In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.247 of 2015 (O&M)

.....

Date of decision:24.7.2015

Krishan Kumar

.....Appellant

v.

Manmath

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Madan Gupta, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Krishan Kumar-appellant/defendant against Manmath-respondent/plaintiff challenging the impugned judgment and decree dated 21.10.2014 passed by the learned District Judge, Narnaul, vide which the appeal filed by the appellant-defendant against the impugned judgment and decree dated 30.1.2014 passed by Additional Civil Judge (Senior Division), Narnaul, decreeing the suit of the plaintiff, has been dismissed.

The brief facts of the case are that Manmath-plaintiff filed suit for recovery of ₹9 Lacs along with future interest @12% per annum from the date of filing of the suit till realization against defendant-Krishan Kumar on the ground that the defendant had taken a loan of ₹9 Lacs from him on 16.5.2005 on promise to repay the same on demand along with interest @12% per annum and executed a promissory note and a receipt in favour of the plaintiff. Legal notice was also sent to the defendant, but he has not paid the amount.

In the written statement, the case of the defendant is of denial. He denied that he took a loan of ₹9 Lacs from the plaintiff on 16.5.2005 and promised to repay the same along with interest @12% per annum and executed a promissory note and a receipt. It is also stated that as per law no payment exceeding ₹20,000/- can be made in cash. It is also stated that promissory note and receipt are forged. It is also stated that the plaintiff is a money lender, but he has not taken any licence for money lending.

After framing the issues and after the parties led evidence, the learned Additional Civil Judge (Senior Division), Narnaul, decreed the suit of the plaintiff. The defendant filed an appeal before the learned District Judge, Narnaul, which has been dismissed vide judgment and decree dated 21.10.2014. Aggrieved from this judgment passed by the Courts below, this regular second appeal has been filed by the appellant-defendant.

At the time of arguments, learned counsel for the appellant argued that the plaintiff has not proved the source of income. He has given huge amount without knowing the defendant. Attesting witness is a relative and further amount of more than ₹20,000/- cannot be given in cash.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that, first of all, the findings of fact given by the Courts below are concurrent. Nothing has been pointed out as to which evidence has been misread by the Courts below and as to how the judgments and decrees passed by the Courts below are perverse. Nothing has been argued as to which substantial question of law arises in this regular second appeal. The defendant's case is of mere denial and he has examined himself only to deny the borrowing of the loan and execution of the pronote and receipt. No other cogent evidence has been produced by the defendant to show that the pronote and receipt are forged documents. From the evidence on record, it is clear that the defendant belongs to the in-law's village of the plaintiff and defendant has admitted the fact that he is knowing the brother-in-law of the plaintiff for the last ten years. The mere fact that the plaintiff has stated that he has given ₹9 Lacs by selling his shop and could not tell the particulars regarding the same is no ground to disbelieve the documentary evidence. Further more, the plaintiff has stated that he had paid loan money of ₹9 Lacs which has been given on the execution of promissory note and receipt. The plaintiff has examined himself as PW-1 and deposed as per version/pleading in the plaint. He also deposed regarding promissory note Ex.P.1 and receipt Ex.P.2. PW-2 Chander Bhan is attesting witness to the promissory note. He also deposed regarding the same facts. PW-3 Ram Kumar, Clerk of Shri B.L. Sharma, Advocate has proved the signatures of the Advocate on the legal notice and also deposed regarding the postal receipt. He also deposed regarding another legal notice and postal receipt.

On the other hand, the defendant in his statement even denied his signatures on his written statement filed before the trial Court which shows that the defendant, who is denying his signatures on the written statement, is also trying to depose falsely and is not a reliable witness. The evidence is appreciated by the Courts below in right perspective. No law has been cited that if the amount of more than ₹20,000/- is paid in cash on the basis of pronote and receipt, then the version is not to be believed and then the suit should have been dismissed. Rather, proviso to Section 269-SS of Income Tax Act shows that this shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act. There is no evidence on record to show that any of the parties is paying income tax. The defendant is also stated to be farmer and not paying any income tax. The plaintiff is also not paying income tax as per evidence. The defendant has not brought any evidence to rebut the evidence of the plaintiff by bringing Expert to prove that the pronote and receipt do not bear his signatures.

Therefore, the findings given by the Courts below are correct, as per evidence and law and same are concurrent. The findings cannot be held as perverse. Both the judgments and decrees passed by the Courts below are correct, as per evidence and law which do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the regular second appeal, the same is dismissed.

July 24, 2015. **(Inderjit Singh)**
Judge

hsp