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

**RSA-1457-2024 (O&M)
Date of decision : 29.07.2024**

VIJAYPALAppellant

Versus

HUKAM CHANDRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Anil K. Gahlawat, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

Defendant is in second appeal.

2. For convenience, parties herein after are referred to by their original position in the suit i.e. the appellant as defendant and respondent as the plaintiff.

3. Plaintiff filed suit for recovery of an amount of Rs.2,18,000/- along with interest along with interest @ 1% per month against defendant.

4. As per the case of the plaintiff it was claimed that both the parties were enjoying good relations. Defendant was in need of money for purchasing the land. Plaintiff came forward and lend an amount of Rs.2.00 lacs to the defendant for an interest @ 12% per annum. Two separate



pronotes along with receipts were executed on 20th of September, 2016 and 23rd of September, 2016 for an amount of Rs.1.00 lac each, total amounting to Rs.2.00 lacs. After the defendant failed to pay back money on demand, the suit was filed.

4. On notice, the defendant contested the suit denying any transaction w.r.t. advancing of loan by the plaintiff to the defendant. It was further claimed that the plaintiff who is *Lamberdar* misused his office. Signatures of the defendant were taken on blank papers.

5. On the basis of the pleadings, following issues were framed :

- “1. Whether the plaintiff is entitled to recovery of Rs.2,18,000/- from the defendant, on the grounds as mentioned in the plaint? OPP.
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the plaintiff has no cause of action to file this suit? OPD
4. Relief.”

6. Both the Courts after analysing the evidence on record came to the conclusion that the plaintiff successfully proved execution of the pronotes as well as receipts by examining the scribe thereof i.e. Sanjay Kumar Aggarwal. Since the defendant admitted his signatures on the documents it was for him to prove the defence. He having failed to prove the same, both the Courts below decreed the suit.

7. Ld. Counsel for the defendant while assailing the judgments and decree passed by the Courts below submits that the Courts erred in ignoring



the documents produced on record by the defendant i.e. Mark A1, Mark D1 and Mark D2. He thus submits that since the Courts ignored the aforesaid documentary evidence on record, perversity has crept in the findings which need to be reversed in the Second Appeal.

8. On being asked a specific query as to how the documents which could not be proved on record and have been merely tendered as Mark A1, Mark D1 and Mark D2 can be considered, counsel for the defendant very fairly submits that the said fact of the documents having not been proved is evident from the record.

9. Pure findings of fact have been recorded by the Courts below. Ld. Counsel for the petitioner is not in position to refer to any evidence brought on record but not considered or the piece of evidence which has been misread by the Courts below. Trite it is that Second Appeal is not the forum to re-appreciate the evidence. In the absence of any legal infirmity, this Court is precluded from interfering in pure findings of fact recorded by the Courts below. Reliance can be placed upon law laid down by the Apex Court in **Randhir Kaur versus Prithvi Pal Singh & Ors. 2019(17) SCC 71** wherein it was held as under :-

“14. The Division Bench of Punjab and Haryana High Court in a judgment reported in **Sadhu v. Mst. Kishni, 1980 AIR (Punjab) 85** set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:

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"12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Suprems Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanymayya [AIR 1959 Supreme Court 57.]**, **Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 Supreme Court 1633.]**, **Bithal Dass Khanna v. Hafiz Abdul Hai [1969 S.C. Notes 481.]** and **Afsar Shaikh v. Soleman Bibi [(1976) 2 SCC 142 : AIR 1976 Supreme Court 163.]**. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.

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14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree



15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

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10. In view of above, this Court does not find any merit in the instant Second Appeal. Resultantly, the same is dismissed.

(Pankaj Jain)
Judge

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