

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

Sr. No.212

RSA No.5772 of 2014 (O&M)

Date of Decision: 07.02.2023

Saroj Devi

.... Appellant

Versus

Vinod Verma

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. R.S.Sihota, Sr. Advocate with
Mr. B.R.Rana, Advocate
for the appellant.

Mr. Rajesh Sethi, Advocate,
Mr. Arun Biriwal, Advocate,
Mr. Tushar Gera, Advocate
for the respondent.

TRIBHUVAN DAHIYA, J.

This is plaintiff's appeal against the judgment of reversal in a suit for recovery.

2. The facts of the case in brief are, the appellant/plaintiff (hereinafter referred to as the 'plaintiff') filed a suit for recovery of ₹9 lakh from the respondent/defendant (hereinafter referred to as the 'defendant') claiming that the latter had taken a loan of the said amount from her in three installments on 20.02.2009, 21.02.2009 and 15.04.2009 amounting to ₹3 lakh on each date, with a mutually settled interest at the rate of 2 per cent per month. The defendant agreed to return the amount with interest whenever called upon to do so. He scribed three writings on his

letterhead, acknowledged the receipt of payments on the dates mentioned above and signed the same. The transaction was witnessed by Vikram Lamba and other family members of the plaintiff, who happened to be present in the house at that time. The defendant had earlier also taken a loan from the plaintiff and her family members while he was constructing a house. In view of the cordial relations and good conduct of the defendant, the loan in question was extended to him.

3. The suit was contested by the defendant denying that he ever took a loan of ₹9 lakh from the plaintiff in three installments. Vikram Lamba was stated to be close to the plaintiff's husband and her sons, and was, therefore, named as a witness with ulterior motive. Defendant had never taken loan from the plaintiff earlier, as alleged by her. He had taken loan from plaintiff's husband Ram Lal for a sum of ₹11 lakh (₹6 lakh on 20.02.2009 and ₹5 lakh on 21.02.2009), but no writing was executed for the same by the defendant. The plaintiff's husband and her sons obtained four writings/*tehreer* on defendant's letterhead of ₹3 lakh each in the name of the plaintiff, as security of the loan taken by the defendant from plaintiff's husband Ram Lal in April, 2009. Later, the defendant repaid ₹16,80,000/- on different dates as detailed in the plaint. As such, the aforesaid principal amount of ₹11 lakh stood returned in June, 2009 and excess amount as well as the writings/*tehreer* remained with the plaintiff's husband, who along with plaintiff's sons Amit, Gopal and Sachin Goyal started blackmailing and misbehaving with the defendant and filed the suit in question. The defendant in his statement recorded on 02.06.2010 admitted his signatures on the alleged writings, but denied taking any loan from the plaintiff as well as execution of the writings in question.

4. On these pleadings, following issues were settled between the parties:

1. Whether the plaintiff is entitled for recovery of ₹9,00,000/- along with interest and cost? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has no cause of action to file this present suit? OPD
4. Relief.

5. In evidence, the plaintiff examined herself as PW1, Sachin Goyal (her son) as PW2 and Vikram Lamba (witness to the writings) as PW3. Defendant, on the other hand, examined himself as DW2 and Rakesh as DW1.

6. While returning finding on Issue No.1, the trial Court held that writings in question dated 20.02.2009, 21.02.2009 and 15.04.2009 (Ex.PW1/1, PW1/2 and PW1/3 respectively) establish that the same were executed by the defendant for an amount of ₹3 lakh each along with interest at the rate of 2% per month in favour of the plaintiff on his letter head. The same bore his signatures with acknowledgement of having received the payments. These facts stand established by way of deposition of the witness Vikram Lamba, PW3. The defendant's plea of having taken loan of ₹11 lakh from the plaintiff's husband and the latter having obtained four writings of the former on the letterhead as security of the loan, could not be established on record. No witness was examined by the defendant to prove this fact, nor any fraud could be established on the part of the plaintiff. Therefore, it was

15.04.2009 (Ex.PW1/1, PW1/2 and PW1/3 respectively) stood duly proved on the file. With regard to the interest, the trial Court held that rate of interest, i.e., 2% per month, was on higher side, the plaintiff was accordingly held entitled to interest at the rate of 9% per annum. Issues No.2 and 3 were not pressed by the defendant, and were decided against him.

7. Defendant went in appeal against the judgment and decree of the trial Court dated 28.02.2013. The lower appellate Court reversed the same, vide judgment and decree dated 08.07.2014, by holding that signatures on the writings dated 20.02.2009, 21.02.2009 and 15.04.2009 (Ex.PW1/1, PW1/2 and PW1/3 respectively) were admitted by the defendant at the very outset, however, he denied execution of the same. It was held that this denial was to be viewed keeping in view the stand taken by the defendant that the loan was, in fact, raised by the plaintiff's husband Ram Lal, who instead of taking any writing/*tehreer* on his behalf from the defendant, took writings (Ex.PW1/1, PW1/2 and PW1/3) in the name of his wife, i.e., the plaintiff, as security. The plaintiff on her own had no financial capacity to advance a loan of huge amount of ₹9 lakh to the defendant. Therefore, there was no consideration for execution of the writings in question. It was also held by the lower appellate Court that the writings (Ex.PW1/1, PW1/2 and PW1/3) could not be termed as a promissory note under Section 4 of the Negotiable Instruments Act, 1881, since there was no unconditional undertaking signed by the defendant to pay a certain sum of money to the plaintiff. The writings (Ex.PW1/1, PW1/2 and PW1/3) only recorded that the defendant had acknowledged having incurred loan of ₹9 lakh (₹3 lakh against each of the receipts) with interest at the rate of 2% per month. Therefore, the document at the most can be termed as a receipt as

they do not answer requirements of promissory note, so as to attract any presumption under Section 118 of the Act of 1881. Therefore, passing of the consideration was required to be proved by the plaintiff as a matter of fact, which could not be established on record. In fact, it could not even be established that the plaintiff had the financial capacity to extend the loan in question, as she admitted in the cross-examination that she never filed income tax return, nor ever sold any property or ever held any bank account. She never incurred any loan nor had she received any gift.

8. The lower appellate Court also made a reference to a complaint lodged by the defendant (Ex.DW2/1) to the Superintendent of Police, Rewari, against the plaintiff's husband and sons. It resulted in a settlement dated 16.09.2009 (Ex.DW2/2) between them, which was signed by the defendant, the husband and sons of the plaintiff. These documents clearly established that there was money dispute between the signatories to the settlement. It showed that the amount borrowed by the defendant from the plaintiff's husband and sons had been returned when the writings in question (Ex.PW1/1, PW1/2 and PW1/3) were executed. This falsified the plaintiff's case also that keeping in view the defendant's good conduct, the loan in question was advanced to him.

9. With these observations, the appeal was allowed, the trial Court judgment and decree dated 28.02.2013 was set aside and the plaintiff's suit was dismissed by the lower appellate Court, vide judgment and decree dated 08.07.2014.

10. Learned counsel for the appellant/plaintiff has argued that loan in question already stood admitted by the defendant, once he admitted his signatures on the writings in question. He has further submitted that the

intent of the parties is to be read from these documents as well as the police complaint (Ex.DW2/1) and the settlement arrived at between the parties before the police (Ex.DW2/2), which clearly establish that the loan in question was advanced to the defendant. Therefore, the lower appellate Court wrongly reversed the well reasoned judgment of the trial Court.

11. *Per contra*, learned counsel for the respondent/defendant has argued that judgment of the lower appellate Court is well reasoned and deserves to be upheld. He states that there is no reliable witness that was examined by the plaintiff to prove the loan transaction in question. He further submits that merely because signatures of the defendant on the writings are not disputed, it cannot be assumed that the writings/documents stood proved on record. The writings, as per him, were executed only as a security for the loan advanced by the plaintiff's husband to the defendant, and the same have been misused by the plaintiff to file the suit in question.

12. Learned counsel for the parties have been heard and record perused.

13. To consider the submissions of the learned counsel for the appellant that the writings in question (Ex.PW1/1, PW1/2 and PW1/3) stand duly established on record by way of signatures of the defendant, it needs to be noted that mere admission of signatures on a document or it having been exhibited, is not sufficient proof of its contents. For proving a document as such, including the contents thereof, the executant has to be fully conscious of his acts and it has to be established on record that he is aware about the contents of the document and has duly understood the same. A reference in this regard can be made to the law laid down by Supreme Court in *Ramji*

Dayawala and Sons (P) Ltd. v. Invest Import 1981(1) SCC 80. The relevant paragraph 16 of the said judgment is reproduced hereunder:

16. Incidentally it was urged by Mr. Majumdar that even if the court proceeds on the assumption that the letter and the cable were received, it is not open to this court to look into the contents of the letter and the cable because the contents are not proved as the Managing Director of the appellant company who is supposed to have signed the letter and the cable has neither entered the witness box nor filed his affidavit proving the contents thereof. Reliance was placed on *Judah v. Isolyne Bose*, AIR 1945 PC 174. In that case a letter and two telegrams were tendered in evidence and it was observed that the contents of the letter and the telegram were not the evidence of the facts stated therein. The question in that case was whether the testatrix was so seriously ill as would result in impairment of her testamentary capacity. To substantiate the degree of illness, a letter and two telegrams written by a nurse were tendered in evidence. The question was whether in the absence of any independent evidence about the testamentary capacity of the testatrix the contents of the letter could be utilised to prove want of testamentary capacity. Obviously, in these circumstances the Privy Council observed that the fact that a letter and two telegrams were sent by itself would not prove the truth of the contents of the letter and,

therefore, the contents of the letter bearing on the question of lack of testamentary capacity would not be substantive evidence. Undoubtedly, mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in a document is in issue mere proof of the handwriting and exeution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue.

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14. In the facts of the instant case, the writings/*tehreers* in question (Ex.PW1/1, PW1/2 and PW1/3) cannot be said to have been proved on record merely because signatures on the same have been admitted by the defendant. It is a pleaded case of the defendant that the same were executed as a security for the loan he had taken from the plaintiff’s husband. To prove the contents of the writings, the plaintiff has examined its witness Vikram Lamba as PW3. A perusal of his testimony establishes that he is not aware about contents of the writings, as it has been admitted in the cross-examination that he merely signed on the same. He had feigned ignorance of the fact as to whether any loan was taken by the defendant from the plaintiff or her family. He was not aware that apart from him, somebody

else had also signed on the writings. Therefore, sole witness to the writings was unaware about the contents thereof. On the other hand, the defendant has pleaded that the writings were executed as a security for the loan he had taken from the plaintiff's husband. The complaint lodged to the police by the defendant (Ex.DW2/1) as well as the settlement dated 16.09.2009 (Ex.DW2/2) arrived at before the police between defendant, the plaintiff's husband and her sons, establish the probability of the writings having been obtained as security for the loan he had taken from the plaintiff's husband. More importantly, the plaintiff was not a signatory to this settlement before the police. Besides, the plaintiff has failed to examine her husband to disprove the defendant's plea that he took the loan from the plaintiff's husband, which resulted in execution of the writings in question.

15. Another important aspect which demolishes the plaintiff's case is, absence of any evidence on record to establish that the amount of ₹9 lakh was ever extended as loan to the defendant by her. While testifying before the Court as PW1, she has admitted that she never sold any property or incurred any loan, maintained any bank account or filed any income tax return ever. As an after thought, she tried to explain the situation by saying that the amount extended as loan to the defendant was lying with her ever since the death of her parents-in-law, and that her own parents had also given her some money. She, however, admitted that her father-in-law died about 30 years back and mother-in-law about 8 years back. In these circumstances, the findings of the lower appellate Court are correct, that it is highly doubtful and defies all logic and common sense that she will be having such a huge amount with her for such a long period to extend as loan to the defendant. The witness to the writings, PW3, also admitted in the

cross-examination that the plaintiff was a home-maker and was not doing any business. Also, it could not be believed that such a huge amount was extended by plaintiff as a loan without insisting on any collateral security.

16. Therefore, there is no doubt that the necessary ingredients of a contract having been entered into between the parties with respect to the loan in question, have not been established on record. There is no error of law in the judgment passed by the lower appellate Court setting aside the judgment and decree passed by the trial Court, and dismissing the plaintiff's suit.

17. Accordingly, the appeal stands dismissed.

18. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

07.02.2023
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes