

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****RSA No.119 of 2023****Date of Decision : 30.12.2025**

Joginder Singh Sahi (deceased) through LRs.**..... Appellants*****Versus*****Rajesh Sood****.....Respondent**

Coram:**The Hon'ble Mr. Justice Bipin Chander Negi, Judge***Whether approved for reporting?¹*

For the Appellants : Mr. Umesh Kanwar, Advocate.

For the respondents : Mr. Sanjay Jaswal, Advocate.

Bipin Chander Negi, Judge (oral)

The Appellant, by filing this appeal under Section 100 of the Code of Civil Procedure (for short, CPC), has assailed the judgment and decree dated 18.11.2019, passed by learned District Judge, Kangra at Dharamshala, District Kangra, Himachal Pradesh, in Civil Appeal No.29-D/XIII/2019 titled *Joginder Singh Sahi (deceased) through LRs. vs. Rajesh Sood*, whereby the judgment and decree dated 26.09.2018, passed by Senior Civil Judge, Dharamshala, District Kangra, in Civil Suit No.39/2014, have been affirmed.

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred in the same manner in which they were referred before learned Trial Court.



3. The facts germane to the filing of the suit, briefly, are that the plaintiff-respondent instituted a suit for recovery of ₹13,00,000/- along with interest @ 12% per annum from the date of an agreement dated 14.09.2012 till realisation. The plaintiff's case was that the defendants-appellants, having disclosed that a bank loan for constructing their house was exhausted and the construction remained incomplete, requested a loan of ₹6,50,000/- for further work, promising repayment within one year. An agreement to this effect was executed on 14.09.2012, acknowledging receipt of the said sum.

4. The agreement stipulated that if the defendants failed to repay within one year, they would be liable to pay double the amount, i.e., ₹13,00,000/-. Upon the expiry of the said period on 14.09.2013, the plaintiff approached the defendants for payment, received assurances but eventually, in November 2013, the defendants refused to pay. A legal notice dated 27.01.2014 was served, which yielded no result, leading to the suit. The defendants contested the suit by filing a written statement, raising preliminary objections regarding cause of action, locus standi, estoppel, maintainability, suppression of facts, limitation, valuation and jurisdiction. On merits, they denied ever approaching the plaintiff for a loan, questioned the plaintiff's financial capacity to lend, and specifically denied the execution of the agreement dated 14.09.2012. They alleged that the agreement was fraudulent, their signatures were obtained without reading or explaining the contents, and that they had never received any



amount from the plaintiff. They further pleaded that the agreement had expired. The plaintiff filed a replication, reiterating the plaint averments.

5. On the basis of the pleadings, the learned Trial Court framed the following issues on 23.11.2015:

1. *Whether plaintiff is entitled for recovery of ₹13,00,000/- (thirteen Lacs) with future interest @ Rs. 12% per annum from the execution of agreement dated 14.09.2012 till the realization of the due amount as prayed for? OPP.*
2. *Whether plaintiff has no cause of action to file the present suit? OPD.*
3. *Whether plaintiff has no locus-standi to file the present suit? OPD.*
4. *Whether suit is not maintainable? OPD.*
5. *Whether suit of plaintiff is barred under provision of Limitation Act? OPD.*
6. *Whether suit has not been properly valued for the purpose of court fee? OPD.*
7. *Whether this Court has no jurisdiction to pursue the present suit? OPD.*
8. *Relief.*

6. After recording evidence and hearing arguments, the learned Trial Court decided the issues as follows: Issue No.1: Partly Yes; Issue No.2: No; Issue No.3: No; Issue No.4: No; Issue No.5: No; Issue No.6: No; Issue No.7: No; and consequently, partly decreed the suit with costs. Aggrieved by the partial decree, the defendants preferred the first appeal. In the first appeal, the appellants contended that the trial court erred in decreeing the suit; that the impugned judgment was contrary to law and facts; that the court below failed to appreciate the pleadings and misinterpreted documents and law; that all necessary issues for a just decision were not framed; that the defendants' evidence was reliable while the plaintiff's evidence was inadmissible and interested; and that the findings were based on a vague, fraudulent and fabricated agreement



(Ex. PW2/A) which was never executed as alleged. They asserted that they neither requested nor received any loan from the plaintiff, and thus no question of recovery arose. They prayed for the suit to be dismissed or, alternatively, for the matter to be remanded for fresh consideration. The first appellate court, however, dismissed the appeal, affirming the judgment and decree of the trial court. Hence, the present second appeal.

7. Heard Counsels for the parties and perused the impugned judgments.

8. The core case of the plaintiff was that he advanced a loan of ₹6,50,000/- to the defendants, evidenced by a notarized agreement (Ex. PW2/A) dated 14.09.2012, which contained a stipulation for repayment of double the amount in case of default. The defendants' primary defence was a complete denial of the loan transaction, the execution of the agreement, and the receipt of any money, alleging the document to be fraudulent.

9. The testimony of the plaintiff (PW1), supported by his brother (PW3) who was a witness to the transaction, consistently asserted the advancement of the loan and the subsequent execution of the agreement. Crucially, the version of the plaintiff finds significant corroboration from the Notary Public (PW2), who categorically deposed that the agreement Ex. PW2/A was notarized in his presence after the parties signed it and his register. No evidence was led by the defendants to discredit the Notary Public or to suggest any collusion. The defendants' failure to seek a comparison of the signatures on the agreement and the notary's register,



despite specifically denying them, is a significant omission that militates against their plea of non-execution.

10. Although defendants denied the execution of the agreement, they also pleaded fraud on behalf of the plaintiff by stating in their written statement that the plaintiff had concealed facts regarding terms and conditions of the agreement and that the agreement was not read over to them before signing. They however failed to prove this as there was only one self-serving statement of defendants DW-1 Sanjog Sahi in this regard.

11. Furthermore, the suggestions given to the plaintiff in his cross-examination reveal a telling admission. The defendants suggested that the plaintiff had withdrawn money from his bank to lend to them and that the money was given at different times, not in one lump sum. These suggestions inherently concede the fundamental fact of the loan transaction, shifting the dispute merely to the manner of its disbursement. The purchase of the stamp paper for the agreement in the name of the defendants also supports the plaintiff's narrative, a fact which the defendants did not rebut by summoning the stamp vendor.

12. The trial court correctly analysed this evidence and concluded that the plaintiff had proved the advancement of ₹6,50,000/- and the execution of the agreement. It also rightly applied the provisions of Section 74 of the Indian Contract Act to hold the stipulation for payment of double the amount as a penalty, and thus unenforceable. Consequently, the plaintiff was correctly held entitled only to the principal



sum of ₹6,50,000/- along with reasonable interest. The findings on the ancillary issues regarding cause of action, maintainability, limitation, valuation, and jurisdiction, which were not seriously contested in appeal, were also correctly decided and do not warrant any interference. The first appellate court, upon a re-appraisal of the entire evidence, affirmed these findings, and this Court finds no perversity or error of law in the concurrent conclusions reached by both the courts below.

13. In view of the aforesaid, no question of law much-less a substantial question of law arises for consideration of the Court, therefore, the appeal is dismissed being devoid of any merit. Pending miscellaneous applications, if any, also stand disposed of.

December 30, 2025 (KS)

(Bipin Chander Negi)
Judge