

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****226****RSA-3584-2018 (O&M)****Decided on: 14.05.2025****Hari Kishan****...Appellant(s)****Vs.****Jai Parkash****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Atul Yadav, Advocate for  
Mr. Kuldip Singh Yadav, Advocate for the appellant.

Mr. Devender Arya, 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 respondent-plaintiff for recovery of Rs.3,08,000/- has been decreed by learned trial Court vide judgment and decree dated 22.02.2017. The appeal filed by the defendant was dismissed by the learned lower appellate Court vide judgment and decree dated 07.12.2017. Hence, the present regular second appeal by the defendant.

2. It is *inter alia* submitted by learned counsel for the appellant that it is admitted that defendant had taken the loan of Rs.2 lacs from the plaintiff. However, defendant had repaid the said amount to the plaintiff. As such, suit of the plaintiff could not have been decreed. The defendant had produced enough evidence, including Ex.D1 which was writing of the plaintiff showing and proving that the amount was repaid to the plaintiff.



A perusal of Ex. D1 will go to show that the plaintiff had admitted the factum of repayment. Even writing of the plaintiff upon the said document/receipt was proved from the evidence of handwriting expert Ex.DW3.

3. Repayment also stands established from the testimony of DW2 Maha Singh, who had stated that defendant had paid an amount of Rs. 1,15,000 on 07.05.2013, and amount of Rs. 85000 and on 10.05.2014, and that the appellant had paid a sum of Rs.1,00,000 in his presence; and after making the payments, the plaintiff made calculations by his own handwriting. As per the version of this witness the amount stands paid and therefore there is no amount which remains outstanding against the defendant. The learned lower court had declined this evidence on very vague grounds. The findings delivered by learned lower courts are one sided and are against the evidence produced by the appellant.

4. Ld. Counsel further contends that the Ld. courts below were supposed to have taken an adverse inference against the plaintiff because the plaintiff has not examined any handwriting expert. The learned lower Courts below ought to have relied upon the undisputed report Ex.DW3/B and ought to have held that the plaintiff had executed the Ex.D1. This evidence proves that the defendant had repaid the amount. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

5. *Per contra*, learned counsel for the respondent/plaintiff submits that the defendant had produced writing Ex.D1, which was a



rough sheet of paper. It is submitted that though the said writing may have been written by the plaintiff, however, the same could not have been relied upon because it could have been in respect of any person as it did not bear the name of defendant. It is accordingly submitted that the impugned judgments and decrees suffer from no error. Hence, it is prayed that the present appeal be dismissed.

6. No other argument is raised on behalf of the parties.

7. I have heard learned counsel for the parties and perused the case file in great detail.

8. The record bares out that the submissions made on behalf of the appellant/defendant are misconceived. It was the case of the plaintiff that the defendant had borrowed a sum of Rs.2 lacs from the plaintiff on 23.04.2013 for household purposes @ 1.25 per hundred Rupee per month. It was undertaken by the defendant that he will repay the said amount on 23.04.2013. In this regard "Tehrir" was made by the defendant in the "Bahi" of the plaintiff in his own handwriting upon which he had also affixed his signatures. These facts have been admitted by the defendant. As defendant had failed to repay the loan, the plaintiff had issued demand notice dated 12.04.2016 to the defendant; and ultimately instituted the instant Civil Suit on 21.04.2016 for recovery of Rs.3,08,000/- (Rs.2,00,000/- principal amount and Rs.1,08,000/- as interest thereupon).

9. The record reveals that the defendant in his written statement has categorically admitted that he had borrowed the amount of Rs.2 lacs from the plaintiff. Even in his cross-examination as DW1, the



defendant has admitted that an amount of Rs.2 lacs was borrowed by him from the plaintiff along with interest @ 1.25 per hundred Rupee per month. However, it has been contended by the defendant that the borrowed amount was repaid by him to the plaintiff. In this regard, defendant, has relied upon document/writing Ex.D1 to submit that repayments in varying instalments were made by the defendant to the plaintiff. However, a bare perusal of Ex.D1 shows that the same is merely a rough piece of paper torn from a notebook upon which some rough calculations have been made. Admittedly, there is over-writing and cutting in the said calculations. The writing Ex.D1 also has over-writing in various dates and amounts. Therefore, the exact nature of calculations cannot be ascertained. Moreover, the name of the defendant is nowhere mentioned in the rough calculation in Ex.D1 to remotely indicate that the said rough calculation pertains to the loan account of the defendant. Even date of loan is not mentioned therein and there is a gross cutting and over-writing in the said document. It has been admitted by the defendant in his cross-examination that Ex.D1 bears overwritings and cuttings. Further, defendant failed to show any receipt qua any alleged repayment of loan made by the defendant.

10. The defendant has also relied upon the evidence of DW2 Maha Singh in whose presence the repayment is alleged to have been made by the defendant. However, the evidence of Maha Singh is also unreliable as there is discrepancy in the statements made by the defendant and Maha Singh. By way, of example, it is pointed out that the



defendant as DW1 has stated that Maha Singh is his neighbour; whereas Maha Singh as DW2 has stated that defendant is his cousin being son of his real uncle.

11. Relevant findings of Id. lower appellate Court are in para 14 of the judgment and decree dated 07.12.2017, which read as under:-

*“The taking of loan amount of Rs.2 lakhs on interest at the rate of 1.5% per month is not disputed by the defendant. The entire dispute is of repayment only. It is claimed by the defendant that he has repaid the entire amount alongwith interest. He has examined his cousin Maha Singh to prove this fact, and has also placed on record a document Ex.D1 in support of his contention. It is pertinent to mention here that when the loan was taken, a tehrir was executed by the defendant, and he appended his signatures on a revenue stamp on the tehrir. Thus, it prima facie appears that it was a very formal transaction between the parties with due writing work. However, the defendant has failed to show any receipt qua the repayment of the loan amount. It is claimed by him that he repaid the loan in three instalments. Firstly, he paid Rs.1,15,000/- to the plaintiff on 7.5.2013. Thereafter, he paid Rs.1 lakh on 10.5.2014, and thereafter he paid Rs.2,124/- in the month of June, 2014 approximately. As per defendant, both on 7.5.2013 and 10.5.2014, Maha Singh was present. However, it is pertinent to mention here that the defendant has failed to show any receipt either qua the payment made on 7.5.2013 or qua the payment made on 10.5.2014. The defendant has relied on a document Ex.D1 which he alleges that the same was prepared by the plaintiff and in the same, the entire calculations qua the repayment have been made. He has examined DW3 a Handwriting Expert to prove that*



*the writing work in Ex.D1 is in the handwriting of the plaintiff. However, it is pertinent to mention here that Ex.D1 shows only rough calculations made by someone. Even if, it is believed that the same is in the handwriting of plaintiff, the same does not reflect the repayment of the loan amount in question in clear lucid terms. There is substance in the contention of learned counsel for the plaintiff that writing work on Ex.D1 bears several cuttings and overwritings. It is further correct that the same does not bear any acknowledgment of receipt of loan amount what to talk of signature of anyone. It is also correct that Ex.D1 is a piece of paper from some notebook which is torn from bottom. It also bears some words, which does not make any sense. It is conceded by the defendant in his cross-examination that the Ex.D1 bears overwritings/cuttings. It is further conceded that the same also bears words like bura, khand, chaipatti (type of sugar and tea) etc. Firstly, the Ex.D1 is not making any sense in itself in isolation. Secondly, all the above-mentioned factors like torn portion, overwritings and writing of extraneous words further renders it as an untrustworthy document. It is pertinent to observe here that a tehrir was duly executed at the time of taking of loan, which included signatures of defendant on a revenue stamp and the presence of two witnesses. In such a circumstance and relations, it was naturally expected that a similar writing work would be done at the time of repayment as well. Even if the same was not done, it was expected that the said tehrir would be cancelled or an endorsement would be made on the same qua the repayment or same would have been taken back by the defendant from the plaintiff. Nothing such has been shown. The tehrir is in the possession of the plaintiff. The same is not disputed in any manner. In the civil matters, it is principle of*



*preponderance of probability, which is applicable. In such a given circumstances, the contentions and evidence of plaintiff are more inspiring. Thus, the defendant (appellant herein) has failed to prove otherwise.”*

12. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings on record.

13. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

14. Pending applications, if any, stand disposed of.

**14.05.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

Whether speaking/reasoned: Yes/No  
Whether reportable: Yes/No