

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

RSA No.3468 of 2010 (O&M)

Date of decision : 08.11.2016

Sukhwinder Singh

...Appellant

Versus

Naib Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Aakash Singla, Advocate for the appellant.

Mr. J.S. Dhaliwal, Advocate for

Mr. H.S. Batth, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby suit seeking recovery of the amount of Rs.2,40,000/- as principal amount and Rs.86,400/- as interest, total Rs.3,26,400/- along with interest at the rate of 2% p.m., has been dismissed by both the Courts below.

Mr. Aakash Singla, learned counsel appearing on behalf of appellant-plaintiff submits that both the Courts below have committed illegality and perversity in misreading and misconstruing the pronote and receipt and formed an opinion that there was interpolation owing to assertion of figure 2 before figure 40000 and in word two, the defendant had not taken the specific stand. It was only in the evidence and, therefore, the trial Court ought to have granted the opportunity to the appellant to lead the

evidence. Even application was moved but the same was dismissed. Before the lower Appellate Court, indulgence was sought by moving application under Order 41 Rule 27 CPC for referring the documents to the agency recognized by the Government so that genuinity/authenticity of the documents, much less, alleged interpolation could be ascertained but the same has been dismissed.

He submits that aforementioned order is also under challenge. Courts below ought to have granted the permission to lead rebuttal evidence so that averments in the plaint could be proved and thus urges this Court to set aside the findings rendered by both the Courts below.

Mr. J.S. Dhaliwal, Advocate for Mr. H.S. Batth, learned counsel appearing on behalf of respondent submits that concurrent findings of fact cannot be entertained or set aside on same pretext, much less, grant the opportunity to filling up lacuna and it was incumbent upon plaintiff to lead evidence in affirmative, therefore was a specific denial. Nothing prevented the plaintiff to discharge the onus, rightly so, the suit, much less, application before the lower Appellate Court and the appeal have been dismissed.

I have heard learned counsel for parties and appraised the paper book and also seen the original record summoned and from the naked eye, there is apparent interpolation/insertion of figure 2 before 40000 and as well as words in the pronote and receipts. This Court has undertaken the exercise as per the provision of Section 45 of the Indian Evidence Act. The arguments of Mr. Singla, for granting them opportunity to lead rebuttal evidence by examining the expert or sending the documents to the Forensic

Agency is not only fallacious, but misconceived, for, plaintiff was aware of the interpolation as he did not intentionally lead evidence perhaps was afraid that interpolation may not brought to the notice of the Court, rather took risk of proceeding with the suit.

For the reasons aforementioned, I am of the view that suit has rightly been dismissed as no case was made out for seeking recovery of amount as noticed above.

Both the Courts below have rendered concurrent findings of fact which are based upon the appreciation of oral and documentary evidence and hence declined relief.

I do not intend to differ with the findings rendered by the Courts below, much less, no substantial question of arises for determination by this Court.

Accordingly, present appeal is dismissed.

08.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No