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JUDGMENT

This is a suit for recovery of money valued at Rs. 2,26,000/- from the defendants.

02. The plaintiff's case is that himself and late Hazari Martha were good friends. Hazari Martha was a reputed person of the locality. The said Hazari Martha after his retirement from Bank service started one Electronic business in Nirakarpur Bazar. On 08.12.2008 the said Hazari Martha requested the plaintiff to give him a hand loan of Rs. 2,00,000/- for a temporary period to meet his business requirements. Since the plaintiff had a close relationship with Hazari Martha gave him Rs. 2,00,000/- on 08.12.2008 and in token of receipt of the said money Hazari Marth executed one money receipt with his signature on the revenue stamp paper as well as three post dated cheques of State Bank of India amounting to Rs. 50,000/-, 50,000/- & 1,00,000/- respectively to the plaintiff. Even though the said Hazari Martha agreed to return the said money to the plaintiff soon, he failed to pay the same in time and as such the plaintiff requested him to return back the amount. The plaintiff also waited for some days. But, unfortunately on 22.01.2009 the Hazari Martha suddenly passed away in his residence at Nirakarpur. The plaintiff finding no other alternative deposited all the three cheques in the State Bank of Indian for encasement, but all the three cheques were bounced with a report by the bank to be insufficient of fund in the SBI Account of said Hazari Martha. The defendants No-1 is the wife, 2,3 and 4 are the sons and 5 is the daughter of late Haziri Martha. Thereafter the plaintiff requested all the

defendants, who are the legal representatives/ heirs of deceased Hazari Martha to pay the amount incurred by Hazari Martha, but they did not respond. The further case of the plaintiff is that on 26.10.2009, he served advocate notice to the defendants demanding repayment of the hand loan incurred by deceased Hazari Martha, but they also did not respond to the notice and as such he was forced to file the present suit. The plaintiff in his prayer has sought for the relief of realization of Rs. 2,26,000/- from the present defendants who are jointly and severally liable to pay the amount incurred by Hazari Martha.

03. The defendants appeared in this case and also filed their joint written statement by saying that the suit is not maintainable in nature and there is also no cause of action for the plaintiff to bring the suit. There specific case is that Hazari Martha was running a electronic shop in the Nirakarpur Bazar after retirement from the Bank service with the help of the plaintiff, who was managing the business of Hazari Martha including the banking transactions. While Hazari Martha was alive, the plaintiff taking advantage of his fiduciary relationship with Hazari Martha obtain the cheques and money receipt as utilized by the plaintiff for the purpose of this case. The defendants have averred that during the life time of Hazari Martha the plaintiff has never brought the said matter in the notice of the present defendants. They have further to say that, all the documents have been manufactured by the plaintiff. The said Hazari Martha had never taken a single pie from the plaintiff as he was economically sound enough. It is further contended by the defendants that for the first time after receiving the pleader notice from the plaintiff, they came to know about his claim. After that the

defendant No. 1 and her son went to the plaintiffs residence and expressed that Hazari Martha had not borrowed any money from him. They also requested the plaintiff not to do any mischief by virtue of the documents obtained fraudulently. One village meeting was convened, where the plaintiff admitted that he has fraudulently obtained the cheques and money receipt from Late Hazari Martha and assured to return back the documents to the wife of Hazari Martha. But, the plaintiff did not return the documents back to the defendants and filed the present suit. Advancing the above facts against the plaintiff, the defendants have made a prayer for dismissal of the suit.

04. After taking account of rival pleadings of both the parties, the following issues have been settled for final adjudication of the dispute.

I S S U E S.

1. Is the suit maintainable?
2. Is there any cause of action to bring the suit?
3. Whether the deceased Hazari Martha had borrowed Rs. 2,00,000/- from the plaintiff at any point of time in term of hand loan?
4. Whether the said Hazari Martha had executed any money receipt and three posted dated cheques in favour of the plaintiff with regards to the hand loan received by him amounting Rs. 2,00,000/-?
5. Whether the defendants being the legal heirs of deceased Hazari Martha are liable to refund the money to the plaintiff?
6. To what relief, if any, the plaintiff is entitled for?

05. In order to prove its case three witnesses have been examined on behalf of the plaintiff including the plaintiff himself as P.W. 3. Four documents have been relied upon and exhibited in this case from the side of the plaintiff. The money receipt

executed by Hazari Martha is marked as Ext. 1/a, three post dated cheques dt. 15.12.2008, 14.12.2008 and 20.12.2008 as Ext. 2 3 and 4 respectively.

On the other hand two witnesses have also been examined on behalf of the defendants, out of whom D.W. 1 is an independently witness and D.W. 2 Badrinath Martha is the defendant No. 3 himself. No document has been relied upon by the defendants.

FINDINGS.

Issue Nos. 3, 4 & 5.

06. The plaintiff's case is that the deceased Hazari Martha took a hand loan from him on 08.12.2008 for a sum of Rs. 2,00,000/- and executed a money receipt with his signature and three postdated cheques. The defendants have not disputed the signatures of Hazari Martha over all the four documents, which are by nature promissory notices executed in favour of the plaintiff. On that aspect the defendants have taken a specific plea saying that during the life time of Hazari Martha the plaintiff was managing the financial and banking affairs of the electronic shop of Hazari Martha and taking advantage of the same the plaintiff fraudulently taken signature of Hazari Martha on such papers.

With regards to the genuineness of execution, P.W. 1 has deposed that Hazari Martha was running an electronic shop namely "Mahima enterprises" in Nirakarpur Bazar. The said shop situated near his (P.W. - 1) house. On 08.12.2008 the said Hazari Martha called P.W. 1 to accompany him to the house of the plaintiff. On that day Hazari Martha took Rs. 2,00,000/- from the plaintiff for his business purpose and

executed one money receipt in token of receiving of the said amount. Hazari Martha himself wrote the receipt and put his own signature over a revenue stamp affixed on it. That apart Hazari Martha also handed over three post dated cheques of SBI amounting Rs. 2,00,000/- to the plaintiff after putting signature on it. P.W. 1 further admitted the signature of Hazari Martha on the money receipt as Ext. 1. During cross-examination he has stated that he does not know the purpose of execution of the money receipt and the cheques. He again deposed that the money receipts were executed on 08.12.2008 and on the very moment the cheques were issued by Hazari Martha to the plaintiff. P.W. 2 is another independent witness. He has also stated the exact fact as deposed by P.W. 1. He also stated that at the time of delivery of cash of Rs. 2,00,000/- he was very much present. He has also stated that the money receipt and the post dated cheques were served to the plaintiff by Hazari Martha after receiving of the cash. In the cross-examination he has stated that he had around 5 to 6 years relationship with Hazari Martha. He further stated that he is not a witness to the money receipt, rather P.W. 1 is the witness to the said money receipt. The said P.W-1 is an adjoining shop owner to Hazari Martha and the above transactions took place in the shop of Hazari Martha around 12 noon to 1.00 P.M. Now it is evident that discrepancies have been found place in the evidence of both the witnesses with regards to the payment of the money and execution of the above promissory notes. As per P.W. 1 the money has been paid in the house of the plaintiff whereas P.W. 2 has stated that the transaction took place in the shop of Hazari Martha.

07. P.W. 3 is the plaintiff himself. His evidence in chief being the exact reflection of his pleading needs no further repetition. However, as per his evidence in chief Hazari Martha came to him and requested to give him Rs. 2,00,000/-. Since he had a close relationship with Hazari Martha, he paid the amount in cash. In token of receiving of the said money, Hazari Martha executed the money receipt with his own signature on the revenue stamp in presence of the Manoj Kumar Pradhan and Sruti Ranjan Jena (P.W. 1 & 2 respectively) on 08.12.2008. The said Hazari Martha also issued three number of post dated cheques in his favour. In the cross-examination he admitted the money receipt as Ext. 1/a and three posted dated cheques to be Ext. 2, 3 & 4 respectively. He again stated that Hazari Martha is his cousin brother. He has a good relationship with Hazari Martha. He explained that he withdrew Rs. 2,00,000/-from the bank and paid the same to Hazari Martha. No other useful cross-examination has been made to P.W. 3.

Relying upon such cross-examination, the defendants have to say that a lot of infirmities have been appearing in the evidence of the witnesses. Firstly, the place of execution of the documents and handing over the cash cannot be ascertained from their evidence as the plaintiff has failed to prove the exact place of execution of the documents and handing over the cash. The counsel for the defendants again urged that P.W. 1 & 2 were not present at the time of execution as both have narrating two different stories and P.W. 2 himself has contradicted his examination in chief by saying that he was not at all present at the time of execution of the document.

08. Coming to the said aspect of the case, it is learnt that P.W. 1 in his evidence in chief has stated that the amount was received by Hazari Martha in the house of the plaintiff. He has not stated the exact place, where the documents have been executed. But it can be asserted from his evidence in chief as if the documents such as the money receipts and the post dated cheques have been prepared at the very moment, i.e. in the house of the plaintiff. P.W. 2 also corroborated the said fact in his evidence in chief, but in the cross-examination he has stated that he was not a witness to the money receipt. He has again stated that the transaction took place in the shop of Hazari Martha around 12 noon to 1.00 P.M, which is contradictory to the evidence of P.W. 1. If one goes through the evidence of the plaintiff (P.W. 3), can well assert that Hazari Martha came to his house and received the money and handed over the documents. While dealing with the above infirmities, it may further be noted that the witnesses such as P.W. 1 & 2 might have not remembered the whole transaction, and as such certain variations have been find place in their evidence, but so far as the evidence of the plaintiff is concerned nothing has been retracted from his mouth to dispute the whole claim as advanced by himself finding absolute corroboration from P.W. 1. But the most important aspect of this case is that the defendants have admitted the signature of Hazari Martha on the money receipt as well as in the three post dated cheques. But, since they have taken a plea that fraudulently the money receipts and the cheques have been received, the onus lies on them to establish the said fact. It is true that the plaintiff has to stand on his own leg and he can not take the advantage of weakness of the defendants case. But at this stage it is desirable for the court to

measure the truthfulness in the claim of the defendants to proceed further with the case of the plaintiff.

09. Coming to the defendants case, they have specifically averred that the plaintiff was looking after the management of the electronic shop of Hazari Martha. He was also looking after the banking transaction and taking advantage of the same he fraudulently obtained the documents, which has been used in this case. D.W. 1 in his evidence in chief has admitted that he has no knowledge about issuance of any cheque to Hazari Martha and he cannot say anything about the said matter. The said evidence in chief of D.W. 1 is self-explanatory. He again in his cross-examination has stated that he has not noticed any endorsement of the plaintiff over any document to ascertain whether he was entrusted with any work in the electronic shop of Hazari Martha. D.W. 2 is the defendant No. 3 himself. He in his evidence in chief has stated that the plaintiff and one Bimala panda were working in the shop of their father Hazari Martha. The plaintiff was managing the financial and banking transactions of their shop. The plaintiff fraudulently obtained the cheques and money receipts from his father Hazari Marth. In the cross-examination he has stated that by the year 2008 he was a student. After death of his father he took over the whole charge of management of his shop. All the documents are all along available in the shop. He found some papers, wherein the plaintiff has entered into business transaction with his father.

10. After assessing the evidence of the witnesses from the side of the defendants, now it is became highly essential to note that the first claim of the defendants is that the plaintiff was working in the shop of Hazari Martha and looking

after the monetary and banking transaction. Therefore, the documents must have been available with their shop, which shall be sufficient to establish that the plaintiff was working in the shop of Hazari Martha and looking after the financial transactions, but not a single scarp of paper has been produced in this case and the defendants have offered no explanation to that effect, which implies that the statement is completely false and baseless. So far as the exercise of fraud by plaintiff is concerned, it is quite relevant to assess the evidence as well as the other material aspects involving in this case. The plaintiff is a retired Army Habildar and the deceased defendant Hazari Martha was a retired bank employee. Both are cousin brothers. Being a bank employee and running a electronic business, he must have ample knowledge about the object and purpose of putting signature on a money receipt and more particularly over a revenue stamp as well as regarding issuance post dated cheque. A cheque cannot be obtained by fraud as the defendant being an educated person and a bank employee must have the knowledge of providing a postdated cheque to anybody else. Providing a cheque is a matter of promise for realization of liability, which is not required to be explained to a retired bank employee. This court cannot withdraw its sight on the documents, which have been relied upon by the plaintiff. The contents of money receipt appears to be completely designed and drafted by deceased Hazari Martha. The same can be well asserted from the documents itself as because the hand writing and signature of Hazari Martha is sufficient enough to provide a clear picture regarding execution of the money receipt. Similarly, three postdated cheques have also been executed and drafted by the deceased Hazari Martha himself. Apart from that, the execution and contents of the

documents such as the money receipt and post dated cheques have never been disputed by the defendants. This being the factual position of the case, this court has no hesitation at all to accept that the above documents which are nothing, but negotiable instruments have been drafted and executed by deceased Hazari Martha in favour of the plaintiff. He being a retired bank employee knows the object, purpose and consequence of executing such documents. Therefore, it is not possible for the court even to presume that the plaintiff had any opportunity to misguide, mislead or pervert Hazari Martha for execution of the documents. No fraud has been committed with relating to the documents and all these documents such as money receipt and postdated cheques are genuine documents. In the above circumstances whatever minor infirmities have been appearing in the evidence of P.W. 1 & 2 shall be ignored as the same does not go to the root of the case nor effecting the basis of the plaintiff's case and the truthfulness in the allegation of the plaintiff.

11. Now the question arises whether after death of Hazari Martha, the defendants, who are the wife, son and daughters of Hazari Martha are liable to pay the loan incurred by their ancestor Hazari Martha. It is the settled law that the liability of an heir of a deceased Hindu to pay the debts of the deceased is extent only to the assets inherited by him from the deceased. The heir is not personally liable to pay the debt of the deceased, not even if he be a son or a grandson of the deceased. Sec. 6 (4) of Hindu Succession Amendment Act 2005, now stipulated that the right of a creditor to proceed against the son, grandson or grate grandson, after the amendment came into force on the ground of pious obligation is circumscribed. The act prevents the creditor

from proceeding against the specified heirs. Debts contracted by the ancestor before the commencement of the amendment and the right of the creditor to proceed against the specific heir is however saved, but where the sons are jointly with their father, the debts have been contracted by the father for his own personal benefit, the sons are liable to pay the debts, provided they were not incurred for an illegal or immoral purpose. The liability to pay the debts contracted by the father, though for his own benefit, arises from an obligation of religion and piety, which is placed upon the son under Mitakhara law to discharge the father's debts, where the debts are not tainted with immorality. This being the settled position of law and in view of the foregoing discussions, it is the right place to mention that after retirement the deceased Hazari Martha was running an electronic business for the welfare of his undivided family and admittedly after death of Hazari Martha, the said business is now managed by his son namely Baidyanath Martha, who is defendant No. 3 in this case. The defendants being the legal heirs of Hazari Martha, the whole property of Hazari Martha has been devolved upon them and as such they are liable to paying the debt incurred by their father from the plaintiff.

12. Lets, now come to the amount demanded by the plaintiff. The plaintiff has to say that Hazari Martha has incurred Rs. 2,00,000/- from him, but in the plaint the plaintiff has demanded Rs. 2,26,000/- from the defendants without assigning any reason regarding the demand of extra Rs. 26,000/-. Therefore, the plaintiff is only entitled to relief Rs. 2,00,000/- from the defendants with interest as provided by law. In the present case there is no contract in between the plaintiff and Hazari Martha

regarding the rate of interest. Therefore, the plaintiff is entitled for six per cent interest from the defendants, which is permissible in the eye of law, where there is no specific contract towards interest between the debtor and the creditor. Therefore, the plaintiff is only entitled for six per cent interest from the date of filing of the suit till payment is made over the suit amount of Rs. 2,00,000/-. The above issues are answered accordingly.

Issue Nos. 1, 2 & 3.

13. With regards to the question of maintainability the defendants in their written statement have stated that the suit is not maintainable in the eye of law. They have not assigned on which basis they have stated that the suit is not maintainable in the eye of law. But, their subsequent pleading reveals that they have only challenged the claim of the plaintiff on the ground that the plaintiff has fraudulently received the documents and as such he is not entitled for the relief as sought for. The forgoing discussion is sufficient to held that no fraud has been committed by the plaintiff and he has come with a genuine and proper cause of action against the defendants. He has come with a bonafied dispute over his legitimate claim against the defendants. He has assigned a proper and reasonable cause of action and the suit is also in time. Therefore, the suit is maintainable and the plaintiff is entitled for recovery of amount of Rs. 2,00,000/-from the defendants along with six percent interest per annum. Hence it is order.

ORDER.

The suit of the plaintiff be and the same is decreed on contest against the defendants, but in the circumstances without any cost. The defendants are hereby directed to pay Rs. 2,00,000/- along with six per cent interest per annum to the plaintiff over the said amount from the institution of the suit till payment is made. This court further direct the defendants to pay the amount of Rs. 2,00,000/- along with the interest as mentioned above to the plaintiff within two months hence, failing of which the plaintiff is at liberty to execute the order through the process of the court by adopting the proper recourse to law.

Advocates fees are at contested scale.

Senior Civil Judge, Khordha.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 25th day of August, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiffs :-

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| P.W. 1 | Manoj Kumar Pradhan. |
| P.W. 2 | Sruti Ranjan Jena. |
| P.W. 3 | Madhabananda Parida. |

List of witnesses examined on behalf of Defendants :-

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| D.W. 1 | Bimal Panda. |
| D.W. 2 | Badrinath Martha. |

List of documents admitted on behalf of the Plaintiff :-

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| Ext. 1 | Signature of Hazari Martha on Ext. 1. |
| Ext. 1/a | Money receipt. |
| Ext. 2 | Post dated cheque dt. 15.12.2008. |
| Ext. 2/a | Signature of P.W. 3 on Ext. 2. |

Ext. 3 Post dated cheque dt. 14.12.2008.

Ext. 3/a Signature of P.W. 3 on Ext. 3.

Ext. 4 Post dated cheque dt. 20.12.2008.

Ext. 4/a Signature of P.W. 3 on Ext. 4.

List of documents admitted on behalf of Defendants :-

Nil.

Senior Civil Judge, Khordha.