

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

R.S.A. No. 2265 of 2013 (O&M)

Date of decision:- 13.07.2015

Jagan Nath

...Appellant

Versus

Harvinder Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. L.N. Verma, Advocate
for the appellant

Mr. P.S. Jammu, Advocate
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This regular second appeal is directed against the judgment dated 19.01.2013 passed by learned District Judge, Sirsa, which was filed against the judgment and decree dated 20.10.2011 passed by learned Civil Judge (Jr. Divn.), Dabwali, vide which the suit of the plaintiff-respondent (herein after to be referred as ('the respondent')) was decreed.

The appellant borrowed a sum of Rs.3,00,000/- from the respondent on 29.06.2007 and in token of the said amount, the appellant executed a pro note and receipt in favour of the respondent

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in the presence of the witnesses and also agreed to pay interest @ 1.5% per month on the said amount but when the respondent demanded the money from the appellant, he kept on putting the matter on on pretext or the other. A legal notice was also served upon the appellant but to no avail and hence the respondent filed the present suit seeking recovery of Rs.3,42,000/- from the appellant along with interest @ 1.5% per month.

On notice, the appellant appeared and filed its written statement taking a stand that no amount was ever borrowed by him from the respondent. He also denied execution of any pro note and receipt and has contended that the alleged pro note and receipt were false and fabricated documents. Further he stated that if such a huge amount had been borrowed from the respondent then the pro note and receipt would have been scribed through a regular petition writer, which was not in the present case.

From the pleading of the parties, the trial Court framed the following issues:-

“1. Whether the defendant had borrowed a sum of Rs.3,00,000- on interest by executing a pro note and receipt dated 29.06.2007 in favour of the plaintiff but he did not reply the same? OPP

2. *If issue No. 1 is proved in affirmative whether the plaintiff is entitled to a decree for recovery of Rs.3,42,000/- along with interest? OPP*
3. *Whether the suit of the plaintiff is not maintainable? OPD*
4. *Whether the suit of the plaintiff is barred by law of limitation? OPD*
5. *Relief.”*

In order to substantiate his claim, the respondent examined P.W.1 A.K. Gupta, Handwriting Expert who tendered his report Ex PW1/a and has given the opinion that the disputed and standard signatures were of the same person.

P.W.2 Kaur Singh who scribed the pro note and receipt has stated that the same was scribed by him at the instance of Jagan Nath and a sum of Rs. 3 lacs was borrowed by the appellant from the respondent. After writing the pro-note he had read over the contents thereof to the parties who after understanding the same and in token of its correctness, had affixed their signatures and thereafter, the witnesses had affixed their signatures. He also affixed his signatures on the pro note.

In his cross examination, he stated that the pro note was

written at the house of Harvinder Singh in village Phalard at around 12.00 noon. At that time, brother of Harvinder Singh and his wife were present then he himself stated that they were inside the house and they were sitting in the outer room. Jagan Nath is a resident of Dabwali and knows him as he used to go on his Aarat but now he does not go there. Jaswinder Singh is the real brother of the respondent and he has not counted the money by his hand but Jagan Nath counted the same. Jagan Nath took the money in a plastic bag.

P.W.3 Harinvder Singh-respondent himself stepped into witness box and reiterated the facts and averments mentioned in different paras of his plaint. In cross examination he stated that his brothers Jaswinder and Kazur Singh used to go on Aarat of Jagan Nath and due to this fact, he knows the appellant. Witness Jaswinder Singh is his real brother. He has sold his crops for Rs.3,00,000/- ten days back out of which he has given money to the appellant. Harbans is not the sarpanch, lambardar or Chowkidar of village. They had not called any sarpanch or lambardar for giving the witness.

P.W.4 one of the attesting witness tendered his affidavit Ex PW4/A and from the contents of PW4/A, it emerges that a sum of Rs.3 lacs was borrowed by the appellant from the respondent in the presence of the witnesses and in consideration thereof pro-note and

receipt were executed.

Thus, the execution of the pro-note and receipt stood duly proved by the depositions of P.W's and these witnesses were cross examined at length and their testimony could not be shaken.

The argument of learned counsel for the appellant before the trial court that the signatures of the respondent are not spread over the promissory note, therefore possibility cannot be ruled out that cancelled stamps were lifted from another document and were placed on the same, has been discarded on the ground that the respondent has not brought on record any other document from which it could have been shown that the stamps were lifted from this document.

On appeal filed by the appellant, the Lower Appellate Court dismissed his appeal and affirmed the judgment and decree of the trial Court.

Learned counsel for the appellant has argued that the cause of action accrued to the respondent in State of Punjab where pro note and receipt was executed and Rs. 3 lacs were handed over to the appellant. However, the suit had been filed in State of Haryana, which did not have the jurisdiction to entertain the suit.

This argument is liable to be rejected, in view of Section 17

and 20 of Civil Procedure Code, which reads as under:-

“17. Suits for immovable property situate within jurisdiction of different Courts.

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Court, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court.

20. Other suits to be instituted where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

¹[* * *]

²[Explanation].-A corporation shall be deemed to carry on

business at its sole or principal office in ³[India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

In view of the above said sections, the Court at Mandi Dabwali has the jurisdiction to entertain the suit of respondent as the respondent was residing in District Sirsa.

Learned counsel for the appellant has further argued that the mere signatures on the pro note was not sufficient to prove that the appellant had taken a loan from the respondent. The respondent was an agriculturist and did not engage the services of some professional deed writer. Further the respondent was not in a position to advance loan of Rs.3 lacs and further it is not believable that an agriculturist had such a huge amount ready at his house without any rhyme and reason and that he could bring such a huge amount from the city in the denomination of 100 rupees note. Further the stamps on the pro note have not been properly cancelled so as to meet the requirement of law and the provisions of Section 12 (2) and 35 of the Stamp Act are not complied with.

This argument of learned counsel for the appellant has been dealt by the lower Appellate Court in para 22 of the judgment and it has been observed that the signatures on the pro note Ex

PW2/B are on the stamp and thereafter a line has been drawn crossing the receipt extending up to the body of the pro note and receipt also bears the stamp which has been validly and legally executed upon which the signatures of Jagan Nath has been affixed extending up to the body of the pro note and as such it cannot be said that the said pro note and receipt bear the false revenue stamp and the same have not been cancelled/crossed as per the provisions of the Stamp Act.

After going through the judgments passed by both the Courts below in detail, the execution of the pro note has been proved by Harbans Singh P.W.4 one of the attesting witness who tendered his affidavit Ex PW4/A, according to which a sum of Rs.3 lacs was borrowed by the appellant from the respondent in the presence of the witnesses and in consideration thereof pro-note and receipt were executed. Further the respondent had examined P.W.1 A.K. Gupta, Handwriting Expert who tendered his report Ex PW1/a and has given the opinion that the disputed and standard signatures were of the same person. Further, P.W.2 Kaur Singh who scribed the pro note and receipt has stated that the same was scribed by him at the instance of Jagan Nath and a sum of Rs. 3 lacs was borrowed by the appellant from the respondent. The execution of the pro note was corroborated by the plaintiff himself while appearing as P.W.3. Thus, the execution

of the pro-note and receipt stood duly proved by the depositions of P.W's by leading sufficient evidence coupled with the fact that the signatures on the pro note Ex PW2/B are on the stamp and thereafter a line has been drawn crossing the receipt extending up to the body of the pro note and receipt also bears the stamp which has been validly and legally executed upon which the signatures of Jagan Nath has been affixed extending up to the body of the pro note .

No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

13.07.2015

G Arora

(**RITU BAHRI**)
JUDGE