

116.

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

Regular Second Appeal No.1326 of 2015 (O&M)

Date of decision:18.11.2015

Nagarmal

... Appellant

versus

Krishan Kumar

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. O.P. Goyal, Senior Advocate,
with Mr. Nirmal Singh, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The appellant is the defendant in suit who has suffered a decree for specific performance of an agreement executed in favour of the plaintiff on 29.12.2010. The contention of the plaintiff was that the consideration was stipulated as ₹ 7 lakhs and on the date of agreement, an amount of ₹2 lakhs was paid. The receipt of ₹2 lakhs was admitted by the defendant and the signature in the document was also admitted but he sought to contend that he signed the document without reading the recitals out of trust and believing the same to be merely an instrument of security for the amount borrowed.

2. At the trial, the plaintiff produced the witness Dharmender Kumar who admitted to his relationship with the plaintiff. Yet another person shown as witness to the document was Rakesh Kumar whose name had been written after scoring the name of Raj Kumar, but Rakesh Kumar was not examined. The court found the agreement to be genuine and granted the decree. The defendant's grievance was that there had been a panchayat in the village where it was decided that if the defendant paid ₹2 lakhs which he had borrowed for repayment with interest, the plaintiff ought not to press his relief for specific performance. The so-called panchayat was also reduced in writing and the panchayatnama was produced in court as evidence.

3. At the trial, the plaintiff stated that he was not a party to the panchayat and the decision of the panchayat was taken unilaterally. The defendant wanted to contend that the plaintiff had been informed about the constitution of panchayat but the plaintiff was not willing to participate. The appellate court rejected any consideration of the panchayatnama and finding the execution of the agreement to be genuine, granted the decree.

4. The learned senior counsel reiterates the argument about the decision in the panchayat and their persuasions that the document were to be acted only as an instrument of loan and the plaintiff shall not enforce the same for specific performance. I

declined to give any weightage for such a panchayat in which the plaintiff was not a party. We cannot have parallel system of administration of law outside the forum created for the purpose of administration of justice. Non-formal institutions such as village panchayats have infamy of creating undue pressure and the *khaps* in Haryana have been known more for their notorious ways than for good reasons, as perpetrators of many an ill in the society. No panchayat can take a decision for anyone party who is not willing to participate in the same. The village bigwigs cannot steamroll their decisions for compliance as if they have any legitimacy. I will make no issue in favour of the defendant and find no error in the approach of the courts below in discarding the panchayat decision, so long as it was an admitted fact that the plaintiff was not a party to it and he had not participated in any deliberations said to have been carried in the presence of the village panchayat.

5. The matter would require to be examined only from the point of view of whether the agreement could be treated as an evidence of loan and the conduct and intent of parties were only to secure such a protection for recovery of the loan advanced. During all the time when the proceedings were pending, there was not even an attempt to deposit the money or tender the amount but it suited the convenience of the defendant to merely take a plea that it was meant to be a loan transaction. I find no bona fides in such a

contention when there was no actual tender. Further, a person of full age and understanding, even if illiterate, cannot be heard to say that he affixed his thumb-impression or gave his signature out of trust for the other and without reading the recitals. A person that subscribes the signature or thumb-impression, if there were no other vitiating circumstances, ought to take the consequences of his own fool hardiness, if he was so indiscreet not to know what the document contained. I will give again therefore no benefit to the defendant who simply gives his signature if all that he was interested was to receive ₹2 lakhs on that date. The consequence of such indiscretion must be carried to its logical end. I find no scope for intervention in favour of the appellant and dismiss the appeal as involving no substantial question of law for consideration.

(K.KANNAN)
JUDGE

18.11.2015
sanjeev