

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

**Regular Second Appeal No.937 of 2014 (O&M)
Date of decision: 07.08.2015**

Ashok Singh

.....Appellant

Versus

Paramjit Kaur

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. L.S. Sidhu, Advocate,
for the appellant.

Ritu Bahri, J.

Defendant-appellant has come up in regular second appeal against the judgment dated 16.12.2013 passed by the District Judge, Barnala dismissing his appeal against the judgment and decree dated 10.09.2012 passed by the Addl. Civil Judge (Senior Division), Barnala, whereby Suit filed by the plaintiff-respondent for recovery of Rs.28,780/- along with interest has been decreed.

Paramjit Kaur-plaintiff (respondent herein) filed a suit for recovery alleging therein that defendant-appellant borrowed a sum of Rs.28,780/- from him and had agreed to return the same on demand along with interest. He also execute a pronote and receipt in favour of the plaintiff and after receipt of principal amount, appended his signatures thereon in the presence of witness namely Boota Singh son of Arjan Singh. However, the

defendant had failed to repay the principal amount along with interest.

Upon notice, the defendant-appellant filed written statement and took preliminary objections with regard to locus standi and maintainability of the suit. On merits, it was stated that the pronote and receipt was got executed by the plaintiff-respondent in her favour as security of the amount, which was due towards the defendant on account of a committee.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiff is entitled for recovery of Rs.39,750/- on the basis of pronote and receipt dated 01.01.2007, if so, to what extent and what rate of interest? OPP
2. Whether plaintiff has got no locus standi and cause of action to file the present suit? OPD
3. Whether suit is not maintainable? OPD
4. Whether alleged pronote and receipt are forged and fabricated documents and are of without consideration? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, came to a conclusion that Paramjit Kaur-plaintiff herself appeared as PW-1 and tendered her duly sworn affidavit as Ex.PW1/A. She has specifically stated that the defendant, after understanding the contents of the pronote and receipt dated 01.01.2007 (Ex.P1 and Ex.P2), put his signatures thereon. The sole testimony of the defendant-appellant was not sufficient to prove the averments of fraud. Once the execution of the pronote and receipt (Ex.P1 and Ex.P2) is proved, it would be presumed that the same were for consideration. Reference has been made to the judgments delivered in

Moideenkutty Harjee Vs. Manooran and another, 1996 (1) Apex Court Journal 207 (Supreme Court) and **Hans Raj through his LRs Vs. Surinder Singh**, 1997 (1) RCR (Civil) 205, wherein it was held that once the execution is proved, the pronotes and receipts would be presumed to be for consideration. On the basis of above observations, the suit of the plaintiff-respondent was decreed.

The lower appellate Court affirmed the findings returned by the trial Court and held that mere denial that no consideration had been passed, was not sufficient to rebut the presumption and something probable had to be brought on record to prove the non existence of consideration. Reference was made to a judgment delivered in **Mallavarapu Kasivisweswara Rao Vs. Thadikond Ramulu Firm and others**, 2008 (3) CCC 392 (SC), wherein it has been observed as under:-

“15It was also a finding of the High Court that except in the reply notice issued by the respondents, nowhere had they stated that the consideration had not passed. It is also an admitted position that the findings of the two courts below was that the execution of the pronotes having been proved, the presumption under Section 118 (a) must come into play and the appellant must be entitled to a decree in the absence of evidence to the contrary. Having said this, the High Court proceeded to observe that if there was evidence inconsistent with the presumption under Section 118 (a) of the Act, the court would not be in a position to pass a decree in favour of the appellant on the basis of the presumption and therefore, proceeded to examine the evidence of the appellant in *extenso*. In view of the decision of this Court in ***Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal*** [supra] and also in view of the findings arrived at by the Courts below, we are of the view that since the initial burden on the respondents to show that the pronote being Ex.A-21 was not supported by any consideration was not discharged by them, the High Court was not justified in not decreeing the suit of the appellant in respect of the amount covered by the pro-note Ex.A-21. It is an admitted position that the finding as to the execution of the pronotes had become final. Also, we are of the view that the respondents had not discharged the initial burden of proving the non-existence of consideration either by direct evidence or by preponderance

of probabilities. The mere denial, if there be any, by the respondents that no consideration had passed would not have been sufficient and something probable had to be brought on record to prove the non-existence of consideration. In this view of the matter, we are, therefore, of the view that once the execution of the pronote has been proved, the appellant would be entitled to the benefit of the presumption under Section 118 (a) of the Negotiable Instruments Act because the respondents had failed to discharge the initial burden and therefore, the High Court was in error in appreciating the evidence of the appellant to come to the conclusion that since such evidence was inconsistent with the pronote being Ex.A-21, the appellant could not be given the benefit of the presumption.”

After going through the impugned judgments, this Court is of the view that the suit of the plaintiff-respondent has been rightly decreed as the defendant-appellant has failed to rebut the evidence led by the plaintiff-respondent. Execution of the pronote and receipts (Ex.P1 and Ex.P2) has been duly proved on record. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

07.08.2015
ajp

(RITU BAHRI)
JUDGE