

(1956) 12 AHC CK 0032
In the Allahabad High Court
Case No : First Appeal No. 526 of 1955

Lakshmi Ratan Cotton Mills Co. Ltd.

APPELLANT

Vs

J.K. Jute Mills Co. Ltd.

RESPONDENT

Date of Decision : 21-12-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Companies Act, 1956 — Section 292, 293
Contract Act, 1872 — Section 10, 196, 198

Citation : AIR 1957 All 311 : (1957) 27 CompCas 660

Hon'ble Judges : Desai, J; Beg, J

Bench : Division Bench

Advocate : J. Swarup, V.P. Misra, R.K. Shukla, Promodchandra, Devendra Sarup and K.L. Misra, for the Appellant; R.S. Pathak, M.N. Shukla, Rajaram Agarwal and G.G. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Beg, J.—This is a defendant's first appeal arising out of a suit for recovery of money brought by the plaintiff-despondent, a company styled as J. K. Jute Mills Company Limited, Kanpur against the defendant appellant also a company known as Lakshmi Ratan Cotton Mills Limited, Kanpur. Both the companies are limited liability companies, and have their registered offices at Kanpur. The plaintiff company is one of the concerns owned by the family of Juggilal Kamlapat. Sir Padampat Singhania is the head of the said family. The defendant company belongs to another group of industries known as Beharilal Ram Charan group. Sri Ram Ratan Gupta is the head of that group. The defendant company was sued through two persons, namely, Sri Ram Prasad Gupta and Sri Gulab Chand Jain both of whom are the directors of the defendant company.

2. The plaintiff's case was that the plaintiff company had advanced a loan of Rs. 1,50,000/-to the defendant company on the understanding that the loan advanced would carry interest 1% higher than the current Bank rate, and would

be repaid together with interest within six months. Sri Gulab Chand Jain, one of the Directors of the defendant company, sent a letter on 24-12-1951 to Sir Padampat Singhanian the governing Director of the plaintiff company to advance the said loan. Sri Gulab Chand Jain also sent an advance receipt to the plaintiff along with the above-noted letter. Thereupon the plaintiff advanced a sum of Rs. 1,50,000/- as a loan to the defendant on 25-12-1951 through cheque No. 444821, dated 25-12-1951 drawn on the Hindustan Commercial Bank Limited in favour of the defendant. A covering letter of the same date was also sent by the plaintiff to the defendant along with the above-noted cheque stating that the said loan was repayable within six months with interest which was to be 1 per cent, higher than the current Bank rate. After the expiry of the stipulated period of six months, the defendant failed to pay the loan in spite of reminders sent to it. Accordingly, the plaintiff filed the present suit praying that a decree of Rs. 1,55,671/14/- together with pendente lite and future interest be passed and that the costs of the suit be also awarded in its favour.

3. The defendant denied that there was any transaction of loan between the parties as alleged by the plaintiff. According to the case set up by the defendant, Sir Padmapat Singhanian had entrusted Sri Ram Ratan Gupta with work of a personal nature involving a large amount of expenditure. As Sri Ram Ratan Gupta had to meet these expenses from his own pocket on behalf of Sir Padampat Singhanian, the latter agreed to advance Rs. 1,50,000/- on the said account by remitting the amount of Rs. 1,50,000/- to the defendant company by way of temporary accommodation pending the payment of the money due to Sri Ram Ratan Gupta. Further, in para 16 of its written statement the defendant took the plea that no loan could be taken as no resolution sanctioning the taking of loan was passed by the Board of Directors. The defendant also alleged that the plaintiff company owed an amount of RS. 2,005/12/- to the defendant company, and claimed an adjustment in respect of this amount. The liability to pay interest was also denied by the defendant company.

4. The trial Court held that an amount of Rs. 1,50,000/- was advanced by the plaintiff company to the defendant by way of loan as alleged by the plaintiff at the rate of interest and for the period mentioned in the letter sent along with the cheque, and that the said loan was binding on the defendant. As, however, the counsel for the plaintiff had made a statement that his claim be reduced by Rs. 2,005/12/-, which was the amount of deduction claimed by the defendant, the trial Court, accordingly, reduced the amount due to the plaintiff by Rs. 2,005/12/-. It, accordingly, held that the plaintiff was entitled to get Rs. 1,53,665/2/- from the defendant, and passed a decree in respect of the said amount with pendente lite and future interest at the rate of 3 per cent. per annum.

5. Dissatisfied with the said decree of the trial Court, the defendant has filed this appeal in the High Court.

6. Having heard the learned counsel for the appellant, we are of opinion that

there is no substance in this appeal. Whatever the merits of the plaintiff's case as initially set up might have been, the area of controversy has, in the present case, been considerably narrowed down as a result of certain statements made on behalf of the defendant at the preliminary stage of the case in the trial Court. In order to appreciate this aspect of the case, it is necessary to refer briefly to the pleadings of the parties, and to the aforesaid statements of the counsel of the defendant.

7. The plaintiff's case as set out by the plaintiff was based on the following three allegations :

1. That the transaction in question was a loan advanced by the plaintiff to the defendant ;

2. That the loan was negotiated on behalf of the defendant ;

3. That the loan was binding in law. In reply, the defendant controverted all the aforesaid three points and pleaded that :

1. The transaction was not a loan but an adjustable accommodation ;

2. It was not negotiated on behalf of the defendant ;

3. It was not binding as no resolution sanctioning the said loan was passed by the Board of Directors.

In view of the above pleadings, the Court framed issue No. 2 on the question whether the alleged transaction was an adjustable accommodation as set out in para 14 of the written statement and if so, its effect. This issue was framed on 3-3-1953. On the 11th February, 1954, however, the defendant's counsel made a statement that :

"If Sir Padampat Singhania gives evidence on Special Oath on Issue No. 2 against the defendants then the amount in suit be deemed a loan subject to the objection of authority of Shri Gulab Chand Jain. Loan, that is, the amount which Shri Gulab Chand Jain has taken on loan "on behalf of the defendants" from the plaintiff."

The underlined (here into " ") words "on behalf of the defendants" are important, & should be borne in mind. On the same date, Sir Padampat Singhania appeared as D. W. 1, and made the required statement on Special Oath to the effect that J.K. Jute Mills gave Rs. 1,50,000/- to the defendant by way of loan, and that this money was not to be adjusted with anything.

8. As a result of the above proceedings, two of the above-mentioned three points of contest between the parties must be taken to have been proved in favour of the plaintiff. That is, it must be taken to be established that, firstly, the transaction in question was not an adjustable accommodation but a loan, and secondly, that the amount which was taken by Sri Gulab Chand Jain was taken, as stated by the learned counsel for the defendant, "on loan on behalf of the

defendant from the plaintiff". The only point that survived for contest between the parties was point No. 3. The result was that the only plea that was left open to the defendant to plead was that the loan could not be held to be binding on the defendant as no resolution sanctioning the said loan was passed by the Board of Directors. The defendant could therefore, contest the suit only on the ground that even though Sri Gulab Chand Jain acted on behalf of the defendant the loan could not be binding on them because of the want of a resolution of the Board of Directors making him competent to enter into such a transaction. On this point, therefore, the Court framed a fresh issue being issue No. 4 which related to the question of competency of Sri Gulab Chand Jain to borrow the money on behalf of the defendant company.

As stated above, the only ground of his incompetency pleaded by the defendant was the want of a resolution authorising him to borrow the money. The burden of proving that no such resolution was actually passed by the Board of Directors lay on the defendant. They have not produced their minute book, nor has Sri Gulab Chand Jain come in the witness-box to state that no such resolution was actually passed by the Board of Directors. The defendant having failed to produce any evidence in support of the only plea that had survived, the plea must be taken to have failed for want of evidence.

9. Even if, however, the matter is approached from the legal stand point, we are of opinion that the defendant's plea in this regard cannot be sustained, as the plaintiff would be protected by the legal doctrine of internal management. In order, however, to appreciate the legal aspect of this matter, certain admitted or proved facts must be borne in mind.

It is admitted on behalf of the defendant that Sri Gulab Chand Jain was a Director of the defendant company. It is also admitted by the defendant company that Article 148A of the Memorandum of Association lays down that Messrs. B. R. Sons Limited would be the Managing Agents of the defendant company for a term of 20 years with effect from 15-7-1947. It is also admitted that Sri Gulab Chand Jain was a Director of B. R. Sons Limited, the Managing Agents. Further, it is also proved from Ext. 7, a copy of the resolution passed at the Board of Director's meeting of B. R. Sons Limited on 3-1-1951 that Sri Gulab Chand Jain and one Sri Sukhnandi Dayal Garg were jointly and severally authorised to represent the managing agency in the discharge of its functions as Managing Agents of the defendant company and to make, draw, accept, endorse, and negotiate cheques, hundis and all other negotiable instruments or mercantile documents for and on behalf of the company.

This resolution delegated the entire power of the managing agency to Sri Gulab Chand Jain & Sri Sukhnandi Dayal Garg jointly and severally. Sri Gulab Chand Jain thus represented the Managing Agency, and could individually exercise all the powers of the managing agency when the transaction in question took place. Thus at the relevant time Sri Gulab Chand Jain combined within himself three-fold capacities. Firstly, he was a director of the defendant company, secondly, he

was also a director of the managing agency, and thirdly, the entire power of the managing agency was vested in him by a resolution passed by the Directors of the managing agency.

There is also no doubt that the plaintiff creditor was throughout proceeding in a bona fide manner, dealing as he was with the company through a person who was armed with such formidable and all-embracing power on its behalf. The creditor in the present case had, therefore, no reason whatsoever to suspect the propriety, legality, or validity of the transaction. The transaction was of a usual nature by a trading company through one of its directors or managing agents who is the proper Person in the normal course to represent the company in its dealings with third person and to act on its behalf.

There was absolutely nothing in the circumstances they presented themselves before the creditor to excite his suspicion, or to put him on his guard, or to lead him to doubt the obviously legitimate nature of the transaction.

10. A reference to the Memorandum of Association of the company shows that the defendant company itself was a trading company. Para. 3 (n) of the Memorandum of Association lays down that one of the objects of this trading company was to borrow money in connection with its business. The transaction of borrowing was not, therefore, in the present case ultra vires of the company. There is no bar in the Memorandum of Association or the Articles of Association prohibiting either the directors or the managing agents to enter into a transaction of loan on behalf of the company. On the other hand according to para 3 (n) of the Memorandum of Association the directors could borrow money on such terms as they considered desirable.

Further, there is no provision in the Memorandum of Association or the Articles of Association prohibiting the delegation of the power to borrow by the directors of the company to one of their own body or by the Managing Agents to one of their own directors.

11. On the other hand, the Articles of Association point to the contrary. In Article I of the Articles of Association it is stated that Directors are the directors for the time being of the Company or such number of them as have authority to act for the company.

The definition of the Managing Agents as given in Clause (1) of the Articles of Association is that Managing Agents" include the person or persons authorised by the Managing Agents of the Company to perform the duties of such Managing Agents. Articles 72 and 73 of the Articles of Association authorise the directors to borrow money within certain limits on such terms and conditions as they think fit. Article 140 empowers the directors to delegate their power to such member or members of their body as they think fit. Article 142 lays down that the acts of the Board of Directors or Committee shall be considered to be valid notwithstanding any defect in their appointment.

Article 145 of the Articles of Association states that the business of the company shall be managed by the Directors and, subject to their control and supervision, by the Managing Agents, if any. Article 146 specifies the area of the powers of directors in so far as they are not exclusively vested in the agents. Clause 21 of this Article also empowers the directors to appoint Attorney or Attorneys of the Company by a Power of Attorney under the seal of the Company. Further, according to Article 149 of the Memorandum of Association the general management, of the company shall be vested in the Managing Agency subject to the control and supervision of the Directors.

As a part of this general management, the Managing Agents, among other powers, have been vested with the power:

"to sign, endorse or negotiate Bills of Exchange, promissory notes, cheques and other negotiable instruments or mercantile documents on behalf of the Company and to operate on all banking accounts of the Company, to recover and receive Interest on all banking accounts of the company, and to recover and receive interest and dividends on Government Promissory Loan Notes, War Bonds and securities of all kinds belonging to the Company".

12. Article 150 runs as follows :

"The Managing Agents shall have power to Sub-delegate all or any of the powers, authorities and discretions for the time being vested in them, and in particular from time to time to provide, by the appointment of an attorney or attorneys, for the Management and transaction of the affairs of the Company in any specified locality, in such manner as they think fit."

13. In view of the above provisions, there can be no doubt that Sri Gulab Chand Jain who was the director of the defendant company, the director of the managing agency and also a delegate of the managing agency could be authorised to enter into this transaction. Under the above circumstances, even supposing that there was no actual resolution authorising him to enter into this transaction on behalf of the defendant company either by the Board of Directors or by the Board of Managing Agents, the claim of the plaintiff who was a creditor cannot be affected. A creditor dealing with a trading company is required by law to be conversant with the terms of its Memorandum and Articles of Association and no more. If it is found that the transaction of loan into which the creditor is entering is not barred by the charter of the Company or its Articles of Association, and could be entered into on behalf of the Company by the person negotiating it, then he is entitled to presume that all the formalities required in connection therewith have been complied with. If the transaction in question could be authorised by the passing of a resolution, such an act is a mere formality. A bona fide creditor, in the absence of any suspicious circumstances, is entitled to presume its existence. A transaction entered into by the borrowing company under such circumstances cannot be defeated merely on the ground that no such resolution was in fact passed. The passing of such a resolution is a

mere matter of indoor or internal management and its absence, under such circumstances, cannot be used to defeat the just claim of a bona fide creditor. A creditor being an outsider or a third party and an innocent stranger is entitled to proceed on the assumption of its existence; and is not expected to know what happens within the doors that are closed to him. Where the act is not ultra vires the statute or the company such a creditor would be entitled to assume the apparent or ostensible authority of the agent to be a real or genuine one. He could assume that such a person had the power to represent the company, and if he in fact advanced the money on such assumption, he would be protected by the doctrine of internal management.

14. The leading case on the subject is that of the Royal British Bank v. Turquand (1856) 119 ER 886 (A). The judgment of Jervis C. J. in the said case contains the following significant observations relevant to the present case :

"And the party here, on reading the deed of settlement, would find, not a prohibition from borrowing, but a permission to do. so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorising that which on the face of the document appeared to be legitimately done". (p. 888).

15. In Daya Ram Vs. Sita Ram and Others , it was laid down that :

"The Articles of Association of the company define the power of Directors as between themselves and the company, and unless there is anything in those Articles limiting the powers of the Board of Directors in carrying on the ordinary business of the corporation, a third party who deals with the Directors or with the Managers acting under those powers, however, irregularly is protected if he acts in good faith in his dealing with them." (208).

16. In Dehra Dun Mussorie Electric Tramway Co. Ltd. and Another Vs. Jagmandar Das and Others , a Bench of this Court held that :

"A company is liable for all the acts done by its directors even though unauthorized by it, provided such acts are within the apparent authority of the directors and not ultra vires of the company. Persons dealing bona fide with a managing director are entitled to assume that he has all such powers as he purports to exercise if they are powers which, according to the constitution of the company a managing director can have". (head-note).

17. In T.R. Pratt (Bombay) Ltd. Vs. E.D. Sassoon and Co. Ltd. and Another , it was held that where the act of borrowing is ultra vires the directors, and not ultra vires the company, the company is liable to pay. Further it was held that:

"If it is shown that a particular act was ostensibly authorised by the statute, the Memorandum and Articles of Association, persons dealing with the company are not concerned to see that the company has put itself into a position to exercise its Power properly." (p. 80).

The reason of this rule was stated to be "that it would be disastrous if contracts made with companies could be impeached on account of matters known to the company but not to the other contracting party", (p. 80).

18. In *Biggerstaff v. Rowatt's Wharf Ltd.* (1896) 2 Ch D 93 (E), it was held that :

"Persons dealing bona fide with a managing director are entitled to assume that he has all such powers as he purports to exercise, if they are powers which according to the constitution of the company a managing director can have". (head-note).

19. Further, it was held in that case that if the director could have the power, or might have the power to do what he purported to do, then a creditor proceeding in a bona fide way could assume that he had the power to do what he actually did.

20. To the same effect is the law laid down in *Dey v. Pullinger Engineering Co.*, 1921 1 KB 77 (F).

21. In *Buckley on the Companies Act* (12th Edition) the law relating to indoor management is stated at page 375 as follows :

"Outsiders are bound to know what Lord Hartherley called the "external position of the company"; but are not bound to know its "indoor management". If persons are held out as and act as directors, and the share-holders do not prevent them from so doing outsiders are entitled to assume that they are directors, and as between the, company and such outsiders, the acts of such directors, de facto will bound the company".

22. On behalf of the appellant in the present case strong reliance was placed on two cases reported in *Houghton and Co. v. Nothard, Lowe and Wills Ltd.*, 1927 1 KB 246 (G) and *Kredit Bank Cassel G. M. B. H. v. Schenkers, Ltd.* 1927 1 KB 826 (H). In our opinion, the facts of both these cases were different. In the former case, the transaction was of an unusual kind. There were on the face of it, facts which should have put the plaintiff on suspicion. The entire transaction was not done by the Director. The Secretary had also come into picture.

There were circumstances which should have put the plaintiff on enquiry. In spite of this, however, the plaintiff did not make any enquiry at all. In the present case, no such suspicious circumstances exist. The latter case is also distinguishable on facts. In this case, the transaction was done not by the directors at all but by a branch manager; and this branch manager had acted in fraud of the company, and had committed forgeries in the perpetration of the fraud. In the present case, the transaction was not entered into by a branch Manager, but by Sri G. C. Jain who was the director.

Moreover it is not alleged by the defendant that Sri Gulab Chand Jain, the director, had acted in fraud of the company.

23. On behalf of the appellants, our attention was drawn to Ext. 2, the receipt of

the money and it was argued that in this receipt Sri Gulab Chand Jain had described himself only as the director of the Managing Agency, and not the director of the defendant company. A perusal of the receipt, however, shows that it contains the name of the defendant company printed in bold letters as its heading. It also appears that the words "B. R. & Sons" at the bottom are buried under the seal affixed on this receipt.

The first and the obvious impression created on a cursory observation of the receipt is that it, was issued on behalf of the company and the word "director" might have reference to the defendant company. In any case, the manner in which Sri Gulab Chand Jain described himself in the receipt is quite immaterial, if, in fact, he was really acting on behalf of the company. We have already pointed out that he was acting on behalf of the company. This point, as already observed, stood conceded on behalf of the defendant as a result of the statements made by their counsel on 11-2-1954.

It is also supported by other circumstances. The plaintiff also appears to have taken the negotiation to be on behalf of the company. This is borne out by the fact that the cheque for the entire amount of loan was drawn in favour of the defendant Company. The receipt of the said amount was also executed on the printed receipt book of the defendant company. The defendant company also admitted in para 3 of its written statement that the cheque for Rs. 1,50,000/- was received by the defendant company. On 11-2-1954 the defendant's counsel further admitted that the cheque was credited in the books of the defendant.

These facts were also admitted in evidence. Under the circumstances, there can be no manner of doubt that Sri Gulab Chand Jain was actually purporting to act on behalf of the defendant. In view of this fact, the manner in which he described himself in Ext. 2 has hardly any bearing or value.

24. For the above reasons, we are of opinion that the transaction of loan is binding on the defendant. This is quite enough to entitle the plaintiff to a decree in the present case.

25. On behalf of the plaintiff, reliance was further sought to be placed on the two other doctrines viz., the doctrine of benefit and the doctrine of ratification. Regarding the doctrine of benefit, it was argued on behalf of the respondent that in the present case it is admitted that the money went into the coffers of the company. Reliance in this connection was placed on para 3 of the written statement which states as follows :

"It is admitted that cheque for Rs. 1,50,000/- was received by the defendant from the plaintiff".

26. On 11-2-1954 Sri Amba Prasad Gupta the defendant's counsel further admitted that the amount of Rs. 1,50,000/- was credited in the books of the defendant company." It was further admitted in evidence by the defendant's witness Sri B. C. Gupta, who is an accountant of the defendant company that this

amount of Rs. 1,50,000/-was shown in the balance sheet. No doubt this witness also stated that this amount was gradually debited to the account of Beharilal Ramcharan. Once, however, the payment is received by the defendant company, the receipt of the money itself is a benefit to the company, and the creditor is not concerned with what is done with the money by the company subsequently.

On this point also we are in agreement with the argument advanced on behalf of the plaintiff, and are of opinion that the admitted facts are enough to sustain the plaintiff's case based on this plea.

27. In *T.R. Pratt (Bombay) Ltd. Vs. E.D. Sassoon and Co. Ltd. and Another*, , it was held :

that even if the borrowing by the agent of a company is unauthorised, the company would be liable to pay if it is shown that the money had gone into the coffers of the company. The lender having not advanced the money as a gift but as a loan, and the borrower having received the benefit of the money, the law implies a promise to repay. On the establishment of these facts, a claim on the footing of money had and, received would be maintainable.

28. There are a number of English cases also in support of the contention of the respondent. In *Re-David Payne & Co. Ltd.; Young v. David Payne & Co. Ltd.* 1904 2 Ch 608 (I), it was laid down that where a company has a general power to borrow money for the purposes of its business, a lender is not bound to enquire into the purposes for which the money is intended to be applied. At page 613 Buckley J.'s view is given as follows :

"The borrowing being effected, and the money passing to the company, the subsequent application of the money is a matter in which the directors may have acted wrongly; but that does not affect the principal act, which is the borrowing of the money."

This view of Buckley, J., was upheld in appeal.

29. In *Reid v. Rigby & Co.* (1894) 2 Q B 40 (J), it was held that where it is shown that the money had come into the hands of the defendant and used for its benefit, the defendant would be liable even though the act of borrowing was unauthorised.

30. In *Halsbury's Laws of England (Third Edition) Vol. 6* page 299, para 603, it is stated that :

"Apart from ratification, the company will be answerable for any property which has come into its possession through the unauthorised acts of the directors".

In the present case, therefore, even supposing for a moment that the action of the directors was unauthorised, the defendant company would be liable because it is admitted by the defendant company that it did come into possession of the money advanced by the plaintiff and the said money had gone into its coffers.

31. The respondent also relied on the doctrine of ratification. In this connection, reliance was placed on behalf of the respondent on the statement of the defendant's own witness namely, Sri R. C. Gupta, D. W, 2 who stated as follows :

"Every year the balance sheet is prepared. Auditors check it and sign it. Directors also sign. There consolidated liability is shown. In trial balance the details of liabilities are given. Rs. 1,50,000/- was shown in the balance sheet. Directors signed it. Rs. 1,50,000/- was shown in the name of J. K. Jute Mills. Balance sheet is put before the Directors in the meeting. Shareholders pass the accounts. On 30-9-1952 shareholders approved the balance sheet. Directors had approved".

It is argued on behalf of the respondent that this admission by D. W. 2 who is an accountant of the defendant company makes out a plea of ratification. On behalf of the appellant it is argued that these facts are not sufficient to make out the plea of ratification, as ratification, in order to be good in law, must have been made with full knowledge of the facts which invalidate the transaction. Reliance in this connection is placed on AIR 1938 284 (Privy Council) If Sri Gulab Chand Jain had authority, then the question does not arise.

If he had no authority, then this fact must have been known to other directors as well as to the share-holders. It is not possible to believe that though the directors and the share-holders fully knew that such a large amount of money had gone into the account of the company yet, they were oblivious of the fact of the want of authority of the person responsible for the inflow of such a large sum into its coffers. For the above reasons we find ourselves in agreement with the argument advanced on behalf of the respondent on this point as well.

32. On behalf of the appellant a grievance was made that the pleas of benefit and ratification were not taken by the respondent in their written statement, and hence they should not be allowed to be raised. There is a two-fold reply to this objection. Firstly, these pleas are raised in reply to a new plea which is adduced on behalf of the appellant itself, namely, that the transaction was ultra vires of the company. Secondly, both these pleas are based on admitted facts.

If facts admitted or established give rise to certain questions of law, the Court is not debarred from giving effect to such pleas by any technicality of procedure. On behalf of the respondent reliance in this connection is placed on Srinivas Ram Kumar Vs. Mahabir Prasad and Others, and Kidar Lall Seal and Another Vs. Hari Lall Seal, . In the latter case, Bose J., observed as follows :

"I would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded."" (p. 192) (of SCR) : (at p. 52 of AIR).

In the present case, the defendant cannot complain of any surprise nor has any grievance on this score been made before us. In this situation we would uphold the contention raised on behalf of the plaintiff-respondent in this regard. We may

however, observe that the plaintiff is entitled to a decree in the present case independently of the last two pleas on the grounds given in the earlier part of our judgment.

33. The only remaining question that arises in this case relates to interest. On behalf of the plaintiff it is alleged that along with the cheque a covering letter was also sent to the defendant. The carbon copy of the said letter is on the file of this case and it is marked as Ex. 4. It is mentioned in this letter that the disputed loan was repayable within six months, and carried interest at 1% higher than the current bank rate. The plaintiff examined Parshottam Das and Mangal Sen Gupta as P.Ws. 1 and 2 respectively in support of his case.

The defendant produced Sri S.N. Kapur D. W. 3 in rebuttal. The case set up by the defendant appears to be quite improbable. We are of opinion that the trial Court rightly disbelieved Sri S. N. Kapur, D. W. 3 on this Point and, in agreement with the view taken by the trial Court, we have no hesitation in holding that the original of Ext. 4 had been handed over to Sri S.N. Kapur along with the cheque. In this connection, it may also be mentioned that the plaintiff had demanded repayment of the disputed amount together with interest in both the reminders Exts. 5 and 6 sent by him to the defendant. On behalf of the defendant no evidence was produced to indicate that they controverted the claim of the plaintiff in this regard at any time previous to the suit. Under the circumstances, there appears to be no reason to discard the plaintiff's claim on this ground.

34. For the above reasons, we are of opinion that there is no substance in this appeal. We, accordingly, dismiss it with costs.