

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.5527 OF 2002

Naresh Bhutani & Anr.

...Appellants

VERSUS

M/s.A.G.Chit Fund & Finance Co. & Anr.

...Respondents

ORDER

This appeal is directed against a judgment and order dated 27th of August, 2001 passed by the High Court of Delhi at New Delhi in CR No.1095 of 2000 and CM Nos. 2736 & 2828 of 2000 by which the High Court had affirmed the order of the Commercial Civil Judge, Delhi dated 17th of February, 1998 by which the Commercial Civil Judge, Delhi had declined to grant leave to defend to the appellant and decreed the suit of the respondent against him under Order 37 of the Code of Civil Procedure and also directed the appellant to pay a sum of Rs.69,225/- with interest @ 18% per annum from 17th of December, 1993 till the date of realisation and the cost of the suit.

We have heard the learned counsel for the parties and examined the impugned order of the High Court as well as the order of the Commercial Civil Judge, Delhi. Before the Commercial Civil Judge and also before the High Court, the only question that was raised by the appellant was that since the respondent which is a Chit Fund Company was not registered under the Madras Chit Funds, the suit filed by the respondent under Order 37 Rule 1 of the Code of Civil Procedure was not maintainable. The High Court as well as the Commercial Civil Judge, Delhi, in our view, have rightly pointed out that even if the respondent was not registered, it cannot take out the suit from the purview of Order 37 Rule 1 of the CPC. Apart from that the allegations of non registration was denied by the respondent and in fact they asserted that the chit fund was duly registered. Since the Commercial Civil Judge and the High Court concurrently held that the question that was raised for permitting the appellant to defend the suit can not be a ground for which leave can be granted to the appellant. Before us also, the learned counsel appearing for the appellant has failed to

satisfy that the findings of the courts below were perverse or arbitrary.

That being the position, we are not inclined to interfere with the orders passed by the courts below and accordingly the appeal is dismissed. Interim order, if any, stands vacated.

The learned counsel appearing for the appellants submits, on instruction, that the rate of interest granted by the courts below was 18% and prays that the interest rate be reduced. Considering the facts and circumstances of the present case, we modify the order of the courts below only to the extent that the rate of interest should be 12% instead of 18%. Subject to this modification, the appeal stands dismissed. There will be no order as to costs.

JUDGMENT

.....J.
[Tarun Chatterjee]

.....J.
[Aftab Alam]

New Delhi;
September 15, 2009.

.....J.
[R.M.Lodha]