

RSA No.4840-2015

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

RSA No.4840-2015 (O & M)

Date of Decision: 07.01.2016

Harbans Lal

... Petitioner(s)

Versus

Gurjit Kaur and another

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- | | |
|---|------------|
| 1) Whether Reporters of the 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 |

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

Paramjeet Singh Dhaliwal, J.

CM-11582-C-2015

Allowed, as prayed for, subject to all just exceptions.

CM-11583-C-2015

Allowed. For the reasons mentioned in application, delay of
32 days in re-filing the appeal is condoned.

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This regular second appeal by the plaintiff is directed
against the judgment and decree dated 20.11.2014 passed by learned
Additional District Judge, Bathinda whereby appeal preferred by the
defendants has been allowed while setting aside the judgment and decree

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dated 31.07.2013 passed by learned Addl. Civil Judge (Sr. Divn.), Bathinda and suit of the plaintiff has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in civil suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff, being sole proprietor, is running the business of Commission Agent, under the name and style of M/s Jagan Nath Hakam Chand at Bhucho Mandi. It is averred that the plaintiff also maintains regular books of account i.e. khata, rokar, *bahi*, bill books and all the transactions are being made in these books of account, daily, regularly and correctly. The account books are maintained by Shri Hakam Chand in Mahajani (Lande) and the account books are also being produced before the Sales Tax as well as Income-Tax Departments and always found to be correct. The financial year of the firm of the plaintiff runs from 1st April of every year and ends on 31st March of the successive year and all the outstanding dues are being carried forward in the account books of next financial year. Kaura Singh son of Gulzar Singh, husband of defendant No.1 and father of defendant No.2, had dealings with the plaintiff for the last many years and he used to sell his crop through the agency of the plaintiff and also used to purchase goods on credit basis from the plaintiff and also used to borrow amount in cash from time to time himself and also through his son defendant No.2 and

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was having running account with the plaintiff for the last many years. After adjusting all the debit and credit entries in the account of Kaura Singh as on 31.03.2006, there was an outstanding balance of ₹2,17,781/- against Kaura Singh and the said amount of ₹2,17,781/- was carried forward in the account books of next financial year i.e. 2006-07. Accordingly, there was an opening balance of ₹2,17,781/- against Kaura Singh on 01.04.2006. Thereafter, on 17.05.2006, Kaura Singh through his son Tirlochan Singh defendant No.2, purchased goods on credit basis from the plaintiff for a sum of ₹1,600/- and the entry regarding the said amount of ₹1,600/- was made in the rokar bahi on the same day. Thereafter, on 29.07.2006, Kaura Singh again borrowed a sum of ₹17,619/- in cash from the plaintiff and entry in this regard was made in the cash book and also in the ledger on the same day. On 29.07.2006 Kaura Singh after carefully going through his account with the plaintiff and after checking all the debit and credit entries acknowledged an outstanding balance of ₹2,37,000/- due and payable by him to the plaintiff and after acknowledging the said outstanding balance, said Kaura Singh put his signatures in the account books of the plaintiff and assured the plaintiff to pay the said amount within a few days. Thereafter, Kaura Singh never visited the shop of plaintiff nor made payment of any amount against the above said outstanding balance and the said balance of ₹2,37,000/- was carried forward in the account books of next financial year 2007-08. In the meantime, Kaura Singh died on 17.11.2007 leaving behind the defendants as his only legal heirs.

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The defendants have inherited all the movable and immovable properties of deceased-Kaura Singh vide inheritance mutation No.11957 to the extent of 1/4th share in favour of defendant No.1 and 3/4 share in favour of defendant No.2 on the basis of Will executed by Kaura Singh in favour of defendants and as such, the defendants are the only legal heirs of deceased Kaura Singh and they are liable to make the payment of above said outstanding dues to the plaintiff jointly and severally. The plaintiff requested the defendants to make the payment, but to no avail. Hence, suit was filed.

On notice, the defendants resisted the suit and filed written statement taking various preliminary objections. It was pleaded that suit of the plaintiff is based on false, forged and fabricated documents. The alleged signatures of deceased-Kaura Singh on the purported acknowledgment are forged one and do not tally with his routine signatures. The plaintiff never informed the defendants about any outstanding amount standing against the deceased after his death in the year 2007 till filing of the suit. The deceased was not having any dealing with the plaintiff since the year 2004-05 as he had left his commission agency and joined another commission agency after taking No Objection Certificate from the plaintiff. Other averments in plaint were denied and dismissal of suit was prayed for.

On the basis of pleadings of parties, the Court of first instance framed following issues:

“1. *Whether the plaintiff is entitled to recover the*

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amount as prayed for?OPP

2. *Whether the plaintiff is money lender but has not complied with the provisions of Punjab Public Accounts and Money Lending Act, if so its effect?OPD*
3. *Whether the suit is not maintainable?OPD*
4. *Relief.”*

After appreciating the evidence, the Court of first instance decreed the suit. Feeling aggrieved, the defendants preferred an appeal which has been allowed by the lower Appellate Court. Hence, this second appeal.

I have heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant submitted that following substantial questions of law, formulated in the grounds of appeal, arise for consideration by this Court:

- (i) *Whether the debtor cannot be held liable to pay the debt shown in the account book even when the same has been acknowledged by the debtor and when it has been proved that the account books have been maintained in due course of business?*
- (ii) *Whether Section 34 of Indian Evidence Act is applicable when the suit is not based only account books but on account book which has been signed and duly acknowledged by the debtor?*
- (iii) *Whether the signing of the debtor on the account books a an acknowledgment of debt*

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will not bind the debtor in any way to repay the debt mentioned therein?

- (iv) *Whether the judgment of the first appellate court is based on misreading over law and facts and further the misreading of evidence on record and is liable to be set aside?*

Learned counsel for the appellant vehemently contended that entries in the account books are duly proved on record by PW 3 Anil Kumar Gupta, handwriting and finger print expert. The entries in 'bahi' are admissible in evidence. The judgment and decree of the court of first instance has been erroneously set aside.

I have considered the contentions of learned counsel for the appellant.

With regard to the relevancy and evidentiary value of bahi entry/account books and nature of entry executed in 'bahi', this Bench in ***Dhup Singh vs. Pheru and others*** 2015 (4) RCR (Civil) 463 has held as under:

“To appreciate the controversy involved in present case in proper perspective, following points are required to be considered.

- 1. The relevancy and evidentiary value of an entry in ‘bahi’.*
- 2. The nature of an entry executed in ‘bahi’ and consequential application of provisions of Stamp Act, 1899 and Negotiable Instruments Act, 1881.*

In so far as the first point relating to relevancy and admissibility of 'bahi' entry in evidence is concerned,

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undoubtedly, as per section 34 of the Evidence Act, 1872 (in short “the Act”) the entries in account books regularly kept in course of business are relevant piece of evidence and admissible. However, such entries cannot be the sole basis of fixing liability on any person. Section 34 of the 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”.

*An entry to be admissible in evidence under Section 34 of the Act, must be shown to be in a book, that book must be a book of accounts and that account must be one regularly kept in the course of business. The term book may properly be taken to signify ordinarily a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume. A book which merely contains entries of items of which no account is made at any time, is not a book of account for the purpose of Section 34. The legislature did not intend to include in that category any record in which there is no process of reckoning. Reference in this regard may be made to **Central Bureau of Investigation v. V.C. Shukla** 1998(3) SCC 410, **Mukundram v. Dayaram** AIR 1914 Nag 44 and **Mahasay Ganesh Prasad Ray and another v. Narendra Nath Sen and others** AIR 1953 SC 431.*

Whereas, Section 34 of the Act specifically renders admissible, the entries in account books, which would include ‘bahi’, nevertheless, the law insist on corroborative evidence of the same in order to charge a person with liability. The provision in itself ensures that a

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*creditor may not have undue advantage over the debtor by forging or tampering with the entries in the 'bahi' especially when significant proportion of debtors is illiterate. However, if the entry in a 'bahi' is corroborated with other independent evidence, liability can be safely imposed on the debtor. In this context it would be useful to quote from the judgment of Hon'ble Supreme Court in **V.C. Shukla** (supra), wherein the court held as under:*

“From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed”.

*Reference can also be made to **Ishwar Dass Jain (Dead) through LRs v. Sohan Lal (Dead) through LRs** 2000 (1) RCR (C) 168 SC, **Chandradhar Goswami and Ors. V. Gauhati Bank Ltd.** AIR 1967 SC 1058, **Hiralal-Mahabir Pershad v. Mutsaddilal-Jugal Kishore** 1967 (1) ILR (Punjab) 435 and **Abdul Haq and Ors. v. Firm Shivji Ram-Khem Chand** AIR 1922 Lah 338.*

*Recently in **Gian Chand Brothers and Another v.***

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***RattanLal @ Rattan Singh** 2013 (1) RCR (C) 961, the Hon'ble Supreme Court in view of the admitted fact that books of account were regularly kept in course of business held that they should not have been rejected without any kind of rebuttal or discarded without any reason. This case however, cannot be said to be laying down a universal rule of correctness of account books in all circumstances; rather considering the peculiar facts of the case, the court came to a conclusion that mere denial of signatures by defendant and consequential non examination of handwriting expert by the plaintiff is not sufficient to rebut the presumption of correctness of entries in account book.*

Thus the explanation to first point raised above is found in Section 34 of the Act, 1872 itself which has been interpreted by the court in consistent manner as discussed herein above.

*Coming to the second point, to determine the nature of entry as to whether it is merely a balance of account, bond, agreement, acknowledgment or a promissory note is another significant aspect involved in cases of recovery based on entry in 'bahi'. Once nature of entry is determined then it has to be seen whether it was required to be stamped or not. In case yes, then it has to be properly stamped as per the Stamp Act, 1899 or else it is rendered inadmissible in evidence. Primarily nature of the entry has to be decided on the basis of intention of the parties gathered from phraseology used and surrounding circumstances. It has been observed by Full Bench of Lahore High Court in **Firm Shiv Ram Punnun Ram through Shiv Ram and Punnun Ram v. Faiz** AIR 1942 Lah 50 that, the question whether the various entries with*

*respect to balances struck by the defendant in plaintiff's 'bahi' from time to time are to be classed as acknowledgments, agreements or bonds for the purposes of duty chargeable under the Stamp Act has to be decided on the basis of the language used. As pointed out in the Full Bench ruling **Nanak Chand v. Fattu** A.I.R. 1935 Lah. 567, it is the phraseology used and not the legal implications following from it that determines the duty chargeable on such cases. In **Ganga Jal v. Lal Chand**, 1970 PLR 28, this High court came to conclusion that the entry in dispute was not required to be stamped as it was made only as an acknowledgment of the correctness of account and was not intended to supply an evidence of debt so as to fall within the mischief of Article 1, Schedule 1 of the Stamp Act. The court drew support from judgment of Andhra Pradesh High Court in **Dadi Musali Naidu v. Budda Veeru Naidu**, AIR 1958 AP 88, wherein it was held that a mere signature in a running account is not evidence of the debt of which there is already evidence in the account book and is in fact just an acknowledgment of the correctness of the account not required to be stamped.*

*In **Udey v. Ram Kishan** 2000(2) PLR 179, the question before this High Court was whether the 'bahi' entry was a bond. Considering the material before it the court observed:*

The Bahi entry though is attested by two witnesses but there is no express obligation to pay the amount mentioned therein. The definition of bond in clause (b) of sub-section (5) to Section 2 of the Act requires that a person should oblige himself to pay money to another. In other words, there must be an express obligation to pay. No instrument can be a bond within the meaning of Section 2(5)(b) of the Act unless it is one which itself creates an

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obligation to pay money. The document admitting receipt of money in absence of express promise to pay, may be held to be a receipt but not a bond. The writing in question does not show that the defendant had undertaken any obligation to pay. More so, no such obligation can be inferred from mere acknowledgement of the receipt of the amount.

Thus, where an entry is merely a balance of account and signatures of defendant thereon are only intended to accept correctness of such balance then no stamp duty is required to be affixed. Such entry is relevant as per Section 34 of the Act. On the other hand if the entry is executed in nature of bond, acknowledgment of debt etc, it has to be stamped as per the Stamp Act, 1899.

Besides this, the question as to whether the 'bahi' entry qualifies to be a promissory note under the Negotiable Instruments Act, 1881 has also arisen before the courts. Needless to say that once a 'bahi entry' qualifies being a promissory note it will attract the presumptions attached to a negotiable instrument under the Act most important being that it is made, drawn, accepted or endorsed for consideration. In such scenario the burden of proof shifts to the debtor. In this way if a 'bahi entry' is accepted to be promissory note, then it would tend to dilute the effect of Section 34 of the Act, that an entry in account book by itself is not sufficient to charge a person with liability. Thus whenever, a person seeks to recover an amount on the basis of 'bahi entry' which is purported to be shown as a promissory note court must ensure that it satisfies the test of being a promissory note and it is properly stamped as per the Stamp Act. Most importantly, the parties involved must be shown to have intended it to be as such. Satisfaction of

*court to this effect is very crucial in the prevailing social conditions where unscrupulous moneylenders are often found to be exploiting unfortunate debtors. The issue whether a 'khata' involved in the case was a promissory note came up before Division Bench of Rajasthan High Court, in **Chiranjilal and Ors. v. Ramnath and ors.** AIR 1953 Raj 211. The court after considering various English authorities and judgments of other Hon'ble High Courts observed as under:*

“Thus, on the authorities cited by the learned counsel for the appellants, we need not be embarrassed by the portion of document containing a promise to pay. It is permissible to consider carefully every part of the document and also to examine surrounding circumstances in order to find out whether the document is a promissory note or not.

It would appear from the language of the document given above that it was primary intention of the parties that a balance of previous account be struck in the khata of the debtor in the account books of the creditor. A certain rate of interest was also recorded in order to save any dispute about the rate. This khata was stamped with one anna stamp, which, according to the law prevailing in Jaipur at that time, was chargeable on acknowledgment. A promissory note for an amount above Rs. 250/- was chargeable with a stamp duty of 2/-. Neither in the khata nor in the plaint is the document described to be a promissory note. The parties cannot be said to have intended that the document would be negotiable. On a careful consideration of the language of this document and the authorities cited on behalf of the plaintiffs, we are of opinion that the parties did not intend that the document in question should operate as a promissory note. All that they intended was to furnish an evidence of the balance due against the debtor with stipulation to pay interest at a certain rate. Considering the entire circumstances of the case, we are not

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prepared to hold the document to be a promissory note simply on account of the words about payment having found place towards the end of the document.”

*In **Raghunath Prasad v. Mangi Lal** AIR 1960 Raj 20, an entry in ‘bahi khata’ was not accepted to be a promissory note for reasons that it did not specify the rate of interest; therefore was not certain as required under section 4 of the Negotiable Instrument Act, 1881 and being executed in ‘bahi’ it was not ‘Negotiable’. The court observed:*

“By virtue of definition of the negotiable instruments contained in Section 13 a promissory note payable to order or to bearer is a negotiable instrument. If the defect of non-specification of rate of interest in the document in question is ignored it should have been negotiable to be a promissory note.

But being executed in a Bahi, it cannot be taken out of it without tearing the leaf and it cannot be transferred in order to be negotiable under Section 14 of the Negotiable Instruments Act. Here then is a document which satisfies all the ingredients of the definition of promissory note under Section 4 of the Negotiable Instruments Act but which the parties never intended to be negotiable by delivery. Such document cannot be a promissory note within the meaning of the Negotiable Instruments Act.”

Thus, an entry executed in ‘bahi’ cannot per se be a promissory note as it does not fulfil the criteria of ‘Negotiability’ which is the essence of any Negotiable Instrument.

A Coordinate Bench of this Court in **Narsi Dass vs.**

Surender 2015 (1) RCR (Criminal) 104 has also taken the similar view and held as under:

“11. What cannot possibly be disputed here is that such

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*Bahi entries are not the instruments of advancement of loan like pronote, bonds or Bill of exchange etc., which can legally be enforced, as recognized in the NI Act. These entries are only relevant u/s 34 of The Indian Evidence Act, 1872, that too, in case, the same were kept regularly in the course of business. At the same time, such Bahi entries must be kept in conformity with some known system of accountancy, either in the official language or customary language well known to the parties and not otherwise. Where the books produced in a case are merely ledgers, these are not supported by any daybook or roznama, do not contain entries of transactions and there is no daily opening or closing balance, the same are meaningless. Therefore, such Bahi entries cannot and indeed should not be taken to be account book regularly kept in the course of business, as provided u/s 34 of The Indian Evidence Act, in view of ratio of law laid down by the Assam High Court in case Chandi Ram Deka v. Jamini Kanta Deka **1952 AIR (Assam) 92** and Orissa High Court in case Hira Meher and another v. Birbal Prasad Agarwala **1958 AIR (Orissa) 4** and are not at all legally enforceable.*

*12. Not only that, it is now well settled principle of law that an entry in the Bahi Khata merely is an admission by its maker in his own favour and it is only admissible in evidence if it is accepted by the opposite side (loanee) and not otherwise, which is entirely missing in the instant case. Such entries shall alone be not sufficient to charge any person with liability, in view of ratio of law laid by Hon'ble Apex Court in case Chandradhar Goswami v. Gauhati Bank Ltd. **AIR 1967 Surpeme Court 1058** and Rajasthan High Court in case Pit Ram Singh v. Vimla*

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Devi 1992 AIR (Raj) 149.

13. Moreover, it is a matter of very common knowledge that commission agents used to obtain such blank/undated cheques from the Farmers as a security in good faith, not in lieu of any legal liability, to which, the court can take judicial notice of it. Therefore, once it is ruled that such Bahi entries are not negotiable instruments of advancement of loan, such as, pronote, bonds and Bill of exchange etc., which can legally be enforceable, as contemplated by the NI Act, not alone sufficient to charge any person with liability and such cheques were issued as a security of the loan amount, then, the complainant was debarred from filing the complaint u/s 138 of the NI Act against the respondent.

Following the law laid down in ***Dhup Singh's case (supra)*** and ***Narsi Dass's case (supra)***, it is held that account books/bahi entries are not the instruments of advancement of loan like pronote, bonds, or Bill of exchange etc. which can legally be enforced, as recognised in the eyes of law. The entries in account books are only relevant under Section 34 of the Indian Evidence Act, but the same shall not alone be sufficient evidence to charge any person with liability.

The lower Appellate Court has rightly held that *bahi* entry has no express obligation to pay the amount as mentioned therein. The definition of 'bond' in clause (b) of sub-Section (5) to Section 2 of the Indian Stamp Act, 1899 requires that a person should oblige himself to pay money to another. No instrument can be 'bond' within the meaning of Section 2(5) (b) of the Indian Stamp Act, 1899 unless it is one which

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itself creates an obligation to pay money. The document admitting receipt of money in absence of express promise to pay, may be held to be receipt but not a bond. The lower Appellate Court has rightly held that the writing in question does not show that Kaura Singh (since deceased) had undertaken any obligation to pay. Moreover, the document in question shown to this Court during hearing is written in Mahajani (*lande*) and learned counsel for the appellant has failed to read it and even this Court also cannot read it. It is written scribble and no one except the person who has written it, can read it. Mere signature/thumb impression on such writing/entry could not be treated as acknowledgment. In the present case, the plaintiff relied upon the '*bahi*' entries which are in Mahajani (*lande*) and the same cannot be read by anyone except the person who wrote the same and even if it is presumed that signatures/thumb impressions belong to Kaura Singh, such entries have no evidentiary value. It is also the case of the defendants that the deceased had left the commission agency of the plaintiff in the year 2004-05 after obtaining 'no objection certificate' and it seems that just to extend the limitation, the appellant has shown the entries pertaining to the year 2006. Moreover, there is no signature of Tirlochan Singh against the entry showing receipt of the money on 17.05.2006. The defendants have taken a categorical stand that deceased-Kaura Singh had left the commission agency of the plaintiff in the year 2004-05 and thereafter was not having any dealings with the plaintiff. The plaintiff

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has not brought any evidence on record to indicate that after the year 2004-05, deceased-Kaura Singh was selling his crops through the shop of the plaintiff. As such, the plaintiff has failed to corroborate the alleged entries in the account-books. The entries in account-books alone are not sufficient to charge any person with liability. The entries in the name of Tirlochan Singh, one of the sons of deceased-Kaura Singh, have been subsequently made which are not even signed by him. There is no cogent evidence on record regarding sale of crop by deceased-Kaura Singh with the plaintiff. As such, the entries in account-books cannot be relied upon merely in view of Section 34 of the Indian Evidence Act.

It is the case of the defendants that the plaintiff is a money lender, however, is not having the money lender's licence. It would be apposite to reproduce Sections 3 and 4 of the Punjab Money- Lender's Act, 1938:

“Suits and applications by money-lenders barred, unless money-lender is registered and licensed.

3. Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall after the commencement of this act, be dismissed, unless the money-lender-

(a) at the time of the institution of the suit or presentation of the application for execution; or

(b) at the time of decreeing the suit or deciding the application for execution-

- (i) is registered; and*
- (ii) holds a valid licence, in such form and manner as may be prescribed; or*
- (iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or*
- (iv) if he is not a registered and licensed money-lender, satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending; provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of license pending before the Collector is finally disposed of.*

Registration of Money-lenders

4. Every money-lender may apply for registration of his name at the office of the Collector of the District; and his name shall be registered on furnishing such particulars as may be prescribed and on payment of a fee of Rs.5.”

The said sections provide that no money lender shall carry on the business of advancing loans unless he gets himself registered under Section 3(b) (i). Any money lender, who contravenes these provisions, shall be liable for conviction and sentence of a fine not exceeding one thousand rupees for the first offence and two thousand rupees for every subsequent offence in this direction. As per the above

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referred provisions, a person is only competent to advance agricultural loan if he holds the valid licence/registration certificate under the provisions of the Punjab Money Lender's Licence Act, 1938. In the present case, the plaintiff is not having any such licence. Without having the aforesaid licence, the advancement of loan by the plaintiff to Kaura Singh (since deceased) is not only illegal, but at the same time, the plaintiff can also be prosecuted.

In *Narsi Dass's case (supra)*, it has also been held as under:

“14. Sequelly, there is yet another aspect of the matter, which can be viewed entirely from a different angle. The case set up by the complainant in his complaint was that he used to advance loan to the respondent for agricultural purpose from time to time and he was required to repay the loan along with interest at the rate of 24 per cent per annum. Not only that, he has also categorically acknowledged that he used to lend money on credit basis to different persons, but he did not possess any money lender's licence. That means, the complainant was engaged in money lending business to the public at large and did not possess the money lender's licence. Indisputably, The Punjab Registration of Money-lender's Act, 1938 (hereinafter to be referred as “the Money-lender's Act”) is applicable to the State of Haryana by substituting the word “Haryana” by means of Adaptation of Law Order 1968. Section 4(2) postulates that no money lender shall carry on the business of advancing loans unless he gets himself registered under subsection (1). Any money lender, who contravenes these provisions, shall be liable on conviction to a fine not exceeding one

thousand rupees for the first offence and two thousand rupees for entry subsequent offence in this direction.

15. Likewise, Section 3 of the Act posits that notwithstanding anything contained in any other enactment for the time being in force, a suit by a money lender for the recovery of a loan or an application by a moneylender for the execution of a decree relating to a loan, shall, after the commencement of this Act, be dismissed, unless the money lender at the time of institution of the suit or presentation of the application for execution or at the time of decreeing the suit or deciding the application for execution is registered and holds a valid license, in such form and manner as may be prescribed, which is totally lacking in the present case in this relevant connection.

*16. A conjoint and meaningful reading of the indicated provisions of social and beneficial legislation, would reveal that the complainant was only competent to advance agricultural loan if he holds the pointed valid licence/registration certificate. Having a money lender's license is a condition precedent to advance the loan to the Farmers. The advancement of loan by the complainant to the respondent without any valid licence is not only illegal, but, at the same time, he can be prosecuted u/s 4 of the Moneylender's Act as well. Similarly, this Court in case Manjit Kaur v. Vanita **2010(3) RCR (Criminal) 574** and Delhi High Court in case Prajan Kumar Jain v. Ravi Malhotra **2010(3) CivCC 410**, have categorically held that in case a cheque is issued for time barred debt and it is dishonoured, then, it cannot be termed to have been issued, in lieu of legal enforceable liability/debt within the meaning of section 138 of the NI Act.*

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17. Therefore, on the same analogy, once it is proved and the entire facts that the alleged Bahi entries are not negotiable instruments, which can be enforced, not alone sufficient to charge any person with liability, sequely, the complainant was legally debarred to recover the alleged loan, as envisaged under the indicated provisions of the Money lender's Act and in view of such legal disabilities attached to the complaint, as discussed here-in-above, are put together, then, in that eventuality, to my mind, the conclusion is irresistible and inescapable that he (complainant) cannot adhere to initiate the criminal prosecution against the respondent within the meaning and in the garb of complaint u/s 138 of the NI Act.....”

Learned counsel for the appellant has failed to show that findings recorded by the lower appellate court are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. In view of law laid down in ***Dhup Singh's case (supra)*** and ***Narsi Dass's case (supra)***, I do not find any illegality or perversity in the impugned order. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

07.01.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge