

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

RSA-5564-2019(O&M)

Reserved on:-22.3.2023

Date of pronouncement:-27.3.2023

Master Balram

...Appellant

Versus

Ramavtar

...Respondent

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

Present: Mr.Ashwani Talwar, Advocate  
for the appellant.

Mr.Alok Jain, Advocate  
for the respondent.

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**H.S. MADAAN, J.**

1. In nutshell, the facts of the case are that plaintiff Ramavtar son of Murarilal Mahajan, resident of Charkhi Dadri had brought a suit for recovery of Rs.26,34,400/- with interest and cost against defendant Master Balram son of Jai Singh, resident of Stadium Road, Charkhi Dadri, on the averments that on 31.7.2008, the defendant had borrowed a sum of Rs.17,80,000/- from him, agreeing to repay the same with interest @ 1% per month within one year; he had executed a writing in that regard on that very day putting signatures thereon after affixing the revenue stamps, however, defendant did not return any amount to the plaintiff as

agreed despite various requests and demands made by the plaintiff from him including service of a legal notice by the plaintiff upon the defendant sent as per registered AD post on 6.7.2012, giving rise to a cause of action to the plaintiff to bring the suit.

2. On notice, the defendant appeared and filed a written statement contesting the suit denying that he had borrowed any amount from the plaintiff on 31.7.2008 or had executed any writing in that regard under his signatures on the revenue stamps. The defendant alleged that the plaintiff had concocted a false story and had prepared a forged writing; the defendant was never in need of such huge amount of money. As per the version of the defendant, the plaintiff and defendant were on good terms and they had defended a few litigations together; the plaintiff used to come to the house of the defendant daily; he had entered into an agreement to sell land with the son of the defendant; the plaintiff had himself scribed the agreement upon which the defendant had also put his signatures; the son of the defendant had also filed a suit against the present plaintiff regarding that transaction. According to the defendant, the plaintiff had handsome earning and was engaged in property dealing, besides working as a Stamp Vendor; he used to type the pleadings in suits/cases and is a cunning person; he is an income tax payee and used to file his income tax return every year; he had kept many bahis and had been engaged in money transactions on the basis of pronotes

and receipts, therefore the plaintiff would have shown the impugned amount lent on 31.7.2008 in his income tax return but it was not so for the reason that the defendant had not borrowed any money from the plaintiff on 31.7.2008. According to the defendant, if the plaintiff had advanced any amount to him, then he would have got executed a pronote/receipt pronote or got scribed such transaction in his bahi instead of simply obtaining writing on a plain paper, which is not admissible in evidence. The defendant had denied that he had received any notice from the plaintiff. Refuting the remaining allegations, the defendant 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, admitting that there had been good relations between the parties and as a matter of fact they were co-accused in a case filed by Ram Krishan Gupta long time back and both of them were acquitted in the said case. The plaintiff submitted that defendant had retired as a JBT Teacher and he always used to sign in Hindi but on the written statement and other documents pertaining to the present suit, he had signed in English with a malafide intention.

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

1. Whether the plaintiff is entitled to recovery suit amount of

Rs.26,34,400/- (principal amount Rs.17,80,000/- and interest Rs.8,54,400/-) along with future interest, if so, to what rate?  
OPP.

2. Whether plaintiff has no locus standi or cause of action to file the present suit? OPD.

3. Whether suit is not maintainable in the present form? OPD.

4. Whether plaintiff has not come to the Court with clean hands and has concealed true and material facts from the Court?  
OPD.

5. Relief.

5. Both the parties were afforded adequate opportunities to lead their evidence in support of their respective claims.

6. After hearing the learned counsel for the parties, the trial Court of Addl.Civil Judge(Sr.Divn.), Charkhi Dadri by giving issue-wise findings dismissed the suit of the plaintiff vide judgment and decree dated 31.10.2015.

7. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in District Court at Charkhi Dadri, which was accepted by learned Additional District Judge, Charkhi Dadri vide judgment and decree dated 5.10.2019, resultantly the judgment and decree passed by the trial Court were set aside and suit of the plaintiff was decreed with costs for recovery of Rs.17,80,000/- with interest @ 8% per annum from the date of loan till actual realization

of the decretal amount.

8. Being dissatisfied with the judgment and decree passed by Additional District Judge, Charkhi Dadri, the defendant has filed the present regular second appeal before this Court, notice of which was issued to the respondent, who put in appearance through counsel.

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

10. The judgment passed by the trial Court showed that it had failed to marshal the facts of the case properly and apply the law in an appropriate manner, in the process, dismissing the suit. The facts and circumstances of the case warranted decreeing of the suit, which was done by learned Additional District Judge, Charkhi Dadri by way of accepting the appeal and setting aside the judgment and decree passed by the trial Court. The judgment passed by Additional District Judge, Charkhi Dadri reflects proper understanding of the factual and legal position on the subject besides in depth analysis of the evidence available on the record.

11. Learned Additional District Judge, Charkhi Dadri has given valid reasons for accepting the claim of the plaintiff in the process decreeing the suit of the plaintiff. In para No.8 of the judgment, learned Additional District Judge, Charkhi Dadri has dealt with the financial capacity of the plaintiff to advance suit amount to

the defendant observing that at page No.2 of the written statement, the defendant himself has pleaded that the plaintiff is having sufficient income from the property dealing, profession of scribe and even he is income tax payee and defendant himself had produced and proved copies of sale deeds Ex.D1 to Ex.D11 and Mark A to Mark DG, which have been got executed either in favour of the appellant-plaintiff or his family members thereby showing that plaintiff was having sufficient means to arrange the amount of loan given to defendant, which fact had been conveniently ignored by the trial Court while recording an erroneous finding that plaintiff had failed to prove source to arrange amount in dispute.

12. With regard to the execution of writing Ex.P6 by plaintiff though the same is not attested by any witness but as rightly observed by learned Additional District Judge, Charkhi Dadri attestation of such type of document is not required by law. Therefore, non-attestation of writing cannot be taken adversely against the plaintiff.

13. Referring to the oral as well as documentary evidence, the First Appellate Court has returned a clear finding that writing Ex.P6 is in handwriting of the defendant and bears his signatures. I do not see any reason to disagree with learned Additional District Judge, Charkhi Dadri in that regard. It has been noticed by learned Additional District Judge, Charkhi Dadri that during the trial of the case specimen writing of defendant was taken on 1.9.2014 as Ex.P8

where he had written with his left hand explaining that one finger of his right hand was amputated to some extent and he used to write with left hand. The Court observed that purpose of giving specimen writing with left hand was to disguise the writing to mislead the Court. Learned Additional District Judge, Charkhi Dadri has rightly come to the conclusion that version of the plaintiff was correct and the case set up by the defendant mainly of denial was not convincing.

14. Here before this Court, learned counsel for the appellant has though argued that writing Ex.P6 is not in handwriting of the defendant and does not bear his signatures but I find that there is sufficient evidence available on the record discussed in detail by learned Additional District Judge, Charkhi Dadri to prove otherwise.

15. The second ground of attack was that this document Ex.P6 is not attested by any witness. However as has been rightly observed by Additional District Judge, Charkhi Dadri in his judgment that attestation of such type of document is not required by law.

16. The third ground was that the plaintiff had failed to prove source of money. But that aspect has also been dealt with in a proper and appropriate manner by learned Additional District Judge, Charkhi Dadri and it has been discussed supra to show that plaintiff was capable of arranging that much amount so as to advance it to the defendant on account of good relations between the parties.

17. Another objection raised by learned counsel for the appellant was that such a huge amount could not be paid in cash. Though some RBI Guidelines are there at present in that regard but the transaction is of the year 2008 and there is nothing on record to show that at that time, such an amount could not have been paid in cash by the plaintiff to the defendant.

18. Though learned counsel for the appellant has alleged that writing Ex.P6 is a forged and fabricated document prepared by the plaintiff but then admittedly till date, the defendant has not got any criminal action initiated against the plaintiff for indulging in alleged forgery or fabrication thereby showing that such allegations are devoid of any merit.

19. No reason is found to differ with such observations made by the First Appellate Court and to take a contrary view in light of the facts and circumstances of the case.

20. No substantial question of law or fact arises in this appeal.

21. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Charkhi Dadri.

22. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the

miscellaneous application(s), if any, stand disposed of accordingly.

27.3.2023  
Brij

(H.S.MADAAN)  
JUDGE

**Whether reasoned/speaking:      Yes/No**

**Whether reportable                      :      Yes/No**