

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.330 of 2013 (O&M)
Date of Decision.18.09.2015

Balwinder Singh

.....Appellant

Versus

Bhajan Kaur and another

.....Respondents

Present: Mr. Ramesh Sharma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J. (ORAL)

C.M. No.926-C of 2013

For the reasons stated in the application, delay 138 days in
refiling the appeal is condoned.

Application is allowed.

C.M. No.927-C of 2013

For the reasons stated in the application, permission for
making good the court fee is granted.

Application is allowed.

RSA No.330 of 2013

1. The plaintiff who filed the suit on promissory note had a
contest taken by the defendant to contend that the promissory note was
not valid and it cannot be acted upon as such on account of the fact that
it had not been duly stamped. A stamp which was affixed was not
crossed or signed upon and therefore, cannot be taken as valid

instrument. The plaintiff attempted to prove the execution of the promissory note and its validity by calling the scribe and the witness. The Court did not make much of the defence and believed that the promissory note was enforceable in the manner in which it was filed and granted decree. The Appellate Court reversed the decision and held that the promissory note was not valid. The counsel for the appellant argues that the stamp was there and if there was a stamp duty or penalty is available, it should be taken that the promissory note is enforceable.

2. I am afraid I cannot accept this contention, for, Section 35 of the Stamp Act casts an exception to promissory note for being validated by collection of the stamp duty or the penalty subsequently, if it was not already stamped. The proviso (a) to Section 35 states that “any such instrument not being an instrument chargeable with a duty not exceeding ten paise only or a bill of exchange or promissory note, or acknowledgment or delivery order, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable”..... The payment of duty for which it is chargeable will revalidate instruments other than a bill of exchange or promissory note or acknowledgment or delivery order. The payment of duty subsequently or that there is a stamp which is affixed would also be valid is against the provisions of law. The effect of not crossing a stamp is also considered by this Court in Naranjan Singh Vs. Gurdev Singh 1996(3) PLR 54. If the plaintiff had not been able to enforce a promissory note, it would have been still possible to sue on the original cause of action namely the debt as held by the various High Courts in

the following decisions namely Ram Nath Vs. Bhagwati Prasad and another AIR 1946 Allahabad 150; Kallappa Pundalik Reddi Vs. Laxmibai Dattoba Velloram and others AIR 1995 Bombay 160; Shrishailappa Vs. M/s C.P. Malashetti and others 1997(2) Kant LJ 302; M Narasimhulu Vs. M. Laxmamma and others 1997(2) ICC 165 and Natesan Vs. Siri Bala Murugan Finance 2006(41) AIC 409. It would, therefore, require to be proved that there was a debt which was contracted and money had been paid. In such an event the normal presumption of Section 118 of the Negotiable Instruments Act will become unavailable and the debt has to be proved independently. The defendant had denied that he had ever borrowed any amount and therefore, presumption also does not avail to the plaintiff. The enforcement of the instrument as a promissory note or recovery of amount on the original cause of action is, therefore, not available. The dismissal of the suit by the Court below was justified although on different grounds which I have set forth in the present appeal. The question of law involved in the appeal could only be seen to arise against the plaintiff-appellant and hence, the second appeal is dismissed.

(K. KANNAN)
JUDGE

September 18, 2015
Pankaj*