(1987) 01 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 686 of 1978

Zile Singh APPELLANT

Vs

Piare RESPONDENT

Date of Decision : 12-01-1987

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1987) 01 P&H CK 0081

Hon'ble Judges : Ujagar Singh, J

Bench : Single Bench

Advocate : H.L. Sarin, Miss Ja shree thakur, Ms. Ritu Bahri, Mr. Sukhev Singh, Mr. A.S. Grewal, for the Appellant; Ashok Aggarwal, for the Respondent

Judgement

Ujagar Singh,, J.—This is Plaintiff''s second appeal after reversal of the judgment and decree of the trial Court by the first appellate Court. The Plaintiff-Appellant filed this suit against the Respondent for recovery of Rs. 10,898/- comprising Rs. 7750/- as the principal amount and Rs. 3148/- as interest thereon on the ground that the Respondent had taken a loan of Rs. 2000/- on 26th April, 1967 and had agreed to pay interest at the rate of Rs. 1.56 % per month Later on, on different dates the Respondent after admitting the loan used to have a balance struck and ultimately on 24th of May, 1971 a balance of Rs. 7750/- was struck and after affixing three stamps of 10 paise each, the Respondent affixed his thumb-impression twice.

2. The Respondent in his written statement denied the taking of loan and the executing of the bahi entries. The following issues were struck:

1. Whether Defendant received the sura of Rs. 144/- ?

2. Whether Defendant executed the entry for Rs. 3 0/- (sic) ?

3. Whether Defendant executed the entry for Rs. 300/ ?

4. Whether Defendant executed the balance entry for Rs. 3346/- ?

5. Whether Defendant received Rs. 24/- Rs. 100/- and Rs. 300/- ?

6. Whether Defendant executed the entry for Rs. 300/- ?

7. Whether Defendant executed the entry for Rs. 750/- ?

8. Whether Defendant executed balance entry for Rs. 5000/. ?

9. Whether Defendant received the amount of Rs. 12/- ?

10. Whether Defendant executed the balance entry for Rs. 7750/- ?

11. Whether Plaintiff is a money-lender ?

12. Whether Plaintiff is entitled for interest and if so to what rate ?

13. Whether Defendant is entitled for easy instalments in case of decree ?

14. Relief.

The trial Court found all the issues in favour of the Appellant and decreed his suit for recovery of Rs. 9780 (Rs. 7750 as principal amount and Rs. 2030/- as interest). Proportionate costs were also awarded. The first appellate court on appeal by the Respondent disbelieved the entries and accepting the appeal of the Respondent dismissed the suit. It also held that the acknowledgement dated 24th May, 1971 admitting the balance of Rs. 7750/- could be pleaded with a view to claim the extended period of the limitation under the Limitation Act but could not be made bassis of the suit inasmuch as the Plaintiff had failed to prove the previous advances.

3. Learned Counsel for the Appellant has laid stress that the Plaintiff-Appellant is an illiterate person who used to have the entries written with regard to transactions by others and, therefore, entries P. 1 to P. 19 represent the correct picture of the transactions.

4. I have looked into the entries minutely. Entry Exhibit P. 1 is dated Baisakh Badi 2, Sambat 2024, which is equivalent to 26th April, 1967 and vide this entry a loan of Rs. 2000/- was taken by the Respondent. The entry is stamped with three stamps of 10 paise each and is thumb-marked by Respondent twice. Thereafter vide entries Exibit P. 2 to P. 4, P 8 to P. 11, P. 12, P. 15 and P. 16 different amounts are shown as loan on different dates. The entries, Exhibits P. 3, P. 4 and P. 11 are thumb-marked while Exhibits P. 7 and P. 15 are thumb-marked on stamps affixed thereon. Vide entry P. 7 balance amount of Rs. 3346/- was struck on Asarh Sudi 3, 2025 and the Respondent thumb-marked twice on the stamps affixed thereon. Thereafter P. 11 vide which another amount of Rs. 750/- was taken on loan was thumb-marked by the Respondent and again a balance of Rs. 5500/- was struck and the balance entry was again thumb-marked twice on the stamps affixed thereon and the same is Exhibit P. 15. Ultimately on Jeth Badi 15, Sambat 2028, the last balance entry of Rs. 7750/- was struck and was thumb-marked twice on the stamps affixed thereon and this is Exhibit P. 19. The thumb impressions on P. 1, P. 3, P. 4, P. 7. P. 11, P. 15 and P. 19 have been

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compared and found to be those of the Respondent by Shri Tarlochan Singh Inspector of Police and Finger Print Expert FPB, Phillaur who was examined on commission by Subordinate Judge, Phillaur. The Appellant himself is an illiterate person and it is impossible for him to have forged these entries. The Appellant examined himself as P. W. 5 and stated that the entry of Rs 2000/- was scribed by one Kapur Singh. Of course, he has not specifically said about some of the entires produced by him. Kapur Singh has been examined as P. W. 4 and has stated that entry Exhibit P. I is scribed by him and entries p. 2 to P. 19 are in the hand writing of his father whose handwriting he identified.

5. Loan of Rs. 2000/- vide entry Exhibit P. 1 is admitted in written statement and it was not put in as a separate issue. In all the total amount advanced to the Respondent as shown vide entires is Rs. 4143/- and the rest of the amount making up the balance of Rs. 7750/- is the amount of interest and looks to be also interest upon interest. I, therefore, find that the finding given by the first appellate Court has been wrongly arrived at for which there does not seem to by any justification on record specially when the Respondent has totally denied the transactions and his thumb marking on entries mentioned above. As a matter of fact the Appellant in the suit has specifically stated that the first loan amount of Rs. 2000/- was given on 26th April, 1967 and thereafter other amounts were advanced and it is ultimately on 24th May, 1971 that the balance of Rs. 7750/- was struck. Reading the plaint in that manner, the suit is not based on the balance of Rs. 7750/- but on the original loans and the balance struck is taken advantage of as acknowledgements for extension of limitation and not as the basis of the suit as has been wrongly held by the first appellate Court.

6. The Respondent admitted in written statement that he had taken a loan of Rs. 2000/- as stated in para No. 1 of the plaint and lower appellate Court has altogether ignored this fact. Exhibit P. 1 relates to advance of loan of Rs. 2000/-, Exhibit P. 2 shows loan of Rs. 144/- and this amount and another of Rs. 320/- vide Exhibit P. 3 which is thumb-marked by the Respondent when added to Rs. 2000/-, make up the total of Rs. 2464/-. This total is given in entry Exhibit P. 3 itself. Entry Exhibit P. 4 shows loan of Rs. 300/- (out of this Rs. 150/- having been given to Surja) and this entry after showing total loan of Rs. 2764/- is thumb-marked by the Respondent. Exhibit P. is entry of interest and entry Exhibit P. 6/P. 7 shows balance of Rs. 3346/- thumb-marked by the Respondent. Exhibits P. 8, P. 9, P. 10 and P. 11 show loans of Rs. 24/-, Rs. 100/-, Rs. 300/-, and Rs. 750/- respectively on different dates and only entry Exhibit P. II, also showing that of Rs. 4520/- is thumb-marked by the Respondent. Entry Exhibit P. 15 showing loan of Rs. 205/- and balance of Rs. 5500/- is thumb-marked by the Respondent. Respondent is thus proved to have taken loan of Rs. 2000/-, Rs. 320/-, Rs. 300/-, Rs. 750/-, and Rs. 205/- vide entries Exhibits P. 1, P. 3, P. 4 P. 11 and P. 15 respectively and is further proved to have admitted having taken loan of Rs. 144/-, Rs. 24/-, Rs. 100/- and Rs. 300/- vide Exhibits P. 2, and P. 8 to P. 10 respectively. Loan of Rs. 20/- vide Exhibit P. 12 and Rs. 12/- vide Exhibit P. 16 do not stand proved even by admission. The details have been given as even

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according to addmission in cross-examination Respondent had not taken any loan before the amount of Rs. 2000/-. It is also necessary to mention that Rs. 150/- shown to have been given to one Surja in Exhibit P. 4 and Rs. 300/- given to Jogi vide Exhibit P. 10 have clearly been admitted by Respondent vide entries following

7. After counting the original amount advanced by the Appellant to the Respondent, I come to the conclusion that an amount of Rs. 4143/- was advanced as confirmed the acknowledgements duly thumb-marked by the Respondent himself and if we add the interest J on this amount at the rate of Re. 1/- per cent per month from the date of said loans to the date of suit, the total interest roughly comes to Rs. 2664/-. Issues Nos. 1 to 8 and 10 are decided in favour of the Plaintiff-Appellant and issue No. 9 against him. I, therefore, accept this appeal and set aside the judgment and decree of the first appellate Court and modify the judgment and decree of the trial Court and the suit of the Plaintiff-Appellant is decreed for the recovery of Rs. 4143/- plus Rs 2864/- as interest. The Respondent will bear the proportionate costs throughout. No interest u/s 34, CPC 1908 was awarded by the trial Court and in this regular second appeal only restoration of that decree is claimed.

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