

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

**Regular Second Appeal No.3550 of 2011 (O&M)
Date of Decision: February 23, 2015.**

Bahadur Singh

.....APPELLANT(s).

VERSUS

Hardeesh Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate
for the appellant (s).

Mr. Rishav Jain, Advocate
for the respondents.

SURINDER GUPTA, J.

This regular second appeal has been filed against the judgment and decree of the first Appellate Court whereby the suit filed by the plaintiff was decreed for recovery of ₹1 lac along with interest calculated @ 12% per annum from the date of execution of the promissory note (pronote) and receipt, till the date of filing of the suit. Pendent lite and future interest was allowed @ 6% per annum.

Plaintiff Bakhtaur Singh filed suit for recovery of ₹1,72,000 which include ₹1 lac as principal and ₹72,000 as interest @ 12% per annum from 05.04.2004 to 04.04.2007. As per the plaintiff, the appellant-defendant borrowed a sum of ₹1 lac and executed a pronote and receipt dated 05.04.2004 undertaking to repay the loan amount with interest but committed

default and did not pay the outstanding amount despite notice necessitating the filing of the instant suit.

Appellant-defendant denied the borrowing of any amount from the plaintiff and execution of the pronote and receipt. He pleaded that a sum of ₹1 lac was borrowed from one Gurcharan Singh, Commission Agent in May, 1998. Signatures of the appellant were obtained on blank pronote and receipt as surety for the return of loan amount. After all the accounts were settled with Gurcharan Singh, he did not return the pronote and receipt which have been used to prepare the forged and fabricated pronote and receipt in favour of respondent-plaintiff, on the basis of which present suit was filed.

Learned Civil Judge (Junior Division), Malerkotla dismissed the suit with the observation that the execution of the pronote and receipt was not proved. While reaching the conclusion, learned Civil Judge made reference to the report of the Expert examined by the appellant-defendant and also the fact that the date on the pronote and receipt, where the year is mentioned is '20004'. It was observed that the plaintiff had not pleaded that 'an old pronote, which may be blank at the time of its use, was filled up by them and year '04' were mentioned in it but it has not come in the pleadings of the plaintiff nor there is any cutting on the third '0' on it and simple figure '4' has been added behind the year '2000'. The figure of date in the receipt Ex.P2 mentioned as 5.4.2004 was ignored.

The first Appellate Court set aside the findings of learned Civil Judge (Junior Division) and decreed the suit with the observations as follows:-

“21. Quintessence of the plea of the respondent in the written statement is that he admits to have appended his signatures on the promissory note, Exhibit P1,

and receipt, Exhibit P2. In this view of the matter the appellant was not obliged to prove execution of the promissory note, Exhibit P1 and receipt, Exhibit P2; by the respondent in his favour. Even if plea of the respondent is accepted as correct, the appellant could fill in the blanks to claim an amount covered by the revenue stamps affixed on the promissory note, Exhibit P1, as Section 20 of the Negotiable Instruments Act, 1881 (for short-the Act) authorizes him to do so. Similarly, the appellant was not required to prove passing of consideration in view of proof of execution of receipt, Exhibit P2, by the respondent acknowledging receipt of the amount of ₹1,00,000/- from him. Still, the appellant himself entered the witness stand as PW3 and by placing on record his affidavit Exhibit PW3/A he has reiterated on oath his entire plea as contained in the plaint. He has also proved on record promissory note, Exhibit P1 and receipt, Exhibit P2, copy of notice of demand, Exhibit P3, postal receipt, Exhibit P4 and registered cover, Exhibit P5. He has also examined Kesar Singh as PW1 and Sher Singh as PW2. Not only the three witnesses have stood the test of cross examination successfully but the respondent also has thought it unnecessary and wasteful to confront them with a suggestion that promissory note, Exhibit P1 and receipt, Exhibit P2 were not executed by him or that an amount ₹1,00,000/- was not receipt by him from the appellant. Surprisingly, PW3 Bakhtaur Singh is found to have been confronted with a suggestion on behalf of the respondent that promissory note and receipt were scribed with one pen and ink at the same time. This suggestion has been readily accepted by the appellant and demolishes plea of the respondent relating to blank paper theory. Similarly, PW1 Kesar Singh is found to have been confronted with a suggestion that body writing of promissory note, Exhibit P1 and receipt, Exhibit P2 is in his hand. PW1 Kesar Singh is

also found to have been confronted with another suggestion to the effect that an endorsement made by the respondent on the bottom of promissory note, Exhibit P1 and receipt, Exhibit P2 to say that he had received the amount of ₹1,00,000/- from the appellant and body of the promissory note and receipt were written by different pens. The suggestion though has been denied by the witness but, per force, leads to an inference that the respondent does not dispute correctness of the writing on the bottom of promissory note, Exhibit P1 and receipt, Exhibit P2 written by him to acknowledge receipt of the amount of ₹1,00,000/-.

22. Not only this, respondent Bahadur Singh, while appearing as DW3 has admitted his signatures on promissory note, Exhibit P1 and receipt, Exhibit P2 and writing acknowledging receipt of the amount of ₹1,00,000/- by him on promissory note, Exhibit P1 and receipt, Exhibit P2. He has also admitted that the appellant had sent a notice to him before instituting the suit.

23. DW2 Mahinder Singh has also admitted signatures of respondent Bahadur Singh on promissory note, Exhibit P1 and receipt, Exhibit P2. DW1 is a Handwriting & Fingerprints Expert, namely V.B. Bhatnagar examined by the respondent to prove that writings Q5 and Q6 acknowledging receipt of an amount of ₹1,00,000/- do not tally with standard writing of the respondent. Evidence of this witness is inconsequential in view of admission of the respondent about this being his writing.”

I have heard learned counsel for the parties and perused the paper book and record of the Courts below with their assistance.

The major stress of learned counsel for the appellant-defendant during the course of arguments is on the fact that appellant-defendant was selling his crop with Commission Agent Gurcharan Singh and he had

borrowed a sum of ₹1,00,000 in May, 1998. It was at that time that his signatures were taken on blank pronote and receipt and these blank pronote and receipt were later on fabricated in favour of plaintiff. He further argues that on the pronote and receipt, the date has been mentioned as 5.4.20004 which reflects that a blank signed pronote of appellant was used.

On giving a considered thought to the submission of learned counsel for the appellant-defendant, I find that the argument is self contradictory. On the printed pronote and receipt used for Ex.P1 and Ex.P2 against the column of the date after giving space year was mentioned as '2000'. If the plea of the appellant be believed that he had taken the loan in the year 1998, his signatures on the blank pronote of the year 2000 would not have been taken. Plaintiff is not a money lender, as such, a proforma of pronote, which was available at the time of advancement of loan appeared to have been used and while writing the date and the year, figure '4' was added at the back of '2000'. However, in the receipt in fourth line, a specific date '5.4.2004' was mentioned as date of advancement of loan and receipt of the same. This rather reflects that the plaintiff had no intention to fabricate any pronote and receipt. The scribe of the pronote and receipt, plaintiff and the marginal witnesses, all have appeared and fully supported the case of the plaintiff. There is nothing on file that scribe as well as marginal witnesses have any animus against the appellant-defendant.

Admittedly, the appellant-defendant had litigation with Gurcharan Singh, who had filed 3-4 civil suits against him for recovery through different persons. It is not believable that the appellant appended his signatures on blank pronote and receipt when he settled his account with Gurcharan Singh. Another important fact which goes against the appellant in

this case is that before filing the suit, respondent-plaintiff served a notice dated 09.03.2007 on the appellant. The receipt of this notice was admitted but it was not replied. In the written statement, the appellant has taken the plea that the notice was forged and fictitious document, not admissible in the eyes of law. However, while appearing as DW3, he has stated that after the receipt of the notice, he met son of the plaintiff at his shop at Malerkotla. In case, the appellant had not taken any loan and the plaintiff had raised a false claim against him, the first opportunity available with the appellant-defendant was to reply the notice and refute the claim raised by the respondent-plaintiff. His silence after the receipt of notice till the filing of the suit reflects that he had no defence against the claim raised by the respondent-plaintiff.

The appellant examined an Expert who divided the writing on the pronote and receipt in 12 parts and tried to make out that some part is not in the hand-writing of appellant. Report of Expert makes no head or tail and appears to have been given in favour of appellant-defendant only because he had engaged him. The pronote and receipt not only bear the signatures of appellant-defendant which he had admitted but also the writing 'one lac rupees received' was written in the hand-writing of appellant-defendant which he had not denied.

The lower Court while dismissing the suit of the plaintiff got swayed by the fact that the year on the pronote and receipt was printed as '2000'. It failed to look into the fact that even the appellant-defendant was alleging taking of loan and signing of blank pronote and receipt in the year 1998 and not in the year 2000.

On perusal of the judgment and decree passed by the first Appellate Court, I find no legal or factual infirmity therein calling for any

interference.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

February 23, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE