

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****221****Date of decision: 21.04.2025****RSA-3978-2015(O&M)****Anguri****...Appellant(s)****Vs.****Subhram****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ashwani Bakshi, Advocate  
for the appellant.

Mr. Parveen Kumar, Advocate for  
Mr. Abhimanyu Singh, Advocate  
for the respondent.

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**NIDHI GUPTA, J.**

The defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff/respondent herein, for recovery of Rs.85,000/- (Rs.50,000/- as principal amount and Rs.35,000/- as interest thereupon), has been decreed by the learned Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant as the "defendant" and the respondent as the "plaintiff".

3. Learned counsel for the appellant/defendant submits that suit of the plaintiff could not have been decreed as the original writing/Original Bahi was not brought on record by the plaintiff. It is



contended that as per Order 7 Rule 17 CPC, it was incumbent upon the plaintiff to attach the Original Bahi with the plaint. However, the plaintiffs have produced only the coloured photocopy of one page of the Bahi as Ex.PB. This has been admitted by the attesting witness/PW3 in his cross-examination that the original Bahi was not produced. Even from a careful examination of the cross-examination of Handwriting Expert (PW1), respondent/plaintiff (PW2) and Bhan Singh (PW3), it is established beyond doubt that the said Bahi entry was not original but was the coloured photocopy. It is submitted that accordingly, the impugned judgments and decrees have been passed on an incorrect premise by relying upon Bahi entry which was not admissible in evidence being a coloured photocopy. As such, finding of the learned Courts below to the effect that thumb impression of the defendant on the said Bahi entry matched with the thumb impression of the appellant in the written statement is totally perverse. It is contended that as the thumb impression of the defendant was got compared through Handwriting Expert from a photocopy of one page of the Bahi, could not have been relied upon as it was not in accordance with law. In support of his contentions, Id. counsel has relied upon judgment of this Court in **“Randhir Singh Vs. Ram Kumar” Law Finder Doc ID # 663007**, wherein it is held that:-

*“B. Evidence Act, 1872 Section 34 Civil Procedure Code, Order 7, Rule 17 – Money suit based on bahi entries – Plaintiff not producing bahi at the time of filing plaint – No evidence that*



*plaintiff kept bahi in ordinary course of business – Bahi entry not attested by any independent witness – Suit dismissed.”*

4. Per contra, learned counsel for the plaintiff opposes the prayer made on behalf of the appellant and submits that the contention of the appellant is based on a misreading of Order 7 Rule 17 CPC. It is submitted that it is only after examining the documents produced by the plaintiff that the learned trial Court has permitted the same to be exhibited; otherwise, the said documents would have been marked and would not have been permitted to be exhibited by the learned trial Court. It is further pointed out that no such objection was taken by the appellant at any stage before the learned Courts below and it is only before this Court that it has been sought to be stated by the defendant that Bahi entry is not admissible in evidence. It is further submitted that Register could not have been produced by the plaintiff as the plaintiff is not a regular money lender and does not maintain a Register. It is accordingly prayed that the present appeal be dismissed.

5. No other argument is made on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in great detail and given by thoughtful consideration to the rival submissions made on behalf of the parties.

7. I find no merit in the submissions advanced on behalf of the appellant/defendant. Perusal of the record of the case shows that it



was the pleaded case of the plaintiff that on 16.04.2010, the defendant had borrowed a sum of Rs.50,000/- for household expenses. The defendant had duly executed a Bahi entry in favour of the plaintiff to acknowledge receipt of the same. The defendant had also agreed to pay interest at the rate of Rs.2/- per hundred per month on the borrowed amount. Despite repeated requests, the defendant had failed to repay. Even legal notice Ex.PC was served upon the defendant. However, no reply was received thereto. As such, present suit came to be filed.

8. Para 1 of the plaint reads as follows:-

*“1.That on 16.04.2010 defendant Smt. Anguri, aforesaid had taken Rs. 50,000/- from me as loan for the purpose of household expenses. The defendant had agreed to pay the interest at the rate of Rs. 2/- per hundred per month on this amount. The defendant had agreed to pay the principal amount as well as the fixed interest in the month of Kartik. Further, in this connection, the defendant had got a writing scribed and executed in my (plaintiff) book in my (plaintiff) name. And, having heard and understood the page of writing of the book; and having considered the same to be correct; and having taken the aforesaid amount, she herself affixed her thumb impression on the writing/page of the book. She also got the statement of the witness recorded. For evidence, original writing/page of the book is enclosed herewith.”*

(Emphasis added)



9. In reply thereto, the appellant in her written statement has totally denied the averments stating that no amount was borrowed by the defendant from the plaintiff; that it was incorrect that she had affixed her thumb impression on the Bahi page after hearing and understanding the conditions of loan to be correct; and it was further stated that:-

*“1. That paragraph No. 1 of the Suit is incorrect. Therefore, I deny this. This fact is absolutely incorrect that on 16.04.2010 defendant had borrowed Rs. 50000/- from the plaintiff for household expenses. This fact is absolutely incorrect that defendant had agreed to pay the interest at the rate of Rs. 2/- per hundred per month. This fact is also incorrect that defendant had agreed to pay this so called amount of loan including the interest in the month of Kartik. This is also wrong that defendant had got this disputed writing, with regard to so called loan, scribed and executed in the book of plaintiff in the name of plaintiff. This fact is also wrong that having heard and understood the so called page of the book and having accepted the same to be correct and also having taken money, the defendant had affixed her thumb impression on the page of writing of the book; and also got the statement of the witness recorded. Defendant did not take any loan from the plaintiff. Nor did she get any so called disputed writing scribed. Nor did she affix her thumb impression. Nor did she get any statement/deposition recorded. Since defendant did not take any loan from the plaintiff, then no question of getting the disputed writing scribed in favour of plaintiff and no question of paying the interest and of agreeing to pay the amount—by the defendant—arises at all. The disputed writing is false and*



*forged. The plaintiff has got this disputed writing scribed by someone who is his dear one and he has also got the thumb impression of someone else affixed. He has also got the statement of some of his dear one recorded on this forged writing. The plaintiff has filed this false suit in the court having got this false and forged writing scribed with the ill will of recovering money from the defendant. Hence, in view of this, legal action under section 340 of criminal procedure code may be taken against the plaintiff.”*

10. From the above it is clear that original writing/page of the book was duly produced by the plaintiff. It is also clear that this fact was not denied by the defendant in her written statement. Further, the defendant took no plea that the Bahi or original thereof, was not produced by plaintiff. Even no evidence was led by the defendant to prove that Bahi entry (Ex.PB) is a coloured photocopy. Therefore, the above arguments of the defendant are baseless and are accordingly rejected.

11. Moreover, the disputed Bahi entry is duly proved from the evidence of PW3/Scribe Bhan Singh of the said Bahi writing. PW3 has supported the plaintiff's case and had categorically proven the said entry. In this regard, reference may be made to Ex. PW3/A - affidavit tendered by Scribe Bhan Singh PW3 in examination in chief (at page 83 of the LCR), wherein he has stated as follows:-

*“1.....The Defendant had got scribed and executed a ‘Tehrir Bahi Panna’ (writing on page of book) in favor of Plaintiff in the book of Plaintiff from me. After scribing the ‘Tehrir Bahi*



*Panna' (writing on page of book), I read over it to Angoori. After hearing, understanding and accepting the 'Tehrir Bahi Panna'(writing in page of book) as correct as well as receiving a sum of Rs 50, 000/- from the Plaintiff, she affixed her thumb impression on 'Tehrir Bahi Panna'(writing in page of book). I also appended my signatures on it. Today, I have seen original 'Bahi Panna Tehrir' (writing on page of book), which was written and signed by me bearing thumb impression of Defendant, which I verify. The original 'Bahi Panna Tehrir' (writing on page of book) is Ex.P."*

12. The issue at hand is clinched from the evidence of PW1 Handwriting Expert who had tendered his affidavit (Ex.PW1/A) and Expert Report (Ex.PW1/B) as per which the disputed thumb impression marked as Q1 of the defendant borne on the Bahi entry tallied with the specimen thumb impression marked S1 to S3 of the defendant as borne on the written statement. Thus, even Expert Report (Ex.PW1/B) confirmed that disputed thumb impression of the defendant matched with the specimen thumb impression of the defendant. Further, PW4 had proved copy of legal notice (Ex.PC) and identified the signature of YS Panwar.

13. Relevant findings of the learned lower Appellate Court as contained in the impugned judgment and decree dated 02.02.2015 read as follows:-

*"11. Next contention raised by counsel for the defendant is that comparison of fingerprints from a photocopy is not*



*authentic proof of proving the thumb-impression until and unless the original document has been seen, therefore, the opinion of the expert is not bound in this case. But, in the opinion of this Court, such contention is not tenable because handwriting and fingerprints expert Jaibir Singh Yadav PW1 proved his report Ex. PW1/A which reveals that thumb-impressions of Anguri on bahi-entry Ex. PB are tallying with the thumb-impressions appended by her on the written statement. No evidence has been led by the defendant to prove that Bahi entry Ex. PB is the coloured photocopy. Therefore, such bald allegation is being leveled by the defendant with a view to escape herself from the liability to repay the loan amount. Plea of fraud has also been taken by counsel for the defendant in execution of receipt Ex. PB. But, this plea has not been proved by the defendant because not even an iota of evidence has been led by her.*

*12. Contrary to it, due execution of receipt Ex. PB has been well established on record by plaintiff himself through his affidavit Ex. PW2/A which finds further corroboration by its scribe Bhan Singh who also tendered his affidavit Ex. PW3/A. Scribe of receipt Ex. PB was an independent witness who has deposed on oath according to the circumstances which he perceived from his open eyes. This witness as well as the plaintiff have deposed that Anguri defendant had taken loan amount Rs. 50,000/- on 16.4.2010 from the plaintiff for meeting out her household expenses at agreed rate of interest i.e. rupees two per hundred per month and in token thereof, she executed receipt Ex. PB in the Bahi being maintained by the plaintiff after appending thereon her*



*thumb impression which had been found to be genuine by the fingerprints expert while preparing his report Ex. PW1/A on having made the comparison of disputed thumb impression Mark-Q1 with specimen thumb impressions Mark-S1 to S3.*

(Emphasis supplied)

14. Learned counsel for the appellant can derive no benefit from the relied upon judgment of **Randhir Singh (supra)** as the same is distinguishable on facts and law inasmuch as, in the said case, the Bahi entry was not tested by any independent witness; whereas, in the present case as demonstrated above the Bahi entries have been duly proven by the substantial evidence led by independent witnesses.

15. In view of the above, present appeal is **dismissed**.

16. Pending application(s) if any also stand(s) disposed of.

**21.04.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No