

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

RSA NO.261 OF 1989 (O&M)
DATE OF DECISION : 9th APRIL, 2015

Lachhman

.... Appellant

Versus

Bakshi Ram

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. D.S. Chanan, Advocate for
Mr. Rinnypal Singh Cheema, Advocate for the appellant.

Mr. Amit Jain, Advocate for the respondent.

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SURINDER GUPTA, J. (ORAL)

1. This is regular second appeal against the judgment and decree dated 11.01.1988 passed by learned District Judge, Kapurthala, whereby judgment and decree passed by the lower Court, decreeing the suit of the appellant-Lachhu for recovery of ₹27,200/- along with interest, was set aside.

2. The facts of the case as emanate from the perusal of the pleadings are as follows:

The appellant filed the suit for recovery of ₹27,200/- inter alia pleading that he had advanced ₹20,000/- to the respondent on 20.02.1983. The rate of interest was settled as 12% per annum and the respondent executed the pronote and receipt (Exhibits P-1 and P-2) in his favour. Despite repeated requests and reminders the respondent failed to pay the

principal amount as well as the interest. The total amount as due at the time of filing of the suit was ₹20,000/- towards principal and ₹7,200/- toward interest.

The respondent in his written statement admitted that he had signed the pronote and receipt in favour of the appellant but alleged the same to be without consideration. The plea taken by the respondent as incorporated in para 2 of the written statement reads as follows:

“It is submitted that the plf. obtained the signatures of the defendant and marginal witness by playing fraud and misrepresenting the facts. The plf. told the deft. that he would send (sic him) to a foreign country as the plf. was engaged in contacting desired persons to go (to) abroad and the plf. did not do so. The plf. got the said pronote signed on the pretext that he was to spend the money for sending the deft. abroad. But when the plf. failed to do so the deft. requested the plf. time and again to return the pronote and receipt, but he went on putting the deft. off on one pretext or the other and finally refused to do so.”

3. The appellant reasserted his case in the replication but remained silent with regard to the above plea raised by the respondent.

4. The pleadings of parties lead to the framing of issues as follows:

- (i) Whether the defendant executed the pronote and receipt, dated 20.02.1983 in favour of the plaintiff? OPP

- (ii) If issue No.1 is proved, whether the pronote and receipt are the result of fraud and misrepresentation and are without consideration as alleged? OPD
- (iii) Whether the plaintiff is entitled to interest, if so, at what rate?
OPP
- (iv) Relief.

5. The suit was decreed by the learned Sub Judge 1st Class, Phagwara vide judgment dated 28.04.1987. The plea of the respondent that his signatures were obtained on the pronote and receipt in lieu of the deal with the appellant that he will send him abroad and the amount of ₹20,000/- will be paid after his reaching abroad, was discarded. The settlement between the parties vide Ex.D-1 was also discarded for the reasons, firstly, that it was not between the appellant and respondent rather it was between the appellant and the wife of respondent, secondly that this settlement was arrived at police station and possibility of obtaining thumb impression of appellant under duress cannot be ruled out, thirdly the phraseology of the writing of settlement did not disclose if it pertained to the disputed amount of this case and fourthly, the application vide which matter was taken to police was not produced and proved on file.

6. Not satisfied, the responded filed appeal which was accepted by the lower Appellate Court and the settlement Ex.D-1 and the statement of the Panchayat members, who got the compromise effected was accepted and relied while accepting the respondent's plea that he had not taken any loan from appellant, the appellate Court below took note of the fact that the

writing Ex. D-1 dated 11.08.1983 bears the thumb impressions of plaintiff which he dared not to deny while filing the replication or by examining any expert; this writing was produced along with the written statement but the appellant failed to make any reference of the same in the replication or to deny his thumb impression on it.

7. I have heard learned counsel for the parties and have perused the paper book and lower Court record with their assistance.

8. Learned counsel for the appellant has argued that the execution of the pronote and receipt stands proved as the respondent has admitted his signatures on the same. He further argues that once the execution of the pronote and receipt is proved, it carries the presumption under Section 118 (a) Negotiable Instruments Act, 1881, that it was executed for consideration. He has relied on the observations of the Hon'ble Supreme Court in the case of *Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm and Ors.* reported as *AIR 2008 Supreme Court, 2898*.

9. He further argues that admission is the best evidence and once the respondent has admitted that he had signed the pronote and receipt and the witness of the appellant had proved that the pronote and receipt were executed by the respondent for consideration, the first appellate Court had no reason to discard the findings arrived at by the Sub-Judge, First Class, Phagwara. The first appellate Court has given undue weightage to the writing of settlement Ex.D-1, which was not in between the parties. As such, has no concern with the instant case.

10. Learned counsel for the respondent argues that the case of the respondent from the very beginning is that plaintiff/appellant had assured to send him abroad and the pronote and receipt were executed as surety for the expenses to be incurred by appellant. This amount was to be paid after the respondent was sent and settled abroad. However, the appellant failed to send and settle the respondent abroad. The dispute arose regarding the amount settled/agreed to be paid and the matter was reported to the police where vide settlement Ex.D-1, which was executed in the presence of the Panchayat, the appellant had agreed that nothing was now recoverable from the respondent. This writing was executed on 11.08.1983 and the instant suit was filed on 19.02.1986. In case the appellant had any grievance against the writing Ex.D-1, he would not have remained silent for a period of two and half years till he filed the suit.

11. There is no doubt with regard to the proposition of the law that when execution of pronote and receipt is proved, the same is deemed to have been executed for consideration as per presumption under Section 118(a) of the Negotiable Instruments Act, 1881 and the burden shifts on the respondent to prove that the pronote was executed without consideration. It was also so held in the case of ***Mallavarapu Kasivisweswara Rao (supra)***. In this case, the respondent has come up with the plea that he signed the pronote and receipt but did not receive any consideration as the deal was to send and settle him abroad and pronote (Ex. P-1) and receipt (Ex.P2) were got executed under that deal without payment of any consideration. In order to prove this fact he himself appeared as DW-1 and had also examined the

Panchayat members who were party to the settlement Ex. D-1. Milkhi Ram DW-2 has stated that there was a dispute regarding the payment between the appellant and the respondent. On the complaint of the wife of respondent the matter reached the police where the compromise Ex.D-1 was arrived at. Lal Chand DW-3 has stated that appellant was demanding money from the wife of respondent, which was payable by her husband. On this count he had been abusing her. She reported the matter to the police where a compromise was effected. He has referred about the transaction between the parties about sending the respondent abroad. The similar fact has been reiterated by Rattan Kaur DW-5. DW-4 Bakshi Ram son of Mala Ram was also a member Panchayat who got the compromise effected. He has stated that when the compromise Ex.D-1 was effected it was settled that no amount remained to be paid by Bakshi Ram-respondent to Lachhu-plaintiff (appellant).

12. On perusal of the statement of the witnesses recorded in this case, the Appellate Court has rightly reached the conclusion that the pronote and receipt in question were without consideration. The respondent had been able to discharge the onus placed on him that he had signed the pronote and receipt in lieu of the deal with the appellant for sending him abroad and not in lieu of the consideration as mentioned in pronote Ex.P-1 and receipt Ex.P2. The deed of settlement Ex.D-1, even if, it was reached after the matter was reported to the police, cannot be termed as having been executed by the appellant under police pressure. The above conclusion can be safely reached, firstly, because the appellant after executing the writing Ex.D-1 on

11.08.1983, remained silent for about 2 years 6 months when he filed this suit, secondly, he never took the plea in the replication that the above writing was got executed from him under any police pressure and thirdly, he never issued any notice to the respondent or his wife that they have obtained any writing from him under pressure. The mere fact that respondent was not a signatory to settlement Ex.D-1 does not help the appellant. It was never a case of appellant that he had any money dealing with wife of respondent. The witnesses examined by respondent have clarified that the dispute related to alleged money transaction between appellant and respondent, which wife of respondent took to police and was settled vide agreement Ex.D-1. This agreement clearly state that the application moved by wife of respondent was being withdrawn under this agreement, as such, non-production of application moved to the police is immaterial.

13. Keeping in view all the above facts and circumstances, I find no factual or legal infirmity in the conclusion arrived at by the lower Appellate Court, calling for any interference in this appeal. No substantial question of law requiring determination arises in this appeal. Accordingly the appeal is dismissed.

9th April, 2015
'raj'

(SURINDER GUPTA)
JUDGE