In the high Court of Judicature for the States of Punjab & Haryana, at Chandigarh

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Regular SecondAppeal No. 114 of 2015(O&M)

Date of Decision: January 14, 2015

Shamsher Singh ----Appellant

Versus

Bhagwan Singh ----Respondent

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. Sahil Khunger, Advocate for the appellant.

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

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Mahavir S. Chauhan, J.

This is defeated defendant's regular second appeal to assail correctness of judgment & decree dated November 27, 2014 passed by the Court of learned Additional District Judge, Ludhiana (here-in-after referred to as the 'first appellate court') dismissing appellant's appeal which was brought by him to assail judgment and decree dated March 21, 2014 whereby learned Additional Civil Judge (Senior Division), Khanna (here-in-after referred to as 'the trial court') has decreed, with no order as to costs, Civil Suit No. 16-A of 2010 of the plaintiff-respondent, Bhagwan Singh, for the recovery of Rs. 4, 50,000/- together with interest @ 9% per annum from the date of execution of the promissory note and receipt dated September 23, 2009, Exhibits P1 and P2, respectively, till the date of decree and future interest @ 6% per annum and for permanent injunction to restrain defendant/appellant from alienating suit property.

02. I have heard learned counsel for the appellant, ad longum, besides going through, with his able assistance, the judgments/decrees

passed by the courts below, in extenso.

03. Learned counsel for the appellant argues that the respondent has miserably failed to prove that he is entitled to the claimed amount on the basis of promissory note, Exhibit P1, and receipt, Exhibit P2-execution whereof by the appellant and receipt of the amount reflected therein by him have remained unproved in so far as no handwriting and fingerprints expert has been examined to establish that purported signatures of the loanee appearing on promissory note, Exhibit P1 and receipt, Exhibit P2, are, in fact, his signatures, while the appellant has fully proved that the promissory note and receipt in question are forged and fabricated and outcome of fraud. He contends that while the respondent was not possessed of sufficient means to lend an amount of Rs. 4,50,000/- to the appellant, the latter did not need money because in the year 2009 he had received an amount of Rs. 14,00,000/- as compensation in lieu of his land which was acquired by the State and had deposited, out of this money, an amount of Rs. 5,00,000/- with Life Insurance Corporation. According to him, fact of the matter is that Gurcharan Singh (PW2), scribe of the promissory note, Exhibit P1, is son of Mal Singh and is a commission agent. He had procured appellant's signatures on some blank papers during latter's dealing with him, and the promissory note, Exhibit P1, and receipt, Exhibit P2, have been manufactured by misusing those blank papers carrying appellant's signatures, in connivance with the respondent and Gurcharan Singh (PW2). He further contends that from the circumstances appearing on record it is clearly established that no consideration passed hands and, as such, presumption under Section 118(a) of the Negotiable Instruments Act, 1881 could not be raised in favour of the respondent and it stood rebutted in view

of what is stated here-in-before. He also relies upon ***Chandan Lal Joura versus M/s. Amin Chand Mohan Lal, AIR 1960 Punjab 500*** and ***Santa Singh versus Arjan Singh, 1992(2) Recent Revenue Reports 195*** to show that in the absence of evidence to show that the promissory note was for consideration, the instrument, Exhibit P1, is nothing more than a paper transaction and the presumption of Section 118(a) of the Negotiable Instruments Act, 1881, can be rebutted not only by bringing definite evidence but also by referring to the flaws in the evidence of the plaintiff and submits that in view of the facts and circumstances referred to here-in-before the presumption is rebutted.

04. Nothing more has been urged on either side.

05. Syntax of events culminating into filing of this appeal, put in brief, indicates that the respondent had approached the learned trial Court for the recovery of Rs. 4, 68, 750/- together with interest @ 12% per annum, as per details given in the heading of the plaint, by stating that on September 23, 2009 the appellant had borrowed from him an amount of 4, 50, 000/-; had executed a promissory note, Exhibit P1, and receipt, Exhibit P2, to acknowledge receipt of that amount and to undertake to return it, on demand, together with interest at the rate of 12% per annum; had failed to return that amount together with accrued interest, demand put up by him notwithstanding; and was about to alienate his landed property to frustrate his claim, but respondent's claim was resisted by the appellant who by filing a written statement had pleaded preliminary objections to the effect that respondent's suit lacked cause of action and was not maintainable; respondent's hands were unclean; and the respondent was estopped by his own acts and conduct from filing the suit. On merits, appellant had denied

borrowing of the claimed amount and execution of promissory note and receipt by him and had termed the promissory note and receipt as forged and fabricated documents and without consideration besides being outcome of fraud. It was also added that the respondent, in connivance with Mal Singh-appellant's commission agent, and witnesses of the promissory note and receipt had played fraud upon otherwise he did not need money as he had received an amount of Rs.14,00,000/- as compensation for his land in Uttar Pradesh and the respondent did not possess sufficient means to lend such a huge amount to him.

05. In view of the transversely opposing stands of the parties, learned trial Court entered an inquisition into the controversy and to facilitate it, from the pleadings of the parties, identified the areas of conflict in the form of following issues;

> 01. Whether the plaintiff is entitled to recover Rs.4,68,750/- with interest from the defendant on the basis of pronote and receipt dated 23.09.2009? OPP
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> 02. Whether the suit is not maintainable? OPD
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> 03. Whether the defendant is entitled to special costs u/s 35 CPC?OPD
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> 04. Relief.

06. After both the sides had let in evidence to substantiate their respective pleas, learned trial Court afforded them an audience, appraised the pleadings and evidence available on record, returned findings on all the issues in favour of the respondent and against the appellant and vide judgment and decree judgment and decree dated March 21, 2014 decreed, with no order as to costs, respondent's suit for the recovery of Rs.4,50,000/- together with interest @ 9% per annum from the date of execution of the promissory note and receipt dated September 23, 2009, Exhibits P1 and P2,

respectively, till the date of decree and future interest @ 6% per annum.

07. Judgment and decree judgment and decree dated March 21, 2014 of the learned trial court was challenged in appeal (Civil Appeal No.89 dated 26.04.2014) which has been dismissed by the learned first appellate court vide judgment/decree dated November 27, 2014.

08. A glance across the judgments recorded by the learned Courts below discloses that the respondent, in order to prove advancement of the loan by him to, execution of promissory note, Exhibit P1, and receipt, Exhibit P2 by, the appellant and his failure to return the loan amount together with interest at the agreed rate despite demand, has examined himself as PW1, besides examining their scribe Gurcharan Singh, as PW2 and attesting witness, Mehar Singh as PW3, while the appellant, in a bid to substantiate the story put up in the written statement, has examined Harchand Singh, Member Panchayat at DW2 besides himself entering the witness stand as DW1.

09. On behalf of the defendant-appellant a plea has been put forth that promissory note and receipt are the result of fraud played upon him by the respondent in connivance with witnesses and scribe thereof and Mal Singh. It is needless to mention here that by taking the plea of fraud, the defendant-appellant has virtually admitted his signatures on the promissory note and receipt, Exhibit P1 and Exhibit P2, respectively. In paragraph No. 12 of the "Grounds of Appeal" it has been stated on behalf of the appellant that his signatures were obtained by Gurcharan Singh (PW2) on some papers which have been converted into the promissory note and receipt in question. It is well settled that a plea of fraud can succeed only if it is specifically pleaded and circumstances of fraud are proved beyond

reasonable doubt as in a criminal proceeding. The appellant, however, has failed to plead and prove the circumstances of fraud. Further, he could approach a civil or police authority or a court of competent jurisdiction to lodge a complaint that he has been so defrauded but there is nothing available on record to show that the appellant has ever approached any such authority or court to lodge a complaint in this respect. His silence in this regard works against the plea of the appellant. Such a plea adverted to on behalf of the appellant also demolishes his plea that a handwriting and fingerprints expert ought to have been examined to prove that the signatures appearing on the promissory note and receipt in question are his signatures.

10. Respondent has, thus, discharged the initial burden of proof of advancement of loan by him to, and execution of the promissory note and receipt by, the appellant.

11. Execution of promissory note, Exhibit P1 by the defendant-appellant having been proved, Section 118 of the Negotiable Instruments Act, 1881, comes into play according to which presumption, amongst others, of passing of consideration arises in favour of the plaintiff in such a situation. It reads as under:

> "**118. Presumptions as to negotiable instruments of consideration**
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> Until the contrary is proved, the following presumptions shall be made:-
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> (a) of consideration-that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
>
> (b) as to date- that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance- that every accepted bill of exchange was accepted within a reasonable time after its date its date and before its maturity;

(d) as to time of transfer.- that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of endorsements - that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps-that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course - that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been contained from its lawful owner, or form any person in lawful custody thereof, by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

12. No doubt it has been held in Chandan Lal Joura versus M/s. Amin Chand Mohan Lal, AIR 1960 Punjab 500 and Santa Singh versus Arjan Singh, 1992(2) Recent Revenue Reports 195 that in the absence of evidence to show passing of consideration the promissory note is nothing more than a paper transaction and the presumption of Section 118(a) of the Negotiable Instruments Act, 1881, can be rebutted not only by bringing definite evidence but also by referring to the flaws in the evidence of the plaintiff but no such materials could be pointed out by the learned counsel as could mean to have rebutted the presumption that the promissory note, Exhibit P1, is without consideration.

13. In ***Ponugupati Subba Rao vs Sikhakollu Pulla Rao, 1999(2) Civil Court Cases 524 (A.P.)***, the plaintiff-respondent had filed a suit for recovery of a debt on the basis of a promissory note dated 05.05.1992 executed by the defendant-petitioner. The promissory note was executed for Rs. 2,000/- and it was agreed that the interest would be paid at the rate of 24% per annum. The rate of interest claimed in the suit, however, was

@12½ %. It was claimed in the suit that the defendant had borrowed a sum of Rs. 2,000/- from the plaintiff on 05.05.1992 and a promissory note had been executed. The defendant in his written statement denied borrowing of any loan from plaintiff and executing the promissory note. It was stated that the plaintiff had fabricated the promissory note with an ante date. The plaintiff examined himself as a witness. The plaintiff, according to the judgment of the trial Court, had initially proved that the document had been executed. The defendant, however, took a stand that he had not put any signatures on the promissory note and the signature was forged. The learned trial Judge relied on B. Mallamma v. V. T. V. Rangachary, 1997(3) APLJ 39 (SN), whereby it had been laid down that after the initial burden of proving the document is discharged by the plaintiff, the onus of proving the document shifts on to the defendant. High Court of Andhra Pradesh ruled as under:

> "*Section 118 of the Negotiable Instruments Act lays down the conditions in which the presumptions shall be made. Under Section 118(g) there is a presumption in favour of the plaintiff that he is the holder in due course unless proved contrary and the presumption shall not survive if it is proved that the document was with the holder by means of offence or fraud or had been obtained from the maker or acceptor thereof by means of an offence or fraud. In a judgment by the Supreme Court in Bharat Barrel and Drum Manufacturing Co. v. Amin Chand Payrelal, 1999 (2) Supreme 187, while interpreting Section 118(a) the Court held that, after the initial burden is discharged by the plaintiff of showing that the document was executed the burden shifts to the defendant. In the present case also the initial burden was discharged by the plaintiff and the burden shifted to the defendant to prove that the document was forged. Since he has not discharged that burden therefore the trial Court was right in decreeing the suit.*"

14. In ***Kaka Singh versus Krishna Devi and others, 2009(2) Simla Law Journal 1161***, this Court ruled as under:

> "*It is further contended by the learned counsel for the appellant that the plaintiff could not prove the capacity*

> *of the loaner for the purpose of extending loan to the defendant-borrower, therefore, it is not proved on record that consideration had transferred on the basis of pronote executed by the appellant. In this regard, learned counsel for the respondents has contended that once the receipt has been executed no other proof is required to prove that consideration of money was transferred from the loaner to the borrower. I am in full agreement with the contention raised by the counsel for the respondents in this regard that receipt which has already been proved on record would tantamount to the transfer of the consideration from the loaner to the borrower and no further proof is required to prove that the pronote is a paper transaction only. Had there been only pronote and no receipt, then the argument raised by the learned counsel for the appellant has some merit. But once receipt is there, it proves that money has already exchanged hands and the borrower had taken the money from the loaner."*

15. In ***Balwant Singh versus Dr. Vinod Kumar Goel 2009(4) RCR (Civil) 198***, this Court observed as under:

> "*Learned counsel for the appellants has placed reliance upon Sri Khetramohan Ray v. Udayanarayan Panda and another, 1991 AIR (Orissa) 25; P. Venkatamma and another v. Dontham Sulochana, 2006(1) RCR (Civil) 598 and Balbir Singh v. Harbans Singh, 2009(3) RCR (Civil) 127, to contend that the presumption of consideration has to be drawn in terms of Section 118 of the Negotiable Instruments Act, 1881. There is no dispute with the proposition laid down in the aforesaid judgments. The law is clear that once the plaintiff is able to prove the execution of the pronote, it is for consideration. It is the executant of the pronote, who has to rebut the presumption available under Section 118 of the aforesaid Act.*"

16. In ***Takhat Raj Singh versus Shaminder Singh, 2009(5) Recent Civil Reports 689***, this Court has observed that where the plaintiff proves execution of promissory note, burden shifts on to the defendant to

demonstrate that it was without consideration and when no evidence is brought by the defendant in this direction, the presumption arising under Section 118(a) of the Negotiable Instruments Act, 1881, cannot be said to have been rebutted. To the same effect are the judgments rendered in ***Harchand Singh versus Sarwan Singh, 2007(1) PLJ 495, Natranjan versus Marappa Gounder 2005(1) Recent Civil Reports(Civil) 66, Ganapathy Thevar versus Shanmuga Thevar, 2008(4) RCR(Civil) 24*** and ***R.Kamalam versus K.K.Kamarasamy, 2008(2) Recent Civil Reports 798***.

17. Reverting to case in hand, the appellant is not shown to have brought any evidence - except his own self serving statement as DW1, to prove his plea that the promissory note, Exhibit P1 and receipt, Exhibit P2 are outcome of fraud and misrepresentation. DW2 Harchand Singh, admittedly, is not a witness to execution of promissory note and receipt in question. In the absence of evidence of this witness the only evidence in support of plea of the defendant-appellant is his self-serving solitary statement as DW1 and his evidence is also found to be inconsequential in view of his silence in the matter and his failure to render an explanation why he did not approach a civil court or police authority complaining against stated high handedness of the plaintiff-respondent, or to seek cancellation of the promissory note.

18. As a natural consequence of what has been said and discussed in the foregoing paragraphs and the fact that the appeal is not shown to involve a substantial question of law, impugned judgment/decree dated November 27, 2014 passed by the learned first appellate court is maintained and affirmed and the appeal is found to be bereft of any substance and is, therefore, dismissed *in limine* with costs throughout.

<u>Civil Miscellaneous No. 345-C of 2015</u>:

19. Main appeal having been dismissed *in limine,* this application seeking stay of operation of impugned judgment/decree is rendered infructuous and is disposed of accordingly.

(Mahavir S. Chauhan)
Judge

January 14, 2015
adhikari