		BSA-1598/20						
<u> </u>	Online Mentioning Details: 89980 Cm - 4825-9							
Mentioning Type  MATTERS SB		Mentioning For: Fresh Filing: RSA						
Case litle: Lajp	at rai through hi	is legal heirs Vs The Jind adarsh co-operative house						
Mentioned Case	***************************************	Mentioned Case Next Date:						
		entioning Advocate Details						
Advocate Name: <b>bhargav</b>	Dharam bir	Advocate Code: <b>P/516/2018</b>						
Advocate Mobile	9780238502	Advocate E-mail ID: dharembirbhargav@yahoo.co.uk						
Advance copy of the petition/appeal/application has been served to the official respondents/opposite party through e-mail:		YES						
Acts/Statue:	Constitution of	India Cooperative Societies Act						
Copy of Caveat u/s 148 CPC Received or Not	NO							
Lower Court De	etails	The state of the s						
Case-ID No: Date of Decision:		District: JIND						
Details of Any Other Case :	No ·							
Details of any other request that has been filed:	No							
Reason for Urgency:	Stay of Recovery Notice dated 10.09.2020 issues by the bank to the petitioner who is a widow lady is prayed for. Earlier the RSA was filed on 13.08.2019 but the same was returned after raising some objections by the Registry. Now on 14.09.2020 recovery proceedings has been initiated by the Co-operative bank.							
Date of Cause of Action:	10-sep-2020							
Mentioning Request Date:	17-09-2020 09:11:16 AM							
Mentioning Status:	PENDING							
Case has already been filed at the Ordinary Filing	NO							

By order of HMJ Rakesh Kumar Jain accepted for listing.

1 m 17.09.20





## Paperbook - Lajpat Rai RSA



Me
To aghrycivilphhc@gmail.com
Today at 3:11 PM

Sir,
Pl find attached herewith paperbook of RSA titled
'Lajpat Rai through his Legal heirs and others
Versus The Jind Adarsh Co-operative House
Building Society Ltd.'

Regards Dharam Bir Bhargav Advocate Mobile- 9814538502, 9780238502

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Lajpat Rai RSA.docx









Reply

# IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

To,

The Addl. Registrar,
High Court,

Title of case

RSA No. 1548 of 2010

Lajpat Rai Through his Legal Heirs ( 'x ') 128

Versus

The Jind Adarsh Co-operative House Building Society Ltd. and other ... Respondents

Sir,

1. Will you kindly treat the accompanying petition as an urgent one in accordance with the provision of Rule 9, Chapter 3-A, Rules and Order High Court, Volume V.

2. The grounds of urgency are that

#### **STAY IS PRAYED FOR**

Yours faithfully,

CHANDIGARH (R.K. HANDA) (DHARAM BIR BHARGAV)
DATED: 21.09.2020 1:834 79 ADVOCATES P(:5/6/2018

COUNSEL FOR THE PETITIONER

5

## IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No. 154 8f 2010

Lajpat Rai through his legal heirs

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.....Appellants

Versus

The Jind Adarsh Cooperative House Building Society Ltd. and others

... Respondents

#### **INDEX**

Sr.	Particulars	Dates	Page No.	Court
No.				Fee
1.	Application for condonation of	21.09.2020	A-B	2.75
	delay in refiling			2.75
1-A	Affidavit	21.09.2020	С	
1-B	Application for Exemption	13.08.2019	1-2	2.75
2	Affidavit	13.08.2019	3-4	
3.	Application for stay	10.08.2019	5-6	2.75
4.	Affidavit	13.08.2019	7-8	
5.	Grounds of Appeal	10.08.2019	9-19	
6.	Affidavit	13.08.2019	20-21	
7.	Memo of Parties	10.08.2019	22-23	25.00
8.	Judgment and decree C.J.(SD)	05.11.2014	24-44	6.00
	Safidon			
9.	Grounds of Appeal ADJ Jind	04.12.2014	45-49	4.00
10.	Judgment and decree passed by	13.05.2019	50-6	6.00
:	ADJ Jind			
11.	Power of Attorney	10.08.2019	च0	2.75
		Total	•	Rs.5600

#### Note:

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No caveat has been received by the appellants.

ii) Appellants/plaintiffs have not filed any such or similar Regular Second Appeal before this Hon'ble Court of Hon'ble Supreme Court of India.

111) I.O. 89980,

**CHANDIGARH** 

(A)

(DHARAM BIR BHARGAV) P/516/2018

DATED:21.09.2020

ADVOCATES

COUNSEL FOR THE APPELLANTS Email-dharembirbhargav@yahoo.co.uk

Mobile - 98145-38502, 97802-38502

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No. 154 Y of 2019

Lajpat Rai through his legal heirs

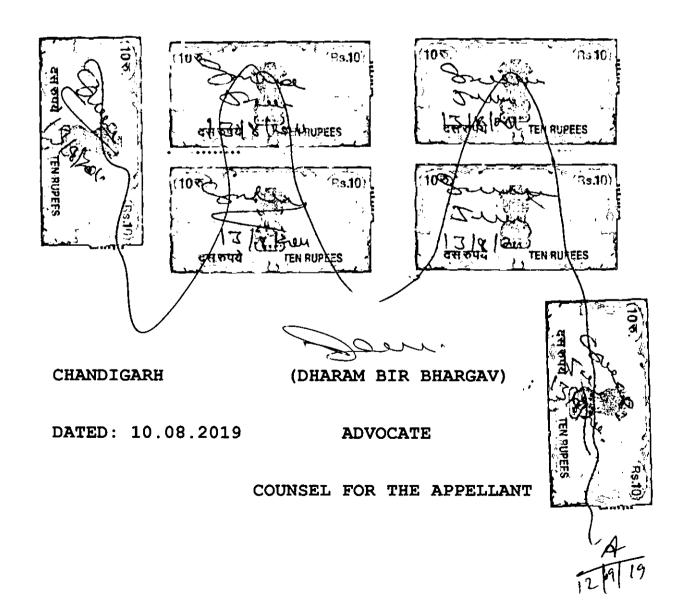
.....Appellants

#### Versus

The Jind Adarsh Cooperative House Building Society Ltd. and others

C.F. 4.601-

... Respondents



A

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Misc. Application No. 4815 of 2010 IN RSA No. 1548 of 2010

Lajpat Rai Through his Legal Heirs

.....Appellants

Versus

The Jind Adarsh Co-operative House Building Society Ltd. and other

... Respondents

Application u/s

section 151 CPC for condonation of delay of 325 days in re-filing the abovesaid appeal in the interest of justice.

#### RESPECTFULLY SHOWETH:

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- 1. That the appellants/plaintiffs have filed the abovesaid appeal before this Hon'ble Court against judgment and decree dated 13.05.2019 passed by Addl. District Judge, Jind, judgment and decree dated 05.11.2014 passed by Civil Judge Senior Division, Safidon, District Jind.
- 2. That the abovesaid appeal was filed on 13.08.2020 but the same was returned after raising some minor objections by the Registry on 12.09.2019.
  - 3. That thereafter the appeal could not be refiled after removing objections because the paperbook mixed up in some other brief by mistake. The same was traced out on 26.03.2020.

- 4. That thereafter complete Lockdown was imposed by the Hon'ble Prime Minister of India in order to curb the spread of the virus Covid-19. Till 26.03.2020, the delay was of 147 days. The Hon'ble Supreme Court of India in view of order passed in which it is specifically mentioned that no delay days will be counted in filing the cases till the restrictions of Lockdown due to Covid-19 are lifted.
- 5. That now the appellants received a notice for recovery from the office of Respondents on 14.09.2020 for payment within 15 days.
- 6. That the counsel for the appellants made a request for fix up the appeal during the Lockdown period on the ground that the respondents issued a Show-cause Notice on 10.09.2020 and the same was received on 14.09.2020 by the appellant for recovery. The request was allowed on 17.09.2020 by this Hon'ble Court and the appellants are re-filing the present appeal.
- 7. That it is in the interest of justice that the delay in re-filing the appeal is neither intentional nor willful but only due to the reason mentioned above.

It is therefore respectfully prayed that the application may kindly be allowed and the delay in re-filing the appeal of 325 days may kindly be condoned in the interest of justice.

CHANDIGARH (R.K. HANDA) (DHARAM BIR BHARGAV)
DATED: 21.09.2020 ADVOCATES

COUNSEL FOR THE APPELLANTS

0

## IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Misc. Application No. 4825 of 2010 IN RSA No. 1548 of 2010

Lajpat Rai Through his Legal Heirs

.....Appellants

Versus

The Jind Adarsh Co-operative House Building Society Ltd. and other ... Respondents

Affidavit of Sarla widow of Late Sh. Lajpat Rai, R/o H.No.508/5, Hakikat Nagar, Jind, District Jind.

I, above named deponent, do hereby solemnly affirm and declare as under:-

That the deponent is well conversant with the facts and circumstances of the case.

That the application has been drafted as per the instructions of the deponent and all the facts mentioned in the application are correct to the knowledge of the deponent.

3. That the deponent has not filed any such or similar application earlier, either before this Hon'ble Court or before the Hon'ble Supreme Court of India.

CHANDIGARH

DATED: 21.09.2020

DEPONENT (SARLA)

#### VERIFICATION:

Verified that the contents of para No.1 to 3 of the above affidavit are true and correct to my own knowledge. No part of it is false and nothing has been kept concealed therein.

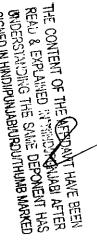
andigari.

CHANDIGARH

DATED: 21.09.202059717

DEPONENT (SARLA)

DEPONENT



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# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Misc. Application No. 4826-Cof 2020

IN RSA No. 1548 of 2020

Lajpat Rai Through his Legal Heirs .....Appellants

#### Versus

The Jind Adarsh Co-operative House Building Society Ltd. and other

... Respondents

Application u/s 151 CPC exemption from filing the certified and fair typed copies of judgment and decree dated 13.05.2019 passed by Addl. District Judge, Jind, judgment and decree dated 05.11.2014 passed by Civil Senior Division, Safidon, District Jind, and Grounds of Appeal dated 04.12.2014 filed before Addl. District Judge, Jind in the interest of Justice.

#### RESPECTFULLY SHOWETH:

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1. That the appellants/plaintiffs are filing the present appeal before this Hon'ble Court against judgment and decree dated 13.05.2019 passed by Addl. District Judge, Jind, judgment and decree dated 05.11.2014 passed

by Civil Judge Senior Division, Safidon, District Jind.

- 2. That the appellants/plaintiffs are not in possession of certified copies of judgment and decree passed by Courts below and pray to permit them to file the photocopies of certified copies of judgment and decree sheet dated 13.05.2019 and 05.11.2014 due to paucity of time as the matter is of urgent nature.
- 3. That it is in the interest of justice that the appellants may kindly be exempted from filing the certified and fair typed copies of judgments and decree passed by Courts Below.

It is therefore respectfully prayed that the application may kindly be allowed and appellants be exempted from filing the certified and fair typed copies of judgment and decree dated 13.05.2019 passed by Addl. District Judge, Jind, judgment and decree dated 05.11.2014 passed by Civil Judge Senior Division, Safidon, District Jind, and Grounds of Appeal dated 04.12.2014 filed before Addl. District Judge, Jind in the interest of Justice.

CHANDIGARH (R.K. HANDA) (DHARAM BIR BHARGAV)
DATED: 13.08.2019 ADVOCATES

4

COUNSEL FOR THE APPELLANTS

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH. One 4816-6-2-2-2-

RSA No. (818 of 20)

Lajpat Rai through his legal heirs . .....Appellants

#### Versus ·

The Jind Adarsh Cooperative House Building Society Ltd. and others

... Respondents



Affidavit of Sarla w/o
Late Lajpat Rai, aged 59
years, house no 508,
Hakikat Nagar, Jind,
District Jind.

- I, the above named deponent do hereby solemnly affirm and declare as under:-
- That the deponent is filing the accompanying application before this Hon'ble Court which is likely to succeed on the grounds mentioned therein.

ZIZM [SARLA]

- 2. That the contents of the application and Appeal may kindly be read as part and parcel of this affidavit.
- 3. That the contents οf the application are true and correct and nothing has been concealed therein.
- That the deponent have not filed any such similar application Hon'ble Court or Hon'ble Supreme this Court of India for the same relief.
- That contents of application has been drafted as per the instructions of the deponent.

5.

242 M

CHANDIGARH

DEPONENT

Certifled that the affidavit has been O1 dead over and explained to the Deponent who satured the properties and (Sarla) the same at the time of marking & signing the document.

**VERIFICATION:** 

Signature

I Know the dependent who has Signed in my Prgsence

OMMISS,O

Verified that the contents οf mу

and affidavit - are <u>true</u> correct mу Lertified That The Aforesaid Statement

has been declared on Oath/S.A. before knowledge and belief day of No. par N/S/D of J. AUG. 2019 (at Aug.) ~of it is false

Resident of ...... and nothing hallas...been ealed therein.

Nho is ider. sonally Advocate: ertified martile. has been

CHANDIGARH read and explained to the deponent Mandeep Kau-3 AIIC 7019 nandigarh

DEPONENT CSARVA

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Oath Commissioner Distr Courts Chandigart

1°3 AUG 2019

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH Cu. 4827-c-2-2-

RSA No. 1548 of 2010

Lajpat Rai through his legal heirs and Comman......Appellants

#### Versus

The Jind Adarsh Cooperative House Building Society Ltd. and others

... Respondents

Application u/s 151 CPC for Stay of recovery during the pendency of appeal in the interest of Justice.

#### RESPECTFULLY SHOWETH:

- 4. That the appellant/plaintiff is filing the present appeal before this Hon'ble Court against judgment and order dated 13.05.2019 passed by Addl. District Judge Jind and order dated 05.11.2014 Passed by Civil Judge Saffidon.
- 5. That the appellant/plaintiff has filed the Appeal along with stay application. The appellant is having good case in his favour

- . the ground of appeal may kindly be read as part and parcel of the application.
- 6. That it is in the interest of justice that the stay of recovery from the appellant may kindly be stayed during the pendency of appeal.

It is therefore respectfully prayed that the application may kindly be allowed and stay recovery proceeding against the appellant in the interest of Justice.

CHANDIGARH

(DHARAM BIR BHARGAV)

DATED: 10.08.2019 ADVOCATE

COUNSEL FOR THE APPELLANT

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH. Lu-4827-c-2-2-2-

RSA No. 1548 of 2020

Lajpat Rai through his legal heirs ......Appellants

#### Versus

The Jind Adarsh Cooperative House Building Society Ltd. and others

... Respondents



Affidavit of Sarla w/o
Late Lajpat Rai, aged 59
years, house no 508,
Hakikat Nagar, Jind,
District Jind.

- I, the above named deponent do hereby solemnly affirm and declare as under:-
  - 1. That the deponent is filing the accompanying application before this Hon'ble Court which is likely to succeed on the grounds mentioned therein.

ZJ2MI [SARLA]

- That the contents of the application 2. and Appeal may kindly be read as part and parcel of this affidavit.
- That the contents of the application are true and correct and nothing has been concealed therein.
- That the deponent have not filed any such or similar application before this

#en'ble Court or Hon'ble Supreme Court of for the same relief.

contents of application has been fted as per the instructions of the

deponent.

CHANDIGARH

Certified that the affidavit has been read over and explained to the DEPONENT DATED: 13.08.201 the same it we may a moving & & gmoonig

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(Sarla)

1 3 AUG 2019

signing the document **VERIFICATION:** 

I Know the dependent who has Signed in my Presence

Verified that the contents of my above 13965 -erutied That Ine Atoresam Charencent rect affidavit nas been declared on Carry and Me on The on The on The one of the order o affidavit nas been declared on Oath/S.A. before and nothing has been consequed therein. pretition ner a reso and examined to the deponent 242~11

CHANDI WHO Huandigarh

Manuese Kaus Oath Commissioner .. Distr Courts Chand year

DEPONENT CSARLAD

1 3 AUG 2019

#### **OPENING SHEET FOR CIVIL APPEALS**

(ORDER 41, RULE 1, CIVIL PROCEDURE CODE, 1908)

## IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

JUDICIAL DEPARTMENT

CIVIL APPELLATE SIDE

ORIGINAL SUIT .				FIRSTAPPEAL				41	75	<u></u>	
Instituted		Decided		Instituted		Decided		<b>10</b>	28 E	8	<u>3</u> 2
Court	Date	Court	Date	·Court	Date	Court	Date	Date of filing appeal in High Court	Value for purposes of junisdiction	Value for purposes of Court fee	Aniount of Court fee on appeal
Inthe Count 0284R; Anguinder Stanma, Adal Can't (Jadge) Scurp, digition	15/05/2013	Su the Goutled Italian Amaginess Sunder Division (1100)	5/11/1	The the Court of Gurunder House	order dated ou/12/2014.	En true Court of Guranhales Kaus.	dated 13/5/2019	6102/80/81	dixed	Sixed Job (-	-100.52 w

Presented by Aduo Cate SMK; (DHARAM BI Advocate or Agent filing the appeal) Appellant (plaintiff or defendant) ! and Respondent (plaintiff or defendant) The Society Will a Other Office Court and date In full with Jing evalue (1000 5/11) Appellate Court and date (3, 4) 1)16. Affect 1 Confirming or modifying Claim in appeal (stating whether the appeal is from a decree or order) follows Enactment and section under which the appealings

Price: 50 Palse

#### Grounds of Appeal

- 1. That the judgment and decree passed by court of Addl. District Judge, Jind dated 13.05.2019 and Judgment and Decree dated 05.11.2014 passed by Civil Judge Senior Division Safidon whereby Civil Suit permanent injunction and appeal filed by the appellant have been dismissed. The same are patently contrary to law as well the pleadings and the evidence on as record and as such unsustainable in the eyes of law. Both the Judgments and Decree are liable to be set aside. Copies of 13.05.2019 Judgment and Decree dated passed by Addl. District Judge Jind and Judgment and Decree dated 05.11.2014 passed by Civil Judge Senior Division Safidon are attached for kind perusal of this Hon'ble Court.
- 2. That the impugned judgment and decree dated 13.05.2019 whereby suit filed by the appellant/plaintiff has been dismissed and appeal filed by the Appellant/Plaintiff has been dismissed. The same are based

upon surmises and conjectures. The Ld. Courts below have erred in law in not appreciating and believing the cogent, trustworthy and reliable evidence adduced by the appellants/plaintiffs and over believing and relying upon the untrustworthy, unreliable argument without any documentary proof by the respondents/defendants.

- 3. That the Ld. Courts below have not gone through the facts of the case and have dismissed the suit and appeal filed by the Appellants/Plaintiff in a hasty manner.
- 4. That the brief facts of the case are that appellants/plaintiff has filed suit for seeking permanent injunction restraining the respondents/defendants from selling house of appellant having No,508/5, Hakikat Nagar Jind for recovery of any amount of and further from recovery from the appellant Rs.6,22,967/- or any other amount present and in future by arrest and detention of the appellant or in any other manner.

5. That the appellant/plaintiff filed the suit with the averment that he was never member of Jind Adarsh Co-operative not account Building Ltd. He has dealing with the Respondent No.1 Society. He had obtained loan for construction of house from the Jind Vikas Co-operative House Building Society Jind to the tune of 49,000 in 1985. He made the payment of the loan to the society from which he had Thereafter borrowed the amount. the government of Haryana from time to waived off the loan taken from the Cooperative societies and as such his entire loan stood paid on account of re-payment or waiver. He received a letter from respondent No.2 vide letter No.512 dated 11.02.2010 asking to pay the amount of Respondent No.1. He replied the same and informed the Respondent No.2 that nothing of the society is due against him. 8 months respondent No.2 issued notice No.820 dated 26.02.2010. the same was replied by the appellant through

his counsel on 29.10.2010 in which it was specifically mentioned that no loan was taken by the appellant from the respondent No.1 nor any amount of respondent No.1 was him. Thereafter due towards again respondent got a notice dated 21.01.2011 served upon appellant through Assistant Registrar Co-operative societies Jind in which he demanded Rs.6,22,967 on behalf of respondent no.1. The same was replied and received on 25.02.2011 by the Assistant Registrar Co-operative Societies Respondent No.3. But again on 27.01.2012, another notice was received bу appellant and the same was replied on 14.03.2012. In which appellant specifically mentioned that he had not taken any loan from them and there is no question of repayment of the same.

6. That respondent No.1 again written a letter No.867 dated 28.08.2012 for demand of Rs.6,22,967/-. The amalgamation of the Jind Vikas Cooperative House Building Society with the respondent No.1 was never

14

done with the consent of the appellant and knowledge. He never informed about any such amalgamation. The same is not binding on the appellant rights. The loan of Rs.49,000/- taken by him from Jind Vikas Cooperative House Building Society in the year 1985 and was secured with the mortgage of the property.

- 7. That the limitation for the purpose of recovery of said amount was 12 years. The period of 12 years expired in the year 1997. The same is barred by time because neither Jind Vikas Co-operative House Building Society either raised any demand of loan from the appellant on or before 1997 because he had deposited installments. Nor any demand raised by the society till 11.02.2010. The respondent No.1 is claiming to have advanced the amount to the appellant through Jind Vikas Co-operative House Building Society. The same is illegal.
- 8. That on notice respondent No.1 and 2 appeared and filed joint written statement

taking preliminary objection that no cause of action and locus standi, maintainability of the suit filed by the appellant/plaintiff. It is also denied that appellant was never the member Respondent No.1 and he had no account or dealing with him. Appellant was member vide membership No.280 dated 27.06.1986 and the society was amalgamated with the respondent No.1 on 31.03.2000 vide order passed by Assistant Registrar Coopeartive Societies Jind and all the rights vested in the respondent No.1 society. Appellant has deposited Rs.10,000/- on 02.11.2000 with the respondent No.1. Appellant has deposited only Rs.33,556 to the Jind Vikas Co-operative House Building Society. The government of Haryana from time to time not waived off the loan of the appellant. Only OTS scheme for defaulting loanee was proposed but appellant was not avail the same as per scheme. It is also submitted that rate of interest was settled 15% per annum and in case of default rate of 2.5%

per annum of penal interest was to be charged in addition to the interest. Loan was to be repaid in 80 equated quarterly installments in 20 years.

- 9. That Respondent No.3 also appeared and filed written statement by taking various objection regarding the maintainability of the suit filed by the appellant/plaintiff.
- 10. That the finding of the learned courts below are erroneous and liable to be set aside. All these issue ought to have been decided in favour of the respondent and against the appellants by the Ld. Courts below. The approach of the Learned Courts below are totally erroneous, unjust, improper and unsustainable in the eyes of Law. Therefore, the finding of the learned courts below does not hold good, because, Exhibits are valid documents including receipt produced by the appellant before the Ld. Trial Court and the document need not be ignored. In such circumstances, the findings of the Ld. Courts below are liable to be set aside.

- 11. That the evidence adduced by the respondents/defendants is most discrepant, unreliable and incredible and the learned courts below have wrongly erred in relying upon the same.
- 12. That the judgment and order passed by Courts below are suffering from various infirmities and illegalities.
- 13. That in the aforesaid facts and circumstances the following substantial question of law arise for the consideration of this Hon'ble Court.
  - Whether the findings of courts (i) below are perverse, having recorded by non consideration of material facts circumstances proved on record, Ld. Courts before the below misinterpretation of the pleadings as well as the evidence on record resulting into grave miscarriage of justice.
  - (ii) Whether the judgment and order dated 1305.2019 and 05.11.2014 passed by Courts below are unsustainable in law because of the same being based on misconceived notion of law by misapplication of

the ratio of the decision of this Hon'ble Court, Hon'ble Supreme Court of India and liable to be set-aside?

- (iii) Whether the judgment and order dated 13.05.2019 and 05.11.2014 passed by Courts below are based on conjuctures, misreading, non consideration of the material evidence of the appellant/plaintiff in support of his plea?
- (iv) Whether grave injustice has been
  done with the appellants/
  plaintiff?
- 14. That there are several other arguable points of law involved in the appeal, which would be argued at the time of arguments.
- 15. That the appellants/plaintiff have not filed any such or similar Regular Second Appeal before this Hon'ble Court of Hon'ble Supreme Court of India.

It is therefore respectfully prayed that keeping in view the above said facts,

circumstances and law, it is, therefore, humbly prayed that the appeal of the appellants/plaintiff may kindly be accepted and the judgments and decree dated 13.05.2019 passed by the learned Addl. District Judge Jind and Judgment and decree dated 05.11.2014 passed by Addl. Civil Judge Senior Division Safidon may kindly be set aside and decree the suit of the appellants/plaintiff in toto, throughout with costs in the interest of justice.

CHANDIGARH

(R.K. HANDA) (DHARAM BIR BHARGAV)

DATED:10.08.2019

**ADVOCATES** 

COUNSEL FOR THE APPELLANTS

20

## IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No. 1548 of 2010

Lajpat Rai through his legal heirs communication ......Appellants

#### Versus

The Jind Adarsh Cooperative House Building Society Ltd. and others

... Respondents



Affidavit of Sarla w/o
Late Lajpat Rai, aged 59
years, house no 508,
Hakikat Nagar, Jind,
District Jind.

- I, the above named deponent do hereby solemnly affirm and declare as under:-
- 1. That the deponent is filing the accompanying appeal before this Hon'ble Court which is likely to succeed on the grounds mentioned therein.

Z-12MI [SARLA]

- That the contents of the appeal are 2. and correct and nothing has concealed therein.
- That the deponent have not filed any such or similar appeal before this Hon'ble Court or Hon'ble Supreme Court of for the same relief.
- 4. contents of appeal has been drafted as per the instructions οf deponent.

CHANDIGAR#

DEPONENT

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(Sarla)

VERIFICATION

Certified that the affidavit has been read over and explained to the Deponent who seemed as an derstand the same at the time of marking &

telgung the document Verified that

**∜**∌f mу above Signature

affidavit are true and mу correct to

knowledge and belief. No part of it is false

and nothing has been concealed therein.

Lertified That The Aforesaid Statement ne on 100 Say of 20\_

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CHANDIGARH Chandigerh by Sh...

1 3 AUG 2019

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-, deponent Mandeep Kau

⊶handigarh

Oath Commissioner Distr. Courts Changware

1 3 AUG 2019

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No. 1548 of 2010

#### MEMO OF PARTIES

Lajpat Rai S/o Matu Ram deceased through his legal heirs

- 1. Sarla wife of Late Lajpat Rai, aged59 years
- 2. Deepak S/o Late Lajpat Rai, aged 39 years
- 3. Ashish S/o Late Lajpat Rai, aged 28 years

  Petitioners No.1 to 3 R/o House No.508/5

  Hakikat Nagar, Jind, Distt. Jind.
- 4. Shweta D/o Late Lajpat Rai, w/o Narender, aged 32 years, R/o Vikas Nagar, New Delhi
- 5. Sonia D/o Late Lajpat Rai, w/o Anil, aged 35 years R/o Gobind Nagar, Jaipur, District Jaipur.

...Petitioners

#### Versus

1. The Jind Adarsh Co-operative House

Building Society Ltd. Through its Seretary

House No.2824, New Housing Board Colony,

near Safidon Road, Bye Pass, Jind,

District Jind.

- 2. Haryana Co-operative House Building Federation through its Managing Director Bays No.49-52, Sector 2, Panchkula, District Panchkula.
- 3. Assistant Registrar Co-operative

  Societies Haryana Mini Secretariat, Jind,

  District Jind.

.....Respondents

CHANDIGARH

(R.K. HANDA) (DHARAM BIR BHARGAV)

DATED:10.08.2019

ADVOCATES

COUNSEL FOR THE APPELLANTS

Certified Cofsel Judgust Part of S-1174

Attended with appeal the feet is the redseth Co-or elementation of the Company Madignatures have to 1000, to and 1 12-05-19

Lajpat Rai Vs. The Jind Adarsh Co-operative House, etc.

In the Court of Amarinder Sharma, Additional Civil Judge(Sr.Divn.), Jind.

Civil Suit RBT No.165 of 2012

Date of Institution: 28.09.2012/13.05.2013

Date of Decision: 05.11.2014

Lajpat Rai son of Sh. Matu Ram, resident of House No.508/5 Hakikat Nagar, Jind.

....Plaintiff.

#### Versus

1. The Jind Adarsh Co-operative House Building Society Ltd. Through its Secretary House No.2824 New Housing Board Colony near Safidon Road Bye Pass, Jind.

2. Haryana Co-operative House Building Federation through its Managing Director Baje No.49-52 Sector-2, Panchkula.

3. Assistant Registrar Co-operative Societies Haryana Mini Secretariat, Jind.

....Defendants

## SUIT FOR PERMANENT INJUNCTION

Present: At the time of Argument

Shri S.S. Poonia, Advocate for plaintiff.

Shri Chand Ram, Advocate for defendants No.1 and 2.

Shri Surender Khatkar, GP for defendant No.3.

## JUDGMENT:

## Brief Matrix of the Case:

The present suit has been filed by plaintiff seeking permanent injunction restraining the defendant from selling House of plaintiff having No.508/5 Hakikat Nagar, Jind for recovery of any amount of and further from recovering from the plaintiff Rs.6,22,967/- or any other amount now or in future by arrest and detention of the plaintiff or in any other manner.

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## Lajpat Rai Vs. The Jind Adarsh Co-operative House, etc.

2: The plaintiff has come with the averments that he was never the member of Jind Adarsh Cooperative Building Ltd. Jind. He has no account or dealing with the defendant No.1 Society. He had obtained the loan for construction of house from The Jind Vikas Co-operative House Building Society, Jind to the tune of Rs.49,000/- in 1985. He made the payment of the loan to the society from which he had borrowed the amount. Thereafter, the Government of Haryana from time to time waived off the loan taken from Cooperative societies and as such his entire loan stood paid on account of repayment or waiver by Govt. of Haryana. He received a letter from the defendant No.2 vide letter No.512 dated 11.02.2010 asking to pay the amount of defendant No.1. He replied the same and informed the defendant No.2 that nothing of the society is due against him. Again the defendant No.2 issued notice No.820 dated 26.10.2010. It was replied by him through his counsel vide his letter dated 29.10.2010 in which it was specifically mentioned that no loan was taken by him from the defendant No.1 nor any amount of the defendant No.1 was due towards him. Thereafter, defendant got a notice dated 21.01.2011 served upon him through Assistant Registrar Cooperative Society, Jind in which a sum of Rs.622967/- was demanded by the Assistant Registrar Cooperative Soceity, Jind on behalf of defendant No.1. This notice was duly replied by him vide his letter dated 25.02.2011 which was duly received in the office of Assistant Registrar Cooperative Society, Jind on 25.02.2011. Thereafter, another

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Lajpat Rai Vs. The Jind Adarsh Co-operative House, etc.

notice dated 27.01.2012 as duly received by him which was duly replied by him vide reply dated 14.03.2012 and the facts were denied as he had not taken any loan from the defendant so there is no question of repayment of the same. Defendant No.1 has now written letter No.867 dated 28.08.2012 in which the defendant No.1 had demanded a sum of Rs.622967/- from him in-spite of the fact that no amount of the defendant no.1 is due against him. He never borrowed any amount from the defendant No.1. The alleged amalgamation of The Jind Vikas Cooperative House Building Society with the defendant No.1 was never done with his consent and knowledge. He never informed about any such amalgamation. As such the amalgamation if any done without his consent and knowledge is not binding on his rights in any manner. The loan of Rs.49000/taken by him from The Jind Vikas Cooperative House Building Society Jind in the year 1985 was secured with the mortgage of the property. The limitation for the purpose of recovery of the said amount was 12 years. The period of 12 years expired in the year 1997. Even if for the sake of arguments, it is taken that loan is not waived off then also no amount of the said loan is recoverable from him as the same is barred by time. It is pertinent to mention here that neither the defendants nor the Jind Vikas Cooperative House Building Society, Jind either raised any demand of the loan from him after 1997 till 11.02.2010 nor he ever admitted his liability. He did not make any promise to pay any amount to the defendants and/or to The Jind Vikas Cooperative House Building Society as

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## Lajpat Rai Vs. The Jind Adarsh Co-operative House, etc.

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such the amount, if any, is not recoverable from him. It is also pertinent to mention that he made the last payment towards the repayment of loan in the year 1997. After 1997 no amount was deposited by him nor any demand was raised till 11.02.2010, therefore, from all angles no amount is recoverable on account of the loan taken by him from the Jind Vikas Cooperative House Building Society, Jind. The defendant No.2 is claiming to have advanced the amount to him through The Jind Vikas Cooperative House Building Society, so he is threatening to sell his house with the help of the defendant no.3 in illegal manner. The defendants have no right to recover any time barred debt from any individual. The defendants were requested many times to not to claim any amount from him and not to give the threat of recovery by sale or through any other mode, but the defendants avoided his request on one or other ground. The defendants have now threatened to recover the amount of Rs.622967/- by use of coercive method of arrest and detention and sale of his house. Hence, the present suit.

3. On notice, defendant no.1 and 2 appeared and filed joint written statement taking preliminary objections on the grounds of no cause of action and locus standi, maintainability, jurisdiction, concealing the true and material facts from the court, etc. On merits, it has been pleaded that it is denied that plaintiff was never the member of defendant No.1. It is also denied that he had no account or dealing with the defendant No.1. It is further submitted that plaintiff

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### Lajpat Rai Vs. The Jind Adarsh Co-operative House, etc.

was member of The Jind Vikas Cooperative House Building Society Ltd. Jind vide membership No.280 dated 27.06.1986. The said society was amalgamated with the defendant No.1 society on 31.03.2000 vide order A.R. Cooperative Societies, Jind and all the rights and liabilities of the Jind Vikas Cooperative Society vest in the defendant No.1 society. After amalgamation the right to recover the loan vest in the defendant No.1 and the plaintiff has deposited Rs.10,000/- on 02.11.2000 with the defendant No.1. It is admitted that plaintiff has obtained the loan for construction of house to the tune of Rs.49,000/- in the year 1986 and the plaintiff has deposited only Rs.33,556/- to the Jind Vikas Cooperative H.B. Society. It is denied that Government of Haryana from time to time waived off the loan taken from Cooperative Societies and as such the entire loan of the plaintiff stood paid on account of repayment or waiver by Govt. of Haryana. However, the defendant No.2 issued O.T.S. Scheme for defaulting loanee members for housing loan advanced by House Fed., Haryana but the plaintiff has not availed the O.T.S. facility as per scheme. It is submitted that defendant No.2 has not served any notice No.512 dated 11.02.2010. The plaintiff has not paid the loan amount alongwith interest in time and became defaulter. The defendant No.1 applied in January, 2010 before defendant No.3 to recover loan amount by way of sale of mortgage property of the plaintiff. The defendant No.3 sent the letter No.512 dated 11.02.2010. It is further admitted that defendant No.1 issued notice No.820 dated 26.10.2010 which was replied

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Lajpat Rai Vs. The Jind Adarsh Co-operative House, etc.

by the plaintiff's counsel but the notice was not replied on true facts. The defendant No.1 served notice dated 28.08.2012 on the plaintiff and demanded Rs.6,22,967/- but this notice was not replied by the plaintiff to the defendant No.1 The reply filed by the plaintiff was wrong as the plaintiff has to pay Rs.6,22,967/- upto 31.08.2012 to the defendant No.1 Cooperative Society governed by Haryana Cooperative Societies Act, 1984 and rules thereafter. The advancing of loan to its member is the business of defendant No.1. It is admitted that defendant No.1 issued notice No.867 dated 28.08.2012. It is denied that no amount of the defendant No.1 is due against the plaintiff. The plaintiff borrowed the loan amount from Jind Vikas Cooperative House Building Society Ltd., Jind and the said society was amalgamated with the defendant No.1. The information of amalgamation was published in Dainik Jagat Kranti News Paper, Jind. The plaintiff was fully aware about this amalgamation and this amalgamation is binding on the rights of the plaintiff. It is denied that limitation for the purpose of recovery of the loan amount was 12 years and no amount of said loan is recoverable from the plaintiff as the same is barred by time. It is denied that defendant No.1 did not raise any demand of loan from plaintiff after the year 1997 to 11.02.2010. It is denied that after year 1997, no amount was deposited by the plaintiff nor any demand was raised till 11.02.2010. The plaintiff mortgaged his plot/property in favour of Jind Vikas Cooperative H.B. Society, Jind vide mortgage deed No.2151 dated 03.09.1986 and the plaintiff has

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promised to pay the loan amount and executed promissory note dated 25.09.86, 30.10.1986 and 12.12.1986. It is submitted that rate of interest was settled 15% per annum and in case of default of the installment rate of 2.5% per annum of penal interest was to be charged in addition to the interest. The loan was to be repaid in 80 equated quarterly installments in 20 years. The plaintiff has deposited Rs.10,000/- before the answering defendant No.1 on 02.11.2000. The plaintiff was served many notice by defendant No.1 on 11.09.2000, 12.10.2001, 16.01.2007, 13.07.2009, 29.12.2009, 26.10.2010, 31.01.2012 and 28.08.2012. The defendant No.1 has applied before the defendant No.3 to recover the loan amount as per Act and rules of Haryana Cooperative Societies Act. There is no threat on the part of answering defendant rather the defendant is following the legal process. It is denied that plaintiff has deposited about Rs.1,40,000/- in the year 1997. It is admitted that no formal notice under Cooperative Societies has been given. It is denied that defendant No.1 was appraised of the correct position vide notice dated 29.10.2010. No notice under Section 124 of Haryana Cooperative Societies Act, 1984 has been served by the plaintiff. Rest all the averments have been categorically denied with a prayer to dismiss the suit.

4. On notice, defendant no.3 appeared and filed written statement taking preliminary objections on the grounds of no cause of action and locus standi, maintainability, jurisdiction, concealing the true and material facts from the court, mis-joinder and non-joinder of the necessary parties, court fee, etc. On

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merits, it has been pleaded that plaintiff was member of Vikas House Building Society, Jind and the same was amalgamated within The Jind Adarash House Building Societies, Jind vide order of Assistant Registrar Cooperative Societies, Jind No.675-94 dated 31.03.2000. No amount out of loan amount taken by the plaintiff was waived by the Government and as such question of repayment of loan by the plaintiff does not arise. It is admitted to the extent that the notice bearing 512 dated 11.02.2010 has been issued by answering defendant for 19.04.2010 which has been issued legally and rightly and the same is binding on the plaintiff. The plaintiff on 03.03.2010 filed reply of the above notice. On receipt of reply dated 03.03.2010, the plaintiff was required to appear before defendant No.3 on 05.04.2010 at 12.00 noon for hearing vide memo No.RK-II/815 dated 25.03.2010 but intentionally did not appear before defendant No.3 on 05.04.2010. Thereafter, fresh notice vide Memo No.RK-II/946 dated 05.04.2010 was again issued directing the plaintiff to appear before defendant No.3 on 16.04.2010 at 12.00 noon but the plaintiff did not come present on 16.04.2010 rather came present on 19.04.2010, the date fixed in the main notice No.512 dated 11.02.2010 through counsel and filed reply dated 19.04.2010 and the case was adjourned to 22.04.2010 for hearing and on hearing both the parties the detailed order was passed by the defendant No.3. The defendant No.3 has every right to issue the notice in question and recover the amount in question. The copy of said notice dated 05.04.2010, copy of notice No.RK-II/815 dated

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## Lajpat Rai Vs. The Jind Adarsh Co-operative House, etc.

25.03.2010, copy of notice memo No.RK-II/946 dated 05.04.2010, replies dated 03.03.2010 and 19.04.2010 and copy of order passed by defendant No.3 are annexed as annexures D-2 to D7. Question of suffering irreparable loss by the plaintiff does not arise. The defendant No.3 never threatened the plaintiff. All the amount is recoverable from the plaintiff and defendant No.3 is adopting the legal process.Rest all the averments have been categorically denied with a prayer to dismiss the suit.

## Framing of Issues and Description of Oral and Documentary Evidence

- 5. Replication was not filed. From the pleadings of the parties, following issues were framed vide order dated 15.04.2013:-
  - 1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for ? OPP.
  - 2. Whether plaintiff has no locus standi and cause of action to file the present suit against the defendants? OPD
  - 3. Whether plaintiffs have concealed the material facts from the court? OPD
  - 4. Whether suit is time barred? OPD
  - 5. Whether suit of the plaintiff is bad for non-joinder of necessary parties? OPD
  - 6. Whether plaintiff is estopped from filing the suit at their own act and conduct? OPD
  - 7. Whether suit of the plaintiff is not maintainable in the present form? OPD

8. Whether suit of the plaintiff is bad for want of proper court fee and jurisdiction? OPD

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- 9. Whether suit is barred by notice under Section 124 of Haryana Cooperative Society Act? OPD
- 10. Relief.
- 6. In order to prove his case, plaintiff Lajpat Rai himself appeared as PW1. Plaintiff has relied upon the documents as depicted in Table No.1:-

## TABLE NO.1

	Sr.No.	Exhibit	Documents	
	1.	Ex.P1	Notice dated 28.08.2012 regarding recovery	
	2.	Ex.P2	Legal Notice dated 29.10.2010	
1	3.	Ex.P3	Notice dated 512 dated 11.02.2010	

Thereafter, evidence of the plaintiff was closed by learned counsel for the plaintiff vide his separate statement dated 31.05.2014.

7. On the other hand, defendant Surender Singh, Secretary himself appeared as DW-1, Defendant Balraj Singh Siwach, Assistant Registrar himself appeared as DW2. Defendants have relied upon the documents as depicted in Table No.2:-

#### TABLE NO.2

Sr.No.	Exhibit	Documents
1.	Ex.D1	Copy of mortgage deed
	Ex.D2 to Ex.D4	Promissory notes
3.	Ex.D5	Copy of resolution dated 10.10.2012
4.	Ex.D6	Copy of notice dated 28.08.2012

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5.	Ex.D7	Letter regarding not to deposit entire mortgage money with interest etc".
6.	Ex.D8	Postal receipt
7.	Ex.D9	Copy of postal receipt
8.	Ex.D10	Copy of Notice dated 29.10.2010
9.	Ex.D11	Postal receipt
10.	Ex.D12	Copy of Legal Notice dated 26.10.2010
11.	Ex.D13	Postal receipt
12.	Ex.D14	Letter regarding not to deposit entire mortgae money with interest etc.
13.	Ex.D15	Copy of Post receipt
14.	Ex.D16	Copy of Notice dated 13.07.2009
15.	Ex.D17	Copy of Notice dated 16.01.2007
16.	Ex.D18	Copy of Notice dated 12.10.2001
17.	Ex.D19	Copy of Register Members
18.	Ex.D20	Copy of personal ledger
19.	Ex.D21	Copy of recovery status of Individual Loanee
20.	Ex.D22	Copy of order dated 31.03.2000
21.	Ex.D23	Copy of Form XI
22.	Ex.D24	Copy of notice No.512 dated 11.02.2010
23.	Ex.D25	Copy of reminder to notice No.512 dated 11.02.2010 dated 25.03.2010
24.	Ex.D26	Copy of reminder to notice dated 512 dated 11.02.2010 dated 05.04.2010.
25.	Ex.D27	Copy of reply to notice Sr.No.RK-II/946 dated 05.04.2010.
26.	Ex.D28	Copy of order dated 22.04.2010
27.	Ex.D29	Copy of Resolution dated 19.01.2010.

Thereafter, evidence on behalf of defendants closed by their

counsels vide their separate statement dated 28.10.2014.

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Lajpat Rai Vs. The Jind Adarsh Co-operative House, etc.

- 8. Learned counsel for the plaintiff closed the rebuttal evidence without leading any evidence vide his separate statement dated 05.11.2014.
- 9. Shri S.S. Poonia, learned counsel for plaintiff, Shri Chand Ram, learned counsel for defendants no.1 and 2 and Shri Surender Khatkar, GP for defendant No.3 have been heard at length and record of the case has been very carefully perused. My issue-wise findings on various issues is as under:-

#### ISSUE NO.1

10. The onus to prove this issue was on the plaintiff.

## Arguments advanced by learned counsel for plaintiff

The learned counsel for the plaintiff has submitted that the plaintiff had obtained loan for construction of house from Jind Vikas Cooperative House Building Society, Jind to the tune of Rs.49,000/- in the year 1985. The plaintiff made the payment of loan to the society and thereafter, the government of Haryana from time to time waived off the loan taken from Cooperative Societies and as such the entire loan of the plaintiff stood paid on account of repayment or waiver by Government of Haryana. It is submitted that plaintiff received a letter from defendant No.2 regarding the payment of amount due to defendant No.1 and nothing is due against the plaintiff. The learned counsel further submits that the limitation for the purpose of recovery of said amount was 12 years and the period of 12 years expired in the year 1997. It is further submitted

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that the plaintiff did not make any promise to pay any amount to the defendants or to the Jind Vikas Cooperative House Building Society and therefore, no such amount is recoverable from the plaintiff. The learned counsel for the plaintiff further invites the attention of the court towards complete available facts and circumstances on the case file and places reliance upon New Delhi Municipal Committee Vs. Kalu Ram and another AIR 1976 Supreme Court 1637, Manoj Kumar Saha and another Vs. Nabadwip Chandra Poddar and another AIR 1978 Calcutta 111 and prays that the suit of the plaintiff be accordingly decreed.

## Arguments advanced by learned counsel for defendants

On the other hand, the learned counsel for contesting defendants No.1 and 2 and the learned GP for State representing defendant No.3 have jointly submitted that present suit is not maintainable and court does not has the jurisdiction to try and decide the present matter as per Section 128 of Haryana Cooperative Societies Act. It is further submitted that the suit is also bad for want of notice under Section 124 of Haryana Cooperative Society Act. It is submitted that the plaintiff was member of the Jind Vikas Cooperative House Building Society Ltd. vide membership No.280 dated 27.06.1986. The said society was amalgamated with defendant No.1. Therefore, the right to recover the loan vest in the defendant No.1. It is further submitted that loan was to be repaid in 80 equated quarterly installments in 20 years and the plaintiff has failed to repay the entire amount. It is further denied that the plaintiff deposited Rs.1,40,000/- in

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year 1997. The learned counsel further invites the attention of the court towards complete available facts and circumstances and places reliance upon Shamshad Shafi Vs. Sale Officer 1991(1) LJR 664, Jagdish Vs. Ranjit Singh 1996(3) LJR 328 (P&H) and Cotton Corporation of India Limited Vs. United Industrial Bank Limited and others AIR 1983 Supreme Court 1272 and prays that the suit of the plaintiff be dismissed with costs.

## **Findings**

In the present case, the main question which needs to be adjudicated is as to whether the plaintiff is entitled for permanent injunction as prayed for. It has been strongly stressed by the plaintiff that the plaintiff has obtained loan for construction of house from the Jind Vikas Co-operative House Building Society, Jind in year 1985 and the said loan stood repaid as certain amount was deposited by the plaintiff and some amount was waived by the Government of Haryana. It has accordingly been prayed that the defendant should be restrained from making recovery of Rs.6,22,967/- or any other amount from the plaintiff by sale of the house of the plaintiff in dispute. It is settled law that the case of the plaintiff has to stand on its own legs, and the plaintiff cannot take advantage of the weakness of the case of defendant. After careful perusal of the available circumstances, this Court is of the thoughtful opinion that the plaintiff has failed to produce any unequivocal, the precise and reliable evidence which could help to give strength to the vague and weak assertions put-fourth by the plaintiff. It would be most

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relevant to briefly resort to the oral evidence available on case record. Lajpat Rai, being the plaintiff, himself has stepped into witness box as PW1 and tendered his affidavit EX.PW1/A, on the similar lines of the plaint. He has reiterated the version of the plaint and has maintained that he has no other efficacious remedy except to file the present suit. However, he could not stand the test of detailed cross-examination and has reflected his ignorance to various material questions put to him in the cross-examination. He has admitted that he took amount of Rs.49,000/- as loan however, he is not aware about the interest. He has shown his ignorance that the rate of interest was settled at 15% per annum and in case of default of the installment, rate of interest 2.5% per annum of penal interest was to be charged in addition to the interest. The overall deposition of the plaintiff was, therefore, completely non convincing and he denied all the material suggestions put to him in the cross-examination. On the other hand, the deposition of DW1 Surender, Secretary Jind Adarash Co-operative House Building Society, Jind is reliable and convincing and he has tendered his detailed affidavit Ex.DW1/A and has maintained that the plaintiff was member of the Jind Vikas Co-operative House Building Society, Jind and had obtained loan for house building from that society. It is further submitted that the said society was amalgamated with defendant No.1 and all the rights and liabilities of that society vests in defendant No.1. He has further maintained that the defendant No.2 issued O.T.S. Scheme for the defaulter loanee but the plaintiff has not availed the O.T.S. facility as per

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scheme and has not fulfilled the condition. The defendant No.3 served notice No.512 dated 11.02.2010 upon the plaintiff. The plaintiff has not paid the loan amount. The defendant No.1 applied in January 2010 before defendant No.3 for recovering of loan amount by way of sale of mortgage of property of the plaintiff. The defendant No.1 also served notice to the plaintiff vide notice No.820 dated 26.10:2010 and notice dated 28.08.2012 and demanded Rs.6,22,967/-. The defendant No.1 is a cooperative Society and governed by the Harvana Cooperative Societies Act, 1984 and rules thereafter, The advancing of loan to its member is the business of the defendant No.1. The plaintiff has not paid the loan amount by way of installment in time and is a defaulter. He has further tendered documents Ex. D5 to Ex.D21, in his examination-in-chief. He was cross-examined at length by the learned counsel for plaintiff, however, he has stood firm on his assertions and nothing material was extracted in his crossexamination to challenge the authenticity and reliability of his deposition. On similar accounts, the deposition of DW2 Balraj is also convincing and reliable. He has tendering his detailed affidavit Ex.DW2/A corroborating the stand of DW1. He has also stood firm in his cross-examination with regard to the assertions of the defendants.

12. This is complete available oral evidence on case file and after bestowal of thoughts, this Court is of the opinion that plaintiff has failed to establish any convincing case in his favour which call out for grant of relief of permanent

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injunction, as prayed for. It is most relevant to mention that as per the provision of Section 124 of Haryana Co-operative Societies Act, 1984 a notice is mandatory. It would be relevant to mention the provisions of Section 124 which reads as below:-

124. Notice necessary in suits:- No suit shall be instituted against a co-operative society or any of its offices in respect of any act touching the business of society until the expiration of two months next after notice in writing has been delivered to the Registrar of left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left.

In the present case, it has been well admitted by the plaintiff that he did not give any such notice, as enshrined under the provisions of Section 124 of the Act. In this regard, reliance is also placed on *Shamshad Shafi Versus*.

Sale Officer 1999(1) LJR 664 whereby it was held by Hon'be Punjab & Haryana High Court that the suit for permanent injunction was held to be not maintainable on account of no notice having been served under the Provisions of Haryana Co-operative Societies Act, 1984. Furthermore, no explanation has been tendered by the plaintiff as to why the said notice, which is mandatory in nature was not served upon the defendant being a Co-operative House Building Society.

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Lajpat Rai Vs. The Jind Adarsh Co-operative House, etc.

This Court further regrets to disagree with the learned counsel for the plaintiff that the present recovery sought by the defendant is time barred. The learned counsel for the plaintiff has placed reliance on the case of *Manoj Kumar Shah* and Another Versus Nabadwip Chandra Poddar and Another & New Delhi Municipal Committee Versus Kalu Ram and another 1976.

S.C. 1637. However, the aforesaid authorities as relied upon by the plaintiff are distinguishable from the facts and circumstances of the present case. Moreover, conclusive evidence has been adduced on record as to circumstances under which the present recovery sought by the defendants is not time barred. Therefore, taking into view, the above said discussion, this court is convinced that the balance of probabilities by way of preponderance of evidence weigh heavily in favour of defendants. Hence, the present issue is decided against the plaintiff and in favour of defendants.

## ISSUES NO.2 and 7

13. Since both these issues are inter-connected and inter-related with each other, therefore, they are taken up together for adjudication. The onus to prove both these issues was upon the defendants and convincing, cogent and reliable evidence has been established on the case record by the contesting defendants to rebut the assertions of the plaintiff. It has further been proved by way of balance of probabilities that the plaintiff has no cause of action and locus standi to file and maintain the present suit and the suit of the plaintiff is

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not maintainable. Hence taking into view, the discussion on issue no.1, and the aforesaid discussion, both these issues are decided in favour of the defendants and against the plaintiff.

## ISSUE NO.3,4,5,6,8 and 9

14. The onus to prove these issues were on the defendants, but these issue were not pressed upon at the time of arguments. So, these issues are decided as being not pressed upon.

## RELIEF:

15. In view of my findings on the above said issues, especially on issue No.1, the suit of the plaintiff fails and the same is hereby dismissed leaving the parties to bear their own costs. Decree-sheet be prepared accordingly and file be consigned to the records after due compliance.

Pronounced in Open Court

Dated: 05.11.2014

(Amarinder Sharma) Addl.Civil Judge(Senior Division),

Jind

Note: All the nineteen pages have been checked and signed by

(A)narinder Sharma) Addl.Civil Judge(Senior Division)

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Civil Suit RBT No.165 of 2012

Date of Institution: 28.09.2012/13.05.2013

Date of Decision: 05.11.2014

Lajpat Rai son of Sh. Matu Ram, resident of House No.508/5 Hakikat Nagar, Jind. ....Plaintiff.

#### Versus

The Jind Adarsh Co-operative House Building Society Ltd. Through its 1. Secretary House No.2824 New Housing Board Colony near Safidon Road Bye Pass, Jind.

Haryana Co-operative House Building Federation through its Managing 2. Director Baje No.49-52 Sector-2, Panchkula.

3. Assistant Registrar Co-operative Societies Haryana Mini Secretariat, Jind.

....Defendants

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## **CLAIM FOR:**

Suit for seeking permanent injunction restraining the defendant from selling House of plaintiff having No.508/5 Hakikat Nagar, Jind for recovery of any amount of and further from recovering from the plaintiff Rs.6,22,967/- or any other amount now or in future by arrest and detention of the plaintiff or in any other manner.

Value of the suit for the purposes of court fee Rs.25/-Value of the suit for the purposes of jurisdiction fee Rs.1000/-

This suit is coming before me {Amarinder Sharma, Addl. Civil Judge (Senior Division), Jind} on the 5th day of November, 2014 for final disposal in the presence of Shri S.S. Poonia, Advocate for plaintiff, Shri Chand Ram, Advocate for defendants No.1 and 2 and Shri Surender Khatkar, GP for defendant No.3 and it is ordered that the suit of the plaintiff fails and the same is hereby dismissed leaving the parties to bear their own costs.

> Amarinder∕Sharma Addl. Clear hange Sr. Divn.)

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#### · COSTS OF THE SUIT

	Plaintiff	Defendants	
1. Stamp for plaint.	Rs. 25.00	Rs. 00.00	
2. Stamp for power.	Rs. 02.00	Rs. 04.00	
3. Process fee	Rs. 50.00	Rs. 00.00	
4. Misc.	Rs. 12.00	Rs. 00.00	
5. Counsel's fee.	Rs. 1500.00	Rs.1500.00	
Total	Rs. 1589.00	Rs.1504.00	

Given under my hand and the seal of the court today this 5th day of November, 2014.

Amarinder Sharma
Addl. Civil Judge(Senior Division),
Jind-05.11.2014

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Examiner (Chyling Agency

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## AMENDED TITLE

## In the Court of Sh. A S Narang, District Judge, Jind

Lajpat Rai S/o Sh. Matu Ram deceased through its Lrs 1. Sarla wife 2. Deepak 3. Ashish Sons R/o H. No. 508/5 Hakikat Nagar, Jind 4. Shewta (Daughter Lajpat Rai) w/o Sh. Narender R/o Vikas Nagar, New Delhi 5. Sonia (Daughter Lajpat Rai) w/o Sh. Anil R/o Gobind Nagar, Jaipur

Appellant/Plaintiff

. Vs.

- 1. The Jind Adarsh Co-operative House Building Society Ltd. Through its Secretary H. No.2824 New Housing Board Colony near Safidon Road Bye Pass, Jind.
- 2. Haryana Co-Operative House Building Federation through its Managing Director Bays No.49-52 Sector 2, Panchkula.
- 3. Assistant Registrar co-operative Societies Haryana Mini Secretariat Jind
  ...Respondents/defendants

Appeal against the Judgment and decree dated 5.11.14 passed by Sh. Amarinder Sharma Additional Civil Judge (Sr. Divn.) Jind in civil suit no.165 of 28.9.2012/13.5.13 vide which the suit of the appellant has been dismissed; For the acceptance of appeal and for setting aside the impugned judgment and decree and thereby decreeing the suit of appellant as prayed for on the following amongst other grounds.

Jind
3.12.2014
9.01.2019

Submitted by:

State Bank of India through its

Branch Manager, Kithana Branch

Plaintiff/Applicant

Through counsel

Rajesh Kumar Gill Advocates, Jind

## IN THE COURT OF HON'BLE DISTRICT JUDGE, JIND

Lajpat Rai S/o Sh. Matu Ram R/o H. No. 508/5 Hakikat Nagar, Jind

Appellant/Plaintiff

Vs.

1. The Jind Adarsh Co-operative House Building Society Ltd. Through its Secretary H. No.2824 New Housing Board Colony near Safidon Road Bye Pass, Jind.

2. Haryana Co-Operative House Building Federation through its Managing Director Bays No.49-52 Sector 2, Panchkula.

3. Assistant Registrar co-operative Societies Haryana Mini Secretariat Jind

...Respondents/defendants

Appeal against the Judgment and decree dated 5.11.14 passed by Sh. Amarinder Sharma Additional Civil Judge (Sr. Divn.) Jind in civil suit no.165 of 28.9.2012/13.5.13 vide which the suit of the appellant has been dismissed; For the acceptance of appeal and for setting aside the impugned judgment and decree and thereby decreeing the suit of appellant as prayed for on the following amongst other grounds:-

Sir,

The appellant/plaintiff submits as under:-

- 1. That the appeal is being filed within the period of limitation allowed by law after deducting the time spent in obtaining the certified copy of the impugned judgment and decree. The copy of impugned judgment and decree is attached here with after due TAKMIL.
- 2. That the Learned Lower Court grossly erred in deciding the issue No.1 against the appellant and in favour of the respondents. This issue ought to have been decided in favour of the appellant and against the respondents. There is ample evidence on the case file to prove the case of the appellant/plaintiff. The appellant had not obtained any loan from the respondent no.1. The appellant was never associated in any alleged merger of The Jind Vikas House Building Society with the defendant No.1. The contention of the alleged merger of The Jind Vikas House Building Society with the respondent No.1 is not at all proved on the file. The alleged merger is not binding on the rights of the appellant.
- 3. That the Learned Lower Court further grossly erred in not appreciating the fact that the loan which was taken by the appellant from The Jind Vikas House Building Society stood repaid either by payment made by the appellant and or due to the loan waiving schemes of the Govt. of India.
- 4. That the Learned Lower Court further grossly erred in not appreciating the fact that the loan taken by the appellant from The Jind Vikas House Building Society even if not fully repaid also can not be recovered as the same has become barred by time. The loan in question was advanced in 1985. It was secured by mortgage so the limitation for the recovery was 12

years which expired in 1997. There is no evidence worth the name on the file to show that the balance in the loan was ever confirmed by the appellant for the purposes of the extension of limitation. So from this angle also the loan in question or the balance if any shown due can not be recovered from the appellant. The Ld. Lower Court did not appreciate that the recoverable is that which is not barred by time. The issue No.1 ought to have been decided in favour of the appellant and against the respondents.

- 5. That the Ld. Lower Court further grossly erred in deciding issues No.2 and 7 in favour of the respondents and against the appellant. These issues ought to have been decided the respondent sand in favour of the appellant. The respondent are threatening to use cohersive method to recover the amount which is not an against the appellant so certainly the appellant has a cause of action to file the case and has also the locus standi to file the present suit. The threat of the respondents was immediate and imminent to do illegal act so the appellant had no other remedy then to file the present suit. The Ld. Lower Court has not appreciated the law in true propective and has thereby mis-carried the justice.
- 6. That the Ld. Lower Court further grossly erred in coming to the conclusion that no notice was served by the appellant. The notice Ex.P2 was duly served by the appellant before filing the present suit
- 7. That the impugned judgment and decree is not based on the facts established on the file and the law applicable to the facts

of the case and as such is not sustainable and is laible to be reversed.

- 8. That the Learned Lower Court has ignored all the vital aspects of the case and has thereby mis-carried the justice.
- 9. That the impugned judgment and decree is based on mere conjunctures and surmises and not on the facts established on the file and as such the impugned judgment and decree is liable to be reversed.
- 10. That the Ld. Lower Court grossly erred in believing the inconsistent, untrustworthy and discrepant evidence of the respondents and in not believing the consistent, reliable and trustworthy evidence of the plaintiff.
- 11. That the impugned judgment and decree is not based on speaking findings and as such is liable to be reversed.
- 12. That the proper Court fee as per decree sheet is affixed.

Hence it is prayed that, the appeal be accepted and the impugned judgment and decree be set aside and thereby the suit of the appellant be decreed with costs, in the interest of justice.

Jind 3.12.14

Submitted by:

Lajpat rai

...Appellant/plaintiff.

Through Counsel: Sh. S S Poonia Adv. Jind

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Lajpat Rai Versus The Jind Adarsh Co-operative Society etc.

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## IN THE COURT OF GURVINDER KAUR, ADDITIONAL DISTRICT JUDGE, JIND UID No.HR0116

Civil Appeal No. 02 of 2019/2014.

Date of institution: 06.04.2019/04.12.2014.

CNR No.HRJN01003537-2014.

CIS No.CA/426/2014.

Date of decision: 13.05.2019.

Lajpat Rai son of Matu Ram deceased through his legal heirs 1. Sarla wife

- 2. Deepak 3. Ashish sons, resident of House No.508/5 Hakikat Nagar, Jind.
- 4. Shewta (daughter Lajpat Rai) wife of Narender, resident of Vikas Nagar, New Delhi 5. Sonia (daughter Lajpat Rai) wife of Anil, resident of Gobind Nagar, Jaipur.

.....Appellant-plaintiff

#### Versus

- 1. The Jind Adarsh Co-operative House Building Society Ltd. Through its Secretary House No.2824, New Housing Board Colony near Safidon Road Bye pass, Jind.
- 2. Haryana Co-operative House Building Federation through its Managing Director Bays No.49-52, Sector-2, Panchkula.
- 3. Assistant Registrar Co-operative Societies Haryana Mini Secretariat, Jind.

... Respondents-defendants

Civil appeal against the judgment and decree dated 05.11.2014 passed by Shri Amarinder Sharma, the then learned Addl. Civil Judge (Sr. Divn.), Safidon, in Civil Suit No.165 of 28.09.2012/13.05.2013.

Present:

Shri Rajesh Gill, Advocate for appellant-plaintiff.

Shri Chand Ram, Advocate for respondents-defendants no.1 and

2

Shri Raj Kumar, Government Pleader for respondent-defendant

no.3

### JUDGMENT:

The appellant-plaintiff has preferred the instant appeal against

the judgment and decree dated 05.11.2014 passed by Shri Amarinder

Gurvinder Kaur, ADJ, Jind, 13.05.2019

perintendent Gr.-II Sessions Court Sharma, the then learned Addl. Civil Judge (Sr. Divn.), Jind, in Civil Suit No.165 of 28.09.2012/13.05.2013, vide which, the suit of the appellant-plaintiff has been dismissed.

- 2. Before discussing the arguments advanced by the learned counsel for the appellant-plaintiff and the respondents-defendants, the facts of the case are detailed in short.
- A suit for permanent injunction was filed by the appellantplaintiff wherein he sought a relief restraining the respondents-defendants from selling the house of the appellant-plaintiff having No.508/5 Hakikat Nagar, Jind for recovery of any amount and further from recovering Rs.6,22,967/- or any other amount in future by arrest and detention of the appellant-plaintiff in any manner on the ground that the appellant-plaintiff was never member of Jind Adars Co-operative Building Ltd. Jind and has no account or dealing with the respondent-defendant no.1 Society. He had obtained a loan for construction of house from Jind Vikas Co-operative House Building Society, Jind to the tune of Rs.49,000/- in the year 1985 and he made payment of the loan to the society. Thereafter, the Government of Haryana from time to time waived off the loan taken from the co-operative societies and as such the entire loan of the appellant-plaintiff stood paid on account of repayment or waiver by the Government of Haryana. The appellant-plaintiff received a letter from respondent-defendant no.2 dated 11.02.2010 asking him to pay the amount of respondent-defendant no.1. A reply was sent to the same and the respondent-defendant no.2 was informed that nothing was due to be paid by the appellant-plaintiff. He received

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another notice dated 26.10.2010 which was replied by him vide letter dated 29.10.2010 in which he specifically mentioned that no loan was taken by him from respondent-defendant no.1, nor any amount of respondent-defendant no.1 was due towards him. He got a notice dated 21.10.2011 served upon him through Assistant Registrar, Co-operative Society, Jind in which a sum of Rs.6,22,967/- was demanded by the Assistant Registrar, Co-operative Society, Jind on behalf of respondent-defendant no.1. The appellant-plaintiff replied to this notice also vide letter dated 25.02.2011 which was duly received by the office of Assistant Registrar, Co-operative Society, Jind on 25.02.2011. Another notice dated 27.01.2012 was received by the appellant-plaintiff which was duly replied by him vide reply dated 14.03.2012 and he denied having taken any loan from the respondents, so there was no question of repayment of the same.

It was further pleaded that respondent no.1 wrote a letter dated 28.08.2012 demanding the above said amount again but since the appellant-plaintiff had never borrowed any amount from respondent no.1 and the alleged amalgamation of the Jind Vikas Co-operative House Building Society with respondent-defendant no.1 was never done with the consent and knowledge of the appellant-plaintiff. He was neither informed either before or after the alleged amalgamation and any such act done without the consent and knowledge of the appellant-plaintiff is not binding upon his rights.

He stated that loan of Rs.49,000/- from the Jind Co-operative House Building Society, Jind in the year 1985 was secured with mortgaged

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of the property. The limitation of the purpose of recovery of said loan was 12 years which expired in the year 1997 and even if the loan has been waived the same is not recoverable being barred by time. He also stated that he made the last payment towards the repayment of loan in the year 1997 and after that he never paid any amount, nor any demand was raised till 11.02.2010 and thus the respondents were not entitled to recover the said amount and when the requests of the appellant-plaintiff failed, he filed the present suit.

After receiving notice, a joint written statement was filed by the respondents-defendants no.1 and 2 in which they took preliminary objections regarding maintainability; no cause of action; no locus standi; suit being false and frivolous; no jurisdiction; appellant-plaintiff has not come to the court with clean hands; suit being barred under section 124 of Haryana Co-operative Society Act.

On merits, it was denied that the appellant-plaintiff was the member of respondent-defendant no.1. It was also denied that appellant-plaintiff has no concern or dealing with respondent-defendant no.1. The appellant-plaintiff was member of the Jind Vikas Co-operative House Building Society Ltd., Jind vide membership No.280 dated 27.06.1986. The said society was amalgamated with the respondent-defendant no.1 on 31.03.2000 vide order Assistant Registrar Co-operative Societies, Jind and all the rights and liabilities of the Jind Vikas Co-operative House Building Society vest in the respondent no.1 society. After amalgamation, the right to recover the loan vest in the respondent-defendant no.1 and the appellant-

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plaintiff has deposited Rs.10,000/- on dated 02.11.2000 with the respondentdefendant no.1. It was admitted that appellant-plaintiff has obtained the loan for construction of house to the tune of Rs.49,000/- in the year 1986 and the appellant-plaintiff has deposited only Rs.33,556/- to the Jind Vikas Cooperative House Building Society. It was denied that Government of Haryana from time to time waived off the loan taken from the Societies and as such the entire loan of the appellant-plaintiff stood paid on account of repayment or waiver by Government of Haryana. The respondent-defendant no.1 did not serve any notice No.512 dated 11.02.2010. The appellantplaintiff did not pay the loan amount along with interest in time and became defaulter. The respondent-defendant no.1 applied in January 2010 before respondent-defendant no.3 to recover loan amount by way of sale of mortgage property of the appellant-plaintiff. It was admitted that respondentdefendant no.1 issued notice No.820 dated 26.10.2010 which was replied by the appellant-plaintiff's counsel. The respondent-defendant no.1 served notice dated 28.8.2012 on the appellant-plaintiff and demanded Rs.6,22,967/- but this notice was not replied by the appellant-plaintiff to the respondent-defendant no.1. It was admitted that the respondent-defendant no.1 issued notice No.867 dated 28.08.2012, but it was denied that no amount of the respondent-defendant no.1 is due against the appellantplaintiff. The appellant-plaintiff borrowed the loan amount from Jind Vikas Co-operative House Building Society Ltd., Jind and the said society was amalgamated with the respondent-defendant no.1. The appellant-plaintiff was duly aware about this amalgamation and it is binding on the rights of the

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appellant-plaintiff. It was denied that limitation for the purpose of recovery of the loan amount was 12 years and no amount of said loan is recoverable from the appellant-plaintiff as the same is barred by time. It was denied that the respondent-defendant no.1 neither raised any demand of loan from appellant-plaintiff after the year 1997 to 11.02.2010. It was denied that after 1997, no amount was deposited by the appellant-plaintiff, nor any demand was raised till 11.02.2010. The appellant-plaintiff has mortgaged his plot/property in favour of Jind Vikas Co-operative House Building Society, Jind vide mortgage deed No.2151 dated 3.9.1986 and the appellant-plaintiff was promised to pay the loan amount and execute promissory note dated 25.09.1986, 30.10.1986, 12.12.1986. It was submitted that rate of interest was settled 15% per annum and in case of default of the installment rate of interest 2.5% per annum of penal interest was to be charged in addition to the interest. The loan was to be repaid in 80 equated quarterly installments in 20 years. The appellant-plaintiff had deposited Rs.10,000/- to the answering respondent no.1 on 02.11.2000. The appellant-plaintiff was served several 11.09.2000, respondent-defendant no.1 on 26.10.2010, 31.01.2012 and 29.12.2009, 13.07.2009, 16.01.2007, 28.08.2012. Rest all the remaining averments have been denied and a prayer for dismissal of the suit was made.

On notice, respondent-defendant no.3 appeared and file separate written statement taking preliminary objections regarding maintainability; no cause of action; no locus standi; suit being false and frivolous; no jurisdiction; mis-joinder and non-joinder of necessary parties; want of

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proper court fee; not come in the court with clean hands; suit being bad for want of notice under section 124 of The Haryana Co-operative Societies Act, 1984.

On merits, it was pleaded that the appellant-plaintiff was member of Vikas House Building Society, Jind and the same was amalgamated within The Jind Adarsh House Building Society Ltd. Jind vide order of Assistant Registrar Co-operative Societies, Jind No.675-94 dated 31.03.2000. No amount out of loan amount taken by the appellant-plaintiff was waived off by the Government and as such question of repayment of loan by the appellant-plaintiff does not arise. It was admitted that the notice bearing No.512 dated 11.02.2010 was issued by answering respondent for 19.04.2010 which was issued legally and rightly and same was binding on the appellant-plaintiff and same was replied on 03.03.2010. On receipt of reply dated 03.03.2010, the appellant-plaintiff was required to appear before respondent-defendant no.3 on 05.04.2010 for hearing vide memo No.RK-II/946 dated 05.04.2010 but intentionally did not appear before respondentdefendant no.3 on the said date. Thereafter, fresh notice/memo No.RK-II/946 dated 05.04.2010 was again issued directing the appellant-plaintiff to appear before respondent-defendant no.3 on 16.04.2010 but again the appellant-plaintiff did not come on the said date, rather appeared on 19.04.2010 through Shri Rajesh Kumar Gill, Advocate and filed reply dated 19.04.2010 and the case was adjourned to 22.04.2010. The respondentdefendant no.3 has every right to issue the notice in question and recover the

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amount. Rest all the remaining averments have been denied and a prayer for dismissal of the suit was made.

- 6. Replication was not filed. From the pleadings of the parties, following issues were framed on 15.04.2013:-
- 1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP
- 2. Whether plaintiff has no locus standi and cause of action to file the present suit against the defendants? OPD
- 3. Whether the plaintiff has concealed material facts from the court? OPD
- 4. Whether suit is time barred? OPD
- 5. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD.
- 6. Whether the plaintiff is estopped from filing the present suit by their own act and conduct?OPD
- 7. Whether suit of the plaintiff is not maintainable in the present form?
  OPD
- 8. Whether the suit of the plaintiff is bad for want of proper court fees?
  OPD
- Whether suit is barred by notice under section 124 of Haryana Cooperative Society Act? OPD
- 10. Relief.
- 7. In order to prove his case, appellant-plaintiff Lajpat Rai himself stepped in as PW-1 and reiterating the version of the plaint and closed the evidence.

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The appellant-plaintiff also tendered in evidence notice dated 28.08.2012 regarding recovery Ex.P1, legal notice dated 29.10.2010 Ex.P2 and notice dated 11.02.2010 Ex.P3.

8. On the other hand, respondents-defendants examined Surender Singh, Secretary as DW1 and Balraj Singh Siwach, Assistant Registrar as DW-2 who reiterated the version given in the written statement and closed the evidence.

The respondents-defendants also tendered copy of mortgage deed Ex.D1, promissory notes Ex.D2 to Ex.D4, copy of resolution dated 10.10.2012 Ex.D5, copy of notice dated 28.08.2012 Ex.D6, letter regarding not to deposit entire mortgage money with interest Ex.D7, postal receipt Ex.D8, copy of postal receipt Ex.D9, copy of notice dated 29.10.2010 Ex.D10, postal receipt Ex.D11, copy of legal notice dated 26.10.2010 Ex.D12, postal receipt Ex.D13, letter regarding not to deposit entire mortgage money with interest Ex.D14, copy of post receipt Ex.D15, copy of notice dated 13.07.2009 Ex.D16, copy of notice dated 16.01.2007 Ex.D17, copy of notice dated 12.10.2001 Ex.D18, copy of register of members Ex.D19, copy of personal ledger Ex.D20, copy of recovery status of individual loanee Ex.D21, copy of order dated 31.03.2000 Ex.D22, copy of Form-XI Ex.D23, copy of notice dated 11.2.2010 Ex.D24, copy of reminder to notice dated 11.2.2010 and 25.3.2010 Ex.D25, copy of reminder to notice dated 5.4.2010 Ex.D26, copy of reply to notice dated 5.4.2010 Ex.D27, copy of order dated 22.4.2010 Ex.D28 and copy of resolution dated 19.01.2010

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- 9. On perusal of the material on record and consideration of the submissions made by learned counsel for the parties, the learned Addl. Civil Judge (Sr. Divn.), Jind dismissed the suit.
- 10. During the pendency of the case, the appellant Lajpat Rai expired and his LRs were brought on record.
- 11. Feeling aggrieved, the appellant-plaintiff has filed the present appeal.
- The counsel for the appellant-plaintiff argued that the learned trial court has not considered the evidence and the averment of the appellant-plaintiff that he has not obtained any loan from the respondent no.1. He was never associated in any alleged merger of the Jind Vikas House Building Society with respondent no.1 and this fact has also not been proved on file. If there was any merger, the same was not binding on the rights of the appellant-plaintiff. The loan which he took from Jind Vikas House Building Society had already been paid by him and nothing is due as per the loan waiving scheme of the Government of India.

The counsel further argued that the learned trial court has erred in appreciating the fact that even if the loan taken by the appellant-plaintiff has not been repaid, the same cannot be recovered being time barred. The loan in question was advanced in the year 1985. It was secured by mortgaged so limitation for recovery was 12 years which expired in the year 1997. There is no evidence that the loan was ever confirmed by the appellant for the purpose of extension of limitation and the respondents are

Gurvinder Kaur, ADJ, Jind. 13.05.2019 threatening to use coercive methods to recover the amount even when they have no cause of action to file the suit and their claim is totally time barred. Learned counsel while placing reliance on the observations made in case titled Sardara Singh (dead) by LRs and another Versus Sardara Singh (dead) and others 1990 (4) SCC 90 prayed that the civil court has jurisdiction to entertain the suit and there is no bar under section 9 of the Code of Civil Procedure.

He also argued while placing reliance on the observations made in case titled New Delhi Municipal Committee Versus Kalu Ram AIR 1976 (SC) 1637 that the claim which is time barred cannot be recovered. It was prayed that the learned trial court has wrongly decided issue no.1 against the appellant-plaintiff and has held that the suit of the appellant-plaintiff is not maintainable. The findings on issues no.1, 2 and 7 are liable to be reversed and prayed that the suit of the appellant-plaintiff be decreed by accepting the appeal.

13. The learned counsel for the respondents-defendants on the other hand argued that the civil court has no jurisdiction to try and entertain the suit filed by a debtor and no notice was served prior to filing of the suit and the suit is bad for non service of notice to the society. To support his arguments, he placed reliance on the observations made in case titled Shamshad Versus Sale Officer 1999 (1) LJR 664 (P&H), Jagdish Versus Ranjeet Singh 1996 (3) LJR 328, Harchand Versus The Khiala Kalan Agricultural Co-operative Service Society 1993 (1) All India Land Laws

Reporter 138 (P&H). He also referred to section 13 of the Haryana

Gurvinger Kaur, ADJ, Jind, 13.05.2019 Co0operative Societies Act, 1984 wherein it was mentioned that a cooperative society may by a resolution passed by 2/3rd majority of the members present and voting at general meeting of the society (a) transfer its assets and liability in whole or in part to any other co-operative society; (b) divide itself into 2 or more co-operative societies.

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And prayed that the respondent no.1 can recover the loan amount from the appellant-plaintiff and there is no bar in doing so as a resolution was passed by the respondent no.2 wherein the respondent no.1 was merged and the liabilities and rights were shifted to the respondent no.2. He argued that as per section 12 of the Haryana Co-operative Societies Act, 1984 a co-operative society may by amendment of its bylaws change the form or extent its liability and similar is the position in the present case.

He argued that when the appellant had paid Rs.10,000/- as arrears of loan amount in the year 2010, he acknowledge the loan taken by him and the recovery of the same is within limitation. He prayed that the appeal be dismissed.

14. After hearing learned counsel for the parties and after going through the case file carefully, it is observed that the appellant-plaintiff on the one hand has denied the taking of the loan from the respondents and on the other hand, he has paid installments of Rs.10,000/- on 02.11.2000 which fact has not been denied by him. He has not denied having taken loan from the respondent no.1 in lieu of mortgage of his house for which he took the

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loan. The respondent no.1 has been merged in respondent no.2 and the liabilities of the appellant-plaintiff does not cease to exist and he is liable to make the payment and the suit has been rightly dismissed by the learned trial court.

15. A plea has been raised by the appellant-plaintiff that the debt is time barred and he is not liable to pay the same to the respondents. The appellant-plaintiff had paid Rs.10,000/- on 02.11.2010 and this amount is of the loan taken by him from the respondent no.1 which he on the one hand is denying and on the other hand he is making payment to clear the arrears. He has acknowledged the debt by making this payment and the limitation has to be considered from his acknowledgement of the debt.

'Acknowledgement' generally means acceptance or admission of something that exists. Section 18 of the Limitation Act, 1963 uses the term 'acknowledgement' to mean an admission of an existing liability in lieu of which the period of limitation is extended. A perusal through section 18 of the Limitation Act indicates certain conditions to be fulfilled in order to emphasize acknowledgement. They are:

- a. That the acknowledgement of liability must be in writing.
- b. That the acknowledgement of liability must be made before expiry of limitation period for filing the suit. If limitation has already expired, it would not revive under section 18 of the Limitation Act.
- c. That the acknowledgement of liability must be unqualified and must be in unambiguous, clear terms.

d. That the acknowledgement must be signed by the person or his

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authorised agent admitting liability.

It may be clarified that 'acknowledgement' under section 18 of the Limitation Act and 'promise to pay' under section 25(3) of the Contract Act, 1872 are different even though both have the effect of creating a fresh limitation period. Where section 18 grants a fresh period of limitation only in cases where acknowledgement is before expiry of limitation period; section 25(3) comes to the rescue in cases where period of limitation has already expired. However, can we treat an acknowledgement of liability as a promise to pay? In affirmatively answering the question the Delhi High Court has held that any written acknowledgement after the confirmation of the balance amount can safely be treated as a promise to pay and not mere acknowledgement.

It is to be noted that an acknowledgement of liability may be unilateral or bilateral. A unilateral acknowledgment would, in most cases, be more reliable and convincing, because if the debtor makes a conditional or unconditional acknowledgment in the absence of a creditor, it cannot be urged by him as in the case of a bilateral agreement that it was obtained by any kind of fraud, coercion, threat, inducement or promise.

# Documents that constitute 'acknowledgement' vis-à-vis section 18 of the Limitation Act:

1. E-mails acknowledging the debt constitute a valid and legal acknowledgement of debt and is legally recognized by the Information Technology Act, 2000.

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- 2. Debentures are 'acknowledgment' under the purview of section 18 Limitation Act, 1963.
- 3. Balance sheets are an admission of indebtedness and sufficient acknowledgment under the Indian Limitation Act. The limitation period is calculated from the date it is signed.
- 4. Cheque given by a debtor to pay his dues is an acknowledgement, even though the Cheque is dishonoured.
- 5. An acknowledgement of a payment made in the written statement in an earlier suit operates as an acknowledgement within the meaning of Section 18 of the Limitation Act.
- 6. In a suit for redemption of a mortgage, acknowledgement of liability must be made by the mortgagee whereas in a suit for foreclosure of mortgage, acknowledgement must be made by the mortgagor.
- 7. An insufficiently stamped document which contains an admission of liability can be relied upon only for the purpose of extending limitation period.

There are documents which do not constitute an acknowledgement of liability under the Limitation Act. Issuance of TDS certificate does not amount to the acknowledgment of liability as TDS certificate is primarily to acknowledge the deduction of tax at source. Also, C – Forms are not due acknowledgement of debt as there is no acknowledgement of a present and subsisting liability. This is because no intention to acknowledge a liability can be inferred from the contents of the C form. Also, one cannot establish a jural relation of debtor and creditor from the contents of the C form.

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Similarly, a letter in reply to a demand notice cannot be held as acknowledgment as long as it does not admit the liability.

- In the present case, the appellant-plaintiff has himself stated that he was not member of the society and he had no notice of the merging of the society but his knowledge has no relevancy with the repayment of the loan which he had taken from respondent no.1 who has merged in the respondent no.1 as per the provisions of Haryana Co-operative Societies Act, 1984 wherein section 12 refers to the change of liability and reads as under:
  - (1) Subject to the provisions of the Act and the rules, a co-operative society may, by an amendment of its byelaws, change the form or extent of its liability.
  - (2) When a co-operative society has passed a resolution to change the form or extent of its liability, it shall give notice thereof in writing to all its members and creditors and notwithstanding any bye-laws or contract to the contrary, any member or creditor shall, during a period of one month from the date of service of the notice upon him, have the option of withdrawing his shares, deposits or repay loans, as the case may be.
  - (3) Any member or creditor who does not exercise his option within the period specified in sub-section (2) shall be deemed to have assented, to the change.
  - (4) An amendment of the bye-laws of a co-operative society changing the form or extent of its liability shall not be registered or take effect until all claims of members and creditors who exercise the option, referred to in sub-section (2) within the period specified therein, have been met in full.

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and section 13 refers to amalgamation, transfer of assets and liabilities and division of co-operative societies which reads as under:

- (1) A co-operative society may by a resolution passed by a two-third majority of the members present and voting at a general meeting of the society, –
- (a) transfer its assets and liabilities in whole or in part to any other co-operative society;
- (b) divide itself into two or more co-operative societies :

Provided that where the Government has assisted the society by way of share capital contribution, the society shall take the prior approval of the Registrar.

- (2) Any two or more co-operative societies may, with the previous approval of the Registrar and by a resolution passed by a two-third majority of the members present and voting at a general meeting of each such society, amalgamate themselves and form a new co-operative society.
- (3) The resolution of a co-operative society under subsection (1) or sub-section (2) shall contain all particulars of the transfer, division or amalgamation, as the case may be.
- (4) When a co-operative society has passed any such resolution, it shall give notice thereof in writing to all its members and creditors and notwithstanding any byelaws or contract to the contrary, any member or creditor shall, during the period of one month of the date of service of the notice upon him, have the option of withdrawing his shares, deposits or repay loans, as the case may be.

Guryinder Kaur, ADJ, Jind, 13.05.2019 Service of the State of the Sta

- (5) Any member or creditor who does not exercise his option within the period specified in sub-section (4), shall be deemed to have assented to the proposals contained in the resolution.
- (6) A resolution passed by a co-operative society under this section shall not take effect until,-
- (a) the assent thereto of all the members and creditors has been obtained, or
- (b) all claims of members and creditors who exercise the option referred to in sub-section (4) within the period specified therein, have been met in full.
- (7) Where a resolution passed by a co-operative society under this section involves the transfer of any assets and liabilities, the resolution shall notwithstanding anything contained in any law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.
- 17. The right of the respondents are duly protected by the provisions of Haryana Co-operative Societies Act, 1984.
- In view of the discussion made above, it is observed that the appellant cannot escape the liability to repay the loan amount or his legal heirs to the extent of property inherited by them from deceased Lajpat Rai. The learned trial counsel has rightly decided the issue no.1, though on different grounds than discussed above, against the appellant-plaintiff and in favour of the respondents-defendants and the findings on other issues also do not require any intervention.

19. / No other issue was pressed or argued.

Gurvinder Kaur, AD. Jind, 13.05.2019 In view of above discussion, I do not find any infirmity or illegality in the impugned judgment and decree dated 05.11.2014 and the same is upheld, whereas the present appeal is dismissed with costs throughout. Decree sheet be drawn accordingly. Copy of the judgment along with the trial court file be sent back and appeal file be consigned to the record room.

Announced:

(Gurvinder Kaur), Addl. District Judge, Jind. 13.05.2019 UID No.HR0116

Note: All the nineteen pages of this judgment have been checked and signed by me.

(Gurvinder Kaur), Addl. District Judge, Jind. 13.05.2019 UID No.HR0116

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Lajpat Rai Versus The Jind Adarsh Co-operative Society etc.

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## <u>DECREE SHEET</u> In the Court of Gurvinder Kaur, Addl. District Judge, Jind.

(UID No.HR0116)

Civil Appeal No. 02 of 2019/2014.

Date of institution: 06.04.2019/04.12.2014.

CNR No.HRJN01003537-2014.

CIS No.CA/426/2014.

Date of decision: 13.05.2019.

Lajpat Rai son of Matu Ram deceased through his legal heirs 1. Sarla wife 2. Deepak 3. Ashish sons, resident of House No.508/5 Hakikat Nagar, Jind. 4. Shewta (daughter Lajpat Rai) wife of Narender, resident of Vikas Nagar, New Delhi 5. Sonia (daughter Lajpat Rai) wife of Anil, resident of Gobind Nagar, Jaipur.

.....Appellant-plaintiff

#### Versus

- 1. The Jind Adarsh Co-oprative House Building Society Ltd. Through its Secretary House No.2824, New Housing Board Colony near Safidon Road Bye pass, Jind.
- 2. Haryana Co-operative House Building Federation through its Managing Director Bays No.49-52, Sector-2, Panchkula.
- 3. Assistant Registrar Co-operative Societies Haryana Mini Secretariat, Jind.

... Respondents-defendants

Date of presentation of plaint in the first court

28.09.2012

Date of decision in first court

05.11.2014

Appeal No.02 of 06.04.2019/04.12.2014 from the decree of the Court of Shri Amarinder Sharma, the then learned Addl. Civil Judge (Sr. Divn.), Jind, in Civil Suit No.165 of 28.09.2012/13.05.2013.

#### Claim For:

Suit for permanent injunction restraining the defendants from selling house of plaintiff having No.508/5 Hakikat Nagar, Jind for

Superintendent Gr.-II
Sessions Court
Jind Q. L.\ 5\ \9

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Lajpat Rai Versus The Jind Adarsh Co-operative Society etc.

recovery of any amount of and further from recovering from the plaintiff Rs.6,22,967/- or any other amount now or in future by arrest and detention of the plaintiff or in any other manner.

## Memorandum of appeal

Lajpat Rai

Appellant.

The Jind Adarsh Co-operative Society etc.

Respondent.

The appellants above named appealed to the District Court at Jind from the decree of the Court of Shri Amarinder Sharma, the then learned Addl. Civil Judge (Sr. Divn.), Jind dated 05.11.2014 for the following grounds as given in the grounds of appeal.

This appeal is coming for final hearing on 13th day of May, 2019 before me (Gurvinder Kaur, Addl. District Judge, Jind), in the presence of Shri Rajesh Gill, Advocate for the appellant, Shri Chand Ram, Advocate for respondents no.1 and 2 and Shri Raj Kumar, Government Pleader for respondent no.3. It is ordered that I do not find any infirmity or illegality in the impugned judgment and decree dated 05.11.2014 and the same is upheld, whereas the present appeal is dismissed with costs throughout.

#### **COSTS OF APPEAL**

			<u>Appellants</u>	Respondent
Ί.	Stamp for Appeal	Rs	25-00	00-00
2.	Stamp for power	Rs.	02-00	02-00
3.	Stamp for process	Rs.	50-00	00-00
4.	Misc.	Rs.	12-00	00-00
5.	Counsel's fee	Rs.	1500-00	1502-00
	Total:	Rs.	1589-00	1502-00

Given under my hand and the Seal of the Court this 13th day of

May, 2019.

of Presentation of application.15 ...ine of Applicant. Ry. J.): 146 mg No. of Pages...... Copying Fee Rs...J...Urgent Fee Rs..

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nder Kaur) Addl. District Judge, Jind. (UID No.HR0116)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

DAY - 1548-2-20

aspat Rai THROUN it LRS MO OTHER

#### VERSUS

**Defendants** Respondents THE I ZOND AMPSH COOP anily DOUSE BUT OF **Plaintiff** 

KNOW ALL to whom these presents shall come that I/we the undersigned appoint

## R. K. HANDA **MADAN SANDHU** DHARAM BIR BHARGAV **ADVOCATES**

## SUPREME COURT OF INDIA & HIGH COURT PUNJAB & HARYANA

Resi.: #3353, Sector 21-D, Chandigarh. Phone: 2707665, 2705475 (O), 09814538502 (M) E-mail: attorney\_handa@yahoo.co.in, dharembirbhargav@yahoo.co.uk

to be the Advocate for the ARRELLANTS. in the above mentioned case to do the following acts, deeds and things or any of them, that is to say:-

- To act, appear, and plead in the above-mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in Appeal or Letters Patent Appeal or Review or Revision or Execution or any other stage its progress unit its final decision.
- To present, sign and verify, Pleading, Appeals, Letters Patent Appeals, Cross objections or petition for executions review, revision, withdrawal, compromise or other petitions or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- To withdraw or compromise the said case or submit to arbitration any differences or disputes, that shall arise touching or in any manner relating to the said case.
- To deposit, draw and receive moneys as grant receipts there are noticed to the state of the stat secrity and other miscellaneous expenses from Courts or parties, a may be necessary to be done for the progress and in the course of t CHANDIDARH ADVOCATES WELFARE FUND
- To employ any other Legal Practitioner authorising him 1 hereby conferred upon the advocate whenever he may think fit to d

BAR COUNCIL OF PUNJAB & HARYANA gs which

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uthorities

AND I/We hereby agree to ratify & certify whatever the Advocate or nis substitute of ..... do in the premises/proceedings.

AND I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequence of his absence from the Court when the said case is called up for hearing or otherwise.

AND I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid and if any cost are allowed for an adjournment, the Advocate would be entitled to the same.

AND I/We hereby agree that the Advocate will not bound to appear for us if the case is transferred to any other Court or the Court sits at any place other than its normal place of sitting & if any application or Retention is to be filed in the case, the Advocate will be entitled to a fresh fee in the case.

WITNESS WHERE OF I/We here onto set my/our hands to these presents the contents of which have been explained to and understood by me/us.

This the LO Ami Dient day of THAT (SARLA)

Accepted

Advocate

Enri. No. : P/144/97

Advocate

DHARAM BIR BHARGAV SONIA) (Signature or Thumb impression

Sapab (DREPAR)

of Clients)

touch CASHISIA)

Enrl. No.: P/839/79

Enrl. No.: P/516/18