

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

RSA No.1037 of 2012 (O&M)

Date of decision : 05.04.2016

Kaur Singh

...Appellant

Versus

Om Parkash

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Ashish Grover, Advocate for the appellant.

Ms. Natasha Munjal, Advocate for
Mr. M.K. Dogra, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the impugned judgment and decree of lower Appellate Court, whereby suit for recovery of ₹1,70,250/-, has been decreed.

Mr. Ashish Grover, learned counsel appearing on behalf of appellant submits that before the trial Court and lower Appellate Court, two judgments were placed on record to show that respondent-plaintiff is money lender. Those findings have been affirmed in RSA No.428 of 2012 titled as Om Parkash Vs. Baghera Singh. Thus, in view of the provision of Section 3 of the Punjab Registration of Money Lenders Act, 1938, money lender was

required to be registered. In the absence of the registration, it cannot be indulged into extending the loan by executing the pronote and receipt. The findings rendered by both the Courts below that defendants were different, is fallacious, much less, perverse, therefore, judgments would not apply. In case such opinion is applied, then it would be given that he is money lender qua No.1 but not qua other defendants which is not the scope of the Act and thus, urges this Court to formulate following substantial questions of law:-

- i) Whether the suit for recovery filed by the respondent is maintainable?
- ii) Whether respondent is permitted to do business of money lending without any valid licence?

Ms. Natasha Munjal, Advocate for Mr. M.K. Dogra, learned counsel appearing on behalf of respondent-plaintiff submits that two transactions would not clothe the status of the plaintiff, that of the money lender and, therefore, not required to be registered as per the provision of 1938 Act. In support of her contention, relied upon judgment rendered by this Court in *Balwinder Singh Vs. M/s Basaikhi Ram Saina Ram 2008(2) RCR (Civil) 467* and *Firm Chint Ram Sohan Lal Vs. Amar Singh, 1985 RRR 377* and judgment rendered by Madras High Court in *M. Nallusamy Vs. K. Subramaniam, 2005 (2) RCR (Criminal) 175*. She further submits that the concurrent findings rendered by the lower Appellate Court should not be interfered until and unless, the substantial question of law arise for determination and urges this Court for affirming of the judgment and decree under challenge.

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

No doubt trial Court though dismissed the suit but lower

Appellate Court decreed the suit holding it to be a transaction of loan as the appellant-defendant had executed a pronote and receipt and such transaction would not clothe the respondent-plaintiff the status of registered money lender. However, before the lower Appellate Court, application under Order 41 Rule 27 was moved to place on record the judgment dated 12.09.2009 which has been affirmed by this Court in RSA No.428 of 2012 holding therein that plaintiff being money lender and in the absence of the registration, act of alleged extending of loan without obtaining the licence would be fatal for seeking recovery and until and unless he is not registered, plaintiff cannot seek recovery. Judgments relied by Ms. Nitasha are in respect of two transactions but here there may be others transactions than the one referred above, but the fact remains that judgment qua respondent-plaintiff would be applicable and cannot be read to be in personam as the loanee would be a different person. Once an evidence qua money lending vide Ex.D1 and judgment dated 12.09.2009 have been affirmed up to this Court, it was incumbent upon the respondent-plaintiff to obtain the licence for transacting the business of extending the loan.

In view of the aforementioned facts and circumstances, judgment and decree of the lower appellate Court is set aside for want of registration under 1938 Act, much less, of licence.

Questions of law as noticed above are answered in favour of the appellant-defendant and against the respondent-plaintiff.

Suit is accordingly dismissed.

Appeal stands allowed.

05.04.2016

pawan

(AMIT RAWAL)
JUDGE