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

RSA No.670 of 2013 (O&M)
Date of Decision.14.08.2015

Labh Singh ....Appellant

Versus

Baljit Singh ......Respondent

Present: Mr. L.S. Sekhon, Advocate for
Mr. Parminder Singh Sekhon, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. Delay of 6 days in filing the appeal is condoned.

2. The plaintiff who sued on a promissory note obtained a decree but in the appeal by the defendant, there was a reversal of the judgment of the trial Court and the appeal was allowed. The plaintiff who lost at the Appellate Court is appellant before this Court.

3. The promissory note was for an amount of Rs.2 lacs said to have been borrowed by the defendant. The defence was that he had never executed any such document and the question of repayment of the loan at any point of time did not arise. His contention was that his son one Bikramjit Singh along with his nephew Prithi Pal Singh had taken 15 killas of land from one Jagdish Singh and used to sell the crops through Gurmukh Trading Company owned by Balwant Singh. The crops worth ₹ 5 to ₹ 6 lacs had been sold in a year and the commission agent was not rendering any payment against sales which they have made and the amounts which were

payable to them. When they demanded the proper account and for repayment, the commission agent had fabricated the document with connivance of the plaintiff.

4. The issue, therefore, predominently was whether the promissory note was true and genuine or whether there had been any passing of the consideration to the defendant. If the execution of the promissory note is an admitted fact, the consideration is a matter of presumption under Section 118 of the Negotiable Instrument Act. On the other hand if the execution of the promissory note itself is disputed, it is the duty of the plaintiff to dispel all issues relating to execution and the payment of consideration. The lower Appellate Court has considered the issue at great length and it has set down in paragraphs by raising several questions as to how the transaction of alleged loan could not be true. The Court has found that the plaintiff was stating that he had collected money from his house and handed over the money to the defendant in the presence of the scribe and when the plaintiff was pressed to declare as to how such a large amount had been stored in his house, he had no answer except to state that the amount had been carried in ₹ 100/- bundles. The Court found that it was an artificial evidence for a villager to say that all the money had been collected and kept in his house without even knowing that he was going to lend the money to the defendant. The lower Appellate Court found that there was improbability in the plaintiff's version that the plaintiff did not know whether the defendant was a man of means and he did not know whether he had property to offer as security and he did not also know whether he had necessary resources to repay the loan. The Court, therefore, inferred that it was most artificial for a person to

have advance money as high as about ₹ 2 lacs without knowing the creditworthiness of the person that he will be in a position to repay the money after borrowing the same or not. The Court also made the issue about the fact that alongside the promissory note, there was said to be a receipt and while the signature found in the document was incomplete with reference to the place where the signature had been affixed in one place and in yet another place a half thumb impression on the body written without indicating the name of the person, the Court found that it was unusual to make an instrument in the manner in which it had been done. Even the receipt which was said to be prepared alongside the promissory note did not contain the name of the defendant at all but it merely referred to the fact of money as having been received without giving the name of the person who had received the money. The Court also found that when the instrument had been denied by the defendant when there was complete lack of proof about how the consideration had passed, the plaintiff must have also taken steps to assess the genuineness of the handwriting found in the document by calling an expert to speak about it. I will not think examination of expert at all times important to prove the genuineness but there is elaborate consideration on issue of fact whether the promissory note was true and whether the consideration had passed. I find the appreciation to be elaborate and I find no justification for reversal in the second appeal.

5. There exists no substantial question of law for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 14, 2015
Pankaj*