

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

RSA No.3422 of 2019 (O&M)
Date of Decision: July 17, 2019

Yad Ram

...Appellant

Versus

Daya Chand

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rao Ajender Singh, Advocate
for the appellant.

JAISHREE THAKUR, J. (Oral)

CM-9224-C-2019

1. There is delay of 550 days in filing the appeal.
2. For the reasons mentioned in the application, the same is allowed and delay of 550 days in filing the appeal is condoned.

CM-9225-C-2019

1. For the reasons mentioned in the application, delay of 06 days in re-filing the appeal is condoned.

RSA-3422-2019

1. The instant regular second appeal has been filed against the judgment and decree dated 28.08.2017 passed by the first Appellate Court whereby, the appeal filed by the appellant-defendant (henceforth called 'the appellant') against the judgment and decree dated 31.01.2015 passed by the

lower court, decreeing the suit of the respondent-plaintiff (henceforth called 'the respondent'), has been dismissed.

2. In brief, the facts are that the respondent herein filed a civil suit for recovery of ₹ 61,600/- against the appellant herein alleging therein that the appellant in need of some amount, had taken a loan of ₹ 40,000/- from the respondent on 15.02.2011 in the presence of witnesses with interest at the rate of ₹ 2/- per hundred per month and the appellant agreed to repay the loan amount within 10 months. It was averred that when the respondent demanded the loan amount, the appellant started avoiding to repay the same. It was claimed that the appellant is liable to pay the amount of ₹ 61,600/- upto 14.05.2013 including the interest. It was submitted that despite legal notice dated 15.05.2013 served upon the appellant, he did not repay the loan amount. Hence, the present suit has been filed.

3. Upon notice, the appellant appeared and filed his written statement controverting the claim of the respondent, while alleging that he had not taken any loan of ₹ 40,000/- from the respondent, therefore, no question of recovery of amount of ₹ 61,600/- arises. Remaining averments of the plaint were categorically denied.

4. From the pleadings of the parties, issues were framed and evidence was led by both the parties. After hearing both the sides, the lower court decreed the suit of the respondent. Aggrieved, the appellant filed an appeal before the first Appellate Court, which came to be dismissed. Now, both the judgments and decrees passed by the courts below have been challenged in this regular second appeal.

5. Learned counsel appearing on behalf of the appellant argues

that the courts below did not appreciate the admissions made by respondent-Daya Chand (PW2) and Chajju Ram (PW1) during their cross-examination. It is contended that no weightage has been given to the testimony of DW2, while nothing incriminating could be extracted from his testimony during cross-examination. It is submitted that the courts below did not consider the fact that the document Ex.PW1/1, as relied upon by the respondent, is not a genuine document.

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

7. The lower court, while decreeing the suit of the respondent, has observed that PW1 Chajju Ram, attesting witness, duly proved on record execution of Ex.PW1/1 i.e. the document pertaining to the terms and conditions of the alleged loan taken by the appellant. So far as the stand taken by the appellant that Ex.PW1/1 was manipulated and fabricated by the respondent and the respondent had tampered the amount as ₹ 40,000/- instead of ₹ 10,000/-, the lower court, while considering the testimony of PW1 Chajju Ram and DW2 Lala Ram (attesting witnesses) observed that the alleged amount of ₹ 40,000/- has been mentioned at three places on the front side, apart from rear side of the document. Even denominations of the currency notes have been written on the rear side of Ex.PW1/1. The findings recorded by the lower court were affirmed in appeal by the first Appellate Court.

8. Learned counsel for the appellant has not been able to point out any perversity in the findings recorded by the courts below. On the one hand, execution of document Ex.PW1/1 has been duly proved on record by

PW1 Chajju Ram, one of the attesting witness. On the other hand, DW2 Lala Ram, another attesting witness to Ex.PW1/1 stated that the loan transaction was only for ₹ 10,000/- instead of ₹ 40,000/-. However, DW2 Lala Ram, admitted his signatures as well as signatures of his son i.e. the appellant herein on Ex.PW1/1 and also admitted about the due execution of Ex.PW1/1. DW2 Lala Ram stated that his son (the appellant herein) borrowed a loan from the defendant in the year 2011, which was repaid back in the December along with interest. Appellant-Yad Ram (DW1) in his examination-in-chief did not say even a single word about the said loan taken in the year 2011 of ₹ 10,000/- and further returning of the same. However, in his cross-examination the appellant (DW1 Yad Ram) took the same stand, as taken by his father (DW2 Lala Ram) regarding return of the said amount along with interest, but admits the due execution of loan document Ex.PW1/1 in the presence of his father Lala Ram. In this way, appellant-Yad Ram led evidence contrary to his pleadings. Moreover, in Ex.PW1/1 digit ₹ 40,000/- is heavily overwritten at one place, but at other two places therein, the digits ₹ 40,000/- have been written normally and smoothly. Ex.PW1/1 was reduced into writing by mutual consent of the parties and the appellant never made any complaint to the police about alleged tampering done by the respondent in it. Besides this, the appellant is barred from taking the plea of alternation in Ex.PW1/1 as per the provisions of Sections 91 and 92 of the Indian Evidence Act, which point has been dealt with by the lower court in detail.

9. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no

question of law requiring determination arises in this regular second appeal filed by the appellant-defendant, which has no merit.

10. Dismissed.

July 17, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No