



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 02.07.2026**

Judgment pronounced on: 24.08.2026

+ RFA 458/2009

NAND LAL & ANRAppellants

Through: Mr. S.S. Tomar, Advocate.

versus

RAM CHANDRespondent

Through: Mr. J.K. Chawla, Advocate.

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present **Regular First Appeal**¹, under Section 96 of the **Code of Civil Procedure, 1908**², has been preferred by the Appellants assailing the **Judgment and Decree dated 31.08.2009**³ passed by the learned **Additional District Judge, Delhi**⁴, in Suit No. 122/2008 titled *Ram Chand v. Nand Lal & Anr.*

2. Though the Appeal, as originally instituted, assailed the findings returned by the learned Trial Court on various issues, however, during the course of oral arguments, learned counsel appearing on behalf of the Appellants confined the challenge solely to the findings recorded on Issue No. 2.

¹ Appeal

² CPC

³ Impugned Judgment

⁴ Trial Court



3. Accordingly, the present Appeal is required to be examined only in respect of Issue No. 2, *namely*, whether the learned Trial Court was justified in holding that the **Promissory Notes dated 09.11.1994 and 05.01.1995**⁵ (Ex. PW-1/A and Ex. PW-1/B) were neither forged nor fabricated and constituted valid documents.

4. For the sake of convenience and to avoid any ambiguity, the parties shall hereinafter be referred to in accordance with their nomenclature in the present Appeal.

BRIEF FACTS:

5. The brief facts necessary for adjudication of the present Appeal are set out hereinbelow:

- a) The Respondent instituted a suit for recovery against the Appellants, *inter alia*, alleging that Appellant No. 1, being in need of financial assistance, had borrowed an amount of Rs. 50,000/- on two occasions, on 09.11.1994 and 05.01.1995, from the Respondent. It was averred that, in acknowledgement and security of the said loans, Appellant No. 1 executed two Promissory Notes, both of which were witnessed by Appellant No. 2.
- b) The Appellants contested the suit by disputing the execution and genuineness of the aforesaid Promissory Notes. It was their specific case that the Promissory Notes had not been executed in favour of the Respondent but had earlier been handed over, in blank, to one Shri Swaraj Kapoor in connection with a separate financial transaction, and that the Respondent, in collusion with the said person, subsequently filled up and misused the same.

⁵ Promissory Notes



- c) Upon completion of pleadings, the learned Trial Court framed the necessary issues and, after recording the evidence adduced by the parties, proceeded to decide the suit by the Impugned Judgment.
- d) While deciding Issue No. 2, the learned Trial Court rejected the Appellants' plea that the Promissory Notes were forged or fabricated and held the said documents to be genuine and valid. Consequently, the issue was decided in favour of the Respondent and against the Appellants.
- e) Aggrieved by the findings returned by the learned Trial Court, the Appellants preferred the present Appeal. As noticed hereinabove, the challenge has been confined to the findings recorded on Issue No. 2.

SUBMISSIONS ON BEHALF OF THE PARTIES:

6. Learned counsel appearing on behalf of the Appellants would submit that the learned Trial Court has gravely erred in deciding Issue No. 2 against the Appellants by failing to properly appreciate the material discrepancies apparent on the face of the two Promissory Notes. It would be contended that the contents of the Promissory Notes themselves disclose that the names of the parties, the amounts and other material particulars have been filled in different handwritings and with different inks.

7. He would further submit that while the Promissory Note dated 09.11.1994 was filled in Hindi, the subsequent Promissory Note was filled in English despite both being printed in Hindi, thereby giving rise to serious doubts regarding their genuineness, which the learned Trial Court failed to adequately consider.



8. Learned counsel would further contend that the Respondent failed to produce any contemporaneous documentary evidence to establish the alleged advancement of the two loans of Rs. 50,000/- each. It would be submitted that no books of account or ledger entries were produced to corroborate the alleged cash transactions and, in the absence of such evidence, the execution of the Promissory Notes by itself could not have been treated as sufficient proof of the alleged loans.

9. It would be contended that the findings returned by the learned Trial Court suffer from inherent inconsistency. Learned counsel would submit that while deciding Issue No. 3, the learned Trial Court disbelieved the genuineness of the cheque allegedly issued by the Appellants in favour of the Respondent, yet, while adjudicating Issue No. 2, it failed to examine the effect of such finding on the overall conduct and credibility of the Respondent. According to the Appellants, the learned Trial Court adopted contradictory standards in appreciating the evidence led by the parties.

10. Learned counsel would further submit that the Appellants had caused a **Legal Notice dated 16.09.1997**⁶ to be issued to the Respondent, wherein the very allegations and assertions now forming the subject matter of the present Appeal had been specifically set out. It would be contended that despite service of the said notice, the Respondent chose not to furnish any reply thereto and such silence constitutes a material circumstance warranting an adverse inference against the Respondent.

⁶ Legal Notice



11. Reliance in this regard is placed upon the decision of this Court in **Kalu Ram v. Sita Ram**⁷ to contend that failure to respond to material allegations contained in a legal notice may, in an appropriate case, justify drawing an adverse inference. It would be submitted that the learned Trial Court failed to accord due weight to the aforesaid circumstance.

12. In view of the aforesaid submissions, learned counsel for the Appellants would contend that the findings returned by the learned Trial Court on Issue No. 2 are contrary to the pleadings and evidence on record and suffer from material misappreciation of the evidence. It would, accordingly, be submitted that the Impugned Judgment and Decree, to the extent it decides Issue No. 2 against the Appellants, is liable to be set aside and the present Appeal deserves to be allowed.

13. **Per contra**, learned counsel appearing on behalf of the Respondent would support the findings returned by the learned Trial Court on Issue No. 2 and submit that the same are based upon a proper appreciation of the pleadings, oral evidence and documentary material available on record and, therefore, warrant no interference in the exercise of appellate jurisdiction.

14. Learned counsel would contend that the learned Trial Court has rightly rejected the Appellants' plea of forgery after noticing that the Appellants had admitted the signatures appearing on the Promissory Notes and had failed to substantiate their defence that the said documents had been handed over to one Shri Swaraj Kapoor in connection with an independent transaction. It would be submitted that the non-examination of the said Shri Swaraj Kapoor, coupled with the failure of Appellant No. 2, who was an attesting witness to the

⁷ 1980 RLR (Note 44)



Promissory Notes, to enter the witness box, rightly weighed with the learned Trial Court while disbelieving the defence.

15. Learned counsel would further submit that the discrepancies in handwriting, language or ink relied upon by the Appellants do not, by themselves, establish that the Promissory Notes were forged or fabricated, particularly when the execution thereof stood admitted. It would accordingly be submitted that the findings recorded by the learned Trial Court are based upon a proper appreciation of the evidence and do not call for interference in the present Appeal.

ANALYSIS:

16. This Court has heard the learned counsel appearing for the parties and carefully perused the pleadings, oral and documentary evidence, and the entire record.

17. As noticed hereinabove, the controversy involved in the present adjudication lies within a narrow compass. The Appellants have confined their challenge exclusively to the findings returned by the learned Trial Court on Issue No. 2, whereby their plea that the Promissory Notes dated 09.11.1994 and 05.01.1995 (Ex. PW-1/A and Ex. PW-1/B) were forged and fabricated came to be rejected. Consequently, the principal question which falls for consideration before this Court is whether the finding so recorded suffers from any perversity, illegality, or material misappreciation of the oral and documentary evidence on record so as to warrant interference in the exercise of appellate jurisdiction under Section 96 of the CPC.

18. Before advertng to the rival submissions and examining the evidence on record, it would be apposite to briefly recapitulate the



nature and scope of the jurisdiction exercised by a First Appellate Court under Section 96 of the CPC.

19. It is well settled that a first appeal is a valuable statutory right. Unless expressly curtailed by statute, the entire case, both on facts and law, is open for reconsideration before the First Appellate Court. The appellate court is not confined to examining errors of law alone but is under a duty to independently assess the pleadings, appreciate the oral and documentary evidence, consider the submissions advanced by the parties, and arrive at its own findings supported by cogent reasons.

20. At the same time, it is equally well settled that where the findings recorded by the learned Trial Court are based upon a proper appreciation of oral and documentary evidence, particularly after evaluating the credibility and demeanour of witnesses who have deposed before it, such findings ordinarily deserve due weight and deference. Interference with such findings is justified only where they are shown to be perverse, contrary to the evidence on record, based on an erroneous application of law, or are such that no reasonable judicial mind could have arrived at the conclusions reached by the Trial Court.

21. The aforesaid principles have been consistently reiterated by the Hon'ble Supreme Court in *Santosh Hazari v. Purushottam Tiwari*⁸, *Madhukar v. Sangram*⁹, *H.K.N. Swami v. Irshad Basith*¹⁰; and several other decisions. These principles were comprehensively restated by the Hon'ble Supreme Court in *Malluru Mallappa v. Kuruvathappa*¹¹, wherein the Court succinctly explained the scope and ambit of a first appeal under Section 96 of the CPC, the obligation

⁸ (2001) 3 SCC 179

⁹ (2001) 4 SCC 756

¹⁰ (2005) 10 SCC 243

¹¹ (2020) 4 SCC 313



of the appellate court to independently evaluate the evidence and record reasons in compliance with Order XLI Rule 31 of the CPC, while simultaneously recognizing that where the appellate court concurs with the appreciation of evidence by the Trial Court, it need not unnecessarily restate the entire evidence or reiterate every reason recorded by the Trial Court. The relevant observations as made in the said Judgement read as under:

“10. Section 96 CPC provides for filing of an appeal from the decree passed by any court exercising original jurisdiction to the court authorised to hear the appeals from the decisions of such courts. In the instant case, the appeal from the decree passed by the trial court lies to the High Court. The expression “appeal” has not been defined in CPC. *Black's Law Dictionary* (7th Edn.) defines an appeal as “a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority”. It is a judicial examination of the decision by a higher court of the decision of a subordinate court to rectify any possible error in the order under appeal. The law provides the remedy of an appeal because of the recognition that those manning the judicial tiers too commit errors.

11. In *Hari Shankar v. Rao Girdhari Lal Chowdhury*, AIR 1963 SC 698 it was held that a right of appeal carries with it a right of rehearing on law as well as on fact, unless the statute conferring a right of appeal limits the rehearing in some way as has been done in second appeal arising under CPC.

12. In *Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat*, (1969) 2 SCC 74 it was held thus: (SCC pp. 77-78, para 5)

“5. ... In the well-known work of *Story on Constitution* (of United States), Vol. 2, Article 1761, it is stated that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. The appellate jurisdiction may be exercised in a variety of forms and, indeed, in any form in which the legislature may choose to prescribe. According to Article 1762, the most usual modes of exercising appellate jurisdiction, at least those which are most known in the United States, are by a writ of error, or by an appeal, or by some process of removal of a suit from an inferior tribunal. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law, to a review and a retrial.”

13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate



jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for reconsideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions [see: **Santosh Hazari v. Purushottam Tiwari**, (2001) 3 SCC 179, **Madhukar v. Sangram**, (2001) 4 SCC 756, **B.M. Narayana Gowda v. Shanthamma**, (2011) 15 SCC 476, **H.K.N. Swami v. Irshad Basith**, (2005) 10 SCC 243 and **Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar**, (1980) 4 SCC 259.

14. A first appeal under Section 96CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is involved in a case and the question of law so involved is substantial in nature.

15. Order 41 Rule 31CPC provides the guidelines for the appellate court to decide the matter. For ready reference Order 41 Rule 31CPC is as under:

“31. Contents, date and signature of judgment. - The judgment of the appellate court shall be in writing and shall state-

- (a) the points for determination;
 - (b) the decision thereon;
 - (c) the reasons for the decision; and
 - (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;
- and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

16. In **Vinod Kumar v. Gangadhar**, (2015) 1 SCC 391 this Court has reiterated the principles to be borne in mind while disposing of a first appeal, as under: (SCC p. 395, para 15)

“15. Again in **B.V. Nagesh v. H.V. Sreenivasa Murthy**, (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp. 530-31, paras 3-4)

‘3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41CPC deals with appeals from original decrees. Among the various rules, Rule 31



mandates that the judgment of the appellate court shall state:

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court [*H.V. Sreenivasa Murthy v. B.V. Nagesha*, 2008 SCC OnLine Kar 837] to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide *Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179, SCC p. 188, para 15 and *Madhukar v. Sangram*, (2001) 4 SCC 756, SCC p. 758, para 5.)”

17. In *Shasidhar v. Ashwini Uma Mathad*, (2015) 11 SCC 269, it was held as under: (SCC p. 277, para 21)

“21. Being the first appellate court, it was, therefore, the duty of the High Court [*Shasidhar v. Ashwini Uma Mathad*, 2012 SCC OnLine Kar 8774] to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law.”

18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its



own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.”

22. Having noticed the scope of the present Appeal and the principles governing the exercise of appellate jurisdiction, this Court now proceeds to examine the challenge laid by the Appellants to the findings recorded on Issue No. 2. Before undertaking such an examination, it would be appropriate to first advert to the reasoning which persuaded the learned Trial Court on the said issue. The relevant findings recorded by the learned Trial Court on Issue No. 2 are reproduced hereunder:

“23.ISSUE NO. 2: Whether the alleged pronotes against which the first loan dated 9* November, 1994 and the second loan dated 5" January, 1995 each of worth Rs. 50,000/- were secured or forged and fabricated as stated by the defendants in preliminary objection no. 3 of the Written Statement? OPD

The plaintiff (PW-1) has testified in his examination-in-chief that since the defendant no. 1 was in need of money he gave him the first loan on 09.11.1994 and the second loan on 05.01.1995 each for Rs. 50,000/- and to secure the same the defendant no. 1 executed two promissory notes on the said dates. These promissory notes have been proved as Ex. PW1/A and Ex. PW1/B. He has further testified that both Ex. PW1/A and Ex. PW1/B were witnessed by defendant no. 2. He has identified the signatures of defendant no. 1 and defendant no. 2.

24. The defendants in their written statement have alleged by way of preliminary objections that the two promissory notes Ex. PW1/A and Ex. PW1/B were forged. DW-1 has claimed in his examination-in-chief that Ex. PW1/A and Ex. PW1/B were given by him to one Sh. Swaraj Kapoor, a resident of Jungpura Extension, New Delhi for liquidating his liability that and Sh. Swaraj Kapoor had been collecting a sum of Rs. 250/- per month from the plaintiff as per the instructions of defendant no.1 from the license fees of Rs. 1000/- per day and Sh. Swaraj Kapoor had been repaid the loan long back. DW-1 has further claimed that since Sh.



Swaraj Kapoor was a friend of the plaintiff the latter has been able to procure both the pronotes and had filled up the same in his favour. It is further claimed that the forgery was evident from the fact that in Ex. PW1/A the names of the plaintiff and defendant no. 1 are in different handwritings in Hindi. Also only the defendant no. 2 is shown as a witness and no one else and the ink used is different at different places. It is further claimed that forgery in the case of Ex. PW1/B was evident from the fact that although the pronote was printed in Hindi the language used to fill in the details of the loan were in English unlike in Ex. PW1/A. Also the same was filled in different inks by different persons.

25. The two pronotes (Ex. PW1/A and Ex. PW1/B) have been scrutinized by me. In Ex. PW1/A the names of the plaintiff and defendant no. 1 are written in different handwritings in Hindi however this alone would not go to prove that the same is forged. Also just because in Ex. PW1/B the printed material is in Hindi and the blanks regarding the details of the loan taken are in English unlike in Ex. PW1/A does not make the former appear to be a forged document.

26. DWI claims to have given Ex. PW1/A and Ex. PW1/B to Sh. Swaraj Kapoor allegedly for a loan taken from him. It is also claimed by him that the alleged loan was repaid long back. Admittedly the signatures on the said pronotes are those of defendant nos. 1 and 2. The best person to prove this claim of the defendants would have been Sh. Swaraj Kapoor himself. The defendants not having produced him as a witness makes their version unworthy of credit. Admittedly the said pronotes have been witnessed by the defendant no. 2, the wife of defendant no. 1 however she did not appear as a witness to support the claim of DW-1 that the pronotes are forged. Also going by the claim of the defendants themselves if the loan to Sh. Swaraj Kapoor stood satisfied there was no reason for these two pronotes to be in his possession. As a matter of normal practice if the loan had been repaid as alleged the same would have been returned to the defendant no. 1. The fact that the pronotes were in the possession of the plaintiff and Sh. Swaraj Kapoor was never produced as a witness makes the version of the defendants difficult to believe.

27. The attempt on the part of DW-1 to shield the truth from the Court is evident from the manner in which in his cross examination he has contradicted himself by, at the first instance denying that his wife signed the pronotes as a witness and then subsequently admitting that his wife had signed as a witness. It cannot be lost sight of that in their written statement the defendants have admitted being under a financial crises.

28. In view of the above observations it is held that the alleged pronotes against which the first loan dated 9th November, 1994 and the second loan dated 5th January, 1995 each of Rs. 50,000/- were



secured were not forged and fabricated and were valid. This issue is decided in favour of the plaintiff and against the defendant.”

23. From the perusal of the aforesaid finding, it is observed that the learned Trial Court had discerned that although the Appellants sought to rely upon the fact that different handwritings and different inks appeared on the Promissory Notes, such circumstances, by themselves, did not establish that the documents were forged or fabricated. The learned Trial Court further noticed that while the defence projected by Appellant No. 1 was that the signed blank Promissory Notes had been handed over to one Shri Swaraj Kapoor, the said person was never examined. Equally, Appellant No. 1, who admittedly figured as an attesting witness on the Promissory Notes, also did not step into the witness box.

24. The learned Trial Court further found the defence to be inherently improbable since, had the alleged loan from Shri Swaraj Kapoor already been discharged, there existed no plausible explanation as to how the signed Promissory Notes continued to remain in circulation and ultimately came into the possession of the Respondent.

25. It was upon the cumulative appreciation of these circumstances that the learned Trial Court concluded that the Promissory Notes could not be characterized as forged or fabricated and consequently decided Issue No. 2 in favour of the Respondent.

26. Upon examining the rival submissions, the evidence on record, and the other material placed before this Court, certain significant aspects emerge which cast serious doubt on the challenge raised by the Appellants.



27. The foremost and most material circumstance is that the defence set up by the Appellants has never been one of a complete denial of the execution of the impugned Promissory Notes. On the contrary, the consistent stand of Appellant No. 1 has been that the signatures appearing on the Promissory Notes (Ex. PW-1/A and Ex. PW-1/B) are admittedly his own, as well as those of Appellant No. 2.

28. According to the Appellants, however, the said promissory notes had been signed and handed over in blank to one Shri Swaraj Kapoor in connection with an independent financial transaction, and were subsequently procured and misused by the Respondent. Thus, the dispute is not with respect to the authenticity of the signatures on the promissory notes, but with regard to the manner in which the signed documents allegedly came to be filled up and relied upon by the Respondent.

29. This Court takes note of the fact that the Respondent entered the witness box as PW-1 and in his examination-in-chief, deposed that Appellant No.1 had approached him seeking financial assistance and that he had advanced two separate loans of Rs. 50,000/- each on 09.11.1994 and 05.01.1995, respectively. According to him, contemporaneously with the advancement of the aforesaid loans, Appellant No.1 executed the Promissory Notes (Ex. PW-1/A and Ex. PW-1/B), which were witnessed by Appellant No.2. Respondent identified the signatures appearing on both the Promissory Notes and asserted that they represented genuine transactions.

30. During his cross-examination, the Respondent admitted that he had neither maintained nor produced any books of account or receipts evidencing the payment of interest or reflecting the advancement of the loans to the Appellants. He, however, consistently maintained that



the loans had in fact been advanced to Appellant No. 1 and also denied the suggestion that the Promissory Notes had been fabricated or that no such loan transactions had ever taken place. The relevant portion of the Respondent's testimony reads as under:

“.....However, it is correct that my averments in the affidavit regarding interest payment was not based on any books of accounts/diary. It is wrong to sug. that the Nand lal/deft, neither took any loan from me not he ever gave me any interest, for the alleged loan....”

31. In response thereto, Appellant No. 1 has consistently asserted that the Promissory Notes were never executed in favour of the Respondent. According to him, the signed blank Promissory Notes had been handed over to one Shri Swaraj Kapoor in connection with an independent loan transaction and, upon repayment of the said loan, the Respondent, acting in collusion with the said Shri Swaraj Kapoor, wrongfully procured the said signed instruments, filled in the particulars therein and sought to misuse the same by projecting them as evidencing the loan transactions in question. The relevant portion of the Appellant No. 1 testimony is reproduced herein:

“.....It is wrong to suggest that in the year 1994 I approached the plaintiff for financial help and requested a loan of Rs.1 lac (Rs.one lac) from him. It is wrong to suggest that in November 1994 plaintiff had given a loan of Rs.50,000/- to me. It is wrong to suggest that I executed any Promissory Note in favour of the plaintiff. It is further wrong to suggest that my wife signed on the alleged Promissory Note as a witness. **It is correct that Ex.PW1/A & PW1/B bears my signature at point X and signature of my wife at point Y.** Voltd. Ex.PW1/A & PW1/B were given to Mr. Swaraj Kapoor blank as had taken a loan of Rs.1 lac from him. But plaintiff had procured the blank pronote, which bears the signature of mine and my wife fraudulently with the connivance of Mr. Swaraj Kapoor and thereafter plaintiff filled up the same to create a false evidence against me.”

32. A careful reading of the testimony of both witnesses reveals that the foundational facts are substantially undisputed. The Respondent



has consistently maintained that the Promissory Notes were executed contemporaneously with the advancement of the loans, whereas the Appellant No.1 does not dispute the signatures appearing thereon. The controversy, therefore, is not one relating to the execution of the signatures but to the explanation subsequently furnished by the Appellants to avoid the legal consequences flowing therefrom.

33. Thus, upon an independent appreciation of the evidence, this Court finds that the defence projected by the Appellants proceeds on an admission of execution coupled with an explanation of subsequent misuse. The evidentiary enquiry, therefore, necessarily shifts from proving the signatures to testing the credibility and probability of the explanation offered.

34. It is in the aforesaid factual backdrop that the defence projected by the Appellants falls for consideration. The burden of proving such defence squarely rested upon the Appellants. The entire edifice of the defence rests upon the assertion that the signed blank Promissory Notes had been handed over to one Shri Swaraj Kapoor in connection with an independent loan transaction and that, despite repayment thereof, the said documents came to be misused by the Respondent in collusion with him. Significantly, Shri Swaraj Kapoor, who alone could have explained the circumstances in which the documents were allegedly executed, retained and thereafter came into the possession of the Respondent, was never examined.

35. Another circumstance which assumes considerable significance is that Appellant No. 2, who admittedly signed the Promissory Notes as an attesting witness, chose not to enter the witness box. Once the Appellants pleaded that the documents had been signed in blank and subsequently misused, the burden lay upon them to substantiate the



said plea by cogent evidence. Appellant No. 2, being an attesting witness to the execution of the Promissory Notes, was a material witness whose testimony could have directly corroborated the defence. Her non-examination, therefore, cannot be treated as a mere omission. Being an attesting witness to the execution of the promissory notes, she was one of the best available witnesses to substantiate the defence pleaded by the Appellants. The failure to examine her, therefore, assumes considerable significance and warrants the drawing of an appropriate adverse inference.

36. The legal position regarding the withholding of the best available evidence is well settled. Section 114 of the **Indian Evidence Act, 1872**¹², particularly Illustration (g) appended thereto, empowers the Court to draw an adverse inference against a party who fails to produce evidence which could reasonably be expected to be within its power and which would have thrown light on the controversy.

37. The underlying principle is that where the best evidence is withheld without any plausible explanation, the Court may legitimately presume that, if produced, such evidence would have been unfavourable to the party withholding it. In **Gopal Krishnaji Ketkar v. Mohamed Haji Latif**¹³, the Hon'ble Supreme Court authoritatively held that where a party withholds the best evidence in its possession without sufficient cause, the Court is entitled to draw an appropriate adverse inference against such party.

38. The aforesaid principle squarely applies to the facts of the present case. The Appellants failed to examine the most material witness, i.e., Appellant No. 2, whose testimony was crucial to

¹² IEA, 1872

¹³ AIR 1968 SC 1413



substantiate their specific defence that the Promissory Notes had been signed in blank and were subsequently misused.

39. At this stage it is also relevant to note that the Appellants also chosenot to examine Shri Swaraj Kapoor, who was the central figure in their defence. According to the Appellants themselves, the impugned Promissory Notes had been handed over to him in connection with an independent financial transaction and were thereafter allegedly misused by the Respondent.

40. In the considered opinion of this Court, Shri Swaraj Kapoor was the material witness in support of the defence set up by the Appellants. He could have deposed regarding the circumstances under which the Promissory Notes were allegedly signed and handed over, the purpose for which they were retained, and the manner in which they ultimately came into the possession of the Respondent. His examination was, therefore, indispensable to substantiate the defence that the Promissory Notes had been signed in blank and were subsequently misused. The Appellants' failure to examine him thus assumes significance and substantially undermines the credibility of their defence.

41. Learned counsel for the Appellants has laid considerable emphasis on the circumstance that the names of the parties, the amounts, and certain other particulars contained in the impugned Promissory Notes appear to have been filled in different handwritings and with different inks. It has also been contended that while one of the Promissory Notes contains entries in Hindi, the other has been filled in English. According to the Appellants, these features are indicative of interpolation and lend support to their plea that the documents were subsequently fabricated.



42. This Court is, however, unable to accept the aforesaid submission as determinative of the controversy for more than one reason. In the first place, the two Promissory Notes were admittedly executed on different dates, *namely*, 09.11.1994 and 05.01.1995. In such circumstances, no inference adverse to the Respondent can be drawn merely because the particulars on the two documents were filled in different handwritings, with different inks, or in different languages. To expect complete uniformity in the handwriting, ink, or language employed in documents executed nearly two months apart would be wholly unrealistic and unsupported by any settled principle of law.

43. More importantly, it is now well settled that the mere fact that a negotiable instrument or any written document contains entries in different handwritings or inks does not, by itself, render the document forged, fabricated, or otherwise invalid. What is of significance is whether the execution of the document is admitted and whether there is any cogent evidence establishing that the document was subsequently altered or materially interpolated without the consent or authority of the executant. The existence of different handwritings or inks, in the absence of such evidence, is by itself insufficient to invalidate the document.

44. In ***Bir Singh v. Mukesh Kumar***¹⁴, while dealing with a similar contention, the Hon'ble Supreme Court held that the mere filling in of particulars by a person other than the executant does not invalidate a negotiable instrument, provided its execution is admitted. Although the said decision arose in proceedings under the **Negotiable**

¹⁴ (2019) 4 SCC 197



Instruments Act, 1881¹⁵, the principle enunciated therein is of general application and is equally relevant while appreciating the evidentiary value of a promissory note whose execution is not in dispute.

45. This Court also cannot lose sight of the statutory presumption embodied in Section 118 of the NI Act, which raises, *inter alia*, a presumption that every negotiable instrument was made or drawn for consideration and was duly executed, unless the contrary is proved. Once the execution of the Promissory Notes stands admitted, the burden shifts upon the Appellants to rebut the statutory presumption by leading cogent, credible, and legally admissible evidence. In the present case, apart from making a bald assertion that the documents were signed in blank and were subsequently misused, the Appellants have failed to produce any convincing evidence to establish forgery, fabrication, or unauthorised interpolation. The defence set up by them, therefore, falls far short of the standard required to rebut the statutory presumption operating in favour of the Respondent.

46. Consequently, the mere existence of different handwritings, different inks, or the use of different languages in the impugned Promissory Notes, in the absence of any cogent evidence establishing fabrication, interpolation, or misuse, cannot by itself discredit the genuineness or evidentiary value of the Promissory Notes (Ex. PW-1/A and Ex. PW-1/B). Rather, when viewed in conjunction with the admitted execution of the documents and the un rebutted statutory presumption under Section 118 of the NI Act, such circumstances are wholly insufficient to invalidate the Promissory Notes or to warrant interference with the findings recorded by the learned Trial Court.

¹⁵ NI Act



47. Turning to the submission regarding absence of books of account, this Court notes that during the course of cross-examination, the Respondent did admit that he had not produced any books of account or diary entries reflecting the alleged loans or the receipt of interest thereon. However, the said omission cannot be viewed in isolation or divorced from the entirety of the evidence brought on record.

48. It is also noted that Section 34 of the IEA, 1872 itself recognizes that entries in books of account, though relevant, are not by themselves sufficient to fasten liability upon a person. The converse equally holds true, *namely*, that the absence of such entries cannot invariably defeat a claim otherwise supported by reliable oral and documentary evidence.

49. In the present case, the Respondent entered the witness box, proved the execution of the Promissory Notes and identified the signatures appearing thereon, which signatures were themselves admitted by Appellant No. 1.

50. Learned counsel for the Appellants also sought to contend that the learned Trial Court ignored the effect of the legal notice issued by the Appellants wherein allegations substantially similar to those urged in the present proceedings had been levelled against the Respondent, and that the Respondent's failure to reply thereto warranted an adverse inference in terms of the decision of this Court in ***Kalu Ram*** (*supra*).

51. There can be no cavil with the proposition that, in an appropriate case, failure to respond to a legal notice may constitute a relevant circumstance while appreciating the evidence. However, such omission is neither conclusive nor does it dispense with the obligation of the Court to independently examine the evidence led by the parties.



The evidentiary burden resting upon the Appellants could not stand discharged merely because the Respondent did not choose to respond to the notice. At the highest, it constituted one circumstance requiring consideration along with the entirety of the material available on record.

52. Viewed thus, this Court is of the considered opinion that the non-reply to the aforesaid legal notice does not materially affect the credibility of the Respondent's case, particularly when the execution of the signatures on the Promissory Notes stands admitted, and the defence projected by the Appellants has remained unsubstantiated.

53. Equally untenable is the submission founded upon the findings returned by the learned Trial Court while deciding Issue No. 3. As civil proceedings are decided issue-wise upon the evidence relevant to each issue framed. The failure of a party to establish one transaction or one document does not inexorably result in the failure of every other claim advanced by that party. The evidentiary foundation of the Cheque (Ex. PW-1/C), which formed the subject matter of Issue No. 3, was entirely distinct from that pertaining to the Promissory Notes (Ex. PW-1/A and Ex. PW-1/B).

54. Therefore, the evidence led in relation to the Promissory Notes (Ex. PW-1/A and Ex. PW-1/B) is sufficient to establish the execution and the underlying transactions, notwithstanding the failure of the Respondent to prove the transaction relating to the cheque (Ex. PW-1/C), as decided in Issue No. 3.

55. At this juncture, this Court also finds considerable force in the reasoning of the learned Trial Court that the defence projected by the Appellants does not inspire confidence when tested on the anvil of probabilities. The Appellants' own case is that the impugned



Promissory Notes were handed over in blank to Shri Swaraj Kapoor in connection with an independent loan transaction, which transaction admittedly stood concluded. If that were indeed the position, no satisfactory explanation has been offered as to how the said signed instruments continued to remain in circulation or eventually found their way into the possession of the Respondent. The absence of any cogent evidence in this regard also assumes significance, particularly when viewed alongside the admitted non-examination of Shri Swaraj Kapoor. The learned Trial Court rightly regarded this as a circumstance rendering the defence inherently improbable.

56. The appreciation of evidence undertaken by the learned Trial Court is also fortified by the admissions elicited during the cross-examination of Appellant No. 1. While denying that he had executed any Promissory Notes in favour of the Respondent, Appellant No. 1 unequivocally admitted that the Promissory Notes (Ex. PW-1/A and Ex. PW-1/B) bore his signatures as well as those of Appellant No. 2. The explanation furnished thereafter, *namely*, that the documents had been signed blank and subsequently misused, remained wholly unsupported by independent evidence. The learned Trial Court, which had the distinct advantage of recording the testimony of the witnesses and observing their demeanour during examination, found the said explanation to be unworthy of acceptance. This Court, upon an independent re-appreciation of the evidence, finds no reason to take a different view.

CONCLUSION:

57. Upon an independent re-appreciation of the entire material on record, including the Promissory Notes (Ex. PW-1/A and Ex. PW-



1/B), the oral and documentary evidence, the admissions elicited during the cross-examination of the witnesses, and the attendant circumstances emerging from the record, this Court is satisfied that the Appellants have failed to discharge the burden of establishing their plea that the Promissory Notes were forged or fabricated.

58. The defence advanced by the Appellants that the Promissory Notes had been signed in blank and were subsequently misused has remained wholly unsubstantiated. The same is unsupported by any cogent or reliable evidence and does not inspire confidence when tested on the touchstone of preponderance of probabilities and the overall evidence on record.

59. Consequently, this Court finds no infirmity in the findings recorded by the learned Trial Court on Issue No. 2. The impugned findings neither suffer from perversity, illegality, nor any material misappreciation or misreading of the evidence so as to warrant interference in the exercise of appellate jurisdiction under Section 96 of the CPC. The Appellants have failed to make out any ground justifying reversal of the findings returned by the learned Trial Court. Accordingly, the present appeal is dismissed, and the judgment and decree passed by the learned Trial Court, insofar as they are the subject matter of challenge in the present appeal, are affirmed.

60. Pending application(s), if any, shall also stand disposed of accordingly.

61. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 24, 2026/jk