

RSA No. 3923 of 2015 (O&M)

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

RSA No. 3923 of 2015 (O&M)

Date of Decision: November 28, 2015

Balbir Singh

...Appellant

Versus

Baldev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Angel Sharma, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the judgment and decree dated 18.03.2013 passed by the Civil Judge (Senior Division), Fatehgarh Sahib, whereby, the suit for recovery of ₹29,260/- i.e. principal amount of ₹19,000/-+₹10,260/- as interest at the rate of 1.5% per month thereupon from the date of pronote and its receipt dated 11.11.2006 till the filing of the suit and the interest thereafter stands decreed by granting him interest at the rate of 12% per annum from the date of execution of the pronote and receipt till the date of decree and future interest at the rate of 6% per annum till its realization, against which the appeal preferred by the appellant-defendant stands dismissed by the District Judge, Fatehgarh Sahib, on 17.03.2015.

It is the contention of the learned counsel for the appellant that the ground for borrowing the amount as per the pronote is to buy a property but nothing has come on record which would indicate that such a property was ever purchased by the appellant-defendant. His further contention is that the thumb impression on the pronote is not that of the appellant-defendant and in the absence of any evidence that the said thumb impression was that of the appellant-defendant, the said pronote could not have been made the basis for decreeing the suit of the respondent-plaintiff. He, thus, contends that the judgments and decree passed by the Courts below deserve to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his assistance have gone through the impugned judgments.

As per the claim of the respondent-plaintiff, pronote was executed on 11.11.2006 (Ex.P-1) and receipt (Ex.P-2) vide which an amount of ₹19,000/- was borrowed by the appellant-defendant of which PW-2 Jaspal Singh was the attesting witness. On the basis of the evidence which has been led by the respondent-plaintiff, the execution of the said pronote and handing over the amount of ₹19,000/- as borrowed by the appellant-defendant, stands established. The onus with regard to the said thumb impression not being of the appellant-defendant as has been asserted by the

counsel, was upon the appellant but unfortunately he did not chose to appear as a witness before the trial Court despite various opportunities having been granted to him for doing so. The trial Court was forced to finally close the evidence by order of the appellant-defendant after granting him last opportunity vide order dated 12.03.2013. The said order was never challenged and the same has attained finality. The assertion, thus, that the thumb impression of the appellant-defendant has not been proved on the pronote cannot be accepted as the onus was upon the appellant-defendant to prove his assertion that this was not his thumb impression. The findings, thus, recorded by the Courts below cannot be faulted with. The interest also as has been granted by the Courts below cannot be said to be excessive as it is a commercial transaction.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

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In view of the order passed in the main appeal, the present application for stay of the operation of the impugned judgments and decree passed by the Courts below, has become infructuous.

Disposed of as such.

November 28, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**