



RSA No. 2791 of 2025 (O&M)

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

RSA No. 2791 of 2025 (O&M)

Reserved on : 17.09.2025

Date of Pronouncement :- 22.09.2025

M/s Durga Dass Naresh Kumar and another

...Appellants

Versus

Gurdeep Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Prince Goyal, Advocate for the appellants.

Mr. Mitul Singh Rana, Advocate for the respondent/caveator.

VIRINDER AGGARWAL, J.

1. This appeal has been directed against the judgment and decree dated 07.03.2025 passed by learned District Judge, Bathinda vide which the judgment and decree dated 26.09.2024 passed by learned Civil Judge (Junior Division), Bathinda has been reversed.

2. Briefly, respondent-plaintiff filed a suit for recovery of Rs.4,19,000/- on the grounds that he advanced a sum of Rs.3,70,000/- to respondent-defendant No. 2 as loan and defendant agreed to pay interest at the rate of 1% per month. Writing dated 01.12.2018 was executed at the time of entering into loan transaction. The same is in the hand of Mr. Karan son of defendant Naresh Kumar and has signed by Naresh Kumar and Karan. Defendants failed to repay the loan amount along with



interest, hence the suit. Suit was contested by the appellant-defendants denying the loan transaction or execution of any writing dated 01.12.2018 and alleged that the writing is forged and fabricated. When plaintiff examined himself and a witness, defendant absented himself and was proceeded against ex-parte and after hearing arguments the learned Civil Judge dismissed the suit of the respondent-plaintiff.

3. Aggrieved by the judgment and decree so passed, appeal was preferred by respondent-plaintiff. The same was allowed by the learned District Judge. Aggrieved by the judgment and decree so passed in appeal, the present appeal has been filed by the appellant-defendants.

4. During the course of preliminary hearing respondent-plaintiff put in appearance on the basis of caveat filed by the respondent-plaintiff. Record of Courts below was called for.

5. I have heard learned counsel for the parties and perused the record carefully.

6. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of Punjab Courts Act, 1918 and not under Section 100 of CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of '***Pankajakshi (Dead) through LRs and others V/s Chandrika and others***', (2016)6 SCC 157, followed by the judgments in the case of '***Kirodi (since deceased) through his LR V/s Ram Parkash and others***' (2019) 11 SCC 317 and '***Satender and others V/s Saroj and others***', 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.



7. The learned counsel for the appellants has assailed the judgment and decree passed by the learned District Judge on the grounds that the learned District Judge has failed to appreciate that learned Civil Judge, Bathinda has recorded findings after properly appreciating the pleadings and evidence on record and that plaintiff has failed to examine any eye witness of the transaction or scribe of the writing dated 01.12.2018 and that he failed to prove existence of any business relations between the parties and production of receipt Ex. PW1/B alone is not sufficient to saddle defendant with liability. The learned District Judge has failed to notice that testimony of the witness is to be read as a whole and not in bits and pieces. The learned District Judge has committed a mistake while recording a finding that appellants has not denied the averments made by the plaintiff with regard to writing dated 01.12.2018 whereas in para Nos. 5 and 7 of the written statement defendants has categorically denied the loan transaction and has claimed that receipt is false and forged document. The finding recorded by the learned District Judge that defendants have not denied the execution of the document Ex. PW1/B and the fact of having taken money from plaintiff is admitted, the learned District Judge has misread the cross-examination of the plaintiff and has given unnecessary weightage to one suggestion made by counsel for the appellant-defendants. It is settled law that the plaintiff has to stand on its own legs and the learned District Judge failed to take into consideration that writing dated 01.12.2018 is inadmissible in evidence for want of stamp. Counsel for the respondent-plaintiff contended that the learned District Judge has properly appreciated the pleadings and evidence on



record and has correctly recorded a finding that defendant has not denied the due execution of the document Ex. PW1/B and has admitted of having taken money from the plaintiff. The judgment is well reasoned and does not call for any interference and the appeal be dismissed.

8. The foremost question raised in the appeal by the appellant-defendants is that the receipt Ex. PW1/B is inadmissible in evidence for want of stamp. The receipt Ex. PW1/B is on the writing pad and is not having any stamp as required under the Indian Stamp Act, 1899. As per Section 35 of the Indian Stamp Act, 1899 any document which is insufficiently stamped cannot be admitted into evidence.

Section 35 of the Indian Stamp Act, 1899 reads as under :-

“35. Instruments not duly stamped inadmissible in evidence, etc. — No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped : Provided that—

(a) any such instrument [shall] be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the



person tendering it; (c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped; (d) nothing herein contained shall prevent the admission of any instrument in evidence in proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (V of 1898); (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.”

9. In the present case document Ex. PW1/B is not having any stamp whereas the receipt or a negotiable instrument in the nature of promissory note is required to be stamped. In view of Section 35 of the Indian Stamp Act, 1899, the document Ex. PW1/B should not have been admitted in evidence but the same was admitted in evidence without any objection raised by the appellant-defendants. The position of law is different when any insufficiently stamped document or unstamped document is admitted in evidence. After such admission of the document as evidence the same cannot be called in question at any stage of the same suit in view of the provisions of section 36 of the Indian Stamp Act, 1899.

Section 36 of the Indian Stamp Act, 1899 is reproduced as under :-

“36. Admission of instrument where not to be questioned. — Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.”



10. In the present case when the document was admitted into evidence without any objection raised by defendant on 22.11.2022 when PW1 Gurdeep Singh has tendered that document Ex. PW1/B into evidence, now it cannot be questioned on the ground of its being unstamped.

11. As regards the second limb of attack on the judgment of the learned District Judge is concerned, the learned District Judge has observed that cross-examination of plaintiff reveals that defendant has not denied the due execution of document Ex. PW1/B and also the fact that he has taken money from the plaintiff. Para No. 16 of the impugned judgment of the learned District Judge is relevant here. The same is reproduced as under :-

“16. A bare reading of the aforesaid cross-examination would reveal that the defendant has not denied the due execution of document Ex.PW-1/B and also the fact that he has taken money from the plaintiff and explains that the writing Ex.PW-1/B is in that context. The aforesaid suggestion has been denied by the plaintiff. The very fact that such a suggestion put to the witness, itself shows that the defendant is admitting having received a sum of rupees, mentioned in document Ex.PW-1/B and has not disputed the genuineness of the same. Even otherwise, in the cross-examination, there is no contrary suggestion given to the witness denying the factum of the document Ex.PW-1/B, not being scribed by the son of defendant No.2 or that the said document contains his signatures, rather to the contrary, the defendant is trying to use the said document in his advantage by introducing yet another story, which suggestion has been denied. Once it be so, then the case of the plaintiff based on document Ex.PW-



1/B and is oral testimony is a sufficient discharge of the onus to prove his case. Since no contrary evidence has been led by the defendant, in as much as they were eventually proceeded against ex-parte, there was no occasion with the learned lower Court to have not considered the positive evidence led by the plaintiff, based on the vague denial and rather admission of the genuineness of the document Ex. PW-1/B.”

12. A perusal of the cross-examination of the respondent-plaintiff shows that the learned District Judge has misread the suggestion and the findings in para No. 16 are based upon that misreading of suggestion. The relevant portion of the cross-examination of plaintiff reads as under :-

“It is wrong to suggest that rather defendant had to take money from me, in this regard, I have paid amount in question, and they have issued Ex. PW1/B in my favour.”

13. The learned District Judge read this entire portion of the cross-examination as suggestion put forth by appellant-defendants. However, I am of the considered opinion that the suggestion of the appellant-defendants was only to the following extent :-

“It is wrong to suggest that rather defendant had to take money from me.”

14. The subsequent portion of cross-examination of the plaintiff was voluntary portion and the version of the plaintiff was put forth by him and in that portion he has deposed that he has paid the amount in question. By this plaintiff meant that plaintiff was referring to the amount which is in question in the present litigation and then plaintiff has stated that defendants have issued Ex. PW1/B in his favour. So after denying the suggestion plaintiff has put his own case as explanation and the learned



District Judge has misread the same and took it as suggestion by the appellant-defendants which it was not. No doubt appellant-defendants has denied the availing of loan and execution of the receipt Ex. PW1/B and the findings recorded by the learned District Judge on this ground are erroneous.

15. If the judgment of learned Civil Judge which was being assailed before the learned District Judge is taken into consideration, the appreciation of evidence by the learned Civil Judge is not correct. The learned Civil Judge was alive to the situation that evidence of the plaintiff remained unrebutted and defendant has not led any evidence to rebut the evidence but the writing Ex. PW1/B was discarded merely on the grounds that independent witness was not examined and the scribe who was the best eye witness of the alleged transaction has not been called as witness. The learned Civil Judge has lost sight of the fact that Mr. Karan was none other than the son of the appellant-defendants.

16. Even after assuming that it was difficult for plaintiff to produce Mr. Karan as he is son of defendant, the learned Civil Judge recorded that it was incumbent upon the plaintiff to corroborate his version through testimony of any independent witness or any corroborative evidence. It is the case of the plaintiff that at the time of transaction only the parties to the suit and scribe Karan of writing Ex. PW1/B was present and admittedly Karan was son of the defendant. So he was not examined as a witness and there is no other independent witness to the loan transaction. So the learned Civil Judge was wrong in discarding the testimony of plaintiff and writing Ex. PW1/B on the



ground that there is no corroborative evidence rather the learned Civil Judge has misinterpreted the evidence. The writing Ex.PW1/B has been proved on record by the plaintiff and in order to corroborate that writing plaintiff himself stepped into the witness box and that testimony of the plaintiff remain unrebutted. Learned Civil Judge lost sight of position of law that Civil matters are to be decided on preponderance of probability and plaintiff is not to prove the case beyond reasonable doubt. Appellant-defendants has not dared to step into the witness box to deny the execution of the writing Ex.PW1/B and testimony of plaintiff. So evidence of the plaintiff remained unrebutted on record and the unrebutted evidence of the plaintiff is sufficient to prove the case of the plaintiff. As such, the suit has been rightly decreed with costs by the learned District Judge, Bathinda though reasoning with regard to suggestion made to plaintiff was not correct.

17. Finding no merits in the appeal, the same stands dismissed.

18. Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

22.09.2025

P.Singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No