

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

**RSA No.3385 of 2017 (O&M)
Date of Decision:21.07.2017**

Ved Parkash

...Appellant

Versus

Ishwar Kaushik

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K. Liberhan, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM 8167-C of 2017

This is an application for making good the deficiency in
Court fees.

Allowed as prayed for, because the deficiency in payment of
Court fee has already been made good.

CM 8168-C of 2017

This is an application for condonation of delay of 227 days'
in refiling the present appeal. The application is supported by an affidavit
of learned counsel for the appellant.

For the reasons stated in the application, delay of 227 days'
in refiling the present appeal is condoned.

RSA No.3385 of 2017

Defendant is in Second Appeal against the concurrent
finding of fact arrived at by the Courts below.

The plaintiff filed a suit for recovery of Rs.70,000/- along with interest at the rate of 18% per annum. Defendant in the written statement admitted that the amount of Rs.47,000/- was borrowed as a friendly loan and he has already repaid the same. In evidence, the plaintiff produced a receipt/writing executed between the parties, which is duly signed by the defendant. A reading of that writing shows that accounts between the parties were settled and defendant agreed to pay sum of Rs.70,000/- in the month of November, 2011.

After appreciating the evidence available on the file, the trial Court decreed the suit filed by the plaintiff after recording a finding that defendant has not been able to prove repayment of the amount. However, the learned Court decreed the suit only to the extent of Rs.47,000/- along with interest at the rate of 8% per annum from the date of filing of the suit.

Appellant filed an appeal before the first Appellate Court. Learned first Appellate Court after appreciating the evidence available on file again recorded a finding of fact that defendant has failed to prove repayment of the amount. However, learned first Appellate Court reduced the rate of interest from 8% to 6% per annum.

Learned counsel for the appellant has submitted that Sunder Lal and Naresh Kumar, attesting witnesses have not been examined and only Monu Malik has been examined as PW2 and, therefore, the receipt/writing dated 20.04.2011 is not proved. He has further submitted that Monu Malik is one of the relatives of the plaintiff.

I have examined Ex.P1, writing between the parties. Monu Malik has been shown as attesting witness. Monu Malik has appeared in

the witness box and he has been duly cross-examined by the counsel representing the defendant. Plaintiff has also supported his case.

Therefore, merely because other two attesting witnesses were not examined, would not make any difference in the case of the plaintiff. Once the plaintiff has been able to prove the writing by examining himself as well as one of the attesting witnesses Monu Malik, there is sufficient compliance of law to prove the aforesaid document Ex.P1.

Learned counsel for the appellant has further submitted that the defendant had served a notice on the plaintiff mentioning that the entire payment has already been made.

I have examined Ex.D1, the notice dated 16.11.2011. Plaintiff had also replied to the aforesaid notice vide reply dated 30.11.2011 wherein it was specifically stated that amount has not been paid and the same should be paid.

Since lending of money is not in dispute through friendly loan, therefore, the onus to prove that entire payment has been made, was on the defendant. Defendant has failed to discharge the aforesaid onus. Defendant has only appeared in the witness box and reiterated his written statement. No independent witness has been examined.

Counsel for the appellant has not been able to point out either any misreading of evidence or any legal issue involved in the present appeal. Therefore, the appeal is ordered to be dismissed.

(ANIL KSHETARPAL)
JUDGE

21.07.2017

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No