



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

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**RSA-9814-2018 (O&M)
Date of decision : 14.02.2025**

Sanjay Nagpal

..... Appellant

versus

Ishwar Chand Aggarwal (since deceased) through his LR.

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Adarsh Jain, Advocate
for the appellant.

Mr. J.S. Randhawa, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Present regular second appeal is at the instance of defendant.

2. Plaintiff filed suit seeking recovery of Rs.14,85,000/- alongwith interest @ Rs.22,500/- per month. The plaintiff further prayed for sale of mortgaged property i.e. shop measuring 10 ft. x 28 ft. by way of public auction.

3. Plaintiff pleaded that he was at good terms with defendant. Defendant approached him for taking loan of Rs.10 lakhs and offer to mortgage his shop measuring 10 ft. x 28 ft. as described in the head note of the plaint. The plaintiff advanced loan amount. As a security thereto, mortgage deed dated 19.11.2009 was reduced into writing. Defendant agreed to pay a sum of Rs.22,500/- per month as interest and



the term of mortgage was settled for a period of 11 months. Defendant issued 11 post dated cheques to the plaintiff amounting to Rs.22,500/-. After the defendant used to pay him interest in cash, plaintiff used to return cheque. On expiry of 11 months, when the plaintiff was requested to repay the loan amount, defendant expressed his inability and promise to pay interest of Rs.22,500/- per month. Further, the request was exceeded by the plaintiff. When the plaintiff approached defendant in May, 2012 for making payment, defendant made a payment of Rs.1 lakh towards part payment of arrears of interest and promised to pay entire principal amount within a period of 04 months. After defendant failed to repay, plaintiff filed the present suit.

4. Suit was contested by the defendant, claiming that he borrowed sum of Rs.1 lakh from plaintiff on a monthly interest @ 5%.

5. On the asking of the plaintiff, defendant paid entire amount of Rs.1 lakh in single transaction against issuance of a valid receipt. The fact of receipt of loan amount of Rs.10 lakh was disputed.

6. On the basis of the pleadings, Court of the first instance framed following issues:-

“1) Whether the plaintiff is entitled for a recovery of an amount of Rs.14,85,000/- alongwith interest from the defendant by way of sale of shop detailed in prayer clause of the complaint? OPP

2) Whether the suit is not maintainable in the present form? OPD

3) Whether the plaintiff has no cause of action to file the present suit? OPD

4) Whether the plaintiff has not come with the clean hands? OPD

5) Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties? OPD



6) *Relief.”*

7. Trial Court while returning finding on issue No.1, held that execution of the documents in form of mortgage deed Ex.P-1 and P-2 is admitted. The stand taken by the defendant that he had only taken Rs.1 lakh as loan and repaid the same, runs counter to the aforesaid documents. The other defence taken by the defendant with respect to the plaintiff running business of a money lender without licence was also rejected for want of evidence. The document relied upon by the defendant to prove lump sum payment Ex.D-5 was ignored by the Trial Court for having not been put to the plaintiff.

8. Resultantly, Trial Court held plaintiff entitled to recovery of Rs.14,85,000/- from the defendant alongwith interest @ 9% per annum and decreed the suit. Dissatisfied by the judgment passed by the Trial Court, defendant preferred the appeal. Appellate Court affirmed the findings recorded by the Trial Court and dismissed the appeal.

9. Mr. Jain while assailing the impugned judgment has drawn attention of this Court to the plea raised by the plaintiff in the plaint admitting execution of the receipt. He further refers to statement of the plaintiff wherein he admitted having issued receipt of Rs.1 lakh in favour of the defendant. He thus, submits that once the plaintiff himself admits of having issued receipt of Rs.1 lakh and the receipt was tendered in evidence as Ex.D-5, the Courts below ought not have ignored the same. He further submits that from perusal of Ex.D-5 which is an admitted document, it is evident that Rs.1 lakh was paid as a full payment on account of loan. He thus, submits that the judgment passed by both the Courts below by ignoring vital piece of evidence are



perverse and cannot be sustained. Counsel further submits that the Trial Court also erred in decreeing the suit for a sum of Rs.14,85,000/- alongwith interest @ 9% per annum oblivious of the fact that the interest was calculated by the plaintiff @ Rs.22,500/- per month.

10. *Per contra*, counsel for the plaintiff-respondent submits that even though the receipt Ex.D-5 was tendered in evidence by the defendant, but the same was never put to the plaintiff. Plaintiff in his plaint as well as in the oral testimony specifically claimed that the receipt was issued towards part payment of the loan as lump sum settlement towards the interest payable upto the date of receipt i.e. 01.02.2011. Had the evidence being put to the plaintiff, he would have explained the same. In the absence of the same having been put to the plaintiff, the same cannot be held to have been proved in accordance with law and thus, the Courts below have rightly ignored the same.

11. I have heard counsel for the parties and have carefully gone through the records of the case.

12. In the considered opinion of this Court, after the plaintiff successfully proved execution of Ex.P-1 and P-2, he succeeded in proving that a loan amount of Rs.10 lakh was advanced by the plaintiff to the defendant. Thereafter, onus shifted upon the defendant to prove that an amount of Rs.1 lakh was acknowledged by the plaintiff as full and final settlement of the said loan amount. Even though plaintiff admitted issuance of receipt, but the same was admitted to have been executed acknowledging receipt of part payment only. At no point of time, either by way of pleading or by way of evidence, plaintiff ever acknowledged receipt of Rs.1 lakh towards full and final payment of the



entire loan amount. It was in these circumstances that the defendant was required to put the receipt Ex.D-5 to the plaintiff when he appeared in the witness box and to confront him with respect to acceptance of Rs.1 lakh towards full and final payment of the loan. Mr. Jain fairly admits that the said vital link is missing.

13. In view thereof, this Court does not find any reason to interfere in the well reasoned finding recorded by the Court below that Ex.D-5 cannot be relied upon to dislodge the case proved by the plaintiff. However, Mr. Jain is right in contending that the Courts below ought not have decreed the suit for entire amount of Rs.14,85,000/- which includes calculation of interest @ 22,500/- per month. Consequently, the impugned judgment and decree are modified to the extent that the plaintiff is held entitled to recover an amount of Rs.10 lakh i.e. the principal amount alongwith interest @ 6% from 01.02.2011 i.e. date of receipt Ex.D-5 till the date of actual realization.

14. With the aforesaid modification, the appeal is partly allowed.

15. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

14.02.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No