

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

RSA-549-2023(O&M)

Date of decision:-3.3.2023

Sattar

...Appellant

Versus

Nirmal Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.K. Sood, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Nirmal Singh had brought a suit for recovery of Rs.6,80,000/- with interest and cost against defendant Satar, on the averments that the latter had been borrowing money from the former during the period starting from the month of August 2014 to November, 2014 i.e. Rs.2,00,000/- on 08.08.2014, Rs.1,54,000/- on 28.08.2014, Rs.75,000/- on 27.09.2014, Rs.1,25,000/- on 20.10.2014 and Rs.1,30,000/- on 11.11.2014, total amount of Rs.6,84,000/- on account of friendly relations between the parties; the defendant had assured to repay the entire amount to the plaintiff up to 1.11.2015; on account of friendly relations between the parties, no written document was prepared; on 17.11.2015, the defendant came to residence of the plaintiff and at that time he was accompanied by

Shri.Chand; he felt sorry for not repaying the loan amount and acknowledge his liability in writing to pay Rs.6,84,000/- by April, 2016; that written acknowledgement was signed by the plaintiff, defendant as well as witnesses S/Sh. Jaswant Singh and Shri Chand; the defendant did not repay that amount to the plaintiff in April 2016; on 5.5.2016, the defendant again came to the house of the plaintiff in company of Shri Chand and gave Rs.4,000/- in cash to the plaintiff and made a further written acknowledgement undertaking to repay the amount of Rs.2,00,000/- on 20.10.2016 and remaining amount by December, 2016. Since the defendant failed to do so, the plaintiff brought the suit.

2. On notice the defendant appeared and filed written statement denying that he was on friendly terms with the plaintiff or that he had borrowed any amount from the plaintiff as alleged in the plaint or that he had made any written acknowledgement of the amount borrowed or his liability to return the same on 17.11.2015 or 5.5.2016 as claimed by the plaintiff in the plaint. The defendant took the stand that the plaintiff has prepared false and fabricated acknowledgements and he does not have any liability to pay any amount to the plaintiff. He prayed for dismissal of the suit.

3. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to a decree of recovery of Rs.6,80,000/- along-with interest as prayed for? OPP.
2. Whether the suit of the plaintiff is not maintainable?OPD
3. Whether the plaintiff has no cause of action and no locus standi to

file the present suit?OPD

4. Whether the plaintiff has not come to the Court with clean hands?

OPD

5. Relief.

4. The parties were afforded opportunities to lead evidence in support of their respective claims.

5. During the course of evidence, the plaintiff had examined Jaswant Singh as PW1 and Jasvinder Singh as PW2. He also tendered in evidence documents Ex.PW1/A - Affidavit of PW-1, Ex.PW2/A - Affidavit of PW-2, Ex.P1 & Ex.P2 – undertakings/acknowledgments and Ex.P3 Special Power of Attorney.

6. In rebuttal, the defendant got his statement recorded as DW1 and tendered in evidence his affidavit as Ex.DW1/A.

7. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Faridabad by giving issue-wise findings decreed the suit of the plaintiff for recovery of Rs.6,80,000/- with interest at the rate of 6% per annum from the date of filing of the suit till realization. This was so done vide judgment and decree dated 6.3.2019.

8. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Faridabad, who vide judgment and decree dated 31.1.2023 dismissed the appeal upholding the judgment and decree passed by the trial Court.

9. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant filed the present regular second appeal before this Court.

10. I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the appeal.

11. Both the Courts below in light of the pleadings of the parties and the evidence brought on record by them as well as the settled legal position have returned concurrent findings that the defendant had borrowed a total sum of Rs.6,84,000/- from the plaintiff during the period August 2014 to November, 2014 as claimed by the plaintiff and he had submitted written undertakings Ex.P1 and Ex.P2 in that regard and further a sum of Rs.6,80,000/- was due from defendant to the plaintiff, which he had not paid. The version set up by the defendant that he had not borrowed any amount from the plaintiff and had not executed any written acknowledgements Ex.P1 and Ex.P2 and as such he was not liable to pay any amount to the plaintiff was considered and rejected by both the Courts below by giving sound reasoning.

12. Although learned counsel for the appellant referred to judgments i.e. *Thiruvengada Pillai Versus Navaneethammal & Anr., 2008(2) RCR(Civil) 262* and *Man Kaur (Dead) by LRs Versus Hartar Singh Sangha, 2010(4) CivCC 792*, however those judgments do not help the appellant in any way in advancing his case due to different facts and circumstances of the case and the context in which such observations had been made.

13. With the concurrent findings having been recorded by the Courts below against the appellant/defendant, which are based on proper appraisal of evidence and correct interpretation of law and there being no

illegality or infirmity with the impugned judgments and decrees passed by the Courts below, there is no ground to interfere with such impugned judgments and decrees in regular second appeal.

14. No substantial question of law arises in this appeal.

15. Finding no merit in the appeal, the same stands dismissed.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

3.3.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No