

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****118****RSA-992-2021 (O&M)****Reserved on : 20.03.2025****Pronounced on : 08.04.2025**

Kamlesh Rani

....Appellant

VERSUS

Sudesh Kumari

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.S. Gill, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 08.07.2016 passed by the Trial Court and the judgment and decree dated 13.10.2020 passed by the First Appellate Court whereby her suit for recovery has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed the suit averring that on 19.11.2003 the defendant-respondent had borrowed a sum of Rs.45,000 from her followed by Rs.50,000/- on 10.12.2003 and Rs.10,000/- on 15.12.2003 on interest @ 5% pm for her personal necessity. As per the plaintiff-appellant the defendant-respondent had also executed a receipt/writing in the presence of marginal witnesses. The defendant-respondent is stated to have repaid Rs.30,000/- out of the aforesaid amount till May 2007 and agreed to return the entire outstanding amount in two instalments and also executed a written compromise in this regard. According to the plaintiff-appellant at the time of execution of the written compromise, the defendant-respondent took the original receipts of

the borrowed amount from the plaintiff-appellant. A further sum of Rs.5000/- was returned in 2010. Thereafter, no payment was made despite issuance of legal notice to the defendant-respondent. Hence, the suit for recovery. In her written statement the defendant-respondent raised preliminary objections regarding not having come to the court with clean hands, suppression of facts, cause of action, estoppel and limitation. On merits it was the stand taken that the plaintiff-appellant was working as money lender and though the defendant-respondent had received some money from her on interest in 2003, the same had been returned. It was averred that the signatures of the defendant-respondent and her husband had been obtained on some blank paper but the same was not returned when the loan amount was repaid. Replication was filed by the plaintiff-appellant reiterating the contents of the plaint and denying those of the written statement.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to recovery of Rs.70,000/- alongwith future interest @ 12% per annum as prayed for ? OPP
2. Whether the plaintiff has not come to the court with clean hands and he has suppressed the true and material facts from the notice of this court ? OPD
3. Whether the plaintiff has no valid cause of action to file the present suit ? OPD

4. Whether the plaintiff is estopped by her own act and conduct for filing the present suit against the defendant ? OPD

5. Whether the present suit is barred by law under the Limitation Act ? OPD

6. Relief.

4. The Trial Court vide judgment and decree dated 08.07.2016 dismissed the suit holding inter-alia that the suit of the plaintiff-appellant was barred by limitation. Aggrieved by the decision of the Trial Court, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 13.10.2020. Hence, the present regular second appeal by the plaintiff-appellant.

5. The learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing the suit of the plaintiff-appellant. It is urged that the suit of the plaintiff-appellant was filed within the period of limitation since Rs.5000/- were returned by the defendant-respondent in 2010 and thus the suit deserved to be decreed in view of the evidence led.

6. Heard learned counsel for the plaintiff-appellant and perused the record.

7. In the present case both the Courts have held that the plaintiff-appellant failed to prove that any amount was paid by the defendant-respondent in 2010. Even the execution of the agreement/writing Mark PX was not proved. The suit was filed in 2012 and was clearly beyond the period of limitation. An ambiguous oral statement cannot per se make a suit

fall within limitation. The Trial Court held that “*Mere assertion about Rs.5000 having been paid in the year 2010 would not help the cause of the plaintiff in claiming a fresh period of limitation to commence in the year 2010 upon the alleged payment of Rs.5000 by the defendant. Therefore, the suit of the plaintiff is clearly barred by time*”. The First Appellate Court also inter-alia held that “*So far as the execution of alleged agreement/writing dated 27.5.2007 Ex.PX is concerned, the appellant/plaintiff has failed to prove its due execution. There is no documentary proof that Sudesh Kumari returned Rs.5000/- to Kamlesh Rani in the year 2010. Therefore, considering the aforesaid facts, it is clear that loan was raised in November, December 2003. As per the version of plaintiff upto May 2007, Rs.30,000/- were returned. However, there is no written proof of the same. Similarly, there is no written proof regarding return of Rs.5000/- in 2010. On the basis of oral testimony of plaintiff Kamlesh Rani PW2 or Neelam PW3, it cannot be said that respondent/defendant acknowledged her liability by executing the said agreement/writing dated 27.05.2007 Mark PX or their oral version regarding return of Rs.5000/- in 2010. Even otherwise, as per section 18 of the Limitation Act, acknowledgment is required to be executed before the expiry of period of limitation. Similarly, as per section 19 of the Limitation Act, acknowledgment by way of payment requires to be in his own hand writing or signed by the said person. In the case in hand, there is no valid acknowledgment of debt executed by respondent/defendant before expiry of period of limitation nor she acknowledged her liability as provided under the provisions of Limitation Act*”. In the present case there is no credible evidence available on the record which would prove the stand of any amount having been repaid in 2010 by the defendant-respondent so as to make the

suit fall within limitation. Learned counsel for the plaintiff-appellant has failed to point out as to how the concurrent findings recorded by both the Courts are erroneous or perverse. No cogent and reliable evidence has been shown to the Court by the learned counsel which would establish that the suit of the plaintiff-appellant was within limitation. This Court finds no reason to differ from the findings returned by both the Courts.

8. No other point was argued.

9. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.04.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES