

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

R.S.A No.2233 of 1989

Date of decision : 03.06.2016

Har Lal

..... Appellant

Versus

Kanwar Bhan

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. A.P.S.Sandhu, Advocate
for the appellant.

Mr. Ajay Bishnoi, Advocate
for Mr. Mahabir Singh Sindhu, Advocate
for the respondent.

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

DARSHAN SINGH,J

1. This Regular Second Appeal has been preferred by defendant-appellant Har Lal against the judgment and decree dated 20.07.1989 passed by the learned Additional District Judge, Rothak vide which the appeal filed by the respondent-plaintiff Kanwar Bhan against the judgment and decree dated 11.11.1987 passed by the learned Sub Judge Ist Class, Jhajjar has been allowed.

2. The facts of the case have been recapitulated by both the learned Courts below, however the facts necessary for the disposal of the present appeal are that plaintiff-respondent Kanwar Bhan filed the suit for recovery of Rs. 8240/- against appellant Har Lal on the grounds *inter alia*

that on 06.09.1982 appellant-defendant Har Lal borrowed a sum or Rs. 9000/- from the plaintiff and executed a *Bahi* entry in this behalf. The interest at the rate of 1 % per month was agreed to. The defendant has repaid Rs. 4000/-. Thereafter, a sum of Rs. 8240/- along with interest were was due from the defendant-appellant, which he had not paid despite demand. Plaintiff also got served the legal notice through registered post, which was not replied by the appellant. Hence the suit.

3. Appellant-defendant contested the suit on the grounds *inter alia* that he never took any loan from the plaintiff-respondent nor signed any *Bahi* entry. The question of settling any interest does not arise. Nothing is due from the defendant to the plaintiff. He also denied that any legal notice was served upon him. He also raised certain legal and preliminary objections and pleaded for dismissal of the suit.

4. The plaintiff filed the replication controverting the pleas raised by the appellant-defendant in the written statement. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the defendant borrowed a sum of Rs. 9000/- from plaintiff on 06.09.1982 and executed bahi entry agreeing to repay the amount along with interest at the rate of Rs.1 % p.m? OPP
2. Whether the defendant has paid a sum of Rs. 4000/- out of the loan amount of Rs. 9000/- and now only a sum of Rs. 8240/- is standing towards him as alleged in para no.2 of the plaint?OPP
3. Whether the suit is false and fictitious and filed due to enmity. If so its effect?OPD
4. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
5. Whether the plaintiff is money lender without licence?OPD

6. Whether the defendant is entitled for special costs?OPD
7. Relief.

5. On appreciating the evidence adduced by the parties and the contentions raised by their counsel, the learned trial Court dismissed the suit filed by the plaintiff-respondent vide judgment and decree dated 11.11.1987.

6. Aggrieved with the aforesaid judgment and decree, plaintiff-respondent preferred the appeal, which has been allowed by the learned First Appellate Court. The suit filed by the plaintiff-respondent was decreed for recovery of Rs. 7000/- in favour of the plaintiff and against the appellant-defendant with proportionate costs. Plaintiff was also held entitled to interest at the rate of 1 % per month on the principal amount of Rs. 5000/- from the date of filing the suit i.e. 30.08.1985 till realization. Hence this Regular Second Appeal.

7. I have heard Mr. A.P.S.Sandhu, Advocate, learned counsel for the appellant, Mr. Ajay Bishnoi, Advocate for Mr. Mahabir Singh Sindhu, Advocate, learned counsel for the respondent and have carefully gone through the record of the case.

8. Initiating the arguments, learned counsel for the appellant contended that the suit of the plaintiff is based on the *Bahi* entry Ex.PW2/A. He contended that as per section 34 of the Indian Evidence Act, 1872, the *Bahi* entry alone cannot fix the liability. He further contended that even the suit for recovery is not maintainable on the basis of the *Bahi* entry as the said *Bahi* entry does not fall within the definition of promissory note, bond and acknowledgment of debt as the *Bahi* entry

does not fulfill the criteria of negotiability. He further contended that the entry in *Bahi* alone is not sufficient evidence to charge any person with any liability. To support his contentions he relied upon cases **Harbans Lal Vs. Gurjit Kaur and another, R.S.A No. 4840 of 2015, decided on 07.01.2016, Dhup Singh Vs. Pheru and others 2015(4) R.C.R (Civil) 463 and Narsi Dass Vs. Surender 2015(1) R.C.R (Civil) 108.**

9. He further contended that there is no corroborative evidence in respect of the *Bahi* entry Ex.PW2/A. It is alleged that the said *Bahi* entry was scribed by PW-2 Diwan Singh, the brother of the plaintiff. But, plaintiff Kanwar Bhan stated that at the time of payment of the money except him and appellant Har Lal nobody else was present. So, there is no corroboration to the fact that the loan consideration has passed over from plaintiff to defendant-appellant. He further contended that there are certain discrepancies in the statements of PW-1 Kanwar Bhan plaintiff and PW-2 Diwan Singh his brother, the alleged witness of the *Bahi* entry. So, even the execution of the *Bahi* entry is doubtful.

10. He further contended that the learned trial Court has categorically mentioned that the *Bahi* entry Ex.PW1/A does not bear the signatures of appellant. The report given by PW-3 Som Nath Aggarwal, hand writing and finger print expert examined by the plaintiff has been rebutted by DW-3 Baldev Singh Dutt, the handwriting and finger print expert examined by appellant-defendant. In view of the conflict reports, the learned trial Court has itself compared the signatures of the appellant and came to the conclusion that the same do not tally with the specimen/standard signatures of appellant Har Lal. This conclusion of the

learned trial Court supports the plea raised by the appellant-defendant that the *Bahi* entry Ex.PW2/A is a forged document. Such entry cannot be made a basis for passing the decree for recovery.

11. He further contended that the plaintiff-respondent has admitted in the cross-examination that he has also advanced loan to other persons. It is an admitted case that the plaintiff is not a registered money lender under the Provisions of Punjab Registration of Money Lender's Act, 1938 (for short Money Lenders Act). Thus, the suit filed by him is barred under Section 3 of the Money Lenders Act.

12. He further contended that it is an appeal against the judgment of reversal of the well reasoned judgment of the learned trial Court. The judgment passed by the learned trial Court has been upset/reversed by the learned First Appellate Court without assigning any sufficient reason. Thus, he contended that as the *Bahi* entry Ex.PW2/A cannot fix the liability of the appellant-defendant, the same is not legally admissible to maintain the suit for recovery, the plaintiff has not been able to establish that the *Bahi* entry Ex.PW2/A bears the signatures of the appellant-defendant and the suit is also barred by Section 3 of the Money Lender's Act, so the judgment and decree passed by the learned First Appellate Court cannot be sustained in the eyes of law.

13. On the other hand, learned counsel for the plaintiff-respondent contended that the *Bahi* entry Ex.PW2/A is a legal document. The same has been executed by the appellant in favour of the plaintiff-respondent. From the statements of PW-1 Kanwar Bhan plaintiff, PW-2 Diwan Singh, the scribe of the entry and PW-3 Som Nath Aggarwal, the

hand writing expert, it is established that the *Bahi* entry Ex.PW2/A was signed and executed by appellant-defendant. He contended that the *Bahi* entry Ex.PW2/A is fully corroborated from the evidence brought on record. The statements of PW-1 Kanwar Bhan-plaintiff and PW-2 Diwan Singh, the scribe shows that a sum of Rs. 9000/- was advanced as a loan to the defendant-appellant by the plaintiff-respondent. He further contended that out of that appellant-defendant has returned total Rs. 4000/- in two installments of Rs. 2000/-. That endorsement is also signed by defendant-Har Lal. If, no loan was taken by the appellant, then what was the need for him to return Rs. 4000/-.

14. He further contended that there is no evidence to show that the plaintiff-respondent was carry on the business of money lending So, the provisions of the Money Lender's Act are not applicable to the plaintiff. He further contended that when both the parties have examined the handwriting expert, it was not proper for the trial Court to itself compare the signatures of defendant-Har Lal to contradict the well reasoned report of the handwriting expert examined by the plaintiff. Thus, he contended that the impugned judgment and decree passed by the learned First Appellate Court does not call for any interference.

15. I have duly considered the aforesaid contentions.

16. As per the grounds of appeal, the following substantial questions of law arises for consideration by this Court:-

1. *Whether the learned First Appellate Court has misread, misconstrued and misinterpreted the oral as well as documentary evidence available on record?*

2. *Whether the Bahi entry Ex.PW2/A is inadmissible being irrelevant and not worthy of reliance as not proved to be the part of the regularly maintained books of account?*
3. *Whether the plaintiff-respondent is proved to be money lender and suit filed by him is not maintainable in the absence of licence under the Money Lenders Act.*

17. As per the case of the plaintiff-respondent, the appellant-defendant borrowed a sum of Rs. 9000 in cash from him on 06.09.1982. The writing to this effect was recorded in the *Bahi* of the plaintiff which was signed by the appellant-defendant. It is also the case of the plaintiff that appellant-defendant had agreed to pay interest at the rate of 1 % per month. He has also repaid Rs. 4000/- out of the aforesaid loan amount. Whereas, the appellant-defendant has taken the plea that he has not taken any loan from the plaintiff and never signed in the *Bahi* of the plaintiff. There was no question of settlement of any rate of interest.

18. Plaintiff-respondent Kanwar Bhan has himself stepped into the witness box as PW-1 and supported his case as set out in the plaint. He categorically deposed about the advancement of Rs. 9000/- as loan to the appellant-defendant and stated that entry was reduced into writing in his *Bahi* after taking the loan which was signed by the defendant. He deposed that he has seen the page of the *Bahi* available on record, which was signed by Har Lal-defendant. This *Bahi* entry was reduced into writing by Diwan Singh. The same was read over to defendant-Har Lal and he signed the same accepting the same to be correct. PW-2 Diwan

Singh, is the scribe of the *Bahi* entry Ex.PW2/A. He has also corroborated the version with respect to the advancement of the loan of Rs. 9000/-the plaintiff to the defendant and that the *Bahi* entry Ex.PW2/A was scribed by him, which was read over and explained to the appellant-defendant and thereafter he signed it. He also deposed about the interest agreed to between the parties and return of Rs. 2000/- each on two occasions. Plaintiff further examined Sh. Som Nath Aggarwal as PW-3. He has compared the disputed signatures of appellant-defendant Har Lal on the *Bahi* entry with his specimen/standard signatures and gave his report Ex.PW3/5 that the *Bahi* leaf Ex.PW2/A bears the signatures of appellant-defendant.

19. In rebuttal to the aforesaid evidence, appellant-defendant Har Lal stepped into the witness box as DW-1 and deposed that there was no loan transaction between him and the plaintiff. He has never taken any loan from the plaintiff. The *Bahi* leaf Ex.PW2/A does not bears his signatures. He was having enmity with the plaintiff and due to that grudge, he has filed the suit against him. He has invested Rs. 4-5 lacs in his factory for manufacturing the aluminum utensils and is supplying the same. He also examined DW2-Laxmi Narain who deposed about the profession and financial capacity of the appellant-defendant. The appellant-defendant also examined DW-3 Baldev Singh Dutt, finger print expert, Rohtak, who has proved his report Ex.DW3/A. He has given the opinion in favour of the appellant that the disputed writing do not bears the signatures of the appellant.

20. Section 34 of the Indian Evidence Act, 1872 (for short 'Act')

reads as under:-

“Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.”

21 In view of the phraseology of the aforesaid provision of law, there is absolutely no dispute with the proposition of law laid down in the cases referred by learned counsel for the appellant that *Bahi* entry alone is not sufficient evidence to charge any person with liability. However, the said *Bahi* entry is certainly admissible in evidence being a relevant piece of evidence. Nevertheless, the law insist on the corroborative evidence of the same in order to charge a person with liability. In the instant case, *Bahi* entry Ex.PW2/A is not the simply *Bahi* entry settling the accounts. Rather, the same is the writing on the basis of which the appellant-defendant has received a loan of Rs. 9000/- from the plaintiff respondent. So, firstly we have to determine the nature of the entry Ex.PW2/A in order to adjudicate upon the rights of the parties. The *Bahi* entry Ex.PW2/A is reduced into writing in Hindi script. The same bears the signatures of the appellant and also bears the revenue stamp of 20 Naya Paisa. This entry is on behalf of the appellant wherein it is mentioned as under:-

“ I Har Lal son of Hardawari (Khati) had taken Rs.9000/- from Kanwar Bhan on 09.06.1982 village Ghaur, 51 Khas (Rohtak).

Rs.9000, signatures of Har Lal over the revenue stamp of 20 paisa.”

So, Ex.PW2/A is duly signed by the appellant. The revenue stamp of 20 paisa has been fixed. No objection has been taken from the

side of the appellant that the said writing is insufficiently stamped when the said writing was produced in evidence. When once a document has passed the ordeal of an investigation at nisi prius as to its liability to the stamp duty or the sufficiency of stamp, it should be subjected to no further discussion. The admission of the document in evidence puts it beyond the pail of controversy at least with regard to sufficiency or insufficiency of stamps. When this objection goes, then all other consequences of the document must flow. This Court in case **Jagdish alias Jagan Vs. Jora singh 2010(4) PLR 778** has laid down that when no objection was raised when unstamped pronote admitted in evidence, later on the admissibility of pronote in evidence cannot be questioned at the appellate stage.

22. Even, at the time of arguments, learned counsel for the appellant has not challenged the entry Ex.PW2/A being insufficiently stamped. So, the fact remains that the entry Ex.PW2/A is signed by the appellant and is also stamped. So, it clearly falls in the ambit of acknowledgement of debt. Such acknowledgement implies the promise to pay. Reference can be made to case **R. Kumar & Co. Vs. Chemicals Unlimited 2001 Bombay 116**. So, the entry Ex.PW2/A is an acknowledgement of debt with implied promise to pay.

23. The entry Ex.PW2/A is fully corroborated from the evidence adduced by the plaintiff-respondent. Plaintiff-Kanwar Bhan has himself stepped into the witness box as PW-1. He also examined PW-2 Diwan Singh, the scribe of the entry Ex.PW2/A. Mere this fact that PW-2 Diwan Singh happens to be the brother of the plaintiff-Kanwar Bhan is no

ground to disbelieve his statement. Both these witnesses have consistently deposed that the entry Ex.PW2/A was read over to the appellant-defendant and thereafter he has affixed his signatures. The plaintiff has also examined PW-3 Som Nath Aggarwal, hand writing expert, who has compared the disputed signatures of defendant-Har Lal available on the entry Ex.PW2/A and has gave the opinion that the said signatures tallied with the specimen/standard signatures of defendant-Har Lal.

24. PW-2 Diwan Singh was has categorically deposed that Rs. 9000/- was handed over by the plaintiff to the defendant in his presence. In the cross-examination, plaintiff-Kanwar Bhan has simply stated that at that time nobody else was present. But, he has nowhere ruled out the presence of PW-2 Diwan Singh. So, there is no basis to draw the conclusion that PW-2 Diwan Singh was not present at the time of advancement of the loan.

25. Appellant-defendant while stepping into the witness box has simply denied the receipt of loan and executing the entry Ex.PW2/A. He has also examined DW-2-Lakshmi Narain, who has deposed about the profession and financial capacity of the appellant. It was also projected at the time of the arguments that the appellant is financially sound. He is running a factory for manufacturing the aluminium utensils and had invested Rs. 4-5 lacs. But, in the cross-examination, he admitted that he has taken Rs. 2 lacs as loan from the bank and invested Rs. 2 lacs from his pocket. He again deposed that from where the money comes with him. This version of the appellant in the cross-examination negates the plea

that he was financially sound. The leaf of the *Bahi* Ex.PW2/A also depicts that even on 03.06.1982, appellant has borrowed a sum of Rs. 10,000/- from Phool Singh, the father of the plaintiff. It shows that the appellant-defendant has been borrowing the money from the family members of the plaintiff-respondent.

26. Both the parties have produced the hand writing experts. The plaintiff-respondent has examined PW-3 Som Nath Aggarwal, who has proved his report Ex.PW3/5 and gave the opinion that the disputed signatures on the entry Ex.PW2/A tally with the specimen/standard signatures of the appellant-defendant. The appellant-defendant has examined DW-3 Baldev Singh Dutt, hand writing expert, who has given his report Ex.DW3/A in favour of the appellant-defendant that his specimen/standard signatures do not tally with the disputed entry Ex.PW2/A. The report of the hand writing expert examined by the appellant is to be appreciated keeping in view the conduct of the appellant. When, the appellant-defendant stepped into the witness box, he even denied his signatures on the Vakalatnama. However, after realising his mistake, he admitted the said signatures. Not only that, the appellant-defendant has also denied his signatures on the application mark A. Though, this application was moved by him for file inspection. DW-3 Baldev Singh Dutt, hand writing expert has taken the signatures of the appellant on the Vakalatnama, acknowledgement Ex.P3 and application dated 20.02.1986 (mark A) as the admitted signatures. But, the defendant has denied his signatures on the acknowledgement as well as the application. The hand writing expert examined by the appellant-defendant

has taken his signatures below the entry with respect to the repayment of Rs. 4000/- as admitted signatures which are also disputed by the appellant-defendant. In these circumstances, the report of the hand writing expert examined by the appellant cannot be made the basis to rebut the evidence adduced by the plaintiff-respondent.

27. The approach of the learned trial Court to discard the report of the hand writing expert examined by the plaintiff-respondent by comparing the signatures itself is erroneous. Though, to some extent it is permissible under Section 73 of the Act that the Court can compare the signatures, but it is settled law that the Court cannot act as an expert. Ordinarily, the Court should not take upon itself the responsibility of comparing signatures when disputed. Those are the matters of intrinsic technicalities requiring some amount of technical expertise. The Court is not technically trained or qualified to indulge in the comparison of the hand writing. The expert opinion may be helpful as a piece of evidence to the Court for forming its opinion to come to the appropriate conclusion.

The Hon'ble Apex Court in case State (Delhi Administration) V. Pali Ram AIR 1979 14 has laid down as under:-

*“Although there is no bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the **evidence** of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each*

other; and the prudent course is to obtain the opinion and assistance of an expert.”

28. The same ratio of law has been laid down in cases **S. Nagarthinam Vs. P. Marappan 2000 DCR 307, Smt. Hamida Vs. Smt. Humer and others 1992 AIR(Allahabad) 346 and Thumu Srikanth Vs. Akula Babu 2012 (6) R.C.R (Civil) 3182.**

29. The observations of the learned trial Court that the signatures of the appellant do not tally with his signatures on the entry Ex.PW2/A and the said entry is fabricated and has no legal foundation on the face of evidence available on record and have been rightly ignored by the learned First appellate Court.

30. The case of the plaintiff-respondent has also been corroborated by another entry of the *Bahi* leaf brought on record, which shows that a sum of Rs. 2000/- have been returned by the appellant on 20.01.1983 and Rs. 2000/- have been returned on 28.03.1983. The appellant has disputed that he never returned any such amount to the appellant. As already mentioned that defendants expert has taken the signatures of the appellant at mark C below this entry regarding repayment as the admitted signatures of the appellant. He was obviously acting under the instructions of the defendant, which shows that the entry regarding repayment of Rs. 4000/- bears the signatures of appellant-defendant Har Lal. There was also no reason to disbelieve this entry of repayment as the said entry has not been made as an acknowledgement to bring the suit within limitation. As the suit has been filed within three years from the date of advancement of the loan itself. If the intention of

the plaintiff-respondent would have been to raise the false claim, there was no reason for him to show the repayment of Rs. 4000/-. He could have raised the claim for the entire sum of Rs. 9000/-. The repayment of Rs. 4000/- by the appellant further adds to the authenticity of the entry Ex.PW2/A.

31. Appellant-defendant has admitted the plea that the plaintiff-respondent has raised the false plea due to enmity. But, no evidence/material has been brought on record by the appellant -defendant to show that there was any enmity between them. Rather, the entries on the leaf shows that appellant-defendant has been borrowing the money from the plaintiff and his father. As already discussed, the defendant has even denied his signatures on the documents filed by him, which shows the conduct of the defendant and renders his testimony unworthy of credence.

32. To establish the plea that plaintiff was a money lender, it was incumbent upon the appellant-defendant to establish that the plaintiff-respondent had indulged in the business of money lending systematically. To attract the provisions of the Money Lender's Act lending money should be regular business and not casual instances. There should be element of continuity and habit to constitute business or profession. There must be more than occasional and disconnected loan. Word "business" imports the notion of system, repetition and continuity. But, in the instant case, all these ingredients are totally missing. The appellant-defendant has not led any evidence to establish the aforesaid ingredients. The plaintiff-respondent has not been even questioned as to what was the

intervals in the transactions of loan conducted by him. The casual advances of money to few persons does not make a person money lender. Thus, appellant-defendant has not been able to establish that plaintiff-respondent was a money lender and provisions of Money Lenders Act were applicable to him. To support these observations, reference can be made to cases **Balvinder Singh Vs. M/s Basaikhi Ram Saina Ram 2008(2) R.C.R (Civil) 467**, **Khachen Vs. Ram Ditta Mal 1984 PLJ 408**, **Kampa Wati Devi Vs. Basant Rai 1968(4) DLT 395**, **Sant Lal Vs. Noria Mal 1977 PLR 687** and **S.S.S.Amar Singh Vs. Kuldip Singh and others 1951 PLR 303**.

33. The plaintiff has alleged that appellant-defendant has agreed to pay interest at the rate of 1 % per month. There is only the oral evidence of the plaintiff on this point in the shape of his own statement and the statement of his brother Diwan Singh. But, when the loan has been advanced on the basis of the *Bahi* entry Ex.PW2/A, the oral evidence with respect to the agreement of interest is excluded in view of Section 92 of the Act. So, the plaintiff shall not be entitled to any interest from the date of loan till the date of filing the suit. However, he will certainly be entitled to interest *pendente lite* and future at the rate of 1 % per month on the principal amount of Rs. 5000/- from the date of the suit i.e. 30.08.1985 till realisation.

34. Thus, there is no escape from the conclusion that the appellant-defendant has received a loan of Rs. 9000/- from the plaintiff-respondent on 06.09.1982 and executed the entry Ex.PW2/A, which is an acknowledgement of the debt and out of that amount he has already

repaid the sum of Rs. 4000/-. So, the plaintiff is certainly entitled to recover the outstanding loan amount of Rs. 5000/- and also the interest *pendente lite* and future at the rate of 1 % per month from the date of filing the suit till realisation.

35. Thus, keeping in view my aforesaid discussion, the impugned judgment and decree dated 20.07.1989 passed by the learned First Appellate Court stands modified to this extent that plaintiff-respondent shall be entitled to recover Rs. 5000/- from the appellant-defendant with proportionate costs. He will also be entitled to interest *pendente lite* and future at the rate of 1 % per month from the date of filing the suit i.e. 30.08.1985 till realisation.

36. With the aforesaid modification in the decree, there is no merits in the present appeal and the same is hereby dismissed.

June 03, 2016

s.khan

(DARSHAN SINGH)
JUDGE