

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.1454 of 2011
Date of Decision: 28.08.2015**

Bharat Singh

....Appellant

Vs

Ram Chander

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Sangwan, Advocate
for the appellant.

Mr. Tara Chand Dhanwal, Advocate
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Appellant-Bharat Singh has filed this regular second appeal against judgment and decree dated 09.12.2010 passed by District Judge, Bhiwani vide which judgment and decree dated 06.05.2010 passed by Civil Judge (Jr. Divn.) Charkhi Dadri has been upheld.

[2]. Plaintiff filed suit for recovery of Rs.57,200/- i.e. Rs.33,500/- as principle amount and Rs.23,700/- as interest amount against the defendant on the ground that defendant had borrowed a sum of Rs.33,500/- from him on 12.12.2003 in the presence of a witness. In acknowledgment of the same, borrower executed a *bahi* entry in the *bahi* of plaintiff in which he had promised to repay the amount on demand with interest at the rate of 24% per annum. Despite requests

made by the plaintiff, payment has not been made by the defendant and, therefore, suit has been filed.

[3]. The defendant contested the suit and filed the written statement denying the averments of the plaint. Defendant denied the execution of *bahi* entry and also denied borrowing of the amount from the plaintiff in any manner.

[4]. After filing replication, the following issues were framed:-

- “1. *Whether the plaintiff is entitled to decree for recovery of Rs.57,200/- with pendente-lite and future interest ? OPD*
2. *Whether plaintiff has no locus standi and cause of action to file the present suit? OPD*
3. *Whether suit is not maintainable in the present form? OPD*
4. *Whether suit is false and frivolous? OPD*
5. *Whether plaintiff has not come to the court with clean hands? OPD*
6. *Relief.”*

[5]. At the stage of plaintiff's evidence defendant was proceeded *ex parte* and, thereafter plaintiff led *ex parte* evidence. He examined PW-1 Satbir Singh as deed writer, Bharat Singh himself as PW-2 and Satinder Sheoran, Advocate as PW-3.

[6]. Onus of issue No.1 was on the plaintiff. Plaintiff based his claim on the basis of *bahi* entry. Ex.P-1 in the page/folio of *bahi* entry dated 12.12.2003. It has been allegedly agreed by the defendant that he will pay the amount back in the month of *Jeth*. The entry was allegedly signed by Satbir Singh in Hindi. Plaint filed by the

plaintiff did not contain any averment regarding scribe of the same. It has not been mentioned anywhere in the plaint that Satbir Singh scribed the *bahi* entry on the asking of the plaintiff, nor any pleading has been made in respect of scribe. The evidence led in the context of scribe of the *bahi* entry is beyond the pleadings.

[7]. While filing the plaint, no averment has been made with regard to the alleged plea on behalf of borrower/defendant that he would repay the amount in the month of *Jeth*. The plaintiff while appearing in the witness box as PW-2 has tried to improve the case by deposing that the defendant agreed to pay back the amount in the month of *Jeth*. Since there was no averment in the plaint, therefore, evidence led on that front is also beyond pleadings and cannot be looked into.

[8]. *Bahi* entry is alleged to have been signed by Satbir Singh in Hindi. In the statement of the plaintiff, it has been mentioned that Satbir Singh had scribed the *bahi* entry.

[9]. The aforesaid scribe has been shown to be son of Bharat Singh and has signed affidavit as well as statement in English. Plaintiff has not removed this cloud whether Satbir Singh is his son or otherwise. The pleadings in terms of plaint and *bahi* entry Ex.P-1 are at variance. The pleadings of the plaint are not in coherence with the *bahi* entry.

[10]. The case of plaintiff is that the defendant in token of acknowledgment made *bahi* entry of the plaintiff. The alleged entry has been stamped and even signatures are obtained on revenue

stamp. Plaintiff has not produced the *bahi* itself. He has produced only a folio i.e. one page of the *bahi*.

[11]. The fact shows that plaintiff maintains a *bahi*. The production of one page i.e. folio from the original *bahi* has to be proved by the plaintiff himself with regard to continuity of pages. It is not the case of plaintiff that it was the only entry appearing in the *bahi* which is subject matter of the present suit. In the absence of such averment, *bahi* pre-supposes maintenance of account book of monetary advances made by plaintiff in the capacity of professional money lender.

[12]. Section 3 of the Money Lender's Act prohibits continuance of such business unless and until money lender is registered and licensed person. The suit filed by money lender for recovery of loan without there being any licence in his favour is liable to be dismissed. Plaintiff has not been able to prove the valid licence for advancing the loan to the defendant under Money Lender's Act, nor the original *bahi* has been produced in order to show that the present instance was the only instance in the *bahi* which could have brought him out of purview of Money Lender's Act.

[13]. Since onus of issue No.1 was on the plaintiff and he has failed to discharge the same, therefore, he is not entitled to any decree for recovery of the amount. The defendant has specifically pleaded in the written statement that he has not signed any *bahi* entry, rather his signatures have been obtained when he was in the state of intoxication. Since the plaint does not contain any name of

the person who scribed the *bahi* entry, therefore, evidence of Satbir Singh has to be treated out of context being beyond pleadings.

[14]. The signature appearing on the alleged *bahi* entry in Hindi and his signatures on affidavit and statement in the Court in English further aggravates the plea of the plaintiff and creates suspicion whether Satbir Singh is the same person who allegedly signed the *bahi* entry and has also appeared in the witness box. Father's name of Satbir Singh further adds to the mystery as to whether he is son of Bharat Singh-plaintiff or somebody else? Since the plaintiff has not removed the cloud in his evidence, rather much of the evidence of plaintiff is beyond the pleadings.

[15]. Following questions of law have been pleaded by the appellant in para 4 of the grounds of appeal:-

- “1. *Whether the findings of both the courts below about Bahi entry are as per record/evidence of parties when document Ex.P-1 is exhibited and is admissible in the eye of law?*
2. *Whether documentary evidence can be discarded without any evidence of defendant?*
3. *Whether the findings of the lower court are based on the evidence available on file and are without evidence?*
4. *Whether the respondent can defend and argue his case without any evidence or issue on behalf of respondent/defendant before the appellate court?*
5. *Whether the judgment and decree under challenge are sustainable in the eye of law?*

[16]. In respect of questions of law it is relevant to highlight that mere exhibition of document does not dispense with proof of execution. The name of the scribe as shown in the document has not been pleaded by plaintiff in the plaint. Moreover the scribe who allegedly prepared the *bahi* entry has signed the same in Hindi whereas while appearing as witness his signatures are appearing in English on affidavit as well as on the statement. There is no mention about the scribe that he used to sign in both languages i.e. in Hindi as well as in English. The pleadings in *bahi* entry as well as in the plaint are at variance inasmuch that in the *bahi* entry, recital has been made that amount would be repaid in the month of *Jeth*, whereas there is no such averment mentioned in the plaint.

[17]. In view of aforesaid, *bahi* entry Ex.P1 is surrounded by mysterious circumstances, hence cannot be read in evidence. Question No.2 does not involve in any manner. The documentary evidence as alleged does not advance the case of plaintiff in any manner, rather the same diminishes the plaintiff's case even if defendant was proceeded against *ex parte*. Onus of issue No.1 was on the plaintiff and he has miserably failed to discharge the same.

[18]. Question No.3, the findings recorded by Courts below are based on correct appreciation of evidence and do not warrant any interference in second appeal. Question No.4 is not a substantial question. Plaintiff has to prove his case. Onus of issue No.1 was also on the plaintiff. Plaintiff has not discharged the onus even on the basis of his own *ex parte* evidence. Being lacking on material

particulars, question No.5 is based on the interpretation of earlier questions and is not to be answered in any manner as the findings recorded by both the Courts are based on correct appreciation of evidence and thus findings are legally sustainable in the eyes of law.

[19]. Both the Courts have rightly appreciated the evidence on record. The presumption in terms of Section 118-A of the Act would only arise in case execution of an instrument i.e. *bahi* entry is proved. Once the execution of *bahi* entry in itself is doubtful, no such presumption flows from such instrument.

[20]. There is no evidence on record as to the valuation required towards the stamp chargeable upon such document. According to Section 35 of the Indian Stamp Act, the instrument which is not duly stamped is inadmissible in evidence. Once the execution of instrument is not proved, the issue becomes redundant. The admissibility of the document in question is very much doubted.

[21]. Looking from any angle, concurrent findings recorded by both the Courts are not to be disturbed in second appeal. Resultantly, the appeal is totally devoid of merits and the same is dismissed.

August 28, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE