

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

RSA-4759-2018(O&M)

Date of decision:-24.1.2023

Bir Singh

...Appellant

Versus

Jagir Singh

...Respondent

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

Present: Mr.G.S. Sirphikhi, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Jagir Singh had brought a suit for recovery of Rs.65,000/- with interest and cost against defendant Bir Singh on the averments that on 13.12.2006, the defendant had borrowed a sum of Rs.1,00,000/- from the plaintiff agreeing to repay the same with interest @ 3% per month and had executed an agreement; subsequently on 5.6.2007, he had returned Rs.35,000/-, agreeing to pay the balance amount of Rs.65,000/- with interest at the agreed rate and a writing in that regard was executed on the back of agreement scribed by Gurcharan Singh, Document Writer on 5.6.2007 in presence of witnesses, however, defendant did not return that amount in spite of repeated requests and demands made by plaintiff, giving rise to a cause of action to the plaintiff to bring the suit in question.

2. On getting notice, the defendant appeared and filed written statement denying having borrowed any amount from the plaintiff or executing any agreement. He contended that he is an illiterate person and the plaintiff in collusion with the witnesses and others might have created some document, which is against the provisions of Contract Act, 1872. The defendant labelled that agreement set up by the plaintiff as a forged and fabricated document. Finally, denying his liability to pay any amount, he prayed for dismissal of the suit.

3. The plaintiff had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is entitled to recovery Rs.65,000/- with interest from the defendant as prayed for? OPP.
2. Whether the agreement dated 13.12.2006 is legal and void? OPP.
3. Whether the plaintiff has got no cause of action to file the present suit? OPD.
4. Whether the suit of the plaintiff is not signed, stamped and verified? OPD.
5. Relief.

5. The parties led evidence in support of their respective claims.

6. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Batala vide judgment and decree dated 23.7.2015 decreed the suit of the plaintiff for recovery of Rs.65,000/- with

interest at the rate of 6% per annum from the date of filing of the suit till the date of decree with future interest at that very rate on the principal amount from the date of decree till realization of the principal amount besides cost of the suit.

7. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Gurdaspur, which was assigned to Additional District Judge, Gurdaspur, who vide judgment and decree dated 5.5.2017 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

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

9. I have heard learned counsel for the appellants besides going through the record.

10. Both the courts below in light of the pleadings of the parties and after minute and detailed analysis of the evidence adduced by the parties have returned concurrent findings that defendant had borrowed a sum of Rs.1,00,000/- from the plaintiff on 13.12.2006 and had executed an agreement Ex.P1 duly thumb marked by him and attested by witnesses Tarsem Singh and Gurnam Singh son of Dalip Singh of village Chaillowal and he had returned Rs.35,000/- only on 5.6.2007, in that respect a writing on the back of the agreement was made. Therefore, the defendant is liable to return balance amount of Rs.65,000/- with interest. Though the plaintiff had claimed interest @ 3% per month but the trial Court in all fairness had granted interest @ 6% per annum which was approved by the First

Appellate Court.

11. Although learned counsel for the appellant has contended that the agreement Ex.P1 was insufficiently stamped and could not be taken into consideration but that objection should have been taken by the defendant at first available opportunity when the evidence was being recorded in the trial Court and this agreement was proved in evidence and in case it was found that the document was insufficiently stamped, then it could have been impounded and released only on fixation of requisite stamps in terms of Section 33 of the Indian Stamp Act, 1899. Nothing of that sort appears to have been done. There is no mention in that regard in both the judgments.

12. Although learned counsel for the appellant states that such objection had been raised before the Courts below but I do not find this submission to be worthy of acceptance for the reason that if such argument had been raised that would have definitely been discussed and met with by the Courts below. Even otherwise, such like objection cannot be taken for the first time at the stage of regular second appeal.

13. With concurrent findings being there in favour of the plaintiff and against the appellant/defendant with which I find no reason to disagree with both the Courts which have given valid and detailed reasons for arriving at the conclusion drawn. No substantial question of law arises in this case.

14. Finding no merit in the present appeal, the same stands dismissed with costs.

Since the main appeal is dismissed, the miscellaneous

application(s), if any stands disposed of accordingly.

24.1.2023

(H.S.MADAAN)
JUDGE

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No