

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

R.S.A.No.3590 of 2012 (O&M)

Date of Decision: September 10, 2015

Karnail Singh

...Appellant

Versus

Hari Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.Ashok Bhardwaj, Advocate,
for the appellant.**

**Mr.Nandan Jindal, Advocate,
for the respondent.**

AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the impugned judgments and decrees of the Courts below, whereby the suit for recovery of an amount of ₹3,55,110/- inclusive of interest @ 12% per annum from the date of pronote and receipt till the date of decree and @ 6% per annum till the date of realisation, has been decreed.

Mr.Ashok Bhardwaj, learned counsel appearing on behalf of the appellant-defendant submits that both the Courts below have committed an illegality and perversity, inasmuch as both the attesting witnesses to the pronote were not aware that the consideration of the alleged pronote amount

had not been passed on to the appellant-defendant. He further submits that the respondent-plaintiff, in cross-examination, admitted that there was nothing due, when the business was closed in 2006-07 and, therefore, in view of such admission, the Courts below ought not to have decreed the suit and thus, a substantial question of law arises for adjudication by this Court.

Mr.Nandal Jindal, learned counsel appearing on behalf of the respondent-plaintiff submits that both the attesting witnesses, i.e., PW-1 Ranjit Singh and PW-2 Balwinder Singh have, unequivocally, submitted in their examination-in-chief (affidavits) that the pronote amount was passed on to Karnail Singh. However, there is only a suggestion in the cross-examination, but no dent has been caused to the statements of the aforementioned witnesses. He further submits that plaintiff Hari Singh in his cross-examination admitted, that he did not know how much amount was due in the books. Such statement be treated as an admission that nothing was due from the appellant-defendant.

I have heard the learned counsel for the parties, appraised the paper book and the records of the Courts below.

The pronote has been proved through the testimonies of the aforementioned attesting witnesses, who have categorically submitted that the money/consideration of the pronote was passed on to Karnail Singh defendant/judgment debtor/appellant. The story coined by the appellant-defendant that he never conducted any business with the respondent-plaintiff has been found to be fabricated one, inasmuch as, no material evidence has been brought on record. However, for the first time, along with the application under Order 41 Rule 27 CPC, certain documents have been

sought to be placed on record to show that there was transaction. Such a belated act on behalf of the appellant-defendant, in my view, amounts to filling up the lacunae in the evidence as he had a chance to place on record the aforementioned documents even when the appeal was preferred before the Lower Appellate Court against the judgment and decree of the trial Court and, therefore, the documents sought to be placed on record by way of additional evidence do not conform to the provisions of Order 41 Rule 27 CPC. It has to be decided as to whether any substantial questions of law and not on re-appreciation of the oral and documentary evidence.

The Courts below have relied upon the reports of the Experts examined by the parties to the lis. It is settled law that the expert would always toe to the lines of the person who has engaged him. Be that as it may, the execution of the pronote has been proved through the testimonies of the aforementioned witnesses, therefore, the report would be immaterial for the adjudication of the lis between the parties.

In view of what has been observed above, there is no illegality and perversity in the judgments and decrees of both the Courts below, much less, no substantial question of law arises for determination by this Court.

The appeal is accordingly dismissed.

September 10, 2015
ramesh

(AMIT RAWAL)
JUDGE