

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CR No. 111 of 2013**

- Hemant Sahu, son of Samaru Sahu Aged About 38 Years, Peon Government Science College Rajnandgaon, resident of Rajiv Nagar Ward No.41, Rajnandgaon, Civil and Revenue Distt. Rajnandgaon C.G.

**---- Applicant**

**Versus**

- Mahesh Dewangan S/o Late S.R. Dewangan Aged About 36 Years R/o Tulsipur, Rajnandgaon, Distt. Rajnandgaon, Chhattisgarh

**---- Respondent**

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For Applicant : Shri Vishnu Koshta and Shri Shobhit  
Koshta, Advocates  
For Respondent : Shri Aditya Bharadwaj, Advocate  
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**Hon'ble Shri Justice Parth Prateem Sahu**

**Order on Board**

**13.07.2018**

1. This instant revision has been preferred by the applicant challenging the impugned judgement and decree dated 21.06.2013 passed by the learned Additional District Judge (FTC), Rajnandgaon in Civil Appeal No.2-B/2011, whereby the learned first appellate Court set aside the judgment and decree passed by the learned trial Court in Civil Suit- 7B of 2009.

2. Brief facts of the case are that the respondent/plaintiff has filed a suit for recovery of an amount of Rs.19,000/- with interest @ 14% per annum from the applicant/defendant on the ground that the applicant has taken loan of Rs.20,000/- on 07.05.2004 in cash and it was agreed that the loan amount will be returned within a period of three months. This transaction was written on a stamp paper as agreement on the same day. After lapse of time when the applicant/defendant did not return the loan amount, then a legal notice was sent by the respondent/plaintiff on 13.04.2017 which was returned on

26.04.2007 with an endorsement of refusal to accept the same. It was pleaded that on 02.05.2007, again the plaintiff met with the defendant and requested him for return of the loan amount and on that day the defendant returned Rs.1,000/- to the plaintiff before two witnesses and further an agreement was executed that the balance amount of Rs.19,000/- will be returned within further period of three months. But, the said amount could not be returned by the defendant and therefore, a suit was filed.

3. The defendant submitted his written statement and accepted the transaction of the loan. But he pleaded that he had taken loan of only Rs.10,000/- in the year 2004 with interest @ of 10%. It is wife of the plaintiff obtained blank stamp paper with his signature for security of the loan amount. It was further pleaded that in between the period of 07.05.2004 to 17.02.2007 he had paid the amount of interest @ Rs.1,000/- per month to wife of the plaintiff. Principal amount was returned in February, 2007 and on 03.04.2007 in two instalments with the interest of Rs.2,000/- and thereby he had returned entire loan amount to wife of the plaintiff. He has also pleaded that on demand of the blank signed stamp paper, it has been informed by wife of plaintiff that it was not traceable at that time and as soon as she finds the stamp paper, it would be returned to him. He further pleaded that he had not executed any agreement at any point of time, he never refused to accept the notice and also pleaded that he signed at only one place on the stamp paper, that too on a blank stamp paper. He further specifically pleaded that he had not entered into any agreement on 02.05.2007 and therefore, the suit is barred by limitation. He denied his signature at the bottom of acknowledgement (Ex.P/1) dated 02.05.2007 on back side of stamp paper.

4. The learned trial Court on the basis of pleadings made by the respective parties, framed as many as six issues for consideration, including the issue that whether the plaintiff is entitled to recover the amount of Rs.19,000/- from the defendant and another issue on the point of limitation. The learned trial Court after considering the documentary evidence Ex P/1 ie deed of agreement and the evidence of Ravi Kumar (PW-2) and Dharmendra (PW-3) have arrived at a conclusion that the evidence of Ravi Kumar, witness to the document Ex P/1 was contrary to the pleadings and therefore, evidences of the witnesses PW- 2 and PW-3 held not to be admissible. The learned trial Court further in para- 18 and 19 of the judgment dated 29.03.2011 discussed about the comparison of the signatures of the defendant on Ex.P/1 with the signatures available on record ie signature on Vakalatnama, order sheets, written statement and the statement on the affidavit and opined that the signatures of Ex.P/1 on 02.05.2007 and other documents are different and further held that the plaintiff failed to prove the signature on Ex.P/1 said to be of defendant only by producing reliable and cogent evidence particularly when in the written statement itself the defendant has denied his signature on the agreement dated 02.05.2007 of Ex.P/1 and dismissed the suit of the plaintiff as barred by limitation. The said judgment and decree were challenged by non-applicant/ plaintiff before the learned first Appellate Court and it has framed the question for consideration that whether the judgment and decree in question is erroneous and is liable to be set aside. The learned first appellate Court has not discussed the reasons and findings recorded by the learned trial Court and not assigned any reason as to why the findings recorded by the learned trial Court on the issues of limitation are erroneous. The learned first appellate Court also not

considered the finding of learned trial Court that the signature on agreement dated 02.05.2007 is different from the signatures of defendant available on records.

5. Order 41 Rule 31 of the CPC provides with regard to the contents, date and signature of judgment. The provisions of order 41 Rule 31 is reproduced herein:

"31. Contents, date and signature of judgment—The judgment of the Appellate Court shall be in writing and shall state— a) the points for determination; b) the decision thereon; c) the reasons for the decision; and d) where the decree appealed from is reversed or varied, the relief to which and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

6. On a bare perusal of the above, it reveals that it has been made mandatory that the appellate Court if once formulated the question or point for determination, then, the said question or point is to be decided by assigning the reasons.

7. From perusal of the trial Court's judgment, it is evident that the learned trial Court has arrived at a finding that the agreement dated 02.05.2007 further acknowledging the debt could not be proved and therefore, dismissed the suit as barred by limitation. But the learned first appellate Court has not considered and discussed the issue of limitation and not discussed the evidence and findings arrived at by the learned trial Court for dismissing the suit. The issue of limitation on which the suit was decided was crux of the case but the learned appellate Court has even not cared to discuss and decide the issue on the point of limitation.

8. Hon'ble Supreme Court while dealing with the issue of the manner of disposal of First Appeal in the matter of **BV Nagesh and another Vs Sreenivasa Murthy**, reported in **2010 AIR SCW 6184** has held as under:

"The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth and pressed by the parties for decision of the appellate Court. Sitting as a court of appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. Thus, it is evident that the First Appellate Court must decide the appeal giving adherence to the statutory provisions of Order XLI Rule 31 CPC."

9. In the case in hand as the learned first appellate Court has not considered and applied its mind on the issue of limitation decided by the learned trial Court after discussing and comparing the signature of the defendant on the agreement dated 02.05.2007 with the signatures available on record, which is in contravention to the provisions of Order 41 Rule 31 of the CPC and also not in consonance with the law laid down by the Hon'ble Apex Court in the matter of **BV Nagesh and another (supra)**.

10. In view of above discussions and in light of the judgment rendered by the Hon'ble Apex Court, without entering into the merits of the case the

impugned judgment and decree passed by the learned first appellate Court in Civil Appeal- 2B of 2011 passed by the Additional District Judge, Rajnandgaon is hereby set aside and the matter is remanded back to the first appellate Court to decide the appeal in accordance with law after considering all the issues, facts and materials available on record.

11. Looking to the fact that the suit is of the year 2008, it is expected, that the learned first appellate Court will make all its endeavour to dispose of the appeal expeditiously.

12. The revision is allowed in terms as stated above.

13. As both the parties are represented before this Court today, it is directed that the parties may appear before the learned First Appellate Court on **16<sup>th</sup> August**, 2018.

14. Records be sent back forthwith.

15. No order as to costs.

Sd/-  
(Parth Prateem Sahu)  
JUDGE