

**RSA-1687-2018 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-1687-2018 (O&M)
Reserved on: 12.11.2024
Pronounced on: 11.02.2025****Chhinder Kaur**

.....Appellant

Versus

Tarsem Lal

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Achin Gupta, Advocate for the appellant.

Mr. S.K. Bololia, Advocate for the respondent.

ALOK JAIN, J.

1. The present appeal arises out the judgment and decree dated 17.02.2017 passed by the Court below decreeing the suit of the plaintiff (respondent in the present appeal) for recovery of Rs. 1,86,656/- and also for permanent injunction restraining the defendant from alienating any portion of land as detailed in the head note of the plaint And the judgment and decree dated 28.11.2017 passed by the learned First Appellate Court whereby his appeal against the order dated 17.02.2017 was dismissed.

2. Succinctly, the facts of the case are that the suit was instituted at the instance of the respondent/plaintiff raising a claim that he is a Commission Agent operating in the New Grain Market, Faridkot, maintains duly recorded account books. The appellant/defendant took loan of ₹70,000



from respondent/plaintiff on various dates and duly acknowledged the debt by signing the appellant/plaintiff's *Bahi* entry, with an agreed interest rate of ₹1.70 per hundred per month, as per the prevailing market practice. Subsequently, on 02.05.2008, the appellant/defendant sold wheat worth ₹32,861 through the respondent/plaintiff and thereafter withdrew cash on 17.06.2008, followed by another withdrawal of ₹50,000 on 21.10.2008. However, despite repeated demands, the appellant/defendant neither discharged her financial liability, nor repaid any amount and stopped further business.

3. However, on the contrary the appellant/defendant refuted the claim of the respondent/plaintiff and asserted in the written statement and took the preliminary objection that the suit is barred as the respondent/plaintiff had not complied with the provisions of Order 7 Rule 17 of CPC. The appellant/defendant further took the defence that she merely purchased *Karyana* goods from the respondent/plaintiff on credit and, being illiterate, was misled by the respondent/plaintiff into signing fraudulent financial entries. The appellant/defendant denied the existence of any loan transaction and alleged that the respondent/plaintiff had manipulated the records to unjustly claim repayment.

4. No replication was filed and from the pleading of the parties, following issues were framed by the learned trial Court below, which reads as under:

“1. Whether the plaintiff is entitled to recovery of suit amount to the tune of Rs.1,86,656/- from the defendant as prayed for? OPP.

2. Whether the plaintiff is entitled for permanent injunction, as prayed for? OPP.



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

4. *Relief.*”

5. The respondent/plaintiff in support of his case had brought on record the evidences and examined the witnesses, as stated below:

“PW-1 Tarsem Lal-plaintiff himself stepped into witness box and tendered into evidence his duly sworn affidavit Ex. PW1/A and proved on record copy of counter foil as Ex. P1, copy of account as Ex. P2, copy of notice as Ex. P3, postal receipt as Ex. P4, acknowledgement as Ex. P5, UPC receipt as Ex. P6, jamabandi as Ex. P7, Bahi dated 29.12.2007 as Ex. P8, dated 17.06.2008 as Ex. P9, dated 21.10.2008 as Ex. P10.

PW-2 Sanjiv Sharma, Finer Print and Handwriting Expert who stepped into witness box and tendered into evidence his duly sworn affidavit Ex. PW2/A and also tendered into evidence his report as Ex. P11, photographs as Ex. P12 to Ex. P20.”

5.1. To rebut the claim of the respondent/plaintiff, the appellant/defendant examined the following witness:

“DW-1 Chhinder Kaur stepped into witness box and tendered into evidence her duly sworn affidavit as Ex. DW1/A and reiterated the whole facts of the written statement.”

6. The trial Court after considering the detailed evidence led by both the parties recorded the following finding while decreeing the suit for recovery of Rs. 1,86,656/- inclusive of interest but the rate of interest was not mentioned and the finding on relevant issue reads as under:

*“11) The backbone of the present case is, **whether the plaintiff is entitled for the recovery of Rs. 1,86,656/- along with interest?** To ascertain the same, the plaintiff has examined himself and proved on record copies of his bahies as Ex. P8 to*



Ex. P10 and other documents. The plaintiff had brought the original record of Bahis in the court and the same were seen by the defendant. Perusal of documentary record brought by the plaintiff inspires confidence and further strengthens the plaintiff's case. Furthermore, the signatures against the entries in the bahies are duly proved by the plaintiff by examining Finger Print and Handwriting Expert as PW-2. In addition to this, the defendant- Chinder Kaur while stepping into witness box as DW1 had admitted her signature on the acknowledgment which is Ex.P5 but she did not file any reply to legal notice Ex.P3 issued to her for the reasons best known to her. Furthermore, the conduct of the defendant is doubtful as she during her cross-examination giving contradictory and doubtful statement. Moreover, defendant in her pleadings as well as statement dated 23.12.2015 deposed that she used to take Karyana Goods from the plaintiff on credit and for the security of the same, the plaintiff used to obtain her signatures in his Bahi but it is pertinent to mention here that the defendant has not led any evidence on this point. No evidence has been led by the defendant that she used to purchase house-hold articles from the plaintiff on credit basis and the same has been paid off. Accordingly in view of above detailed discussion, issues No.1 and 2 are decided in favour of the plaintiff and against the defendant.”

7. Subsequently, the appellant herein filed the first appeal and the First Appellate Court dismissed the appeal filed by the appellant/defendant vide order dated 17.02.2017, while returning the following findings:

“12. I have considered the respective contentions of learned counsel for both parties and with their valuable assistance perused the record of file and I am of the considered view that the present appeal must fails. Respondent-plaintiff has filed suit for recovery of Rs.1,86,656/- from the appellant-defendant on account of advance took in running account maintained by the



appellant-defendant with respondent-defendant and also sought relief of permanent injunction restraining the appellant-defendant from alienating any portion of land measuring 27 Kanals 17 marlas, as detailed in head-note of the plaint, till realization of prospective decretal amount. In order to prove his case respondent- plaintiff Tarsem Lal himself appeared as PW 1 and also proved on files copies of bahi entries Ex.P8 to Ex.P10 etc., perusal of which shows that all the entries in the bahies bears signatures of appellant-defendant and this fact has been duly proved by respondent-plaintiff, by examining Handwriting & Finger Print Expert Sanjiv Kumar Sharma (PW2). Furthermore while appearing as DWI appellant-defendant Chhinder Kaur, has herself admitted her signatures on the acknowledgment Ex.P5. Furthermore, the case of respondent-plaintiff finds support from the contradictory statement made by the appellant-defendant herself during her cross-examination as well as from her statement dated 23.12.2015 made in the court, wherein she has stated that she used to take Karyana goods from the respondent-plaintiff on credit basis, who used to take her signatures in his bahi, for security purpose. Moreover, appellant- defendant has failed to lead any evidence on this point. Appellant-defendant has also failed to prove the fact by leading any evidence that whether she used to purchase house-hold articles from the respondent-plaintiff on credit basis and she has made payment of the same.

13. In view of the above discussion, I find that impugned judgment dated 17.02.2017 is well reasoned and it requires no interference of this court and therefore, the same is up-held.”

8. In the present regular second appeal, learned counsel for the appellant/defendant has argued that both the Courts have misread and misconstrued the evidence as the perusal of Ex. P-10 demonstrates that the same was never signed by the appellant/defendant. As regards the other



entries, the suit was barred by limitation and only to bring the suit with limitation the bogus entry under Ex. P-10 was recorded. He further submits that the appellant/defendant used to buy the *kiryana* goods from the respondent/plaintiff who was also a commission agent and for the said reason and the trust at that point of time, the appellant/defendant used to sign the *bahikhatas*.

9. *Per contra*, learned counsel for the respondent/plaintiff has submitted that the amounts were advanced to the appellant/defendant on various occasions and *bahi* entries were duly recorded and admittedly, the appellant/defendant had accepted the signatures on the *bahi* entries in Ex. P-8 and P-9. Although counsel for the respondent/plaintiff could not deny the fact that Ex. P-10 does not bear the signatures of the appellant/defendant but reiterates that the evidence of the hand writing and finger print expert duly corroborated that the fact that the appellant/defendant was the one who had signed the *bahi* on the earlier occasions. There was no reason to disbelieve the *bahikhatas*, as it is a running register of accounts and has some veracity attached to the same. The counsel further submitted that the appellant/defendant had taken advance and after adjusting the sale of crop, the amounts were outstanding and therefore, the suit had been filed for the recovery of the amount. He further submits that both the Courts below have upheld the claim of the respondent and has relied upon the judgment passed by this Court in the case of “*M/s Maruti Ltd. (in Liquidation) and another Vs. M/s M.H. Tractor and Automobiles Corpn. and another*”, 1988 (2) PLR 312, wherein, para 13 is as under:



“13. Now the question arises whether the respondent can be fastened with the liability merely on the basis of the entries in the books of the petitioner company. In the present case, the transactions in dispute are numerous and extend over a large number of years. It is not necessary to prove each and every item in the account books. If the accounts-books are regularly kept and the genuine and the petition had made a definite statement that the accounts-books were regularly kept, and he was not cross-examined with regard to the genuineness of the accounts books, his own statement on oath in support of the entries in the accounts books is sufficient to fix the respondent with liability. In the present case, the petitioner produced the original entries, the correctness of which was proved by PW 1 Sh. Ashok Gulati. He made a definite statement that the accounts books were regularly kept. No question was put to him with regard to the genuineness or otherwise of the accounts books. In the circumstances, therefore, the petitioner's own statement on oath in support of the entries in the accounts books is sufficient to fix the respondent with the liability.”

9.1. He has also relied on the judgment passed by the Hon'ble Apex Court in the case of **“Malkit Singh vs. Surjit Singh,” 2015 (30) R.C.R. (Civil) 388**, to substantiate his arguments and held para 10, which reads as under:

“10. Although the appellant had disputed the signatures appearing upon the account books but on the basis of the opinion of the expert, which report has been placed on record, was produced on record and proved the signatures appearing upon the account books, stood proved and there was no rebuttal of the same. As a matter of fact, the appellant moved an application to examine his expert, which was allowed by the Court on 18.10.2011 but the appellant chose not to examine his expert, which led to an adverse inference being drawn by the



*Courts below against the appellant. For coming to that conclusion, reliance has been placed upon the judgment of this Court passed in case titled as **Harnam Singh v. Dogar Singh, 2002 (2) RCR (Civil) 202**, where it was held that where permission was sought to compare the signatures but no efforts have been made to do so by the party, the presumption goes against the party, who obtains the permission as no expert was examined.”*

10. Learned counsel for the appellant in rebuttal has reiterated that both the Courts below have fell in error in not appreciating the evidence Ex. P-10 and the fact that the other two entries in the *Bahi* were time barred and there being, no acknowledgment of debt by the appellant/defendant. The limitation qua the entry in Ex. P10 could not be the basis for admission of debt. Moreover, the entry Ex. P-10, which purportedly extends the limitation period, does not bear the signature of the appellant/defendant and, therefore, cannot be treated as an acknowledgment under Section 18 of the Limitation Act, 1963.

11. Heard learned counsel for the parties and it is imperative to reproduce the provisions of Section 18 of the Limitation Act, 1963 which reads as under:

“18. Effect of acknowledgment in writing.— (1) *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*



(2) *Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

Explanation.— For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

12. The above provision has to be read in consonance with Article 26 of Part II of the Schedule of Limitation Act, 1963, and for the ready reference, the same is reproduced as under:

Article	Description	Period of limitation	Time from which period beings to run
26	For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.

13. In light of the above provision and after perusing the Ex. P-10 and upon careful examination of the record, it is evident that the entries dated 29.12.2007 and 17.06.2008 were barred by limitation on the date of

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filing the suit (18.07.2011), as the three-year limitation period under Article 1 of the Limitation Act, 1963 had already expired on 28.12.2010 and 16.06.2011, respectively. However, it is only the last entry dated 21.10.2008 which was still within the limitation period (valid until 20.10.2011). However it is material to record that as per Ex. P-10, the last entry which purportedly extends the limitation, does not bear the defendant's signature, making it legally insufficient as an acknowledgment under Section 18 of the Limitation Act, 1963. Since there was no valid acknowledgment of debt or part payment to extend the limitation period under Sections 18 and 19 of the Limitation Act, the major part of the claim is time-barred, and only the claim arising from the last entry (21.10.2008) was within limitation, but in the absence of a valid acknowledgment or part payment as required under Sections 18 and 19 of the Limitation Act, the claim was legally unsustainable.

14. Accordingly, the present appeal is allowed and the claim *qua* entries dated 29.12.2007 and 17.06.2008 are barred by limitation and the alleged entry dated 21.10.2008 though was in limitation but was never acknowledged by the appellant, consequently, the suit being barred by limitation was not maintainable. Therefore, in light of the above, the judgments and decrees passed by learned Courts below are set aside.

15. Pending miscellaneous application, if any, shall stand disposed of.

(ALOK JAIN)
JUDGE

11.02.2025

Parul

Whether speaking/reasoned:- Yes
Whether Reportable:- Yes