IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 492 of 2008

Reserved on: 29.5.2026

Date of Decision: 19.6.2026

Bal Krishan Rawat ...Appellant

Versus

Mohan Lal (deceased) through LRs ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the Appellant : Mr Janesh Gupta, Advocate.

For the Respondents : Mr Vinay Thakur, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 30.4.2008, passed by learned Additional District Judge, Shimla (learned Appellate Court), vide which the judgment and decree dated 31.8.2007, passed by learned Civil Judge, Senior Division, Shimla, H.P., (learned Trial Court) were partly set aside. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court seeking recovery of ₹3,33,365/- along with costs and interest. It was asserted that the plaintiff was working as a commission agent with Bansi Lal Hitin Kumar (BHS), Delhi. The plaintiff lent money to the defendant in 1997 for purchasing apple material. The defendant assured to consign the apple crop to BHS. It was agreed that the defendant would return the money with interest at the rate of ₹2/- per month per ₹100/- if he failed to consign the apples to BHS. The defendant failed to consign the apples, and he is liable to repay the money. The accounts were settled on 22.1.1999, and an amount of ₹1,61,843/- was found due towards the defendant. The plaintiff requested the defendant to repay the money, but in vain. Hence, the suit was filed for the recovery of the amount.

3. The suit was opposed by the defendant by filing a written statement taking preliminary objections regarding the suit being barred by limitation, the suit being bad for non-joinder of necessary parties and lack of *locus standi*. The contents of the plaint were denied on the merits. It was asserted that the plaintiff used to work with M/s Chadha Traders (CT), Delhi,

when the defendant had consigned apples to the plaintiff for sale. The defendant had taken 250 apple boxes at the rate of ₹46/- per box, two bags of raddi, 5/½ kgs of nails and 23 kilograms of carton boxes in the year 1996 on different dates, which were worth ₹16,915.50. The defendant received ₹20,000/- by cheque on 28.9.1996, ₹25,000/- by cash on 6.12.1996 and ₹1,000/-. In this manner, the defendant had received an amount of ₹62,912.50. The defendant had consigned 121 apple boxes, and ₹43,069.95 was due from the firm. An amount of ₹42,428.48 was remitted to the defendant after deducting draft charges of ₹641.47. The defendant requested the plaintiff to receive the amount, but in vain. The defendant never accepted the amount of ₹1,61,843/-. Therefore, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. Learned Trial Court framed the following issues on 14.1.2003: -

1. Whether the plaintiff is entitled for recovery of ₹3,33,365/- as alleged? OPP.

2. Whether the suit of the plaintiff is barred by limitation? OPD.
3. Whether the suit is bad for non-joinder of necessary parties? OPD.
4. Whether the plaintiff has no locus standi to file the present suit? OPD.
5. Relief.

6. The parties were called upon to produce the evidence, and plaintiff examined himself (PW1) and Ranjeet Tegta (PW2. The defendant examined himself (DW1), Vijender Chauhan (DW2) and Roop Lal (DW3).

7. Learned Trial Court held that the copy of the ledger (Ex.PW1/B) contained the defendant's signatures, which amounted to an acknowledgement of liability. The plea taken by the defendant that an amount of ₹62,912/- was payable was not supported by any document on record. Putting of the signatures on the ledger amounted to an admission, and the plaintiff was liable to pay an amount of ₹1,61,183/- to the defendant. The Learned Trial Court answered Issue No.1 partly in affirmative, Issues Nos. 2 to 4 in the negative, and decreed the suit filed by the plaintiff.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the defendant filed an appeal, which

was decided by the learned Additional District Judge Shimla, H.P. (learned Appellate Court). Learned Appellate Court held that the plaintiff was earlier working with CT Delhi. The defendant had no direct dealings with BHS or CT Delhi. The plaintiff concealed the fact that he was working as a commission agent for CT Delhi, which adversely affected his credibility. The plaintiff had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881. The statement on oath was contrary to the contents of the ledger. An exorbitant interest was charged by the plaintiff. Hence, the plaintiff was only entitled to ₹42,428/-. The learned Appellate Court modified the decree passed by the learned Trial Court and decreed the suit for the recovery of ₹42,428/- along with interest at the rate of 6% per annum.

9. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the plaintiff has filed the present appeal, which was admitted on the following substantial questions of law on 4.6.2009:

1. Whether the cheque issued by defendant, on which his signatures were not disputed, could be ignored from consideration by holding that blank cheque was obtained by plaintiff and later on misused, by ignoring the presumption attached to the negotiable instrument, under the provisions of Negotiable Instruments Act?

2. When the signatures of defendant were appearing on the ledger account, which was duly settled, has not the Lower Appellate Court committed grave error and jurisdiction in holding that such signature appears to be obtained by threat, and the past transactions have not been established by the plaintiff? Has not the Lower Appellate Court acted in excess of its jurisdiction in recording the erroneous and perverse findings by ignoring the principle of law that accounts once finalised could not have been reopened especially when the same were duly witnessed by PW-2?

3. Whether the impugned judgment and decree of Lower Appellate Court is vitiated on account of misreading and misinterpretation of Ex.DA, Ex.DC and Ex.DE?

4. Whether Lower Appellate Court has acted in excess of jurisdiction in raising assumption and presumption regarding the false defence of the defendant, which have no support from the record, especially when the defendant has failed to explain his signatures on the ledger account of the plaintiff, where the suit amount was duly acknowledged?

10. I have heard Mr Janesh Gupta, learned counsel for the appellant and Mr Vinay Thaur, learned counsel for the respondent.

11. Mr Janesh Gupta, learned counsel for the appellant, submitted that the learned Appellate Court erred in decreeing the suit for an amount of ₹42,428/-. The defendant had acknowledged his liability by putting his signature on the ledger. The defendant admitted before the Court that he had a transaction with the plaintiff. The interest was agreed between

the parties @2% per month and cannot be said to be exorbitant. This was a commercial rate prevalent at that time, and the learned Appellate Court erred in interfering with the award of interest passed by the learned Trial Court. Therefore, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court be set aside.

12. Mr Vinay Thakur, learned counsel for the respondent, submitted that the plaintiff had not produced the books of account on the first date of hearing, and the copy of the ledger was inadmissible in evidence. The plaintiff had charged an exorbitant rate of interest and learned Appellate Court was justified in reducing it. Therefore, he prayed that the present appeal be dismissed. He has relied upon the following judgments in support of his submissions:-

(i) ***Sudhir Kumar Pandey Vs. Bank of India 1991 Supreme (Pat) 117;***

(ii) ***Sulaiman Vs. Biyaththumma and others, 1916 Supreme (SC) 79; and***

(iii) ***Bimla Devi Vs. M/s Bittam Garages, RSA No. 310 of 2008, decided on 6.9.2023.***

13. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Questions of Law No.1 to 4:

14. All these substantial questions of law are interconnected and are being taken up together for consideration.

15. The defendant Mohan Lal (DW1) stated in his proof affidavit that he had settled all the disputes with the plaintiff on 6.12.1996 and issued a blank cheque drawn on State Bank of India, Sawra Branch, dated 7.12.1996. The plaintiff filed a complaint under Section 138 of the NI Act, and the defendant lodged an FIR against the plaintiff. Significantly, no such plea was taken by the defendant in the written statement filed on 19.09.2002. Thus, the evidence of the defendant regarding the issuance of the cheque and filing of the complaint under Section 138 of the NI Act was beyond pleadings, and the learned Appellate Court erred in taking note of it.

16. The defendant had asserted in para-3 of the written statement that he had requested the plaintiff to receive the money and settle the account, but in vain. The defendant had

nowhere mentioned that he had settled the dispute with the plaintiff on 6.12.1996 and issued a blank cheque. Therefore, the plea taken by the defendant before the Court regarding the settlement and issuance of the cheque was not acceptable.

17. The defendant stated in his cross-examination that he had settled the account with Chadha Traders and issued a cheque in favour of the plaintiff. He admitted his signature on the ledger (Ex.PW1/B). He volunteered to say that he had not put the signatures voluntarily after reading the document. He claimed that the signatures were obtained forcibly by beating him. He went to the Police Station to report the matter, but no action was taken. The plea taken by the defendant that the plaintiff had obtained his signature forcibly by beating him is clearly not acceptable, as no such plea was taken in the written statement filed before the Court or the notice issued to the plaintiff.

18. The learned Trial Court had rightly held that putting the signatures on the ledger by the defendant showed the correctness of the amount mentioned in the ledger.

19. Learned Appellate Court held that the plaintiff had only produced one page of the ledger, which is factually

incorrect. Plaintiff Balkrishan had stated on oath that he had brought the ledger book whose extract was Ex.PW1/B. The Court made an endorsement, original seen and returned. Therefore, the ledger was produced before the Court, and it is not correct to say that the complete ledger was not produced before the Court.

20. It was submitted that the entries were not admissible because of non-compliance with Order 7 Rule 17 of CPC. It is true that the Books of Accounts were not produced at the time of the presentation of the plaint as required under Order 7 Rule 17; however, the non-production of the Books is not fatal. It was held in ***Sushil Rani v. Attam Parkash, 2007 SCC OnLine P&H 371 = AIR 2007 (P&H) 142*** that the failure to produce the Books of Account at the time of presentation of the plaint is not fatal as it is merely a procedural lapse. It was observed:

> "4. Learned Counsel for the petitioner has vehemently argued that the petitioner has substantively complied with the provisions of Order 7 Rule 17 of the Code at the time of filing of the plaint. The plaintiff has sought to produce original copies of the bahi entries soon after the objection was raised by the defendant in his written statement. It is contended that the provisions of Order 7 Rule 17 of the Code are the rules of procedure and such provisions are directory. Reliance is placed upon ***Shaikh Salim Haji Abdul Khayumsab v. Kumar and Ors., 2006 AIR(SC) 396*** and ***Sardar Amarjit Singh Kalra and Ors. vs. Parmod Gupta and Ors.,2002 SUPP 5 SCR 350***. In ***Sardar***

Amarit Singh Kalra's case (supra), it has been held to the following effect:

> The law of procedure is meant to regulate effectively, assist and aid the objection of doing substantial and real justice and not to foreclose even an adjudication on the merits of substantial rights of citizens under personal, property and other laws. The procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify the miscarriage of justice.

5. In ***Shaikh Salim's case (supra)***, the Hon'ble Supreme Court of India, while dealing with the provisions of Order 8 Rule 1 of the Civil Procedure Code, contemplating the filing of a written statement within the time frame, held to the following effect:

> 10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity to participate in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice.
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> 11. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.
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> 12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress of legal justice, compels consideration of

> vesting a residuary power in Judges to act ex debitio justitiate where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual as much as substantive. See ***Sushil Kumar Sen v. State of Bihar***.
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> 13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament, the mode of procedure is altered, he has no other right than to proceed according to the altered mode. See Blyth v. Blyth. A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid of justice. Any interpretation that eludes or frustrates the recipient of justice is not to be followed. (See: ***Shreenath v. Rajesh***).
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> 14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural Prescriptions are the handmaid and not the mistress, a lubricant, not a resistance in the administration of Justice.

6. In view of the above judgments wherein it has been held that the procedure is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice, the plaintiff cannot be denied an opportunity to participate in the justice only because the original bahi entries were not produced along with the plaint. By non-production of the original bahi entries, no right of the defendant has been infringed. It was a rule of procedure, and such a rule of procedure is always subservient to and is in aid of justice. It is not to be a tyrant but a servant, not an obstruction but an aid of justice. Therefore, the substantive right of the plaintiff to recover the amount due in accordance with law cannot be defeated on the basis of a procedure that is prescribed only to advance the cause of justice.

7. Learned Counsel for the respondent has relied upon a judgment of this Court in ***Som Parkash Bansal v. Managing Committee, Hindu Higher Secondary School, Kaithal and Anr., 2003 133 PunLR 535***, to contend that in the absence of compliance of provisions of Order 7 Rule 17 of the C.P.C., the suit is not maintainable. However, the said judgment provides little assistance to the respondents, as that was a case where the impugned order was not produced either with the plaint or during evidence. The said judgment is clearly distinguishable and has no applicability to the facts of the present case."

21. This position was reiterated in ***Ram Singh versus Rajeev Kumar and Company 2012 (4) Civil Court cases, 337***, wherein it was held:

"14. Order 7 Rule 17 of the Code of Civil Procedure reads as under:

Production of shop-books.-(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) Original entry to be marked and returned.- The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed."

15. The provisions of Order 7 Rule 17 of the Code of Civil Procedure are enabling provisions, by which a document can be brought on record, but the standard of proof can

> not be dispensed with, and such a document has to be necessarily proved in accordance with law. Bringing on record documents in the shape of bahi entries and exhibiting the same does not mean that the standard and manner of proof required to prove a document under the provisions of Section 62 of the Indian Evidence Act can be dispensed with.
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> 16. In the facts of the present case, the plaintiff/respondent had relied upon the entry, Ex.P-6, pertaining to the amount of 3,51,600/-, as also entries Ex.P-1 to Ex.P-5 for the remaining amount. The present appellant had categorically denied his thumb impressions on such bahi entries and had taken a specific stand that such entries were forged. Upon such a specific and categoric stand having been taken, the onus shifted back to the plaintiff/respondent to have proved such entries by getting the alleged thumb impressions of the appellant upon such entries examined by adducing expert evidence in the shape of a document or finger expert opinion. Admittedly, the plaintiff/respondent has failed to discharge such onus. The Courts below have erred in taking a view that since the defendant, i.e. the present appellant, had denied his thumb impressions on the bahi entries as such, it was for him to prove such entries to be fabricated and forged."

22. In the present case, also, the original Books of Accounts were produced at the time of examination-in-chief. No objection was raised to the exhibition of the copies; therefore, the submission that entries in the Books of Account could not have been relied upon because these were not produced at the time of presentation of the plaint cannot be accepted.

23. The learned Appellate Court branded the plaintiff as a liar but ignored that the defendant was improving upon his defence from time to time. He had mentioned in the notice (Ex.DA) that an amount of ₹62,912/- was due to him and he was willing to pay this amount. He mentioned in the final paragraph of the notice that the plaintiff was called upon to receive an amount of ₹62,912/- without interest against proper receipt. He changed this amount to ₹42,428.48 in para-4 of the proof affidavit. He had taken a plea before the Court that the accounts were settled and nothing was due, which was found to be false by the learned Appellate Court.

24. The defendant admitted that he had a running account with the plaintiff. He had taken some items from the plaintiff in the year 1996 from time to time. Learned Appellate Court held that the principal amount due was ₹87,995/- on 22.1.1999, and interest of ₹73,848/- was added, which would come to around 57% per month. The explanation furnished by the plaintiff that an amount of ₹73,848/- was paid in cash was brushed aside. Learned Appellate Court failed to notice that the word 'cash' was mentioned against an amount of ₹73,848/-, and an inference could not have been drawn that the amount

was due as interest. The defendant had put his signature acknowledging its correctness. He has nowhere stated that no cash was paid to him, and the learned Appellate Court had no material to reject the explanation appearing on record.

25. The plaintiff stated in his cross-examination that he had advanced ₹1,07,000/- to the defendant in 1997. Thus, the plaintiff had come with the specific case of advancing the loan of ₹1,07,000/- and the learned Appellate Court had no justification to reject the explanation furnished by the plaintiff.

26. Learned Appellate Court also highlighted the discrepancy in the dates in the statement on oath and on the ledger to hold that the entries in the ledger were not correct. A person on oath can make an incorrect statement regarding the date because of failure of memory, and such a statement could not have been ignored because of the entry in the record, which is put contemporaneously.

27. The judgment in ***Sudhir Kumar Pandey*** (supra) and ***Sulaiman*** (supra) deals with the limitation that does not arise in the present case, and no advantage can be gained from the cited judgment.

28. Thus, the learned Appellate Court erred in making out a case in favour of the defendant which was never made by him, in relying upon the evidence which was beyond pleadings and ignoring the acknowledgment made by the defendant by putting his signature on the ledger. Hence, the judgment passed by the learned Appellate Court cannot be sustained, and these substantial questions of law are answered accordingly.

Final Order:

29. In view of the above, the present appeal is allowed, and judgment and decree passed by the learned Appellate Court are ordered to be set aside, and those passed by the learned Trial Court are ordered to be restored.

30. Pending application(s), if any, also stand(s) disposed of.

31. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

19th June, 2026
(Chander)