

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4370 of 2013(O&M)

Date of decision : December 7, 2015

Rakesh Kumar and another

..... Appellants

Versus

Gurdev Singh

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ramneek Vasudeva, Advocate
for the appellants.

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?

Amit Rawal, J (oral).
CM No.11784-C of 2013

This is an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 52 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 4370 of 2013(O&M)

The appellants-defendants are in Regular Second Appeal against the concurrent finding of fact whereby the suit for

recovery of an amount of ₹5,30,360/- along with interest @ of 9% per annum with effect from the year 2005 before filing of the suit and during the pendency of the suit and 6% after passing of the decree till realization has been decreed.

Learned counsel for the appellants-defendants legal representatives of Madan Gopal originally contesting defendant submits that the respondent-plaintiff in order to prove the averments in the plaint failed to lead any evidence. In the cross-examination it has surfaced that he had been earning ₹10,000/- only. Both the experts examined by the respective parties submitted report in favour of their parties and therefore it has not been proved whether the signatures on two documents i.e. on receipt and letter dated 1.6.2004 were of Madan Gopal or not.

He further submits that the aforementioned documents are witnessed by witnesses namely Gurmail Singh and Amar Chand, though examined but did not depose in the cross examination whether they were present at the time of extension of loan or not. These facts are germane for decision between the parties to the *lis*, which have not been noticed by the courts below, therefore, substantial question of law arise for determination by this Court.

I have heard learned counsel for the appellant and appraised the paper book.

While filing the suit, the bahi entries have not been produced before the trial court Registered legal notice had been served to the defendants. It has not been denied that the said legal

notice has been sent at a wrong address or not received. Nothing prevented the defendants to reply the same whatever has been pleaded in the written statement for the first time. In essence, after receipt of notice did not deny extension of loan nor lodged any criminal complaint with regard to the forged signatures on the documents whereby Madan Gopal had undertaken to return the loan. Rather, from the perusal of the cross examination of Gurmail Singh it has surfaced that though long questions have been asked at the instance of the defendants to show that there was a loan transaction. For the sake of brevity the same is reproduced hereinbelow:-

"I know Madangopal Verma for the last 5/7 years as my brother use to sell his crops through the defendant. Writing was effecting between the parties in the month of May 2002. When I gave Rs.5 lac 75 thousand to the defendant. However, I do not know the date of the said writing. I have produced that writing on file. The said writing was effected on a letter head and the entry regarding the same was also incorporated in the bahi. The said writing was effected in the shop of the defendant at Anajmandi Chamkaur Sahib. And that time some agriculturist were present in the shop whom do not know. On accountant/Munim of the defendant and one Chhinda were present there. The Tehsil Complex of Chamkaur Sahib is in the Chamkaur Sahib Town and as a distance of ½ Km from the shop of the defendant. It is correct that Stamp Vendor Deed Writers, stamp papers, pronote are available in Tehsil complex. The said Tehsil complex is about 30 years. Tehsildar also remains

available there. I have not tried to get any document scribed regarding the said payment in the Tehsil Chamkaur Sahib. There is no letter head on Ex.P1. It is correct that the upper portion of the paper of Ex.P1 is torn. It is correct that nothing is mentioned in Ex. P1 with regard to any interest. It is correct that Ex.P-1 is not signed by any attesting witness. The writing of calculation on Ex.P-1 from point A1 to A2 is different from the writing on the upper portion of Ex.P1. Voltd.there are two three munim of defendant. It is correct that the calculation is not signed by body from portion A1 to A2. The signatures on Ex.P1 at point A3 were made after completing of whole of the writing on Ex.P1. The calculation from A1 to A2 were written prior to make the signature at point A3 on Ex.P1. Ex.P1 was written in the month of May 2002. Since May 2002 this paper Ex.P1 is in my custody. In the year 2002 out income from the above mentioned work shop were 10,000/- to 15,000/- pm. However, we do not have record regarding this. I was having a saving bank account in the month 2002 in Punjab National Bank, Ropar, Apart from it I have not having any other bank account. An amount of Rs.41,000/- and Rs.6.40 were returned to me on 7.1.03 and after a period of 6 months of it respectively.”

From the tenor and mode of cross examination, it is irresistibly seen that there was loan transaction. Even the plaintiff and Madan Gopal were known to him for the last 7 years.

There is another aspect of the matter. It is immaterial that whether bahi entries have not been proved as the

appellants-defendants have failed to prove the signatures of Madan Gopal on the aforementioned two documents vide which he had undertaken to return the amount. In the absence of any evidence to the contrary, courts below have rightly decreed the suit, though the appellate court modified the decretal amount from ₹7,37,360/- to ₹5,30,360/- and interest part previous to the filing and during the pendency of suit and post the decree.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

December 7, 2015
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