

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

(247)

**RSA-2844-2015 (O&M)
Date of Decision: 02.12.2022**

Balwant Singh

...Appellant

Versus

Mukhtiar Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Natasha Munjal, Advocate, for the appellant.

HARKESH MANUJA, J.(ORAL)

By way of present appeal challenge has been made to the Judgments and Decrees dated 11.02.2015 and 20.08.2013, passed by the Courts below whereby, the suit for recovery in favour of respondent-plaintiff has been decreed.

Brief facts of the case are that based on a pro-note as well as receipt dated 29.07.2006, a suit for recovery of sum of Rs.1,52,000/- was filed by respondent/plaintiff against appellant/defendant. It was pleaded in the plaint that vide pro-note and receipt dated 29.07.2006, the appellant/defendant took a loan of Rs. 1 Lakh from the respondent/plaintiff which was agreed to be returned along with interest @ 12% per annum. It was further stated that appellant/defendant since failed to repay the amount, respondent/plaintiff was compelled to file a suit for recovery against him.

Upon notice, the appellant-defendant appeared and contested the suit by filing written statement to the effect that the loan amount already stood paid to the real brother of respondent/plaintiff vide receipt Ex.D-1 dated

Balkar Singh were jointly running the business of money lending.

The trial Court vide judgment and decree dated 20.08.2013 though upheld the execution and proof of Ex.D-1, however, decreed the suit by holding that the receipt Ex.D-1 was since executed under the signature of Balkar Singh had no effect upon the rights of respondent/plaintiff. Aggrieved against the judgment and decree dated 20.08.2013, passed by the trial Court, a first appeal was filed. However, the same was also dismissed by the Court of District Judge, Ferozepur, 11.02.2015 vide judgment and decree dated 11.02.2015 by reiterated the reasons recorded by the trial Court regarding Ex.D-1 having no effect upon the rights of respondent as regards the recovery of amount.

By way of present appeal, appellant/defendant impugned the validity of both the aforementioned judgments and decrees primarily on the ground that the courts below ignored and failed to take into consideration the evidence available on record. In support, learned counsel for the appellant/defendant submits that once the Courts below were fully satisfied as regards the execution of Ex.D-1 i.e. receipt dated 29.07.2006 vide which amount obtained from respondent/plaintiff was returned to his brother, the same could not have been discarded simplicitor on the ground that it was not signed by the respondent-plaintiff and was not binding on his rights particularly in view of the deposition made by respondent/plaintiff while appearing as PW-1 wherein, he categorically stated that all the calculations with regard to the principal amount as well as interest were being done by his brother Balkar Singh. Learned counsel for the appellant further submits that the respondent/plaintiff in his cross-examination categorically admitted that he was doing the business of money lending and he was not having any license issued by any of the Government Agency in this regard and accordingly, in

view of Section 3 of the Punjab Registration of Money Lenders Act, 1938 (hereinafter referred to as “the Act”) suit itself was not being maintainable.

No one appears on behalf of respondent-plaintiff despite service.

I have heard learned counsel for the appellant and have gone through the paper book. I find substance in the submissions made on behalf of the appellant which raised the following law points in the present appeal:

- 1. Whether the Courts below have misread the relevant and admissible evidence available on record in support of the case set up by the appellant-defendant ?*
- 2. Whether in the absence of respondent/plaintiff being registered and licensed money lender, the suit for recovery filed at his instance was liable to be dismissed?*

Discussion on law points:-

I. On consideration I find that, once the Courts below recorded concurrent findings as regards the validity of execution of Ex.D-1 i.e. receipt dated 15.10.2007 by Balkar Singh, the same was required to be read and considered in conjunction with the cross-examination of respondent/plaintiff Mukhtiar Singh who specifically stated therein that the calculations with regard to the principal money as well as interest were being done by his brother Balkar Singh. He even further deposed that he along with his brother Balkar Singh were jointly calculating the principal amount as well as interest. He was not even specific and categorical while denying the receipt Ex.D-1 except for a vague and uncertain assertion in this regard. The relevant portion of cross-examination of Mukhtiar Singh is reproduced hereunder for reference:

“.....It is correct that I am doing the business of money lending. I do not have any license issued by the Agency of government for giving loan. I do not maintain any account books

regarding money lending transactions i.e. loan given to the people. My brother was also doing the business of money lending. It is correct that all the calculation with regard to principle money as well as interest are to be done by my brother Balkar Singh. Again said we jointly calculated the principle amount as well as interest. I cannot tell how much interest is due upto date. I cannot calculate the interest amount on the principle amount. It is correct that the defendant Balwant Singh had executed an agreement to sell with regard to the amount in the present case. It is correct the above said agreement to sell was executed by defendant against the amount lent by me as well as my brother Balkar Singh. I not know whether my brother Balkar Singh has executed/issued the receipt Mark DA or not. I do not know Lahora Singh son of Wattan Singh. I do not know Jagar Singh and Dayal Singh. However, I know Balkar Singh, who is my real brother.....”

From conjoint reading of Ex.D-1 i.e. receipt dated 15.10.2007 and the relevant portion of cross-examination of PW-1 Mukhtiar Singh i.e. respondent/plaintiff himself one can easily see through that both the brothers were doing the work of business of money lending together and it was Balkar Singh who was carrying out all the calculations with regard to principle amount as well as the interest and the calculations were even done jointly between the two brothers and perhaps this was the only reason why the amount of loan taken from the respondent/plaintiff was returned against the receipt Ex.D1 which was issued under the signatures of his brother Balkar Singh. Thus, in view of the deposition made by the respondent, it can easily be traced out that the amount of loan taken by the appellant-defendant was duly returned against the receipt Ex.D-1 which even binds the respondent/plaintiff as well. Based thereupon, it is apparent that the most relevant admissible evidence in the shape of deposition of plaintiff No.1 himself being PW-1 had not been taken into consideration by Courts below

while passing the impugned judgments and decrees which itself compells this Court to interfere with the same. Reliance in this regard can be made to the decision rendered by Hon'ble Supreme Court in the case of **Chandna Impex Pvt. Limited vs. Commissioner of Customs, New Delhi**, reported as **2011 (3) R.C.R. (Civil) 843**. Relevant portion from paragraph 9 of the same is reproduced hereunder:-

“9.....It is trite law that a finding of fact may give rise to a substantial question of law, inter-alia, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread.....”

II. As regards the second submission made on behalf of the appellant regarding maintainability of the suit , learned counsel placed reliance on the decision rendered by this Court in the case titled as **Nikoo Ram Ashok Kumar Vs. Jagtar Singh, 2005(3) RCR (Civil)716** and submitted that in view of the specific bar as prescribed under Section 3 of the Act, the suit for recovery filed at the instance of respondent/plaintiff was not even maintainable as admittedly he was not having any authority/license for the purpose of running the business of money lending. Learned counsel also refers to Section 3 and 4 of the Act of 1938 in this regard. A perusal of Section 3 of the Act makes it clear that a suit by money lender for recovery of loan based on a pronote after the commencement of the 1938 Act can't be entertained and is thus liable to be dismissed unless the money lender, at the time of institution of the suit or at the time of decreeing the same or deciding the execution application, is registered

and holds a valid license as required under Section 4 of the 1938 Act. In the facts and circumstances of the present case, from the deposition of PW-1 plaintiff himself it has been duly established on record that he was regularly and consistently lending money on interest and thus, was not merely a casual or occasional lender. Admittedly, in the present case respondent/plaintiff though running the business of money lending neither got himself registered under Section 4 of the 1938 Act nor even possesses any license under the said Act. Accordingly, the suit for recovery filed at his instance being based on pronote and a receipt itself was liable to be dismissed being not maintainable, in the facts and circumstances of the present case. In this regard, I also find support from the reasoning rendered in the case of **Jagtar Singh (Supra)**.

In view of the discussing made hereinabove, the law points involved in the present appeal and as framed in the preceding part of this judgment are answered accordingly. Resultantly, the present appeal is allowed and impugned judgments and decrees passed by the Courts below are hereby set aside thereby resulting in dismissal of the suit filed at the instance of respondent/plaintiff.

All pending applications also stand disposed of.

(HARKESH MANUJA)
JUDGE

02.12.2022
anil

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No