IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.4739 of 2015 (O & M)
Date of Decision: *December 22, 2015*

Dilbag Singh

..... APPELLANT

VERSUS

Ramesh

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

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?

. . .

PRESENT: - Mr. Ashwani Gaur, Advocate, for the appellant.

. . .

Jaspal Singh, J

1. The instant appeal has been preferred by defendant – Dilbag Singh, challenging judgment and decree dated January 22, 2013 passed by the trial court as well as judgment & decree dated May 19, 2015 by passed by the lower appellate court whereby the findings recorded by the trial court have been upheld and appeal filed by the defendant against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for recovery of ₹ 43,000/- alongwith interest payable @ 6% per annum from the date of its institution i.e. September 19, 2009 till realization has been decreed.

2. While assailing the findings returned by the trial court on all the issues and affirmed by the lower appellate court, it has been ebulliently argued by learned counsel for the appellants that same are against the evidence available on file and settled canons of law. Mis-appreciation of evidence adduced by the plaintiff has resulted into mis-carriage of justice. Learned counsel has contended that plaintiff has failed to prove that appellant – defendant had borrowed a sum of ₹ 25,000/- from him on September 21, 2006 and had executed a Pronote Ex.P1 and Receipt Ex.P2. The courts below have erred ignoring the fact that appellant – defendant had borrowed only ₹ 10,000/- from the respondent – plaintiff on simple interest which has been duly proved by the defendant in his testimony. Defendant has also proved that his thumb impressions upon Promissory Note Ex.P1 and Receipt Ex.P2 were taken without disclosing the contents thereof. Moreover, Promissory Note Ex.P1 and Receipt Ex.P2 were not attested by the witness(es). Consequently, the impugned judgments & decrees passed by the courts below are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal.

3. This court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant and has scrutinized the record available on file.

4. The execution of Pronote Ex.P1 and Receipt Ex.P2 is an admitted fact. As per the case of respondent – plaintiff, the amount of consideration is ₹ 25,000/-, whereas, appellant – defendant has challenged this fact claiming that he had borrowed ₹ 10,000/- only. Therefore, burden of proving part consideration or rate of interest lies on the appellant – defendant. Appellant – defendant, while appearing in witness box as DW-1 has categorically admitted the factum of transaction between him and the

respondent – plaintiff in presence of Ramesh, however, he deposed that an amount of ₹ 10,000/- was taken by him. But, appellant – defendant has not examined Ramesh, in whose presence the aforesaid transaction took place. It was Ramesh who could proved that only a sum of ₹ 10,000/- was borrowed by defendant from the plaintiff, in his presence. So, defendant has not been able to prove part consideration. On the other hand, the evidence led by the plaintiff has gone uncontroverted and unrebutted. It stands duly proved that defendant borrowed an amount of ₹ 25,000/- from him on September 21, 2006 and executed a Promissory note.

5. As far as rate of interest is concerned, Section 79 of the Negotiable Instruments act, 1881 (for short, 'Act') provides that When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the court directs. In the written statement, defendant has only stated that he borrowed a sum of ₹ 10,000/- on simple interest but has not deciphered as to what was the rate of simple interest. However, while appearing in the witness box, he deposed that rate of interest was 9% per annum, which is beyond his pleading and thus cannot be taken into consideration. Even otherwise, defendant has admitted the execution of Promissory note Ex.P1. A perusal of Ex.P1 reveals that agreed rate of interest stated therein is 2% per mensem, which is recited to be agreed rate of interest and satisfies the provisions laid down under Section 79 of the Act. Thus, both the courts below have rightly come to the conclusion that appellant – defendant had agreed to pay a sum of ₹ 25,000/- on interest @ 2% per mensem.

6. In the light of what has been discussed above, there is no infirmity, illegality and impropriety in the findings returned by the courts below. Consequently, impugned judgments & decrees passed by both the courts are upheld. Accordingly, the appeal is dismissed. However, the parties are left to bear their own costs.

(Jaspal Singh)
Judge

December 22, 2015
avin