

REVISIONAL CIVIL.

Before Bhandari, C. J.

SIR SOBHA SINGH AND SONS,—Petitioners.

versus

M/s. BIHARI LAL-BENI PARSHAD,—Respondents.

Civil Revision No: 419-D of 1955.

*Evidence Act (I of 1872)—Section 102—Burden of
proof—Suit for recovery of money advanced as loan—
Defendant denying having received the money as loan—*

1956.

Jan. 16th.

Burden of proving that money was advanced as loan, on whom lies.

Held, that where the plaintiff asserts that he advanced a certain sum of money to the defendant by way of a loan payable on demand and if the defendant denies having received it as a loan the burden of establishing the fact devolves on the plaintiff. The person who asserts something to be due to him has the burden of proof and he cannot be permitted to shift this burden to shoulders other than his own.

Petition under section 115, Civil Procedure Code, Act V of 1908, and Article 227 of Constitution of India, for revision of the order of Shri Tilak Raj Handa, Sub-Judge, 1st Class, Delhi, dated the 12th August, 1955, framing the issue and placing its onus on the petitioner.

A. R. WHIG, for Petitioner.

H. R. SAWHNEY, for Respondent.

JUDGMENT

Bhandari, C.J. BHANDARI, C. J.—On the 1st March, 1955, Messrs. Behari Lal-Beni Parshad brought a suit against Sir Sobha Singh and Co., for the recovery of a sum of Rs. 1,42,884-5-0 on the basis of a cheque for Rs. 1,20,000 issued by it as a short term loan payable on demand. The defendant denied his liability to repay the amount on the ground that this sum of money was given to him not by way of loan but for payment of interest on a loan of Rs. ten lacs raised by the defendant from the Bank of Jaipur. In view of the pleadings of the parties the trial Court proceeded to frame the following issue, namely—

“Was the amount of Rs. 1,20,000 given by the plaintiff firm by means of the cheque in question to the defendant company not a loan and was given for the benefit of Shri Banarsi Lal Tulsyan as per circumstances explained in paras, 2 and 10 of the amended written statement? If so to what effect?”

The defendant states that the onus of this issue has been wrongly placed on him and has come to this Court in revision.

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Section 102 of the Indian Evidence Act declares that the burden of proof shall lie on the person who would fail if no evidence at all were given on either side. If therefore the plaintiff asserts that he advanced a certain sum of money to the defendant by way of a loan payable on demand and if the defendant denies having received it as a loan the burden of establishing the fact devolves on the plaintiff. The person who asserts something to be due to him has the burden of proof and he cannot be permitted to shift this burden to shoulders other than his own. As pointed out by Bhide, J., in *Bihari Lal v. Lala Chandu Lal*, (1) every payment made by one person to another is not necessarily a loan and there is no legal presumption that it was meant to be repaid. The person who brings an action for the recovery of money must establish to the satisfaction of the Court that it was intended to be repaid.

For these reasons I would accept the petition, set aside the order of the trial Court and direct that the issue be reframed so as to shift the burden of proof from the defendant to the plaintiff.

The learned counsel for the plaintiff prays that permission may be accorded to him to prefer an appeal to the Supreme Court. No substantial question of law arises for decision and the leave asked for cannot be allowed.

Having regard to the circumstances of the case I would leave the parties to bear their own costs.