

**IN THE COURT OF VIKAS KAPOOR, CIVIL JUDGE, INDORA,
DISTRICT-KANGRA, HIMACHAL PRADESH**

Civil Suit No. : 170/2022.
CIS Registration No : 24/2022.
CNR Number : HPKA09-000446-2022.
Instituted on : 03.08.2022.
Decided on : 19.02.2024.

1. M/S Hans Raj, Petrol Pump Shekhupur, through its proprietor Vinita D/o Sh. Hans Raj, R/o Vill. Shekhupur, P.O Kandrori, Tehsil Indora, District Kangra, H.P.

...Plaintiff.

Versus

1. Smt. Reshma Bibi, W/o Sh. Rajesh Khan, R/o Vill. Chuaharpur, PO Chanour, Tehsil Indora, District Kangra, H.P.

2. Sh. Rajesh Khan, S/o Sh. Manjeet Khan, R/o Vill. Chuaharpur, PO Chanour, Tehsil Indora, District Kangra, H.P.

...Defendants.

SUIT FOR RECOVERY

COUNSELS

***For The Plaintiff: Sh. P.S. Dhanjal, Id. Advocate.
Defendants already proceeded against exparte, vide order dated 30.11.2022.***

JUDGMENT:

1. The present suit has been filed by the plaintiff against the defendants seeking recovery of Rs. 81,400/-, along with interest.
2. The case of the plaintiff, as emerging from the plaint is that, Vinita D/o Sh. Hans Raj is proprietor of M/S Hans Raj, Patrol pump, Shekhupura, being its owner. It is submitted that, plaintiff is owner of vehicle No. HP-38C-6068, and defendant No. 2, namely, Rajesh Paul was driver of the said vehicle. It is submitted that,

defendant No. 2, had taken an amount of Rs. 99,400/-, from the plaintiff for his personal use during his service period. It is submitted that defendant No. 1, who is wife of defendant No. 2, had returned an amount of Rs. 18,000/-, as one installment and she had further undertaken to pay the remaining amount immediately, without any delay. It is submitted that on 26.03.2019, defendant No. 1 Reshma Bibi, by way of an affidavit undertook to pay an amount of Rs. 81,400/- within six months, but she did not pay the said amount to the plaintiff. It is submitted that plaintiff requested the defendants to pay the remaining amount, but they failed to pay the said amount, as such, a legal notice was served on defendant No. 1, on 02.12.2021, and no reply was given to the same.

3. The cause of action is claimed to have been arisen to the plaintiff, firstly on 02.12.2021, when the plaintiff served legal notice to defendant No.1.

4. Summons were served to the defendants, and they were served through their relatives, with whom they were residing together, as a family. Therefore, the defendants were duly served, as per the provision of CPC, but defendants failed to appear in the court and they were proceeded against exparte, vide order dated 30.11.2022.

5. Though the formal issues were not framed in the present case, however, the following issue has been framed by this Court for the proper adjudication of the present case:-

1. Whether the plaintiff is entitled for the recovery of amount of Rs. 81,400/- along with interest, as alleged?-O.P.D.

2. Relief.

6. To prove his case, GPA of plaintiff, Sh. Hans Raj stepped into the witness box by filing his affidavit Ex. PW-1/A, wherein he has reiterated

the entire contents of his plaint. He has also tendered documents, Ex P-1 to P-3 & closed his evidence. This is the entire evidence led by the plaintiff.

7. I have given my best consideration to the arguments advanced on behalf of the plaintiff and have also gone through the entire record of the case carefully.

8. For the reasons to be recorded hereinafter, while discussing the above issues, my findings on these issues are as under :-

Issue No.1 :..... Yes.

Relief :.....The suit of plaintiff is **decreed**
as per operative portion
of the judgment.

Reasons for findings:

Issue No. 1

9. At the hearing of the case, **Sh. Ashwani Mahant, Ld. counsel** for the plaintiff, vehemently argued that the plaintiff has successfully proved his case and cause of action, against the defendants by ocular as well as documentary evidence, as such he is entitled to recovery of the amount claimed. He submitted that the case of the plaintiff and his evidence, is unrebutted and unchallenged, consequently, adverse inference be drawn against the defendant. Lastly, it is prayed that suit of the plaintiff be decreed.

10. It is the case of the plaintiff that, an amount of Rs. 99,400/-, was borrowed by the defendant No. 2, and defendant No. 1 had undertaken to pay the said amount. It is submitted that the defendants, have only paid one installment of Rs. 18,000/- and the remaining amount is still due from the defendants. In order to prove, its case and claim, the plaintiff has examined Hans Raj, GPA of the plaintiff. He has proved on record his sworn affidavit, Ex PW-1/A, wherein, he has proved the contents of the plaint and the entire case of the plaintiff. His testimony is unrebutted and unchallenged. It being so, is accepted as true. Further, the plaintiff has proved affidavit Ex P-1, duly executed by the defendant No. 1, wherein, defendant No. 1 has admitted the liability, of Rs.

81,400/- against the plaintiff firm. Further more, legal notice Ex P-3, was sent to defendant no. 1, vide postal receipt Ex P-2. The said affidavit and legal notice further corroborates and establish the liability of defendant of the recovered amount, claimed by the plaintiff. Most importantly, the defendants despite due service, have failed to appear before the court and to contest the claim of the plaintiff, as such, an adverse inference is drawn against the defendants and it would be presumed that the defendants have admitted the claim of the plaintiff. Accordingly, the plaintiff has proved the recovery of the claimed amount from the defendants.

11. The plaintiff has claimed cause of action, from the date of legal notice i.e. 02.12.2021, and has claimed that suit is within limitation. Evidently, the amount was paid to the defendant in the year 2019 and defendant No. 1, had executed the affidavit, Ex P-1, acknowledging and accepting the liability on behalf of the defendant No.2, on 26.03.2019. It is clearly mentioned in the affidavit that, the liability was admitted on 26.03.2019 and a part payment was made on 22.02.2019. Evidently, the liability was acknowledged on 26.03.2019, vide Ex P-1, hence, the period of limitation would commence from 26.03.2019. The present suit was filed on 03.08.2022, which is beyond 3 years and beyond period of limitation. Having said that, it is an undisputed position that the the period during lock down, due to covid-19 pandemic, is to be excluded. There is delay of 5 months in filing the present suit, which would clearly be excluded due to the order of Hon'ble Supreme court, excluding period of limitation during lockdown. As such, suit of the plaintiff is within period of limitation. Accordingly, the suit of the plaintiff is decreed. Accordingly, aforesaid issue is answered in affirmative and in favour of the plaintiff.

Relief:

11. In view of my findings on aforesaid issues, suit of the plaintiff is **decreed with costs** and defendant is directed to pay Rs. 81,400/- along

with interest at the rate of 8% from 26.03.2019, till realization of the amount. Decree sheet be prepared accordingly. File after its due completion/registration, be consigned to the record-room.

ANNOUNCED
19.02.2024.

**(Vikas Kapoor),
Civil judge, Indora,
Distt. Kangra-HP.**

List of witnesses.

Sr. No.	Name of witness.	Whether the witness is of plaintiff or of defendant.
PW-1	Hans Raj	Plaintiff.

List of Exhibit/Mark.

Ex./Mark.	Date of Ex./Mark.	Description.
Ex.PW-1/A	09.01.2023	Affidavit of Hans Raj
Ex.P-1	09.01.2023	Affidavit of undertaking.
Ex.P-2	09.01.2023	Postal receipt.
Ex.P-3	09.01.2023	Legal notice.

**Civil judge, Indora,
Distt. Kangra, HP.**

/Seema.

