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

**RSA-3728-2012 (O&M)
Date of decision : 22.03.2016**

Mohan Singh

...Appellant

Versus

Paramjit Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Navdeep, Advocate
for the appellant.

Mr. Gagandeep Singh, Advocate for
Mr. S.S. Grewal, Advocate
for respondent No.1.

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)

The appellant-defendant is aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit for recovery to the tune of ₹ 3,50,000/- along with interest @ 10% per annum from the date of alleged advancement till the date of decree and 6% per annum from the date of decree till actual realization, has been decreed by the lower Appellate Court.

Ms. Navdeep, learned counsel appearing on behalf of the appellant-defendant submits that though the defendant No.1 was *ex parte* before the trial Court, but the fact remains that in order to prove the same, the respondent-plaintiff has to stand on his legs. The allegations of alleged loan is

not supported by any documentary evidence. Neither there is any agreement, receipt or pronote except self-serving statement of withdrawal of the amount from the bank which sought to be proved through the testimony of the official of the Bank. In the absence of any documentary evidence, withdrawal of the money and the alleged advancement does not co-relate the extension of loan. There is no compliance of provisions of Section 101 of the Indian Evidence Act and urges to this Court to formulate the following substantial questions of law:

1. Whether in the absence of any written agreement, pronote or receipt, the suit for recovery was maintainable or not?
2. Whether the respondent-plaintiff has been able to prove the advancement of loan.
3. Whether there is any illegality or perversity in the judgment and decree of the lower Appellate Court.

Mr. Gagandeep Singh, Advocate for Mr. S.S. Grewal, learned counsel for the respondents-plaintiffs submits that there is no illegality and perversity in the judgment and decree of the lower Appellate Court as the plea of the appellant-defendant connecting the payment of the amount withdrawn from the Bank for the purpose of entering into agreement with Sukhwinder Singh has not been proved, irresistibly, the withdrawal of money was only for the advancement of the loan and this fact has been noticed by the lower Appellate Court while decreeing the suit, thus, there is no illegality and perversity in the judgment and decree of the lower Appellate Court and prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is merit in the contentions of Ms.

Navdeep, for the reason that the respondent-plaintiff, who has to stand on his legs failed to prove the advancement of loan, there is no pronote or receipt except the statement of witness and self-serving statement of withdrawal of ₹ 2,50,000/-. No other evidence corroborative has been led, even, in the FIR on 07.08.2002 registered under Section 420 and 406 IPC against the appellant-defendant along with co-accused, they have been acquitted. It was incumbent upon the respondent-plaintiff to prove the advancement of the loan by producing any acknowledgement on behalf of the appellant-defendant. In the absence of the same, in my view, the respondent-plaintiff has failed to discharge the onus, much less, burden, thus, there was no occasion for rebuttal.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the lower Appellate Court is set aside and the substantial questions of law as noticed above are answered in favour of the appellant-defendant and against the respondent-plaintiff and the judgment and decree of the trial Court is restored.

With the aforesaid observations, the appeal is allowed.

22.03.2016
yogesh

(AMIT RAWAL)
JUDGE