



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

RSA-2121-2016 (O&M)

Date of decision : 28.01.2025

Santa Singh

...Appellant

Vs.

Mahesh Kumar and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Goyal, Advocate
for the appellant.

Mr. Varun Jain, Advocate
Mr. Kanish Jindal, Advocate
for the respondents.

ANIL KSHETARPAL, J. (Oral)

CM-5608-C-2016 & CM-5609-C-2016

1. These applications are filed under Section 5 of Limitation Act, 1963, for condonation of delay of 9 days in filing and 120 days in refiling the present appeal.

2. In view of the grounds taken in the applications, delay of 9 days in filing and 120 days in refiling the appeal is condoned.

3. Civil Miscellaneous applications are allowed.

Main case

1. The defendant assails the correctness of decree for a recovery of Rs.79,755/- passed against him by the First Appellate Court.

2. In order to comprehend the issues involved in the present case, relevant facts, in brief, are required to be noticed.



3. The plaintiffs (respondents herein) filed a suit for recovery of Rs. 79,755/- alongwith interest on the ground that the defendant had borrowed the aforesaid amount for his domestic needs. The defendant contested the suit claiming that he had never dealt with the plaintiff Firm and he was not acquainted with them. He disputed borrowing of the amount while claiming to be an illiterate person. The plaintiffs in order to prove their case produced '*bahi* entries' reflecting signatures of defendant in *Gurmukhi* language. They also produced cash book to prove the payment. Three witnesses, namely, the accountant who made the entries, the plaintiff and Sh. Tara Singh appeared in evidence. On the other hand, defendant appeared in evidence. The trial Court dismissed the suit, however, upon re-appreciation of evidence, the First Appellate Court decreed the plaintiffs' suit.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

5. Learned counsel representing the appellant contends that the suit filed by the plaintiff was beyond the prescribed period of limitation with respect to remaining amount except for two entries of Rs. 800/- and Rs. 400/-. He submits that the plaintiff has failed to prove his case as '*bahi* entries' cannot be made a basis to file the suit.

6. Per contra, learned counsel representing the respondent(plaintiff) has submitted that the judgment of the First Appellate Court is fair and reasonable.

7. It is evident from reading of Khata entries (Bahi) Ex. P-2 that a regular continuing account of defendant was opened and he used to take advance from the plaintiff's Firm from time to time. The last two entries were

made on 28.09.2005 and 11.10.2005 and both were signed by the defendant. Hence, it was the case of running account, consequently, the suit was filed within three years from the last entry.

8. Hence, the suit was not filed beyond the prescribed period of limitation.

9. With regard to the second submission, it would be noticed that the plaintiff has produced copies of ‘*Bahi entries*’ Ex. P-2 to P-15, which consistently show that as and when defendant borrowed same amount, he appended his signatures. Though, the defendant has denied his signatures, however, his bald assertion is not sufficient to disbelieve the documentary evidence. No effort has been made by the defendant to prove that he is illiterate and is unable to append his signatures. The defendant has taken a plea that he is Sh. Basant Singh. PW/2-Sh.Tara Singh has proved that Sh. Santa Singh and Sh. Basant Singh are one and the same person. Moreover, the civil suits are required to be decided on preponderance of the evidence. The conclusion drawn by the First Appellate Court is not shown to be suffering from any perversity.

10. Hence, no ground to interfere is made out.

11. The appeal is dismissed.

12. All the pending miscellaneous applications, if any, are also disposed of.

28.01.2025

neeraj

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No