IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.39 of 2014 (O&M)
Date of Decision.28.09.2015

M/s Verma Trading Company ....Appellant

Versus

Amrik Singh ......Respondent

Present: Mr. Ramneek Vasudeva, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 94 days in filing the appeal is condoned.

2. The appeal is at the instance of the defendant who has suffered a decree passed against the defendant on the suit instituted by the plaintiff relying on a receipt of ₹ 1 lac made by the defendant for M/s Verma Trading Company. The document has been witnessed by Chhajja Singh and at the trial the plaintiff examined himself and Chhajja Singh. The document of receipt recites as under:-

> "Received a sum of Rs.1,00,000/- (one lac only) as an *Amanat* money from S. Amrik Singh S. Prem Singh r/0 village Khanpur. The receipt of which is written so that the same can be used at the relevant time.
>
> | | | | |
> |---|---|---|---|
> | | ₹ 1,00,000/- | | sd- |
> | Interest | ₹ 12,000/- | 30.11.2003 | for Verma Trading Co. |
> | | ₹ 1,12,000/- | | |
> | | 12,000/- | | |
> | | ₹ 1,00,000/- | | |
>
> (ruppes one lac only 1.12.2003.)"

2. A photocopy of the document relied on by the plaintiff in vernacular has been signed as annexure and I noticed that it bears out that it has been written on the letter head of the defendant firm as commission agent. The plaintiff's contention was that the amount of ₹ 1 lac was paid with an understanding that he will pay 2% interest per month from the date of borrowing. He had paid interest till December 2003 and the calculation is made and written on the left side of the receipt where the defendant had signed. The plaintiff had issued a notice which was received by the defendant admittedly demanding the return of the amount with interest at 2% per month and the defendant did not respond to the same. The suit was, therefore, filed.

3. The defendant took up a plea that there was no such receipt. It was not stamped and it was unenforceable. According to him, it was forgery. There was no occasion for him to borrow any money from him. The defendant elicited in the cross-examination of the witness that the whole of the recitals in the receipt filed by the plaintiff was drawn on the same day on 01.06.2003. The defendant wanted to rely on the fact that the endorsement relating to the payment of interest which was on the left side of the signature of the defendant was in a different ink. The defendant, therefore, wanted to plead that a writing which was of a different ink could not have been done on the same day and what was palpably an interpolation later clearly evidenced the fact that it was a fabricated document. The defendant also relied on an handwriting expert which evidence was rejected by the trial Court as well as by the Appellate Court as not evoking any confidence.

4. I have seen through the receipt and I have extracted the whole portion. There is no unconditional undertaking to pay on demand in the manner that would qualify for an instrument to be treated as a promissory note under the Negotiable Instruments Act. The fact that there was no stamp affixed, therefore, cannot invalidate an instrument, for, Section 35 of the Stamp Act would make unenforceable only an unstamped document if it were a promissory note. If it did not contain the recitals of a promissory note and if it was a receipt, all that could be done to validate the same is to collect the stamp duty. If the document is also received by the Court without collecting stamp duty, Section 36 of the Stamp Act would come in aid and make it possible for the plaintiff to rely on the same and secure an enforcement of the debt. The debt was spoken to as an *amanat* money and the plaintiff's witness also supprted the same. The Court drew an adverse inference from the fact that the plaintiff had issued a notice demanding the money and defendant did not respond for the same. The Courts below did not award the interest at 2% per month in the manner claimed by virtue of the fact that there was no reference to an obligation to pay interest under the instrument. If the Courts below were not relying on the expert's witness, it was also justified, for, there is plethora of case law on the subject that handwriting expert's evidence is always weak and an expert who is brought at the bidding of one party would always be obliged to give such evidence to support him and it was not safe and worthy to rely on such evidence.

5. The Court had a justifiably strong reason to rely on the instrument which had been sued upon by the fact that the defendant did

not even respond to the notice which was issued to him. It found the evidence given to be convincing and allowed for the decree and granted interest only @6%. The appreciation of evidence of the witnesses is purely factual and there is no substantial question of law involved in the second appeal.

6. The second appeal is dismissed.

(K. KANNAN)
JUDGE

September 28, 2015
Pankaj*