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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4378-2017 (O&M)
Date of decision : 25.04.2018

Tarif Singh

... Appellant(s)

Versus

Udaybhan (deceased through LRs)

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Vijrania, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-11356-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 6 days in re-filing the appeal is condoned.

CM-11357-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the deficiency of the Court fee has been made good.

RSA-4378-2017

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit for recovery of ₹46400/- (₹27000/- principal amount and ₹19400/- interest), has been decreed by the trial Court vide judgment and decree dated 30.09.2015 and affirmed by the lower Appellate Court vide judgment and decree dated 14.12.2016.

Succinctly, the facts as enumerated from the pleadings of the

parties to the suit are that the respondent-plaintiff instituted the suit seeking recovery of the aforementioned amount on the premise that the defendant Tarif Singh borrowed a sum of ₹27,000/- from the plaintiff for domestic purposes and for that a *behi* entry pertaining to the loan amount was executed by the defendant of the even date, whereby he agreed to pay back the borrowed amount along with interest @ 2% per month and having failed to pay the amount, the suit, aforementioned, was filed.

The appellant-defendant appeared and contested the suit by taking preliminary objection of locus standi, cause of action, maintainability and it was denied that *bahi* entry was ever executed or loan was obtained.

Since the parties are at variance, the trial Court framed the following issues:-

1. *Whether the plaintiff is entitled to recover a sum of ₹46,400/- (₹27000/- principal amount and ₹19400/- interest) thereupon ? OPP*
2. *Whether the plaintiff has no cause of action against the defendant? OPD*
3. *Relief.*

On the basis of the preponderance of evidence, the trial Court decreed the suit on the ground that the receipt bore the signatures of the appellant-defendant and the appeal preferred thereto, before the lower Appellate Court was also met with the same fate.

Learned counsel appearing on behalf of the appellant-defendant submitted that both the witnesses i.e. the witnesses to the receipt and payment could not divulge before the Court with regard to the writer of *bahi* entry. It was an valuable piece of evidence, which has been ignored, in essence, the plaintiff miserably failed to discharge the onus claiming the

amount. The Courts below have not considered the material fact that the plaintiff in cross-examination admitted that he used to give and take loan in his area and therefore, it was necessary for him to obtain a licence, in other words, he was moneylender and was required to have a registration, thus, urges this Court for setting aside the concurrent findings of fact as there is a gross illegality and perversity.

I have heard learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Vijrania, for, *bahi* entry bore the signatures of the appellant-defendant on the revenue stamp and witnessed by Rajesh Kumar. The aforementioned witness deposed that the appellant-defendant-Tarif Singh had appended the signatures. Non-remembering of the writer of *bahi* entry would not be fatal to the decision of the suit as nothing prevented the appellant-defendant to take the assistance of an Expert from examining the admitted signatures to disputed signatures. Having failed to do so, the appellant-defendant miserably failed to discharge the onus. The arguments of Mr. Vijrania, have not been able to cut an ice enabling the Court to form a different opinion than the one arrived at by both the Courts below.

No ground is made out for interference, much less, no substantial question of law arises for determination, accordingly, the present regular second appeal is dismissed.

25.04.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**

