**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

RSA No. 95 of 2019
Date of decision: 20.11.2026

Laxmi Dutt Sharma ...Appellant.

Versus

Ashok Kumar Bhardwaj ...Respondent.

*Coram:*

***The Hon'ble Mr. Justice Romesh Verma, Judge.***
*Whether approved for reporting?*[1]

For the Appellant : Mr. R.K.Bawa, Senior Advocate with Mr. Ajay Kumar Sharma, Advocate.

For the respondent : Mr. Rohit Sharma and Mr. Anuj Gupta, Advocates.

**Romesh Verma, Judge (Oral):**

The instant Regular Second Appeal arises out of the judgment and decree as passed by the learned District Judge, Shimla, dated 29th September, 2018, whereby the appeal, as filed by the defendant Shri Ashok Kumar Bhardwaj, was allowed and the judgment and decree as passed by the learned Senior Civil Judge, Shimla, District Shimla, dated 30th December, 2017, was reversed, whereby the suit filed by the plaintiff Shri Laxmi Dutt Sharma for recovery of Rs. 6,00,000/- was decreed.

2. The facts as emerge from the present case are that plaintiff Shri Laxmi Dutt Sharma filed a suit for recovery against the defendant on the ground that the parties were having cordial

[1] Whether reporters of Local Papers may be allowed to see the judgment?

relations for a considerable period and on account of intimacy between the parties, the defendant used to borrow money on loan from the plaintiff from time to time. After a considerable period, the plaintiff demanded the loan amount from the defendant and since he was in dire need of the said amount, the defendant visited the plaintiff at Shimla and settled the accounts with the plaintiff. As per the settlement, a sum of Rs. 5,50,000/- was found payable by the defendant towards the plaintiff. As per the plaintiff, the settlement took place on 31st December, 2010, at Shimla in the presence of the witnesses.

3. After the settlement, on the same day, the defendant assured that the amount outstanding due as loan towards the plaintiff shall be paid by him on or before 30th April, 2011. Upon this, he executed and wrote a receipt on 31st December, 2010, in the presence of the witnesses acknowledging the payment of Rs. 5,50,000/- to the plaintiff on or before 30th April, 2011, with further undertaking that in any eventuality, if he fails to make the payment of the aforesaid amount, he shall be liable to pay interest at the rate of 18% per annum with effect from 31st December, 2010 onwards. Though the plaintiff waited for the repayment of the amount, however, the defendant failed to honour his commitment on one pretext or the other. Under such

circumstances, the plaintiff filed a suit for the grant of decree of Rs. 5,50,000/-, being the amount payable by the defendant as loan, along with interest at the rate of 18% per annum and the cost of the notice, total amounting to Rs. 6,00,000/-, in favour of the plaintiff and against the defendant.

4. The suit as filed by the plaintiff came to be resisted by the defendant by filing a comprehensive written statement. The defendant raised preliminary objections with respect to maintainability, *locus standi*, cause of action, jurisdiction, valuation, etc. On merits, all the averments as made in the plaint were specifically refuted and denied. It was contended by the defendant that neither he owed any amount to the plaintiff nor he executed any agreement in favour of the plaintiff. Primarily, it was the case of the defendant that he does not owe anything towards the plaintiff and the suit as filed by the plaintiff deserves to be dismissed.

5. The learned Trial Court had framed the issues in the matter on 14th March, 2012, in the following manner:

> *"1. Whether on account of intimacy inter se the parties, defendant had been borrowing money from the plaintiff and on 31.12.2010, a sum of Rs. 5,50,000/- had been found due from the defendant to the plaintiff, as alleged ? OPP*
>
> *2. If issue No.1 is proved in affirmative, whether defendant had admitted in writing his liability to pay the aforesaid amount vide deed dated 31.12.2010 whereby he had undertaken to pay the*

*aforesaid amount on or before 30.04.2011 and in default thereof, he had undertaken to pay interest @ 18 % per annum thereon w.e.f. 31.12.2010, as alleged ? OPP*

*3. If issue No.2 is proved in affirmative, whether plaintiff is entitled to recover a sum of Rs. 6 lacs with future interest @ 18 % per annum from the defendant ? OPP*

*4. Whether this Court has got no jurisdiction to hear and decide the present suit ? OPD*

*5. Whether suit in question is in fact counter blast of the institution of FIR No. 71 /11 of Police Station Kandaghat, as alleged, if so, its effect ? OPD*

*6. Relief."*

6. The learned Trial Court directed the respective parties to adduce evidence in support of their contentions and, vide its judgment and decree dated 30th December, 2017, the suit filed by the plaintiff-respondent Shri Laxmi Dutt Sharma was ordered to be decreed by the learned Trial Court by passing a decree for recovery of Rs. 6,00,000/- along with interest at the rate of 18% per annum against the defendant.

7. Feeling dissatisfied, the defendant preferred an appeal in the Court of learned District Judge, Shimla, on 13th March, 2018. The learned First Appellate Court, vide its impugned judgment and decree dated 29th September, 2018, accepted the appeal as preferred by the defendant and dismissed the suit as preferred by the plaintiff/appellant. Against the judgment as passed by the learned District Judge, Shimla

whereby the suit of the plaintiff-appellant came to be dismissed, the plaintiff-appellant has instituted the instant Regular Second Appeal by invoking Section 100 of the Code of Civil Procedure.

8. It is contended by Mr. R.K. Bawa, learned Senior Counsel assisted by Shri Ajay Kumar Sharma, Advocate for the appellant that the impugned judgment and decree as passed by the learned First Appellate Court is erroneous and liable to be quashed and set aside. He would submit that the learned First Appellate Court has not taken into consideration the material oral as well as documentary evidence placed on record, as a result of which, the findings which came to be reversed by the learned First Appellate Court are erroneous, illegal and perverse. He would further submit that after accepting the instant Regular Second Appeal, the suit as filed by the plaintiff for recovery deserves to be decreed.

9. On the other hand, Mr. Rohit Sharma and Mr. Anuj Gupta, Advocates, for the respondent have defended the impugned judgment as passed by the learned District Judge, Shimla, H.P.

10. During the course of the arguments, it was agreed upon by the respective parties through their counsel that it has come on record that during the pendency of the appeal, the

present respondent/defendant had filed an application under Section 45 of the Indian Evidence Act read with Section 151 of the Code of Civil Procedure with the prayer that document Exhibit PW-2/A be ordered to be sent to the Handwriting Expert/ Forensic Expert at SFSL, Junga, or any other Forensic Laboratory for making a comparison and to report with respect to the age of the ink used in the signature part wherein the revenue stamp is affixed and the age of the ink used in writing the rest of the document, and further to indicate whether there is any difference in the age of the ink in the said two parts of the document, which shall be in the interest of justice, equity and fair play.

11. Admittedly, while accepting the appeal as filed by the defendant-respondent, the learned First Appellate Court, on 29th September, 2018, has held that vide separate judgment the appeal is accepted; as far as the application is concerned, it was held that the application, if any, had become infructuous.

12. It is contended by the learned counsel for the respondent that since an application under Section 45 of the Indian Evidence Act came to be filed along with the main appeal, the same should have been adjudicated and determined by the learned First Appellate Court, and in the absence of any

determination on merits, the appeal could not have been adjudicated on merits.

13. The said fact is duly acknowledged by the learned Senior Counsel for the appellant, and with the consent of the parties, the impugned judgment as passed by the learned First Appellate Court is ordered to be quashed and set aside by relegating the parties to the learned First Appellate Court with a direction to the said Court to decide the appeal afresh along with the application under Section 45 of the Evidence Act, which stood filed by the respondent/defendant before the learned District Judge, Shimla, H.P.

14. The parties undertake to appear before the learned First Appellate Court on **16th December, 2026**. Since the suit pertains to the year 2011, the learned First Appellate Court is requested to expedite the matter and to take the same to its logical end positively within a period of six months from the date of the presence of the parties.

The appeal stands disposed of, so also the pending miscellaneous application(s), if any.

**(Romesh Verma)**
**Judge**

November 20, 2026.
(Nisha)