

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

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**R.S.A No. 54 of 2015(O&M)
Decided on : January 08, 2014**

Darshan Singh

... Appellant.

Versus

Suresh Kumar

... Respondent

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Parveen K. Garg, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

Suresh Kumar (respondent herein) brought Civil Suit No.164 of 16.07.2009 for recovery of Rs.11,04,375/- (Rs.7,50,000/- as principal amount and Rs.3,54,375/- as interest) along with future interest on the suit amount @1.5% per month from the date of suit till realization and for permanent injunction restraining Darshan Singh (the appellant herein) from selling, alienating and disposing of his share in the property as described in the heading of the plaint. It was averred by the respondent in the plaint that the appellant approached him and requested him for advancing a loan amounting to Rs.7.5 lacs to him which he needed for his family needs. Respondent acceded to the request and advanced a loan of Rs.7.5 lacs to the appellant on 02.11.2006. Appellant agreed to repay the cash loan along with interest @1.5% per month. A promissory note and receipt dated 02.11.2006 was executed by the appellant in favour of the respondent, but the appellant

failed to return the loan amount together with interest at the agreed rate, inspite of repeated demands and a legal notice dated 26.05.2009, which was duly served upon him.

Suit was contested by the appellant by filing a written statement wherein the promissory note and receipt were stated to be result of fraud and while denying the receipt of suit amount and the execution of the promissory note, appellant came out with a plea that one Surinder Kumar S/o Sarup Chand of Village Brahman Majra was doing business of commission agent at Ghagga and the appellant was dealing with said Surinder Kumar. Latter made wrong entries in his account books and based thereupon Surinder Kumar filed an application with Police Station, Ghagga and proceedings under Sections 107/151 of the Code of Criminal Procedure, 1973 ('Cr.P.C' – for short) were initiated against the appellant and his son. The matter was ultimately compromised and appellant and his son were discharged on 30.07.2004. Thereafter, the appellant stopped dealings with said Surinder Kumar and he (Surinder Kumar) being relative of the respondent has made this suit to be filed against him to harass him.

From the pleadings of the parties, Court of learned Civil Judge (Senior Division), Samana ('trial Court' – for short) framed issues with regard to entitlement of the respondent to recover the suit amount from the appellant as also appellant's plea that the suit was false and frivolous. Besides going through evidence brought on record by the parties, learned trial Court allowed an opportunity of hearing to both the sides and on hearing them came to the conclusion that the respondent was able to prove

his case and decreed his suit vide judgment/decreed dated 05.01.2012 for recovery of Rs.7,50,000/- together with interest @12% per annum from the date of loan till the date of decree and future interest @6% per annum from the date of decree till realization of the decretal amount. To challenge judgment/decreed dated 05.01.2012, appellant preferred Civil Appeal No. 639 of 14.02.2012, which, after contest, has been dismissed by the learned Additional District Judge, Fast Track Court, Patiala ('first appellat Court' – for short) vide judgment/decreed dated 26.08.2014. To challenge judgment/decreed dated 26.08.2014 of the learned first appellate Court, this regular second appeal has been brought by the defeated defendant.

I have heard learned counsel for the appellant besides scrutinizing impugned judgments/decrees passed by the Courts below.

It is vehemently argued by learned counsel for the appellant that inspite of the fact that onus to prove his case was on the plaintiff, he has failed to bring any cogent and convincing evidence to prove execution of the promissory note and receipt as also advancement of loan amount by him to the appellant. According to the learned counsel, even finger print and handwriting expert, namely PW-3 Inderjit Singh, has stated that purported thumb impressions of the appellant appearing on the promissory note were not comparable and this should have been sufficient for the Courts below to non-suit the respondent. It has also been argued that in fact Surinder Kumar, commission agent, has been behind the entire episode and he has been instrumental in getting filed instant suit, in view of the fact that he had tried to defraud the appellant by getting registered a wrong FIR and having

involved the appellant and his son in false proceedings under Sections 107/151, Cr.P.C. According to the learned counsel, the entire transaction is based on fraud and respondent cannot be allowed to hinge upon the fraudulent acts committed by him in connivance with Surinder Kumar.

A perusal of impugned judgments/decrees would show that promissory note, Exhibit P/1, and receipt, Exhibit P/2, have been proved on record by the plaintiff-respondent by appearing as PW-1 and examining Data Ram as PW-2. In the evidence of these two witnesses the aforestated documents though have been sufficiently proved, but PW-3 Inderjit Singh was examined by him as a matter of abundant caution. However, evidence of PW-3 Inderjit Singh cannot be read to throw away the case of plaintiff/respondent even though in the substantive evidence brought on record by the respondent in the form of his own examination as PW-1 and the deposition of Data Ram PW-2, execution of the promissory note and receipt had been proved. That being so, a presumption arises in terms of Section 118(a) of the Negotiable Instruments Act, 1881, that the promissory note was executed for consideration. After such a presumption was raised by the learned trial Court, it was for the appellant to bring on record cogent and convincing evidence to rebut the presumption as also to substantiate his plea of fraud as put up in the written statement. No evidence in this direction is shown to have been brought in by the appellant. It may be noted that the defendant having based his defence on fraud statedly committed by the plaintiff, it was to be specifically pleaded and proved on record beyond reasonable doubt as in a criminal case. However, in the case in hand only a

general statement has been made that the promissory note and the receipt in question are result of fraud, however, no instances or evidence whatsoever of the stated fraud have been adduced to support such a plea.

Another limb of defence of the appellant in written statement is that Surinder Kumar, commission agent, has been instrumental in getting the instant proceedings launched by the respondent. However, there is no evidence available on record to show any nexus between the respondent and aforesaid Surinder Kumar. Were it that the appellant was so sure of connivance of said Surinder Kumar in the matter he could make an application before the Courts below for impleadment of said Surinder Kumar as a party to the proceedings and thereby substantiate his plea of connivance between him and the respondent. For reasons best known to the appellant it has not been so done. At the back of Surinder Kumar no allegation against him can be heard nor any order based on such an allegation can be passed.

Faced with this situation, learned counsel for the appellant has attempted to project that the respondent has not been able to prove passing of consideration amounting to Rs.7,50,000/-. I am afraid, this plea is not available to the appellant for the simple reason that execution of the promissory note and receipt, Exhibits P/1 and P/2, respectively, having been proved presumption in terms of Section 118(a) of the Negotiable Instruments Act, 1881, comes into play and this presumption has remained un rebutted.

In view of the above, coupled with the fact that this appeal is not

shown to involve any question of law, much less a substantial one, I regret my disinclination to entertain this appeal.

Dismissed.

No costs.

January 08, 2014
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[Mahavir S. Chauhan]
Judge