

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

RSA No.959 of 2014(O&M)
Date of decision: 19.01.2015

Indrawati

...Appellant

Versus

Badan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Dalip Kumar Tuteja, Advocate for the appellant.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was decreed by the trial court vide judgment and decree dated 12.03.2011. Appeal preferred against the said decree failed and was dismissed on 27.08.2013. This is how, defendant is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiff, he prayed for recovery of ₹ 3,69,635/-, as principal amount, and ₹ 1,29,365/-, as interest thereon. It was averred that plaintiff and defendant were on visiting terms for the last many years. She borrowed a sum of ₹ 3,69,635/- at Jhajjar from the plaintiff for education of her children and other domestic purposes on 12.10.2001.

And in token of the loan amount, defendant executed a

pronote and receipt, that were duly thumb marked in the presence of the plaintiff and attesting witnesses. It was agreed that the amount lent would bear an interest @ 1% per month. Since, defendant failed to repay the loan amount, thus, the suit.

In defence, it was pleaded, inter alia, that the parties to the lis knew each other and were on visiting terms for the last many years. Plaintiff being a friend of her husband, she reposed confidence in him. However, she denied that she had borrowed a loan for an amount of ₹ 3,69,635/- from the plaintiff either on 12.10.2001 or on any other date. Likewise, it was maintained that the pronote and receipt, that were alleged to have been executed by the defendant in acknowledgment of the said loan, were wholly forged and fabricated documents. It was maintained that the said documents do not bear the thumb impressions of the defendant. Thus, there was no occasion for repayment of the said loan and consequently, any interest thereon. Still further, it was averred that the defendant had permanent accounts in Haryana Cooperative Bank and State Bank of India, Matanhail and her accounts never remained un-deposited. Thus, there was no question of borrowing any money from the plaintiff.

Trial court, on a consideration of the matter in issue and evidence on record, found that plaintiff and defendant were well known to each other. To prove his claim, plaintiff

brought on record a pronote (Ex.P1) and receipt (Ex.P2) duly attested by Dharam Singh Yadav and Daya Kishan. It was observed that concededly one of the attesting witnesses, namely, Dharam Singh has since passed away. Plaintiff (PW1) stepped into the witness box and proved his claim. Likewise, Badan Singh, an attesting witness of the pronote and receipt, testified the due and valid execution of the said documents. To prove that the documents in question bear the signatures of the defendant, plaintiff examined an Handwriting Expert, namely, V.B. Kashyap (PW3), who testified in his statement that the pronote and receipt bear the thumb impressions of defendant Smt. Inderawati. It was observed that neither the defendant produced any substantive evidence to falsify the claim of the plaintiff nor examined any Expert in rebuttal to show that the pronote and receipt (Ex.P1 & Ex.P2) did not bear her thumb impressions. Though, she simply denied to have availed a loan from the plaintiff in her written statement, however, when she appeared in the witness box as DW4, in her affidavit Ex.DW4/A, she testified that despite request of the defendant and her son Om Parkash, plaintiff did not settle the amount and even a Panchayat had assembled in the village in this regard, but the plaintiff refused to settle the amount. Accordingly, it was observed that testimony of DW4 revealed that indeed there was something between the plaintiff and the defendant, that was to be settled. However, this fact

was never pleaded by the defendant in her written statement. Though, Suresh Kumar (DW1) testified that on the date of alleged payment i.e. 12.10.2001, plaintiff did not have sufficient amount in his bank account (PNB), was wholly immaterial, as it was not proved that the plaintiff had only a single account in PNB. Particularly, when this was not the case of the plaintiff that he had brought the amount from the said bank account. Accordingly, the suit was decreed.

Being aggrieved against the said decree, defendant preferred an appeal. First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiff to succeed, he was required to prove the

due and valid execution of the pronote and receipt (Ex.P1 & Ex.P2). Evidence on record reveals that the plaintiff examined himself in support of his claim and proved his case. Likewise, one of the attesting witnesses of the said pronote and receipt, testified in his statement the due and valid execution of these documents by the plaintiff. So much so, plaintiff examined an Expert (PW3), who testified that both the documents bear the thumb impressions of the defendant. The stand set out by the defendant, that pronote as well as receipt were forged and fabricated documents, remained unproved. As defendant failed to lead any cogent or substantive evidence in this regard. Not just that, she never even examined any expert in rebuttal to prove that the documents indeed did not bear her thumb impressions. Concededly, parties were well known to each other and she even admitted in her testimony that the dispute as regards certain amounts was sought to be settled with the intervention of Panchayat. Still further, a comprehensive analysis of the entries in the bank account of the defendant, made by the first appellate court, showed that defendant was in dire need of money. And she had a negligible bank balance at the relevant time. An analysis of the pronote and receipt (Ex.P1 & Ex.P2) unraveled that five revenue tickets of ₹ 1/- each were affixed on the pronote and defendant Inderawati had duly affixed her thumb impression over each of those revenue tickets. Likewise, even the receipt also bears one

revenue ticket and defendant had affixed her thumb impression on the said ticket as well. As observed by the first appellate court, appellant had affixed six thumb impressions over the said pronote and receipt and thus, she could not assert that she was unaware of any such document. So much so, the pronote in question also bears the signatures of Vinod Kumar son of the defendant at its back. As observed by the appellate court, Vinod Kumar son of the appellant could refute his signatures, but he was not examined by the defendant. Learned counsel for the appellant could not point out as to how the conclusions that were concurrently arrived at by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

January 19, 2015
Rajan

(Arun Palli)
Judge