

COURT NOTICE
(U/o 5 Rule 20 CPC)
IN THE COURT OF Dr. Ram Niwas Bharati
District and Sessions Judge ,Sirsa

SARV HARYANA GRAMIN BANK

Vs.

CHANDAN SINGH

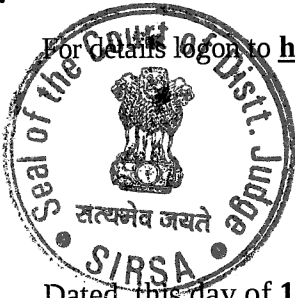
CNR No. HRSI01-006816-2015

Next Date:- 15-12-2018

PUBLICATION ISSUED TO:

- 1 (a) Prem Widow Of Sh Chandan Singh Ahlwat Son Of Sh Radha Ram
(c) Anil Son Of Sh Chandan Singh Ahlwat Son Of Sh Radha Ram
(d) Narender Son Of Sh Chandan Singh Ahlwat Son Of Sh Radha Ram
All Are Resident Of Village Gorchi, Tehsil Beri, District Jhajjar, Haryana.

In above titled case, the defendant(s)/respondent(s) could not be served. It is ordered that defendant(s)/respondent(s) should appear in person or through counsel on **15-12-2018** at **10:00 a.m.**



For details log on to https://highcourthd.gov.in/?trs=district_notice&district=Sirsa

District and Sessions Judge
Sirsa 15-11-18

Dated, this day of 15-11-2018

(Not to be published in newspaper)

Forwarded to the Manager, Dainik Chetna Newspaper, Bhiwani, for publication and necessary compliance. Copy of Publication be sent to the Court of undersigned before the next date of hearing.

District and Sessions Judge
Sirsa 15-11-18

6/8/18 1/11/18

S/C

AMENDED TITLE

IN THE COURT OF SMT. BIMLESH TANWAR, DISTRICT JUDGE,
SIRSA.

CIVIL APPEAL NO. _____/2015

Civil Suit no.	Date of Instt. in first Court.	Date of decision in first court.	Date of filing of appeal.
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376-C of 2012	24.1.2012/ 08.08.2012	21.10.2015	12.12.2015
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Value of suit for purposes of court-fee & jurisdiction.	Value of the appeal for purposes of court fee and jurisdiction	Court-fee paid on the appeal.
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Rs.81,400/-	Rs.81,400/-	Rs.4100/-
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Haryana Gramin Bank, now renamed as "Sarva Haryana Gramin Bank" (sponsored by Punjab National Bank) a body corporate, constituted under R.R.B. Act, 1986 carrying on banking business and having its Head Office at Rohtak and one of its Branch Office at Village Kuttabadh, Tehsil Ellenabad, District Sirsa, known as Haryana Gramin Bank, Kuttabadh (now renamed 'Sarv Haryana Gramin Bank'), Kuttabadh Branch, District Sirsa, through its Branch Manager/Principal Officer and Attorney of the Bank, at its Branch Office at village Kuttabadh, Tehsil Ellenabad, District Sirsa.

...Appellant-Plaintiff.

Versus

1.Chandan Singh Ahlawat (since deceased) son of Shri Radha Ram, resident of village Gorchi, Tehsil Beri, District Jhajjar (Haryana), now represented by his legal heirs:-

← (i) Prem-widow, (ii) Naresh-son, (iii) Anil-son,
(iv) Narender-son of Chandan Singh Ahlawat son of Shri
Radha Ram, resident of village Gorchi, Tehsil Beri,
District Jhajjar.

2. Suresh son of Shri Rawta Ram Sharma, Chowkidar,
Public Health, Kuttabadh, District Sirsa.

3. Amar Singh son of Shri Punnu Ram, resident of village
Chauburja, Tehsil and District Sirsa. (Guarantors)

4. Dakshini Haryana Bijli Vitran Nigam Ltd. through its
Managing Director at Vidyut Nagar, Hisar.

5. Sub Divisional Officer, Dakshini Haryana Bijli Vitran
Nigam, Sub Urban Division, Bhiwani, District Bhiwani.

6. Deputy General Manager, Dakshini Haryana Bijli Vitran
Nigam, Sub Urban Division, Bhiwani, District Bhiwani.

(Employers)

... Respondents-Defendants.

Appeal against the judgment and
decree dated 21.10.2015.

Sirsa/dt.

... Submitted by:

Sarva Haryana Gramin Bank, Village
Kuttabadh Branch, Tehsil Ellenabad,
District Sirsa, through its Branch
Manager.

... Decree-holder/Applicant.

Through:
M.S. Sethi, Advocate,
Sirsa.

g/c

IN THE COURT OF HON'BLE DISTRICT JUDGE, SIRSA.

CIVIL APPEAL NO. _____/2015

Civil suit No.	Date of instt. in first Court.	Date of decision in first court	Date of filing of appeal.
376-C OF 2012	24.1.2012/ 08.08.2012	21.10/2015	12-12-2015

Value of suit for purposes of court -fee & jurisdiction	Value of the appeal for purposes of court fee and jurisdiction	Court fee paid on the appeal.
Rs.81,400/-	Rs.81,400/-	Rs. 4100/

Haryana Gramin Bank, now renamed as "Sarv Haryana Gramin Bank" (sponsored by Punjab National Bank), a body corporate, constituted under R.R.B.Act, 1986, carrying on banking business and having its Head office at Rohtak and one of its Branch office at village Kuttabadh, Tehsil Ellenabad, District Sirsa, known as Haryana Gramin Bank, Kuttabadh (now renamed 'Sarv Haryana Gramin Bank'), Kuttabadh Branch, District Sirsa, through itsw Branch Manager/Principal Officer and Attorney of the Bank, at its branch office at village Kuttabadh, Tehsil Ellenabad, District Sirsa.

----Appellant-Plaintiff

Versus

1. Chandan Singh Ahlawat son of Shri Radha Ram, resident of Village Gorchi, Tehsil Beri, District Jhajjar (Haryana).

II Address.

C/o Chandan Singh, AFM, office of Sub Divisional Officer, operation Sub Division, Dakshini Haryana Bijli Vitran Nigam Limited Loharu, District Bhiwani...(Borrower).

2. Suresh son of Shri Rawta Ram Sharma, Chowkidar, Public Health, Kuttabadh, District Sirsa.

3. Amar Singh son of Shri Punnu Ram, resident of village Chauburja, Tehsil and District Sirsa. ----(Guarantors).

4. Dakshin Haryana Bijli Vitran Nigam Ltd. through its Managing Director at Vidyut Nagar, Hisar.

5. Sub Divisional Officer, Dakshini Haryana Bijli Vitran Nigam, Sub Urban Division, Bhiwani, District Bhiwani.

6. Deputy General Manager Dakshini Haryana Bijli Vitran Nigam Ltd., Sub Urban Division Bhiwani, District Bhiwani.

(Employers).

---Respondents-defendants

Appeal against the judgment and the decree dated 21.10.2015 in civil suit No. 376-C of 2012 passed by MS. Santosh Bagotia, Civil Judge(Junior Division), Ellenabad, District Sirsa, vide which the learned lower court has rightly decreed the suit of the plaintiff bank with costs but has wrongly held that the plaintiff bank is entitled to recover the amount of Rs. 81,400/- from defendant no.1 alongwith interest @ 2% per annum, from the date of institution of the suit till its realization, instead of decreeing the suit for the recovery of the said amount of Rs.81,400/- alongwith pendent lite and future interest at the rate of 16% per annum with monthly rests and also other incidental charges, against all the defendants, as prayed for in the plaint, by ignoring the legal and factual position of the case in hand and the evidence on record produced by the appellant-plaintiff bank.

CLAIM IN APPEAL.

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For acceptance of the appeal with costs; and for decreeing the suit of the plaintiff bank for the recovery of Rs.81,400/- with pre-judgment and future interest on this amount, at the rate of 16% per annum with monthly rests and other incidental charges, against all the defendants-respondents as prayed for in the plaint and thereby modifying judgment and the decree under appeal dated 21.10.2015 passed by the learned lower court, or for allowing any other relief to the plaintiff bank in view of the legal and factual position of the case in hand, in the interest of justice.

GROUNDS OF APPEAL.

Respected Sir,

The plaintiff/appellant respectfully submits as under:-

1. That the plaintiff bank filed the recovery suit against the defendants, for the recovery of the outstanding amount with interest thereon, at the agreed/contractual rate of interest and the learned lower court rightly and legally decreed the suit of the plaintiff bank, in view of the cogent, convincing, positive and definite evidence, oral and documentary, produced by the plaintiff bank vide judgment and the decree under appeal dated 21/10/2015. The learned lower court has categorically held that the suit of the plaintiff is decreed with costs but has wrongly

held that the plaintiff bank is entitled to recover this amount alongwith interest from defendant no.1.

2. That the suit was filed by the plaintiff bank against defendant no.1 as borrower, defendants no.2 and 3 as guarantors and defendants no.4 to 6 as undertakers being employers of the borrower-defendant. Therefore, all the defendants are jointly and severally liable to pay the outstanding amount with interest etc. to the plaintiff bank, as mentioned in the plaint itself.

3. That the learned lower court has not assigned any cogent reason as to why the plaintiff bank is entitled to recover the amount from all the defendants and is entitled to recover the same from defendant no.1. But the learned lower court in para No.19 of the judgment has categorically held that 'in the facts and circumstances of the case liability of a guarantor as defined under section 128 of the Contract Act, 1872 whadreby it is specifically mentioned that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.' It is further submitted that as per the loan documents (as mentioned in para no.16 of the judgment under appeal) executed by the defendants in favour of the plaintiff bank, all the defendants are jointly and severally liable and responsible for payment of the loan amount with interest and other bank charges and that the plaintiff bank is entitled to recover the outstanding amount legally from all the

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defendants. It is further submitted that in para no. 26 of the judgment the learned lower court has categorically held that It is true that the extent of liability of surety is ofcourse co-existent with the principal debtor and the liability of the surety is always to make good the loss that was caused as a result of default of principal debtor. The liability of the guarantor is continuing one legally. Therefore, the learned lower court ought to have held all the defendants liable and responsible for payment of the outstanding amount with interest and other charges.

4. That the learner lower court has wrongly treated the limitation of the suit upto 30/9/2008. In para no.16 of the judgment, it is categorically mentioned about the execution of Balance and Security confirmation letter (Ex.P7 and Ex.P8) dated 7/4/2009. The suit was filed by the plaintiff bank on 24/1/2012. In this way, the suit was filed within the period of limitation.

5. That as regards the liability regarding defendants no.4 to 6, it is submitted that defendant no.6 sent a letter dated 14/9/2009 to defendant no.1 which is on the file as Exhibit P-2. The said letter is with reference to letter No.10826 dated 20/8/2009 sent by Executive Engineer, operation Division, Sirsa to defendant no.6. As stated above, the suit was filed on 24/01/2012. Hence the suit is within the period of limitation against defendants Nos. 4 to 6. Moreover, defendant no.3-guarantor being employee of defendant

no.4. He has identified the signature of official of the defendant Nigam, on the documents issued by the defendant Nigam and its officials when he appeared as a witness in this suit.

6 That it is further submitted that in the loan document executed by the defendant-borrower as well as the guarantors-defendants, the agreed and contractual rate of interest is 13% per annum with monthly rests plus 2% penal interest which is revisable from time to time, as per the Instructions of the Reserve Bank of India and the same are binding on both the parties. In this way, in the present suit, the plaintiff bank has rightly and correctly claimed the rate of interest at the rate of 16% per annum, with monthly rests. But the learned lower court has wrongly and arbitrarily granted the rate of interest @ 2% per annum, from the date of institution of the suit till its realization.

The learned lower court has not assigned any cogent reason for the same and also there is no such specific mentioning in the judgment under appeal as to why the bank is not entitled to recover the agreed rate of interest and is entitled to the interest at the rate of 2% per annum. The learned lower court has not assigned any cogent reason for the same and has acted arbitrarily and in a dictatorial manner. The pleadings and the contentions of the plaintiff bank were totally ignored by the learned lower court. The

suit ought to have been decreed as prayed for in the
plaint.

7. That the plaintiff by producing the cogent and
convincing evidence, oral and documentary, proved its
case beyond the shadow of doubt and all the loaning
documents executed by the defendant-borrower and its
terms and conditions were fully proved. But the
learned lower court has ignored the same and has mis-
interpreted the legal position and mis-read the
documentary evidence relating to the rate of
interest, and the liability of the parties. There was
no reason or cause or any evidence of the defendants
for not allowing the rate of interest as claimed in
this suit and also there was no reason or evidence on
record for reducing the rate of interest and for not
allowing the compound interest. In the absence of any
such evidence on record against the claim of the
plaintiff bank, the learned lower court ought to have
allowed the agreed/contractual rate of interest as
prayed for. The learned lower court has also ignored
the fact that the bank money is a public money and
financial losses to the bank amount to public loss
and that the Hon'ble Court is the best guardian of the
public property/public money.

8. That when the learned lower court has admitted the
legality and validity of the loaning document and has
not asserted any legal defect in the execution of the

documents hence there was no reason or cause for not allowing the rate of interest as prayed for.

9. That the Law and the Authorities produced by the plaintiff bank while arguing the case have been ignored by the learned lower court. The findings of the learned lower court regarding the rate of interest against the claim of the plaintiff bank and regarding the fixation of liability of the defendants are merely based on conjectures and surmises unwarranted by law and the facts.

10. That appeal is being filed within the period of limitation after deducting the days spent in obtaining the certified copies of the judgment and the decree under appeal.

11. That the requisite court fee of Rs. 4100/- is paid on the Memorandum of appeal.

12. It is, therefore, prayed that the appeal may kindly be accepted with costs; the suit of the plaintiff bank for the recovery of Rs.81,400/- with pendente-lite and future interest on this amount, at the rate of 16% per annum with monthly rests and other incidental charges, may kindly be decreed with costs against the defendants-respondents, as prayed for in the plaint and thereby the judgment and the decree under appeal dated 21.10.2015 passed by the learned lower court, may kindly be modified accordingly. Any other relief which the Hon'ble Court deems just and proper,

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be also kindly granted to the plaintiff bank, in view of the legal and factual position of the case in hand, may also kindly granted to the plaintiff bank, in the interest of justice.

Place: Sirsa

Dt. _____

-----Submitted by...

Haryana Gramin Bank, now renamed as "Sarv Haryana Gramin Bank" (sponsored by Punjab National Bank), a body corporate, constituted under R.R.B. Act, 1986, carrying on banking business and having its Head office at Rohtak and one of its Branch office at village Kuttabadh, Tehsil Ellenabad, District Sirsa, known as Haryana Gramin Bank, Kuttabadh (now renamed 'Sarv Haryana Gramin Bank'), Kuttabadh Branch, District Sirsa, through itsw Branch Manager/Principal Officer and Attorney of the Bank, at its branch office at village Kuttabadh, Tehsil Ellenabad, District Sirsa.

-----Appellant-Plaintiff

Through: MANJIT SINGH SETHI ADVOCATE,
DISTRICT COURTS, SIRSA.