

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4315 of 2015 (O&M)
Date of decision 02.09. 2015.

Amarjit Kaur

..... Appellant.

versus

Gurdeep 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. Kanwal Goyal, Advocate for the appellant.

K.C.PURI, J.

This is an appeal directed by defendant/appellant against the judgment and decree dated 16.04.2015 passed by Dr. Harpreet Kaur, Additional District Judge, Jalandhar vide which the appeal preferred by the defendant against the judgment and decree dated 05.07.2014 passed by Shri Deepak Kumar Chaudhary, the then learned Civil Judge (Senior Division), Jalandhar was dismissed.

2. Brief facts of the present case are that defendant borrowed a sum of Rs.2,20,000/- from the plaintiff for his family needs and in lieu thereof he executed a promissory note and a receipt in favour of plaintiff after receiving Rs.2,20,000/- in the presence of the witnesses on 15.06.2011,

which was scribed by deed writer of Bhogpur. Thereafter the defendant neither gave any interest on the borrowed sum as agreed by her nor she returned the loan amount despite repeated requests made by the plaintiff to her. Hence this suit.

3. On notice, defendant appeared and filed written statement taking preliminary objections regarding non maintainability, having no locus-standi ; cause of action to file the suit, not come to the court with clean hands ; plaintiff has concealed the true and material facts, the suit is bad for nonjoinder of necessary parties. Sum of Rs.1,00,000/- was required by her for sending her son abroad from Harbans Kaur. Out of the said amount, defendant returned Rs.70,000/- to Harbans Kaur and only Rs.30,000/- is due for payment. The defendant had in fact been defrauded and FIR No.4 dated 04.01.2011 has been registered against Paramjit Singh. Sum of Rs.70,000/- was borrowed by defendant from Mohan Singh and Pamma so that money could be returned to Harbans Kaur. At the time of advancement of sum of Rs.1,00,000/- Harbans Kaur got thumb impression on blank papers, which might have been misused to create the present transaction in order to harass the defendant at the instance of Harbans Kaur. On merits, defendant denied other averments and prayed for dismissal of the suit.

4. Replication was filed. From the pleading of the parties following issues were framed : -

1. Whether the plaintiff is entitled for recovery as prayed for ? OPP
2. Whether the plaintiff is entitled for interest, if so at what rate ? OPP

3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the plaintiff has got no locus standi to file the present suit ? OPD
5. Whether the suit is bad for misjoinder and nonjoinder of necessary parties ? OPD
6. Whether the suit is hopelessly time barred ? OPD
7. Relief.

5. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence vide judgment and decree dated 05.07.2014, decreed the suit of the plaintiff for the recovery of Rs.2,20,000/- as principal amount and Rs.5,500/- as interest on the principal amount calculated @ 6% per annum from the date of advancing the money till the filing the suit. The plaintiff was also held entitled to recover a sum of Rs.35,200/- as pendente lite interest on the principal amount of Rs.2,20,000/- @ 6% per annum from the date of advancing the money till the filing the suit. The plaintiff was further held entitled to recover future interest @ 6% per annum on the principal amount.

6. Feeling aggrieved, the defendant preferred First appeal. The learned Additional District Judge, Jalandhar vide judgment and decree dated 16.04.2015 dismissed the appeal of the defendant.

7. Feeling dissatisfied with the aforesaid judgments and decrees dated 05.07.2014 and 16.04.2015, the present regular second appeal has been directed by the defendant/appellant.

8. The appellant in paragraph No.06 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (a) Whether the Ld. Court below have misread and overlooked the material evidence on record so as to return absolutely perverse findings ?
- (b) Whether in view of the facts and circumstances of the case in hand, especially in view of alleged agreement to sell of same date as that of pronote and receipt, the presumption under Section 118 of Negotiable Instruments Act, stands rebutted as it creates a doubt regarding execution of pronote and receipt ?
- (c) Whether the courts below were justified in discarding the evidence of plaintiff's witnesses, which amply prove that the pronote and receipt is a forged and fabricated document ?
- (d) Whether in view of the fact that plaintiff/respondent has not been able to show as to from where he had the money to pay the defendant/appellant, it is proved that the pronote and receipt has been created in order to usurp the money of defendant/appellant ?
- (e) Whether in view of the facts and circumstances of the case in hand, the Ld. Courts below were justified by relying upon the ocular evidence of the plaintiffs, which is proved on file to be of their interested witnesses ?

9. I have heard learned counsel for the appellant and have gone through the case file with her able assistance

10. Counsel for the appellant has submitted that plaintiff has failed to prove the execution of pronote ; receipt and passing of consideration. The plaintiff was not having any money and was not able to advance the loan of Rs.2,20,000/-. In fact, Harbans Kaur was the instrument in filing the present suit against the defendant/appellant. Defendant was advanced the loan of Rs.1,00,000/- by said Harbans Kaur and she has used the plaintiff Gurdeep Singh as a tool. In fact, whole of the amount has been paid to Harbans Kaur and the present suit is an abuse of the process of the Court.

11. I have considered the said submission but do not find any force in that submission.

12. Similar argument was addressed before both the Courts below but did not find favour. The execution of the pronote and receipt was duly proved. The stand taken by the defendant is not supported by any documentary evidence. Moreover, there is presumption under Section 118 of the Negotiable Instruments Act. There is nothing on the record that both the Courts below have misread and misinterpreted the evidence on the file. The agreement to sell has not been produced by the plaintiff and that agreement does not create any doubt in the execution of pronote and receipt. It so seems that plaintiff wants to make sure that his money is got recovered from the defendant and on that account pronote, receipt and agreement were executed. There is nothing on the record that pronote and receipt are fabricated documents. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. Consequently, the appeal is without any merit and the same stands dismissed.

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

(K.C.PURI)
JUDGE

September 02 , 2015
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