

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 265 of 2016**

- Goverdhan Sao S/o Radhe Sao, Aged About 40 Years R/o Village Singhpuri, Tahsil Pusaur, Raigarh, Police Station And Post Pusaur, Civil And Revenue District Raigarh (Chhattisgarh).....(Defendant)

---- Appellant

Versus

- Brijmohan Agrawal S/o Kalicharan Agrawal, Aged About 62 Years R/o Danipara, Raigarh, Tahsil Police Station And Post Raigarh, Civil And Revenue District Raigarh (Chhattisgarh).....(Plaintiff)

---- Respondent

For Appellant	:	Shri Manoj Paranjpe with Shri Anurag Singh, Advocate
For Respondent	:	Shri Alok Kumar Pandey, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****25/08/2017**

1. Heard on admission.
2. This is defendant's second appeal preferred under Section 100 of the Code of the Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 28.08.2015 passed by the 4th Additional District Judge, Raigarh, in Civil Appeal No. 297/2015, by which, the lower appellate Court, while affirming the judgment and decree dated 15.11.2011 passed by the Civil Judge, Class-1, Raigarh, in Civil Suit No. 4-B/2009, has dismissed the appeal.
3. The undisputed facts of the case are that the plaintiff has instituted a suit for recovery of sum of Rs.48,138/- by alleging, inter alia, that a sum of Rs.20,000/- and Rs.13,000/- was given to the defendant Goverdhan Sao on loan under receipts executed respectively on 01.07.2008 and 15.07.2008. It is pleaded that the

defendant, after receiving the said loan amount, has agreed to deposit the same by 31st December, 2008 and also to pay the interest @ 3% per month, if the said amount is not deposited by him in time. It is pleaded further that despite repeated oral requests, the said loan amount was not paid by the defendant, therefore, a demand notice was issued by the plaintiff to the defendant on 10.01.2009. It is also put forth that even upon receiving the said notice, neither it was replied nor the loan amount was paid by him, therefore, the plaintiff has been constrained in filing the suit in the instant nature for recovery of a sum of Rs.48,138/- by including the interest, as agreed to be paid by the defendant under the receipts executed on 01.07.2008 and 15.07.2008.

4. The aforesaid claim was contested by the defendant stating that although his signature is there on those receipts executed on 01.07.2008 and 15.07.2008, but, his signature has been obtained forcefully by the plaintiff. He pleaded further that in fact, he has not received any loan amount, as claimed by the plaintiff, therefore, the suit is liable to be dismissed.

5. In support, the plaintiff has examined himself and produced those receipts as Ex.P.1 & Ex.P.2 (01.07.2008 & 15.07.2008) along with other documentary evidence like notice, postal receipts etc while the defendant has examined himself and produced one witness in support of his defence.

6. The trial Court, after considering the evidence led by the parties and particularly by examining those receipts executed on 01.07.2008 (Ex.P.1) and 15.07.2008 (Ex.P.2), has come to the conclusion that the defendant has taken the loan amount of Rs.20,000/- and Rs.13,000/-, total amounting to Rs.33,000/-, from the plaintiff. It observed further that although the defendant is saying that his signature has been obtained forcefully by the plaintiff, but, the defendant has failed to prove the said fact. As a consequence, the trial Court has decreed the suit by directing the defendant to refund the said loan amount of Rs.33,000/- along with interest @ 6% per annum from the date of filing of the suit till its realisation.

7. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the defendant under Section 96 of the Code of 1908.

8. Being aggrieved, the defendant has preferred this appeal. Learned counsel for the appellant submits that the judgment and decree as passed by the Courts below by holding that the signature of the defendant was not obtained forcefully by the plaintiff is apparently contrary to law. He, therefore, submits that the judgment and decree as passed by the Courts below, without proper appreciating the evidence, deserve to be set aside.

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

10. The main contention of the defendant/appellant in this appeal is that though his signature was there in the alleged receipts (Ex.P.1 & Ex.P.2), but, his signature was obtained by the plaintiff forcefully. Therefore, under such circumstances, the burden was heavily upon the defendant to establish this fact that his signature was obtained forcefully by the plaintiff, however, the defendant has failed to prove the said fact by producing any cogent and reliable evidence in this regard. Perusal of the record would show that the alleged documents were executed in the year 2008, whereas no complaint as such was ever lodged by him in order to establish the said material fact even upon receiving the demand notice in the year 2009. By considering all these material facts, the trial Court as well as the lower appellate Court have come to the conclusion that the defendant has failed to prove that his signature has been obtained by the plaintiff forcefully in order to take an undue advantage under those receipts (Ex.P.1 & P.2). The said finding even otherwise cannot be held to be perverse one at this stage as the same was passed upon due and proper appreciation of the evidence of both the parties. Consequently, the finding of the Courts below deserves to be and is hereby affirmed.

11. In view of foregoing discussion, I do not find any substance in this appeal involving question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits and substance is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge