335

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.586 of 1990
Date of Decision: 11.02.2015

Gopi Ram ......**Appellant**

Vs

Karnail Singh .....**Respondent**

CORAM:*HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Alok Mittal, Advocate
for the appellant.

Mr. Arihant Jain, Advocate with
Mr. Rishav Jain, Advocate
for respondent.

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1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

RAJ MOHAN SINGH, J.

[1]. Instant Regular Second Appeal was filed under Section 41 of the Punjab Courts Act. In view of Full Bench judgment of this Court in ***Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I***, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clause (a) to (c) of Section 100(i) CPC. Now second appeal requires substantial question of law to be framed and thereafter inference can be made,

because inference cannot be made only because the order is contrary to law, but when the disputed issues raise a substantial question of law limiting such a power in the Appellate Authority based on public policy having roots in the maxim of "*interest reipublicae ut sit finis litium*".

[2]. Adhering to the aforesaid requirement, this Court considers that following substantial questions of law can be formulated in this regular second appeal for consideration:-

1. Whether the statements of marginal witnesses of the negotiable instrument bring out the case from the legal presumption attached to the document under Section 118(a) of the Negotiable Instruments Act, 1881?

2. Whether statement of PW-3 Arjan Singh and DW-2 Puran Singh raise a probable defence in conformity with preponderance of evidence and probability so as to rebut the resumption attached to Section 118(a) of the Negotiable Instruments Act, 1881?

[3]. Plaintiff/appellant is in regular second appeal in a suit for recovery of ₹9500/- based on pronote and receipt dated 15.12.1983. Plaintiff claimed that defendant took a loan of ₹7,000/- from him and executed pronote and receipt thereof. Defendant/respondent also undertook to pay interest @2% per month on the aforesaid loan. However, the plaintiff/appellant sought interest @1 rupee per month

in the suit. Non-performance of obligation on the part of the defendant/respondent, ultimately entailed in filing of the civil suit No.503 dated 15.12.1986.

[4]. Upon notice, defendant contested the suit and denied the execution of pronote and receipt. He also denied taking of any loan from the plaintiff and claimed that pronote and receipt were forged and fabricated. Besides taking plea of limitation, it was alleged that the plaintiff being a money-lender was not entitled to file a present suit.

[5]. On the basis of pleading of the parties, following issues were famed:-

> *"1. Whether the defendant executed pronote receipt dated 15.12.1983 in favour of the plaintiff? OPP.*
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> *2. If issue No.1 is proved whether pronote and receipt are without consideration, forged and fabricated document? OPD.*
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> *3. Whether the plaintiff is a money lender? If so its effect? OPD.*
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> *4. Whether the suit is within time? OPP*
>
> *5. Relief."*

[6]. Trial Court dealt with issues No.1 to 3 jointly and held that execution of pronote and receipt was proved. Since the defendant could not rebut the evidence of the plaintiff and also the presumption arising out from the document in question, trial Court held issues No.1 to 3 in favour of the plaintiff. Issue No.4 was also held in favour

of the plaintiff to the effect that suit was within time and ultimately the trial Court decreed the suit vide judgment and decree dated 15.03.1989.

[7]. In a appeal filed by the defendant before the Lower Appellate Court, the Court accepted the appeal vide judgment and decree dated 18.01.1990 by holding that the presumption arising out of the Section 118(a) of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') in respect of pronote and receipt stood rebutted in view of statement of PW-3 Arjan Singh and DW-2 Puran Singh, who were marginal witnesses to the document in question.

[8]. In the present appeal learned counsel for the plaintiff/appellant has made much emphasis upon Section 118(a) of the Act to the effect that once the execution of pronote and receipt was proved, heavy onus was cast upon the defendant under issue No.2 to rebut the presumption. Since there was no convincing evidence on behalf of defendant to rebut the aforesaid legal presumption, the Lower Appellate Court was not justified in reversing the well reasoned judgment and decree of the trial Court.

[9]. Learned counsel for the plaintiff/appellant further submitted that the Lower Appellate Court has illegally ignored the presumption thereby misplacing the onus. According to him, the divergence shown in the evidence should have been read against the defendant. As against this learned counsel for the defendant-respondent has

submitted that meticulous appraisal of the statement of both the marginal witnesses viz. PW-3 Arjan Singh and DW-2 Puran Singh would show that they have not supported the case of the plaintiff in the context of passing of consideration which was a condition precedent before bringing the document under the domain of presumption under Section 118(a) of the Act.

[10]. In a suit based on pronote and receipt, the presumption under Section 118(a) of the Act would be attracted unless and until contrary is proved. Such a presumption is to be that the promissory note was made for consideration. The initial presumption raised under the said provision becomes available when the plaintiff/appellant pleads passing of consideration in the plaint i.e. pleads that the promissory note is supported by the consideration as recited in the document and adduced evidence in support thereof. On doing so, the burden would shift upon the defendant to disapprove that the promissory note is not supported by passing of any consideration or on different consideration other than recited in the instrument. In ***K.P.O. Moideenkutty Hajee vs. Pappu Manjooran 1996 AIR (Supreme Court) 3356***, the Hon'ble Supreme Court considered the presumption and observed in the following manner:-

> *"11. It would thus be clear and when the suit is based on pronote, and promissory note is proved to have been executed, section 118(a) raised the presumption, until the contrary is proved, that the promissory note was made for*

consideration. That initial presumption raised under section 118(a) becomes unavailable when the plaintiff pleads in the plaint different consideration. If he pleads that the promissory note is supported by a consideration as recited in the negotiable instrument and the evidence adduced in support thereof, the burden is on the defendant to disapprove that the promissory note is not supported by consideration or different consideration other one recited in the promissory note did pass. If that consideration is not valid in law nor enforceable in law, the court would consider whether the suit pronote is supported by valid consideration or legally enforceable consideration. Take for instance, a pronote executed for a time barred debt. It is still a valid consideration. The falsity of the plea of the plaintiff also would be a factor to be considered by the court. The burden of proof is of academic interest when the evidence was adduced by the parties. The court is required to examine the evidence and consider whether the suit as pleaded in the plaint has been established and the suit requires to be decreed or dismissed."

[11]. In the event of failure on the part of the defendant to discharge the onus by not adducing and proving such evidence so as to negate presumption arising under Section 118(a) of the Act, the plaintiff-appellant would be entitled to the benefit of the presumption. In ***Mallavarapu Kasivisweswara Rao vs. Thadikonda Ramulu Firm and Ors. 2008 (11)JT 43 AIR (SCW) 477*** the Hon'ble Supreme Court while relying upon ***Bharat Barrel & Drum Company vs. Amin Chand Pyerelal, 1999(2) RCR (Civil) 615*** held in the following manner:-

> *"12. Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the intitial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the Court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal. In this connection, reference may be made to a decision of this Court in the case of Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal [supra]. In paragraph 12 of the said decision, this Court observed as under:-*
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> > *"Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing*

> *on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the intial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was to probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist...."*

[12]. The presumption in the context of Section 118(a) of the Act is to be raised unless and until contrary is proved with regard to consideration, date of instrument, time of acceptance of the promissory note, time of transfer of the promissory note, as to order of endorsement, as to appropriate stamps and holder being a holder

in due course. Literally it means 'taking as true without examination or proof'. All such presumptions come under the domain of classified categories under the Evidence Act such as (i) may presume 'which will be rebuttable', (ii) shall presume also rebuttable and (iii) conclusive presumption (irrebuttable in nature). A presumption in itself is not a piece of evidence which can be relied by the plaintiff seeking benefit of the same, but it makes a prima facie case for the party for which it exists on the basis of evidence on record. Word 'until the contrary is proved' casts obligation on the defendants to lead evidence so as to dispel the presumption attached to a document whose execution is otherwise proved.

[13]. The presumption under the aforesaid provision arises only when it is supported by passing of consideration. Such a presumption is rebuttable in nature. The standard of proof required for such rebuttable is preponderance of evidence and probability. It is not required to be rebutted on strict proof beyond reasonable doubt as is required in criminal cases. In nutshell it can be summarised that for rebutting such a presumption, what is needed is to raise a probable defence. The standard of proof is dependent upon the preponderance of the evidence which is to be adduced by the party, seeking to rebut the presumption. On the aforesaid aspect of the case, reliance can be placed upon ***Vijay vs. Laxman and another (2013) 3 SCC 86.***

[14]. In the instant case, the entire controversy hinges upon the

evidence of PW-3 Arjan Singh and DW-2 Puran Singh. PW-3 Arjan Singh, marginal witness who was produced by the plaintiff stated that his signatures were obtained on document Ex.P-2 but no amount of ₹7,000/- was paid by the plaintiff to the defendant in his presence. According to defendant this lone marginal witness examined by the plaintiff did not support the plaintiff on this pertinent aspect of the case. Rather this witness stated that defendant had admitted that he had already received the amount of ₹7,000/-. Defendant urged that this was only a hearsay which was not corroborated and substantiated by any evidence by the plaintiff. This witness also stated that the another witness also signed the document Ex.P-2 but pleaded ignorance about the rate of interest settled between the parties and further highlighted that he did not know the place where the documents Ex.P-1 and Ex.P-2 were executed and what was the time of such execution. Another marginal witness was examined by the defendant i.e. Puran Singh as DW-2. The testimony of said witness corroborated the statement of PW-3 on material particulars. This witness in unequivocally terms had also deposed that no amount was paid by the plaintiff to the defendant in his presence and explained that when he signed the document Ex.P-2, the defendant told him that the amount of ₹7,000/- shall be paid to him by the plaintiff. The aforesaid testimony of DW-2 brought out contingent obligation on the part of the plaintiff that he would pay the amount to defendant in future.

[15]. By relying upon the testimonies of these marginal witnesses, i.e. one was examined by the plaintiff and another one examined by the defendant, learned counsel for the defendant/respondent vehemently submitted that the presumption arising out of Section 118(a) of the Act stood rebutted in view of the statements of both the marginal witnesses in the context of non-passing of consideration in pursuance of the document in question.

[16]. As regards first substantial question of law, the defendant/respondent was able to demonstrate that in fact no consideration was passed in his favour in the presence of marginal witnesses who have unequivocally deposed before the Court that no such consideration was passed in their presence. First marginal witness PW-3 Arjan Singh got examined by the plaintiff himself had admitted this fact that the amount of ₹7,000/- was not paid by the plaintiff in his presence rather defendant himself had admitted that he had received the said amount. This witness also pleaded ignorance about the rate of interest settled between the parties and also pleaded that the place where the negotiable instrument was executed and what time the same was executed. The second marginal witness DW-2 Puran Singh was examined by the defendant who even advanced a contingent aspect of the matter when he deposed that the amount of ₹7,000/- was not paid by the plaintiff to the defendant in his presence rather defendant told him that the said amount shall be paid by the plaintiff to him (obviously in future). On

the strength of this evidence, the legal presumption arising out of Section 118(a) of the Act stood rebutted accordingly, and first substantial question of law stands answered in favour of the defendant/respondent.

[17]. Since the standard of proof required to rebut the legal presumption is only in the form of probability defence, therefore, the statements of marginal witnesses are suffice to meet the requirement of preponderance of evidence and probability. Since the standard of proof was not required at par with the proof beyond reasonable doubt, therefore, such an evidence on record was sufficient to hold that the defendant/respondent had discharged the onus by rebutting the presumption arising out of Section 118(a) of the Act. Therefore, on this front, second substantial question of law is answered in favour of the defendant/respondent. Consequently, the judgment and decree passed by Lower Appellate Court is found to be based on sound reasoning and is thus upheld.

[18]. The appeal being totally bereft of merits is dismissed as such, leaving the parties to bear their own costs.

February 11, 2015 **(RAJ MOHAN SINGH)**
Atik **JUDGE**