amount immediately. Ex. P-8 notices that a sum of Rs. 81,493.05 by way of interest for the period December 1974 to December 1976 was due from the defendant and it was impressed upon him to pay that amount immediately. Had there been any written/oral assurance given by said Ashok k. Jain to the defendant that said amount of Rs.2 lacs will in due course be written off by the plaintiff company, in ordinary course of human conduct the defendant should have atleast intimated to the company or obtained in writing from Ashok Jain that the said amount was not recoverable immediately on receipt of the statements Ex. P-4 and P-8 which he failed to do. It will not be out of place to state that immediately after the issue of said Ex. P-8 the present suit was instituted and petition filed by the defendant against Ashok k. Jain and Shanti Prasad Jain in Calcutta High Court was dismissed as withdrawn on 23rd June 1975. Not only that the said defense was not even remotely put in cross examination to V.N. Bhasin, PW-1, the only witness examined by the company. Furthermore, assuming for the sake of argument that any oral promise was made or writing given to the said effect by Ashok K. Jain to the defendant, same could not legally defeat the right of the plaintiff company which is a corporate body from recovering the said amount with interest from the defendant. Ex. P-3 being payable on demand is a promissory note within the meaning of Section 4 of the Negotiable Instruments Act, 1881 and a presumption is attached to it that it was drawn for consideration u/s 118 of the said Act. In this backdrop the testimony of defendant falls short of discharging the onus of proof on this issue which was squarely on him. I am unable to agree with the submission advanced by the defendant who argued the matter in person, that non-examination of Ashok k. Jain in rebuttal by the plaintiff company is fatal to the case. Issue is Therefore, answered against the defendant.

#### ISSUE NO.4

9. In the promissory note Ex. P-3 the defendant had undertaken to pay the amount of Rs. 2 lacs with interest @ 17% p.a. with monthly rest. It is in the deposition of V.N. Bhasin, PW-1 that the interest agreed was 17% p.a. with monthly rest. Suit amount of Rs. 2,85,557.35 includes the interest up to 31st January, 1977 at the said rate of 17% p.a. which the plaintiff is entitled to recover from the defendant together with further interest beyond 31st January, 1977 at the said contractual rate.

#### RELIEF

10. In view of the findings on said issues, the suit is decreed for Rs. 2,85,557.35 against the defendant with costs and interest pendente lite and future @ 17% p.a. on Rs. 2 lacs, the loan transaction being commercial in nature.