

**FA No. 178 of 2018**

1. M/s A.C. Sarees, Through Its Partner- Shri Sushil Kumar Surana, Address- M/s Suvijita Exclusive Saree Showroom, Shop No. 62, 63 and 64, New Cloth Market, Pandri, Tahsil and District Raipur, Chhattisgarh
2. Sushil Kumar Surana, S/o. Late Champalal Surana, Aged About 45 Years, Partner- M/s A.C. Sarees, Address- M/s Suvijita Exclusive Saree Showroom, Shop No. 62, 63 and 64, New Cloth Market, Pandri, Tahsil and District Raipur, Chhattisgarh
3. Smt. Priti Devi Surana, W/o Shri Sushil Kumar Surana, Partner M/s A. C. Sarees, Address- M/s Suvijita Exclusive Saree Showroom, Shop No. 62, 63 and 64, New Cloth Market, Pandri, Tahsil and District Raipur, Chhattisgarh

---- APPELLANTS

## Versus

Manish Baid, S/o. Shri Madan Lal Baid, Aged About 47 Years, R/o  
Vimal Agency, Shop No.6 A, New Medical Complex, G.E.Road,  
Raipur, Tehsil and District Raipur, Chhattisgarh.

---- RESPONDENT

For the Appellants :- Mr. Sharad Mishra, Advocate

For the Respondent :- Mr. Malay Shrivastava, Advocate

**Hon'ble Shri Justice Prashant Kumar Mishra**

**Hon'ble Smt. Justice Vimla Singh Kapoor,**

**Order on Board By**  
**Prashant Kumar Mishra, J.**

**07.09.2018**

1. Defendants have preferred this appeal under Section 96 of the Civil Procedure Code, challenging the legality and validity of the judgment and decree rendered by the trial Court allowing the plaintiffs suit for recovery of Rs. 5,60,750/- based on promissory note executed by appellant Sushil Kumar Surana, as partner of the partnership firm, M/s. A.C. Sarees.
2. The suit was preferred by the plaintiff on 17.01.2012 on the pleadings inter-alia, that the appellant/defendant Sushil Kumar Surana obtained loan of Rs. 5,00,000/- on 22.04.2011 by executing five promissory notes of Rs. 1,00,000/- each and had signed over promissory note as partner of M/s. A.C. Sarees.
3. The defendant having failed to repay the loan, the suit was preferred which was contested by the defendants on the pleadings that he has never obtained loan from the plaintiffs nor any promissory notes have been executed in his favour. By amending the written statement the defendant contended that on 01.08.2011 he had obtained loan from one Anil Baradiya against which he had signed ten blank promissory notes, so that Anil Baradiya may obtain cheques by presenting the promissory notes to a moneylender. At the time of obtaining defendants' signature over the promissory note, Anil Baradiya stated to him that as and when any moneylender agrees to advance loan he will persuade the moneylender to issue cheques in favour of defendant and at that time blank promissory notes shall be filled. Subsequently, Anil

Baradiya lost his bag containing the papers including promissory notes which has somehow came into the possession of the plaintiff whereupon he has filled the promissory note and has preferred false and vexatious suit.

4. While the plaintiff has examined himself as (PW-1), Dharamchand Ji Bhansali as (PW-2) and one Suresh Golchha as (PW-3). Defendant has examined himself as (DW-1) and one Vasudeo Bhoi, Assistant Sub Inspector, Police Station-Pandri, Raipur as (DW-2).
5. The trial Court has found that the defendant No.2/appellant No.2 has signed the promissory notes, therefore, he is liable to repay the loan.
6. Assailing the impugned judgment, Mr. Sharad Mishra, learned counsel appearing for the appellants would submit that from the evidence available on record it is proved that the promissory note has not been filled by the plaintiff under his handwriting or signature, therefore, the trial Court should have accepted the defence that Anil Baradiya had obtained Sushil Kumar Surana's signature over blank promissory notes. It is also argued that the plaintiffs witnesses have themselves stated that the transaction has not occurred in their presence, therefore, there being no evidence of an existing loan transaction between the parties, hence, the suit should have been dismissed.
7. Per contra, Mr. Malay Shrivastava, learned counsel appearing for the respondent would submit that the entire defence raised by the appellant/defendants is an afterthought to avoid repayment of loan. He would also submit that Sushil Kumar Surana having not denied his signature over the promissory note, the fact as to who has filled the promissory note is wholly irrelevant, particularly, for

the reason that the plaintiffs witnesses Dharamchand Ji Bhansali (PW-2) and Suresh Golchha (PW-3) have clearly stated that the loan transaction occurred in their presence.

8. We have heard learned counsel for the parties at length and perused the record.
9. Before filing of the suit plaintiff had served legal notice dated 09.11.2011 (Ex.P-7) upon the defendant specifically mentioning that Sushil Kumar Surana had signed five promissory notes of Rs. 1,00,000/- each. However, while replying to the legal notice vide Ex.D-1 the appellants have not denied the signature of Sushil Kumar Surana over the promissory notes nor narrated the story involving Anil Baradiya which have been elaborately pleaded in the amended written statement. Had the defence raised in the written statement being correct and was the true fact of the case nothing prevented the defendant to have stated all such events while replying to the legal notice.
10. The other documents submitted by the defendant is an affidavit of Anil Baradiya (Ex.D-4) stating that his black colour bag was misplaced on 01.08.2011 when he was riding a motorbike at about 9.30 pm from Shyam Market, Pandri, to Lodhipara Awantibai Chowk to Shankar Nagar Raod. He has also stated that the bag contained cheques and *Hundi* without mentioning that it also contained some promissory notes. Interestingly, Anil Baradiya would not state in his affidavit that he had obtained signature of defendant Suresh Kumar Surana on blank promissory notes which were also contained in the black colour bag. Anil Baradiya seems to have lodged a report with Police Station-Mova, vide Ex.D-5 which has also been substantiated by the documents (Ex.D-6) and

the statement of (DW-2) Vasudeo Bhoi. But the fact remains that Anil Baradiya has not stated in his affidavit that there was some transaction between him and Sushil Kumar Surana involving execution of blank promissory note by Sushil kumar Surana. It is also to be seen that Anil Baradiya has not been examined by the defendant before the trial Court.

11. Learned counsel for the appellants has tried to explain that since after 2011 Anil Baradiya is not traceable, therefore, he could not be examined. However, the defendant has not proved by examining any witness of the locality that Anil Baradiya is not traceable.
12. In any case, the defendant having not denied the signature over the promissory note, it was for them to have stated the entire defence at the first available opportunity while replying to the legal notice. Not only this, the story was not narrated in the original written statement which came to be introduced by way of amendment in August 2016, even though, written statement was filed way back in December. 2012.
13. Lastly, it is argued that the plaintiff did not submit the original promissory notes at the time of filing of the suit, therefore, coupled with the fact that the plaintiff would admit that the writing on the dotted spaces in the promissory note is not of the plaintiff himself, it is case where the plaintiff having somehow obtained the blank promissory note has used the same for filing the suit. To appreciate the submission we have examined order sheet of the trial Court and have not found that the defendant have ever raised any specific plea before the trial Court that the suit is not maintainable for want of submission of original document along

with the plaint. The trial Court has never framed any preliminary issue about the maintainability of the suit for non filing of the original documents with the plaint. The defendants have not objected to the admissibility of the documents when it was exhibited in course of the deposition of (PW-1) Manish Baid. Hence, the defendant having failed to raise objection at all possible opportunities are not entitled before the appellate Court to raise a technical issue about the maintainability of the suit or genuineness of the plaintiffs' claim on account non filing of original document along with the plaint, which were later on filed in original at the time of recording of evidence and are available in the record of the trial Court.

14. The trial Court has rightly allowed the plaintiffs suit based on promissory note over which the defendant has not denied the signature. The appeal has no substance, it deserves to be and is hereby dismissed.

Sd/

**(Prashant Kumar Mishra)**  
**JUDGE**

Sd/-

**(Vimla Singh Kapoor)**  
**JUDGE**