

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

R.S.A. No.3662 of 2014 (O&M)

Date of decision: 10.02.2016

Partap Singh

...Appellant

Versus

Rajbir

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R. A. Sheoran, Advocate
for the appellant.

Mr. V. K. Sheoran, Advocate
for the respondent.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 29.04.2014, passed by the learned Additional District Judge, Bhiwani, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 03.05.2012, passed by the learned Additional Civil Judge, Sr. Divn., Loharu, (for short, the 'trial Court'), has been dismissed.

The respondent-plaintiff had filed a suit for recovery

of Rs.2,43,244/- which included Rs.1,81,544/- as principal amount and the rest as interest, on the basis of 'bahi' writing executed on 06.09.2008 by the appellant-defendant in his favour. The bahi writing was a collateral security for advancement of loan of Rs.1,81,544/- to the appellant-defendant by the respondent-plaintiff, which stated that in case of failure to repay the loan amount, the appellant-defendant would give his land.

The learned counsel for the appellant contends that Ex.P1 is a isolated paper and the original bahi has not been produced by the respondent wherein the amount of Rs.1,81,544/- so paid to the appellant was entered. The learned Courts below have erroneously ignored the fact that in the plaint and the bahi writing, the respondent has specifically stated that the principal amount of Rs.1,81,544/- was paid in cash but in the cross examination, the witness has stated that on 05.09.2008, only Rs.20,000/- were given. Further, the respondent has not proved any document to show as to how such a huge amount was arranged by him. Therefore, the judgments and decrees passed by the learned Courts below are liable to be set aside.

The learned counsel cites '**Randhir Singh Vs. Ram Kumar**', passed in RSA No.558 of 2012.

On the other hand, the learned counsel for respondent

refers to Ex.P1, which is the written proof of the advancement of the loan to the appellant, which bears the signatures of the appellant. Despite various requests, the appellant did not return the loan amount, therefore, the respondent served a legal notice dated 15.01.2010 upon the appellant to discharge his liability. Even thereafter no amount was paid to the respondent. Therefore, the learned Courts below have rightly passed the judgments and decrees in favour of the respondent.

I have heard the learned counsel for the parties and perused the entire record on file.

The learned Courts below have passed the judgments and decrees after appraisal and appreciation of the oral as well as documentary evidence. Ex.P1, though a solitary sheet, but bears the signature of the appellant along with the signatures of attesting witnesses namely, Satyawan and Suresh. The signature of the appellant upon the same, was duly proved by the respondent by examining the handwriting expert, who submitted his report Ex PW3/B, which suggests that signatures present on the document i.e.Ex.P1 tally with the standard signatures of the appellant. Further, PW2-Satyawan also supports the case of the respondent and stated that the appellant took the loan amount

of Rs.1,81,544/- and put his signature on the bahi. On the other side, except the bald statement of the appellant with regard to the denial of the loan, no documentary proof was brought on record by him. Therefore, once the signature of the respondent is duly proved on Ex.P1, which shows the receipt of amount of Rs.1,81,544/-, the respondent cannot deny his liability to repay the advanced amount in terms of Ex.P1. In these circumstances, this Court finds no fault in the findings recorded by the learned Courts below.

In *Kashmir Singh Vs. Harnam Singh and another*, 2008 (2) RCR (Civil) 688, it has been held that the general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.

On consideration, this Court finds that the contentions raised by the learned counsel for the appellant have no merit. No evidence has been shown to have been ignored

from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed.

10.02.2016

ashok

(JITENDRA CHAUHAN)
JUDGE