IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CM Nos.15732-C of 2015 in/and
Regular Second Appeal No.4430 of 2015 (O&M)
Date of Decision: March 28, 2016.

Sudesh Kumar

..........APPELLANT(s).

VERSUS

State Bank of Paitala and another

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.S. Manaise, Advocate
for the appellant (s).

****

SURINDER GUPTA, J.

CM-15732-C-2015

Heard.

2. The appeal was dismissed on 18.12.2015 due to non-appearance of appellant or his counsel.

3. Learned counsel for the appellant submits that his grand father expired on 17.12.2015 and he had instructed his colleague to seek adjournment but he missed the case.

4. In view of submissions made by learned counsel for the appellant, the application is allowed and the main appeal is ordered to be restored at its original number.

CM-10628-C-2015

5. There is delay of 15 days in filing the appeal.

6. Learned counsel for the appellant submits that the appellant applied for certified copy of the judgment of first Appellate Court on 01.04.2015 i.e. on the next day of the judgment and decree, which was prepared on 16.04.2015 but delivered to him on 30.04.2015. The clerk of the counsel counted the period of limitation from the date of delivery of certified copy, resulting in 15 days' delay in filing the appeal. However, the delay was not intentional or deliberate. The application is supported by affidavit.

7. In view of the submissions of learned counsel for the appellant, the application is allowed and delay of 15 days in filing the appeal is, hereby, condoned.

<u>RSA-4430-2015</u>

8. This is second appeal against the judgment passed by Civil Judge (Junior Division), Gurdaspur, decreeing the suit of the plaintiff-bank for recovery of ₹81,715/- with pendente lite and future interest @ 13.5% per annum.

9. The case of the plaintiff, in brief, is that the defendant-appellant took loan of ₹50,000/- on 06.06.2003 and executed security documents in favour of plaintiff-bank. The loan was to be repaid in instalments which he failed to repay. He executed balance confirmation of the outstanding amount with the bank on 30.05.2006. On the date of filing the suit, a sum of ₹81,715/- was outstanding which he failed to repay. Hence, the suit.

10. The defendant-appellant contested the claim of plaintiff-respondent with the averment that he neither applied loan of ₹50,000/- nor executed any document in favour of plaintiff-bank. Defendant No.2, who stood guarantor for the defendant-appellant, did not appear to contest the

claim of the plaintiff and was proceeded ex parte.

11. Though the defendant-appellant had denied advancement of loan and execution of documents, a plea was raised before the first Appellate Court that under the agreement, instalment of ₹1,400/- per month was to be deducted by the department of defendant-appellant and to remit the same to the bank till the payment of entire outstanding amount, as such, there was no lapse on the part of appellant in repayment of entire loan amount. The appellant, however, failed to produce any document to show that the department had deducted ₹1,400/- per month from his salary and remitted the same to the bank. The defendant-appellant is a Constable in Punjab Police and the plea raised by him before the first Appellate Court virtually amounts to admission of the claim of the plaintiff that the defendant took loan and undertook the repay the same in instalments.

12. Both the Courts have looked into the documents produced by the plaintiff-bank to prove the sanctioning of loan and execution of balance confirmation. The document bear not only the signature of the defendant-appellant but also his photograph.

13. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

14. No substantial question of law requiring determination arises in this appeal, which has no merits.

15. Dismissed.

(SURINDER GUPTA)
JUDGE

March 28, 2016.
Sachin M.