

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

RSA No. 3472 of 2015 (O&M)

Date of decision: 19.10.2015

Manjinder Kaur

... Appellant

versus

Jaswinder Kaur

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. P.K.S. Phoolka, Advocate,
for the appellant.

K.Kannan, J.

CM No. 8416-C-2015

For the reasons mentioned in the application, duly supported
by an affidavit, delay of 39 days in refiling the appeal is condoned.

CM is disposed of.

Main Case

The appeal is brought at the instance of the defendant who
has suffered a decree passed on the basis of a promissory note said to
have been executed by the defendant in favour of the plaintiff on
08.06.2009 for Rs. 1, 85,000/-. The plaintiff had examined herself as one
of the witness to the transaction. The defendant admitted the signature in
the document but however contended that she had not borrowed any
money from the plaintiff nor was the plaintiff capable of advancing such

an amount. According to her, she had borrowed some money from the Co-operative Bank to which the plaintiff's husband stood guarantee and as a measure of counter-guarantee from the defendant that if there was any default by the defendant in repaying the loan borrowed from the bank, the plaintiff would make good the loss sustained by the husband by incorporating the recitals of promissory note. The contention was that only the signatures found in the promissory note was his and they were obtained on blank stamp papers but filled up later behind the back of the defendant.

At the trial, the defendant examined one of the witnesses who stated that no money was paid by the plaintiff to the defendant in his presence but the defendant had merely signed the blank stamp papers on account of good relations between the plaintiff's husband and herself and he stood as a witness to such signatures in blank stamp papers. Two Courts below found the defendant's case to be false, held the instrument to be supported by consideration and granted the decree.

Learned counsel for the defendant would urge that the plaintiff had not proved her means to make the payment. According to him, mere statement that she had borrowed the money from her own brother or relatives ought to have been rejected by the Court below. I will find that the approach to a consideration of case where the defendant was trying to plead that it was written under particular circumstances spoken to by him would not give rise to a query to be raised at the forefront whether the plaintiff had means to advance such an amount.

Since the defence was that the signature found at the document was true

but the recitals were filled up later, the matter that would fall for consideration in the first place is only whether the execution of the document as a promissory note had been established or not. If the document is proved to have been executed in the manner pleaded consideration is a matter of resumption under Section 118 of the Negotiable Instruments Act. The Courts below have referred to one of the witnesses to the instrument as speaking to the fact of the defendant affixing his own signatures only after receipt of consideration and after the recitals were written. The signature was on the stamps on recitals undertaking to repaying the amount on demand as well as to receipt of the amount mentioned in the promissory note and appended by specific recitals beneath the promissory note. The Court below was considering whether the defence of the document as having been subscribed under the circumstances could be true and was rejecting a plea that the defendant would have simply subscribed a signature to blank paper especially when he was setting up a particular plea of indebtedness to the Bank for which the plaintiff's husband stood guarantee. If the defence, therefore, was that the promissory notice so executed was not an instrument of fresh lending but to evidence as a counter guarantee for the liability to make the payment to the Bank for which the plaintiff's husband gave guarantee, then that defence which was possible ought to have been spoken to by the other witness as well. We have curiously an evidence of one of the witnesses to the promissory notice cited on the defendant side who would not give the version of the defendant, but, on the other hand, an artificial evidence that he stood as a witness to the

blank stamp paper. It is perfectly tenable that yet another document as a counter guarantee was made and the witness spoke of such a circumstance and the fact that he stood as a witness. If such evidence had been given it would have been most natural and could have brought a support to the defendant's own plea. If the defendant however was taking a half hearted attempt to admit the signature but take a plea that it was on blank paper, he was trying to push for a defence which was false; he was trying to secure support to his fragile plea by more fragile pleas in evidence that was at once artificial and strained. A witness who is not a close privy of the plaintiff himself cannot be a witness to a blank paper, his statement that he stood as such witness deserved to be rejected by the Court below. I will give no premium to a plea that the plaintiff could not have raised the resources. It is nobody's case that she was in impecunious circumstances. The defendant must take the consequences of executing the document which contained an unconditional undertaking and if the instrument could be taken as proof of its execution, then the presumption of the extent of consideration must follow what the law dictates and I would only look for a strong evidence on the extent of failure of such consideration to be placed only on the defendant. If I have rejected the defendant's case as taking up a false plea regarding his signatures as having been obtained on blank stamp papers, I will not selectively take her evidence for her plea of want of consideration to be accepted.

The second appeal could be heard only on the substantial question of law when the decision that was taken was on a wrong approach of law or by perverse appreciation of evidence which could

also be taken as raising substantial question of law. The perverse appreciation must be rejection of evidence which was placed in Court or failure to note the evidence which was favourable to one party. I find no such fallibility in the decision of law for an inference of any such appreciation of facts.

The judgment of the Court below is maintained and the regular second appeal is dismissed.

(K.KANNAN)
JUDGE

19.10.2015

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