IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2647 of 2013(O&M)
Date of decision: 04.02.2015

Maghar Singh

...Appellant

Versus

Darshna Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. Prantap Sharma, Advocate for the appellant.

Mr. Tribhawan Singla, Advocate for the 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? YES
3. Whether the judgment should be reported in the digest?

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ARUN PALLI J. (Oral)

Suit filed by the plaintiff was decreed by the trial court vide judgment and decree dated 20.09.2012. Appeal preferred against the said decree failed and was dismissed on 16.04.2013. This is how, defendant is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for a decree for recovery of ₹ 1,37,500/- as on 20.12.2003, he had advanced a loan of ₹ 1,00,000/- to the defendant. In consideration thereof, a promissory note and receipt was executed by the defendant in favour of the plaintiff, that was scribed by Raghupati Rai and thumb marked by defendant in

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presence of the scribe as well as in presence of Mohinder Singh and Ram Lal. An entry in this regard was also made in the register of the scribe at serial No.667. As the amount lent was never repaid by the defendant and he finally refused to pay the loan amount on 05.12.2006. Thus, the suit.

In defence, it was pleaded, inter alia, that the alleged promissory note and receipt were forged and fabricated documents. It was maintained that an amount of ₹ 1,00,000/- was never advanced by the plaintiff to the defendant, nor defendant ever executed any promissory note and receipt. In fact, defendant had become a member of a 20 member committee of ₹ 1,00,000/-, in the year 2003, that was being run by the plaintiff. And, thereafter, he started paying the installments. In December, 2003, he opted for the committee money and to secure the said amount, a promissory note and a receipt were got executed by the plaintiff from the defendant by way of security. Further, plaintiff had assured the defendant that as and when he would complete all the installments, the documents executed by the defendant would be returned. It was maintained that defendant had paid all the installments in time and endorsements in this regard were accordingly made on the reverse side of the photocopy of the pronote and receipt. Thus, the entire payment of ₹ 1,00,000/- was made to the plaintiff. As no amount was ever advanced by the plaintiff to the defendant, pursuant to the alleged

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promissory note and receipt, defendant actually owed nothing to the plaintiff in this regard. Accordingly, defendant prayed for dismissal of the suit.

On a consideration of the matter in issue and evidence on record, both the courts concurrently found that the plaintiff had duly proved the execution of the promissory note (Ex.P1) and receipt (Ex.P2). She appeared in support of her claim and proved her case. Raghupati Rai, Deed Writer (PW1), who had scribed the documents Ex.P1 & Ex.P2, also testified the due and valid execution of the promissory note and the receipt. He also proved an entry at serial No.667 that was made in this regard in his register. Likewise, even Ram Lal, one of the attesting witnesses of the documents (Ex.P1 & Ex.P2), also deposed on similar lines. Although, defendant Maghar Singh, while appearing as a witness denied the execution of the pronote and receipt (Ex.P1 & Ex.P2). However, he admitted his thumb impressions and the photograph that was duly affixed on the promissory note and the receipt. The plea of the defendant that the documents (Ex.P1 & Ex.P2) were got executed by the plaintiff to secure the committee amount of ₹ 1,00,000/-, the amount that was duly paid by the defendant, as made out from the document (Ex.D1), remained unproved on record. Nothing was brought on record to show that any such committee was ever run or managed by the plaintiff. Further, on an analysis of the

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document (Ex.D1), it was observed that though, the expert examined by the defendant i.e. Navdeep Gupta testified that the entries recorded in Ex.D1 were in the hand of the plaintiff, but still the document did not reflect any final settlement of accounts between the parties. Writing (Ex.D1) was neither signed by the plaintiff nor was witnessed by any independent witness. Still further, there was no recital in the document (Ex.D1), which could signify the settlement of accounts or repayment by the defendant of the committee amount that was purported to have been obtained by the defendant in 2003, except a writing on the reverse of a photocopy of the promissory note and receipt. Further, stand set out by the defendant, that endorsements in this regard were duly made at the back of the photocopy of the documents i.e. promissory note and receipt (Ex.D1), was completely vitiated, as pronote and receipt were admittedly executed by the defendant on 20.12.2003. And the document (Ex.D1) revealed that installments as regards the committee amount were shown to have been made on 16.06.2003, 15.07.2003, 01.08.2003, 15.09.2003, 15.10.2003, 15.11.2003 & 15.12.2003 i.e. even prior to the execution of pronote and receipt. Thus, it was concluded that such endorsements at the back of the photocopy of the pronote were anti-dated and were of no credence. Though, the said endorsements were put to the plaintiff, but she denied having made any such endorsement

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on receipt of installments. Though, the report submitted by expert Navdeep Gupta (DW2) showed that the writing at the back of a photocopy of the pronote and receipt tallied with the standard writing, but as observed by the courts below, opinion of the expert was not conclusive. Accordingly, it was concluded that it could not be maintained that pronote and receipt were executed by the defendant merely by way of security. That being so, it was concluded that it was not expected of a prudent person to affix his thumb impression upon blank documents (Ex.P1 & P2) that were scribed by the deed writer and as a result of which an amount of ₹ 1,00,000/- was being advanced to the defendant. That being so, it was observed that the pronote and receipt were duly executed by the defendant. And thus, the same carried a presumption as regard the passing of consideration, under Section 118 of the Negotiable Instruments Act. Resultantly, the suit was decreed and the appeal preferred against the said decree failed and was dismissed.

I have heard learned counsel for the parties at length and perused the RSA paper book.

Learned senior counsel for the appellant (defendant) simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

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Per contra, learned counsel for the respondent (plaintiff) submits that both the courts below have concurrently recorded that the promissory note (Ex.P1) and receipt (Ex.P2) were duly executed by the defendant. The defence set out by the defendant that he had repaid a sum of ₹ 1,00,000/- remained unsubstantiated on record. Document (Ex.D1) that was sought to be relied upon by the defendant in this regard was considered and rejected, as the entries recorded therein pertained to the period even prior to the execution of the promissory note (Ex.P1).

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiff to succeed, she was required to prove that the promissory note (Ex.P1) and receipt (Ex.P2) were duly and validly executed by the defendant. Plaintiff examined the scribe of the promissory note (Ex.P1) i.e. Raghupati Rai, Deed Wrtier (PW1), who testified the due and valid execution of the documents. He further proved that an entry in this regard was duly made in his register at serial No.667 (Ex.P3). Ram Lal (PW3), one of the attesting witnesses of the document, also proved the claim of the plaintiff. Defendant conceded in his statement that the documents in question carried his thumb impressions and also his photograph. The plea set out by the

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defendant, that the said two documents were in fact executed only by way of security to secure the committee amount, remained unsubstantiated on record. No evidence, least cogent, was brought on record to prove that any such committees were being run or managed by the plaintiff. Plea of the defendant that he had repaid the committee amount of ₹ 1,00,000/- by way of installments and endorsements in this regard were duly made at the back of a photocopy of the promissory note, stood vitiated as the said amount was purported to have been paid on 16.06.2003, 2nd on 15.07.2003, 3rd on 01.08.2003, 4th on 15.09.2003, 5th on 15.10.2003, 6th on 15.11.2003 & 7th on 15.12.2003 i.e. even prior to the execution of pronote and receipt on 20.12.2003. Ex facie, these endorsements were anti-dated. One wonders, as to how the defendant could repay the installments qua an amount of ₹ 1,00,000/- that was purported to have been advanced in December, 2003, w.e.f. June, 2003 to 15.12.2003. Still further, nothing was averred in the written statement as to when and how the said amount was paid by the defendant to the plaintiff. Concededly, document (Ex.D1) was not signed by the plaintiff. Further, endorsements as regard repayment were made only at the back of a photocopy of the document. The original documents (Ex.P1 & Ex.P2) did not carry any such endorsements. Even if it is assumed for the sake of arguments that the promissory note and receipt (Ex.P1 &

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Ex.P2) were got executed from the defendant only by way of security, nothing was brought on record to show that on repayment of the said amount, defendant obtained the original documents i.e. promissory note and receipt from the plaintiff. Nothing was brought on record to show that the documents in question were cancelled on payment of the committee amount. Execution of the documents and passing of consideration having been proved, in the absence of any evidence of repayment of an amount of ₹ 1,00,000/- that was advanced to the defendant, plaintiff was rightly held entitled to the decree prayed for. Learned senior counsel for the appellant could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

(Arun Palli)
Judge

February 4, 2015
Rajan

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