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

RSA No.3484 of 2015 (O&M)
Date of Decision.10.12.2015

Harpal Singh son of Hardev Singh ....Appellant

Vs.

Rajinder Kumar ....Respondent

Present: Mr. PKS Phoolka, 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 68 days in refiling the second appeal is condoned.

2. The defendant is the appellant before this Court who resisted the action for recovery of money brought by the plaintiff on the basis of a promissory note alleged to have been executed by the defendant. The defendant admitted to the signatures contained in the instrument but stated that his signatures had been taken by the plaintiff on blank stamp papers when he used to be supplying grains to the plaintiff and they had been used wrongly by the plaintiff to fabricate a document.

3. The plaintiff examined two witnesses PW1 and PW2 apart from himself who spoke about the fact of their personal knowledge about the lending of the money and the valid execution of the promissory note. When the Court was satisfied about the valid execution, the Court was looking for whether the document was not

supported by consideration in the manner contested by the defendant.

4. The defendant had two important witnesses apart from his denial of the promissory note as brought about by the plaintiff by fabrication. His contention was that the plaintiff was not a person of means and he could not have advanced such a large amount of ₹1,98,000/- as stated in the promissory note. It was sought to be elicited in the course of cross-examination that he was not an income tax assessee and his wife was only a Teacher. At the same time, the defendant wanted also to take up an inconsistent position that about the same time when the promissory note was executed, there had been other transactions involving loan said to have been given by the plaintiff to other persons aggregating about ₹7 to ₹8 lacs which revealed a systematic nature of business that the plaintiff was carrying on and if it involved any money lending, it would require a person to take licence and without such licence, there can be no loan nor could there be an enforcement of such a loan under the provisions of the Punjab Money Lenders Act. The two persons against whom the plaintiff was said to have filed cases were examined as DW1 and DW2 to say that the plaintiff had actually resorted to action against them also. This was a manner of attempting to prove that the plaintiff was actually a professional money lender and therefore, the enforcement of the money claim will be barred against said provision of the Act.

5. The trial Court held that if the execution of the promissory note was established by the examination of witnesses, a mere statement denying the consideration and the truth and genuineness of the document cannot support the case of the defendant unless it was clearly

brought out that no money at all had been paid. On the other hand, there was a presumption of the instrument as being fully supported for consideration in terms of Section 118 of the Negotiable Instruments Act and the Court found that there was no evidence to displace the recitals contained in the promissory note and the versions of the witnesses. The defendants No.1 and 2 who were examined on the side of the defendant could not have also proved that there was no consideration, for they were themselves not witnesses to the transaction and they were only trying to contend that the suits had been instituted by the plaintiff against them. Their version could not have supported the case of the defendant as regards the aspect of passing of consideration. If the evidence of DW1 and DW2 could not be reckoned for the purpose of establishing whether the plaintiff was professionally a money lender to whom the provisions of the Act would be applicable, the Court reasoned and, in my view correctly, that the defendant who was trying to contend that the plaintiff did not have money to advance could not have brought the evidence that DW1 and DW2 had also been sued upon. If they had been sued upon by the plaintiff that itself showed their enmity against the plaintiff and their own versions could not have been taken without consideration of how they could be aggrieved against any action by the plaintiff and they would be interested in supporting any one who was taking up a plea against the plaintiff. The Court cited case law on the subject under the provisions of the Act that showed that a systematic lending through a course of transactions which would show that the person was engaged in the business of money lending was not available in this case and even if suits were to have been instituted, it could not bring about a meaning that the plaintiff was a professional money lender to which the provisions of the Act would be applicable.

6. The means of the plaintiff had been attempted to be spoken about the plaintiff himself that he had been writing accounts for several persons and he had enough surplus money to lend and he was also saying that his wife was taking private tuitions and she had also enough resources. When he was denying that he was not an income tax, there is no question of proving the loan transaction by any income tax return, for no such document could be available. The counsel also contends that the interest granted by the Court @12% per annum is high and it could not have been awarded. If the contract rate was 12% then there is nothing that prohibits the Court from accepting the contract rate and granting a decree in terms of such a contract. I do not find that there is any statutory prohibition against grant of interest @12% in the manner in which the Court has granted.

7. The issue of whether a promissory note is duly executed and whether they were fully supported by consideration were exclusive issues of facts only and they hav been considered by two Courts below and I would find that there is no proposition of law to be advanced in this case for interference in the second appeal. The second appeal is dismissed as devoid of merit.

(K. KANNAN)
JUDGE

December 10, 2015
Pankaj*