

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

RSA No. 4199 of 2015 (O&M)
Date of decision 26.08. 2015.

Mewa Singh

..... Appellant.

versus

Gurmail Singh

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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?

Present : Mr. Vinod K. Kataria, Advocate for the appellant.

K.C.PURI, J.

C.M. No.10166-C of 2015.

For the reasons mentioned in the application, delay of 11 days in filing the appeal stands condoned.

CM stands disposed of accordingly.

C.M. No.10167-C of 2015.

This is an application under Order 44 Rules 1 and 3 read with Section 151 of the CPC for allowing the appellant to file the appeal in question as an indigent person. Appellant has further filed an affidavit that he is not owner of any property. As such, the application under Order 44 Rules 1 and 3 read with Section 151 of the CPC stands allowed.

K.C.PURI J

Unsuccessful defendant has directed the present regular second appeal against the judgment and decree dated 26.05.2015 passed by Shri Sanjay Agnihotri, Additional District Judge, Sangrur vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 21.08.2013 passed by Shri Sushil Bodh, Additional Civil Judge (Junior Division), Malerkotla was dismissed.

2. Briefly stated the case of the plaintiff is that on 1.6.2008 defendant Mewa Singh borrowed a sum of Rs.44,000/- from him on interest @ 2% per month and executed pronote and receipt in favour of the plaintiff in the presence of marginal witnesses and scribe. Defendant failed to repay the same as agreed. Hence the suit.

3. On notice, defendants appeared and filed written statement and took up legal objections regarding maintainability of suit, locus standi ; cause of action ; concealment of facts and alleged that the pronote and receipt are forged and fabricated documents and are the result of fraud. Defendant denied borrowing any amount of Rs.44,000/- from the plaintiff. It is alleged that plaintiff obtained blank pronote and receipt from every successful bidder for the security of balance instalment. Similarly the plaintiff also obtained the signatures on blank pronote and receipt from the defendant as security for the balance instalment of the committee. Defendant had already paid all the installments of committee but the plaintiff being a man of greed, has filed the present suit. Earlier defendant made a complaint to the Electricity Department against the plaintiff for

defrauding him on the pretext of installing an electric meter. Defendant alleged that due to that revenge, the present suit has been filed by the plaintiff. Denied other averments, defendant prayed for dismissal of the suit.

4. Replication to the written statement was not filed. From the pleadings of the parties following issues were framed :-

1. Whether the plaintiff is entitled to recover Rs.44,000/- from the defendant on the basis of pronote and receipt dated 01.06.2008? OPP
2. Whether consideration was passed at the time of execution of the pronote and receipt dated 01.06.2008 ? OPP
3. Whether the plaintiff is entitled to recover pendent lite and future interest @ 2% per month from the date of filing of suit till realization ?OPP
4. Whether the suit of the plaintiff is not maintainable ? OPD
5. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
6. Whether the plaintiff has not come to the Court with clean hands ? OPD
7. Relief.

5. The parties had led their respective evidence on the aforesaid issues. In the light of the same, after hearing the learned counsel for the parties, the trial Court decreed the suit of the plaintiff vide judgment and decree dated 21.08.2013.

6. Aggrieved by the judgment and decree dated 21.08.2013, defendants went in appeal before learned Additional District Judge, Sangrur. The learned Additional District Judge, Sangrur vide judgment and decree

dated 26.05.2015 dismissed the appeal.

7. Still feeling dissatisfied with the aforesaid judgments and decrees, the present regular second appeal has been preferred.

8. The appellants in paragraph No.08 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (a) Whether the Ex.P1 and P-2 pronote and receipt can be taken into consideration while deciding the case in question as the same has not been proved as per Evidence Act ?
- (b) Whether the impugned judgment and decree of the Courts below are sustainable before the eyes of law as the same being result of non-consideration of the evidence in proper and prospective manner ?
- (c) Whether the judgments of the Courts below are sustainable in law as the material as well as relevant evidence has not been considered and findings have been arrived by the Courts below in admissible evidence and not perverse ?
- d) Whether in the absence of replication to the written statement the learned Courts below ought not to have dismissed the suit ?

9. I have heard learned counsel for the parties and have gone through the records of the case.

10. Learned counsel for the appellant has submitted that the judgments and decrees of both the Courts below are against the facts and law. Both these judgments are the result of misreading and misinterpreting the evidence on the file. Gurcharan Singh, witness of pronote and receipt has supported the case of the defendant/appellant.

11. I have carefully considered the said submission but do not find

any force in that submission.

12. The case put up by the defendant in his written statement is that he has not executed any pronote and receipt but blank pronote and receipt were taken as he was a member of the committee. There is concurrent finding of fact recorded by both the Courts below that defendant has failed to prove the stand that blank pronote and receipt were obtained and later on filled by the plaintiff/respondent. There is nothing on the file that said finding is based upon misreading and misinterpreting the evidence on the record. The plaintiff has been able to prove the execution and passing of the consideration. Otherwise also, presumption under Section 118 of the Negotiable Instruments Act is in favour of the plaintiff. The defendant-appellant failed to rebut that presumption. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal.

14. Consequently, the present appeal is without any merit and the same stands dismissed.

15. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

August 26, 2015

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