

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

**RSA No.4715 of 2015 (O&M)
Date of decision : April 19, 2018**

Dalip Singh

..... Petitioner

Versus

Mahabir Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ramender Chauhan, Advocate for the appellant.

None for the caveator-respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present regular second appeal is the judgment dated 08.04.2015 passed by learned Addl. District Judge, Bhiwani, affirming the judgment and decree dated 27.07.2012 passed by learned Civil Judge (Jr. Divn.), Bhiwani, vide which the suit of the plaintiff was decreed for recovery of ₹5,70,000/- along with interest @ 10% per annum w.e.f. June 2007 till actual payment is made. The defendant was directed to pay the decretal amount along with interest within a period of two months from the date of passing of the decree.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

As per the case of the plaintiff-respondent, he retired as Government Teacher. He got some retiral benefits. The defendant-appellant was running brick kiln and having friendly relations with plaintiff-respondent. In June, 2007, the defendant-appellant borrowed a sum of

₹5,70,000/- from him with a promise to return the same within 15 days. The said payment was made in the presence of Shir Raj Kumar son of Sh. Dhanpat and Om Parkash son of Sh. Mandroop. When the money was not returned, the plaintiff-respondent made a complaint to Shri Dhaman Panchayat Samiti on 22.07.2007 and a panchayat of 12 villages was convened on 05.08.2007, wherein the defendant-appellant admitted to have borrowed the money. The panchayat directed the defendant-appellant to pay the money in two installments i.e., of ₹2,85,000/- each on 06.02.2008 and 06.08.2008. The panchayatnama was signed by both the parties and witnessed by Sarpanches, Panches and other Members of 12 villages. Since the payment was not made, the panchayat was again convened on 16.03.2008, wherein son of the defendant-appellant appeared and accepted the liability to make the entire payment till 26.03.2008. However, the payment was again not made to the plaintiff-respondent. Therefore, the panchayat was again convened on 28.03.2008 as the defendant-appellant had not honoured his undertaking. He was fined of ₹1/- and was boycott socially.

In the written statement, the defendant-appellant denied the receipt of loan and pleaded that no panchayat was convened.

From the pleadings, following issues were framed:

“(1) Whether the plaintiff is entitled for declaration and mandatory injunction on the grounds as prayed for?

OPP

(2) Whether the plaintiff has locus standi to file the present suit? OPP

(3) Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD

(4) Whether the suit of plaintiff is not maintainable in

the present form? OPD

(5) Whether the plaintiff has not come to the Court with clean hands? OPD

(6) Relief.”

The trial Court came to the conclusion that the defendant-appellant had borrowed money and acknowledged the liability in the writing before the panchayat of 12 villages. The said two writings before the panchayat were proved. The trial Court believed the testimony of the plaintiff and his witnesses to the effect that money was borrowed and the defendant-appellant had acknowledged the liability. The said findings were affirmed in appeal by the learned Addl. District Judge, Bhiwani. There are concurrent findings of facts of two Courts below.

The case of the defendant is of complete denial, whereas in the cross-examination, he admitted his signatures on the writing before the panchayat but took the stand that he had signed the same under the coercion and on the asking of his nephew Nar Singh. However, this stand is contrary to the stand taken by him in the written statement, where he had completely denied the convening of panchayat. The fact that before the Sarpanches and Panches and Members of the 12 villages, the defendant-appellant had admitted his liability and undertook to pay the money in two installments, goes to show that he had in fact, borrowed the money. Therefore, there is no ground to interfere in the concurrent findings of facts recorded by both the Courts below.

As such, the present regular second appeal is dismissed.

(KULDIP SINGH)
JUDGE

April 19, 2018

sarita

Whether speaking / reasoned

Yes

Whether Reportable: No