IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 284 of 2011
Date of decision : February 16, 2015

Rajbir

... Appellant

vs.

Ram Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vinod S. Bhardwaj, Advocate
for the appellant.

Mr. R.A. Sheoran, Advocate
for the respondent.

Surinder Gupta, J

The case of plaintiff-respondent, in brief, was that he advanced loan of ₹50,000 to the defendant-appellant on2.12.2002 and a writing to this effect was executed in his *Bahi.* Thereafter, defendant obtained a sum of ₹5,000 on 3.3.2003 for his personal use and a writing to this effect was again executed in his *Bahi* which was signed by defendant after affixing of the revenue stamp. Though, no rate of interest was agreed but as per custom, equity and good conscious, the plaintiff has claimed interest @ 2% per month. The defendant committed default in repayment of loan amount or interest resulting in filing of suit for recovery claiming ₹55,000 as principal amount and ₹44,300 as interest.

The defendant-appellant denied taking of loan of ₹55,000 and termed the writing in *Bahi* as false, vague and forged. It was alleged that the thumb impression of defendant in the *Bahi* are also forged. He denied his liability to pay any amount to the plaintiff-respondent.

Additional Civil Judge (Sr. Division), Loharu, vide judgment dated 26.7.2008, decreed the suit relying on the evidence produced by plaintiff-respondent which included statement of plaintiff, his son Mukesh and Handwriting and Finger Prints Expert Hisar.

The appeal filed by appellant was dismissed by the Additional District Judge-V, Bhiwani.

I have heard learned counsel for the parties.

Learned counsel for the appellant has confined his submissions only with regard to rate of interest on the loan amount allowed by the courts below. He has argued that Additional Civil Judge (Sr. Division), Loharu in the absence of any written agreement or proof of custom in the market allowed the interest on the loan amount from the date of advancement of loan till the date of filing of the suit @ 24% per annum, which is highly excessive and required to be modified.

Learned counsel for the plaintiff-respondent has argued that the prevalent rate of interest amongst the business community is 2% per month. The respondent had suffered due to withholding of his amount by the appellant for such a long time as such both the courts below have committed no error of law while allowing rate of interest @ 24% per annum.

On giving careful though to the submissions of learned counsel for the parties and perusal of the paper book, the substantial questions of law which arises in this appeal for determination are as follows :-

> *"1. Whether both the courts below were justified in allowing interest @ 24% per annum in the absence of any term settled between the parties and in the absence of any evidence of prevailing custom regarding rate of interest in the market or the bank rate?*

Admittedly, there was no writing with regard to rate of interest between the parties. It was not a commercial transaction. There is no evidence of the plaintiff that the defendant-appellant belonged to the business community. The plaintiff-respondent failed to prove the prevailing bank rate or any custom under which the interest was charged at the relevant time @ 2% per month. The rate of interest, in the absence of any such evidence, is certainly excessive and both the courts below have not looked into this aspect or given any reason for allowing interest at the rate of 2% per month from the date of entry in the *Bahi* till the date of filing of suit. Under Section 34 of Code of Civil Procedure, the court, while decreeing the suit could allow interest at such rate as it deemed reasonable to be paid on principal amount.

The deal between the parties was not a commercial or business deal as such grant of interest at the rate of 24% per annum is excessive and unreasonable.

In view the above facts, the rate of interest awarded by the courts below from the date of advancement of the loan till the date of filing of the suit is reduced from 2% per month to 1% per month and the amount of interest is slashed from ₹44,300 to ₹22,150.

The substantial questions of law as framed in this case are accordingly decided in favour of appellant.

As a sequel of my above discussion, this appeal is partly allowed and judgment and decree of the courts below is modified. The suit filed by plaintiff/respondent is decreed for the recovery of ₹55,000 as principal and ₹22,150 towards interest from the date of advancement of the loan till the date of filing of the suit. The *pendente-lite* and future interest as allowed by the courts below are maintained. The plaintiff-respondent will also be entitled to the costs throughout on the modified decretal amount.

(Surinder Gupta)
Judge

February 12, 2015
deepak