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

RSA-4440-2016 (O&M)

Date of decision : 05.12.2018

M/s Chaudhry Ghasitoo Ram & sons and others

... Appellants

Versus

Bela Garg and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.B. Raheja, Advocate
for the appellants.

AMIT RAWAL, J.

The appellants-defendants have not been successful in defending the suit seeking recovery of ₹1,07,500/- along with interest @ 8% per annum.

The plaintiffs alleged that a sum of ₹1 Lac was paid to the appellants-defendants, who agreed to pay interest @ 1.5% per month, but on demand, did not pay the entire amount, therefore, the suit aforementioned was filed.

The defendants denied the factum of the receipt or borrow.

Both the parties examined the experts, who submitted the report in their favour. By relying upon the testimony of the plaintiffs and expert, the suit has been decreed and affirmed in appeal.

Learned counsel appearing on behalf of the appellants-defendants submitted that the factum of the receipt was not pleaded in the

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plaint. The plaintiffs admitted in cross-examination that money was handed over to the appellants-defendants by her husband, who has not been examined nor impleaded. Adverse inference was liable to be drawn. In support of his contentions, reliance of *ratio decidendi* culled out by Hon'ble the Supreme Court in **"Khagendra Lall Dutta and another V/s Jacob Sole Jacob" 1996 (1) RCR (Rent) 267** and **"Bachhaj Nahar V/s Nilima Mandal and another" 2009 (1) RCR (Civil) 855**, was laid.

I have heard learned counsel for the appellants-defendants, appraised the paper book and of the view that pleading of borrowing of the money is sufficient as per the provisions of Order 6 Rules 1 and 2 of CPC, which envisage that the pleadings have to be concise and not the evidence, by which, they are to be proved. For the sake of brevity, the provisions of Order 6 Rules 1 and 2 of CPC read as under :-

"1. Pleading.—*"Pleading" shall mean plaint or written statement.*

2. Pleading to state material facts and not evidence.—

(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words."

Despite extensive cross-examination, the defendants had not been able to shatter the testimony of PW3-Rakesh Kumar, attesting witness, who not only verified his signatures on the receipt, but also asserted that

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amount was paid in his presence. It is a common practice amongst the woman lender to give the money to (male) person and in that respect, it was explained that money was handed over through her husband, who was also present. Non-examination of the husband cannot be fatal as no contrary evidence to belie the statement of the plaintiff as well as attesting witness, PW3-Rakesh Kumar, has been led.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Raheja, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

05.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**