

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

RSA No.4585 of 2010

Date of Decision: 20.07.2016

Vijay Kumari

....Appellant

Vs

Jaggar Singh @ Jagar Singh @ Jagga Singh

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. C.M. Munjal, Advocate
for the appellant.

Mr. Madan Sandhu, Advocate
for the respondent.

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?*

RAJ MOHAN SINGH, J.

[1]. Plaintiff has preferred this Regular Second Appeal against the judgment and decree dated 24.08.2010 passed by Additional District Judge (Adhoc) Fast Track Court, Mansa vide which judgment and decree dated 13.11.2009 passed by Civil Judge (Senior Division) Mansa was set aside and suit of the plaintiff was dismissed with costs throughout.

[2]. Brief facts of the case as gathered from the record are

that plaintiff filed suit for recovery of Rs.2,12,650/- on the basis of pronote and receipt dated 18.06.2007 on the ground that the defendant had borrowed a sum of Rs.2,00,000/- from her on 18.06.2007 with interest @ 1% per month and had also executed a pronote and receipt in her favour in the presence of witnesses. However, the amount was not paid towards principal or interest till filing of the suit despite the request made by the plaintiff. Hence the suit for recovery of Rs.2,12,650/- (Rs.2,00,000/- being the principal amount and Rs.12,650/- as interest calculated @1% per month till filing of the suit) was filed.

[3]. The suit was contested by the defendant on all counts. He alleged that plaintiff had not obtained any money lending licence. The suit was filed on wrong facts. The alleged pronote and receipt were without consideration. The suit was contested on other counts of limitation and *locus standi*. Defendant denied that he ever obtained any loan from the plaintiff, nor he executed any pronote and receipt in favour of the plaintiff. The alleged pronote and receipt were claimed to be forged and fabricated and without consideration.

[4]. After filing replication, both the parties went to trial on the following issues:-

- “1. Whether the plaintiff advanced a sum of Rs.2,00,000/- to defendant on 18.06.2007 and the defendant executed pronote and receipt therefore? OPP.
2. If issue No.1 is proved, whether the plaintiff is entitled to interest, if so, at what rate? OPP.
3. Whether the plaintiff has concealed material facts, if so its effect? OPD.
4. Whether the pronote and receipt are forged and fabricated documents without consideration? OPD
5. Whether the suit is bad for want of licence of Money Lender Act? OPD.
6. Relief.”

[5]. Plaintiff herself examined as PW-1 besides examining one Kashmiri Lal as PW-2. Defendant on the other hand stepped in the witness box as DW-1 and thereafter evidence of the defendant was closed.

[6]. After appraisal of the evidence, trial Court decreed the suit of the plaintiff vide judgment and decree dated 13.11.2009, however the same was reversed in appeal before the Additional District Judge (Adhoc) Fast Track Court, Mansa, who accepted the appeal vide judgment and decree dated 24.08.2010 and

dismissed the suit throughout.

[7]. In the present appeal, in para No.9 of the ground of appeal, appellant has framed the following substantial questions of law:-

- “a) Whether the judgment and decree passed by the learned lower court is based on the mis-appreciation and mis-reading and mis-lead placed on the record.*
- b) Whether in the absence of the clear cut admission by the defendant, an oral evidence can be relied upon?*
- c) Whether the defendant pleaded the mis-representation and forgery has been able to prove the same on the record?*
- d) Whether the documents Ex.P.1 i.e. pronote and receipt has been duly proved by the sufficient evidence?”*

[8]. I have heard arguments of both sides and have also carefully perused the record.

[9]. Learned counsel for the appellant vehemently argued that the defendant while appearing as DW-1 has admitted his signatures on the pronote and receipt in so many words and once the signatures on pronote and receipt are admitted, presumption under Section 118(a) of the Negotiable Instruments

Act, 1881 (hereinafter to be referred as 'the Act') comes into being in order to make the instrument to be lawful enforceable.

[10]. Perusal of statement of DW-1 reveals that defendant has admitted his signatures on pronote Ex.P-1 and receipt Ex.P-2, who has claimed that these were obtained by the husband of the plaintiff on blank papers, when he used to sell his crop through him. The admission made in the context of signatures appearing on Ex.P-1 and Ex.P-2 were with a rider that the same were obtained on blank papers under the colour of fiduciary relationship of commission agent and the farmer. This led the court to scrutinise the evidence minutely.

[11]. Before the trial Court, defendant tendered photocopy of the affidavit mark D-1, photocopy of pronote mark-D-2, photocopy of plaint Ex.D-3, photocopy of plaint Ex.D-4, photocopy of pronote Ex.D5, photocopy of plaint Ex.D-6, photocopy of plaint Ex.D-7, photocopy of plaint Ex.D-8, photocopy of plaint Ex.D-9, photocopy of plaint Ex.D-10, photocopy of decree sheet Ex.D-11, photocopy of execution filed by plaintiff Ex.D-12, photocopy of plaint Ex.D-13, photocopy of plaint Ex.D-14, photocopy of plaint Ex.D-15, photocopy of plaint Ex.D-16, photocopy of plaint Ex.D-17, photocopy of plaint Ex.D-18, photocopy of plaint Ex.D-19, photocopy of plaint Ex.D-20, photocopy of plaint Ex.D-21 and photocopy of plaint

Ex.D-22 in the context of previous transactions made by the plaintiff as money lender. The pronote executed by one Baldev Singh in favour of plaintiff as mark D-1 and photocopy of pronote executed by one Gurdial Singh in favour of plaintiff as mark D-2 and similarly plaint titled as Vijay Kumari vs. Gurdial Singh Ex.D-3 were the transactions in the context of aforementioned documents which make the plaintiff to be a money lender for which money lender licence was required by her. Though the trial Court has referred all these documents in para no.13 of its judgment, but ultimately held that lending of money to two-three persons would not make the plaintiff to be a money lender and also held that these are the solitary transactions of advancing money by running the business of money lending. The decree of the trial Court was based on primary considerations of these documents with reference to the cross examination of the plaintiff herself where she admitted that she gave loan to two-three persons and also filed cases for recovery of the amount.

[12]. It was categoric stand of the defendant that he used to sell his crop through the husband of the plaintiff and at that time plaintiff might have obtained his signatures/thumb impressions as the period was about 7-8 years prior to the filing of the suit.

[13]. Plaintiff while appearing in the witness box admitted in

her cross-examination that her son runs cotton factory in Himachal Pradesh and also runs commission agent shop at Mansa. Plaintiff further admitted that her husband Shivji Ram used to look after that shop. The statement of the plaintiff proved that her husband Shivji Ram was running the shop of commission agency at Mansa and was a power of attorney holder of the plaintiff and her son Tejinder Kumar.

[14]. In view of aforesaid circumstances, it was obligatory on the part of the plaintiff to examine her husband Shivji Ram to rebut the plea of defendant. Shivji Ram attorney of the plaintiff was not examined, plaintiff also admitted in her cross-examination that she cannot tell the names of the persons to whom she advanced the loan in the year 2007. According to her own showing, she was allegedly maintaining a diary at home, but refused to produce the same in the Court. She withheld the best evidence in her possession which would have revealed the truth. Non-examination of Shivji Ram in the witness box and not producing diary in the evidence were the instances attracting adverse inference against the plaintiff.

[15]. Further, perusal of pronote Ex.P-1 and receipt Ex.P-2 would show that the plaintiff herself was the scribe of blank columns of pronote and receipt. The pronote proforma contained printed matter also, including date with space and

word 19 to complete it for the year. This fact showed that the pronote was printed before the year 2000 and the transaction in question took place in the year 2007. The fact sufficiently proved that the signatures of the defendant were obtained on the blank proforma of the pronote about 7-8 years prior to the filing of the suit. In case, the transaction actually took place in the year 2007 as allegedly projected by the plaintiff, the proforma of the pronote was to bear the digit of the word 20 to complete it for the year.

[16]. The plaintiff was resident of Mansa, whereas the defendant was resident of Banwala. There was nothing on record that plaintiff was having any dealing with the defendant in the absence of any material to show previous dealings between them. It was strange to note that the amount was advanced to the stranger. The previous dealings could have been shown by the plaintiff herself, had she produced the diary which was allegedly maintained by her in the ordinary course of business. The number of instances of money lending projected by the defendant are suggestive of the fact that plaintiff was involved in the business of money lending without obtaining any licence under the Money Lender's Act. Therefore, the case of the plaintiff was based on falsehood and forged documents.

[17]. It was legally incumbent upon the plaintiff to examine

the expert person in order to ascertain the age of the document on which the signatures of the defendant were appearing. Even if, the defendant has admitted that his signatures were obtained on blank papers by the husband of the plaintiff as he was dealing with him on the shop of commission agency. This fact coupled with numerous instances as projected by the defendant showing involvement of the plaintiff in a business of money lending would make this case also a case of money lending business for which legal obligation was cast upon the plaintiff to establish that she had money lending licence in dealing with the defendant.

[18]. It is a settled principle of law that in a suit based on pronote and receipt, the presumption under Section 118(a) of the Act would be attracted unless and until contrary is proved. Such a presumption is to be that the promissory note was made for consideration. The initial presumption raised under the said provision becomes available when the plaintiff pleads passing of consideration in the plaint i.e. pleads that the promissory note is supported by the consideration as recited in the document and adduced evidence in support thereof. On doing so, the burden would shift upon the defendant to disapprove that the promissory note is not supported by passing of any consideration or on different consideration other than recited in

the instrument.

[19]. In **K.P.O. Moideenkutty Hajee vs. Pappu Manjooran** **1996 AIR (Supreme Court) 3356**, the Hon'ble Supreme Court considered the presumption and observed in the following manner:-

“11. It would thus be clear and when the suit is based on pronote, and promissory note is proved to have been executed, section 118(a) raised the presumption, until the contrary is proved, that the promissory note was made for consideration. That initial presumption raised under section 118(a) becomes unavailable when the plaintiff pleads in the plaint different consideration. If he pleads that the promissory note is supported by a consideration as recited in the negotiable instrument and the evidence adduced in support thereof, the burden is on the defendant to disapprove that the promissory note is not supported by consideration or different consideration other one recited in the promissory note did pass. If that consideration is not valid in law nor enforceable in law, the court would consider whether the suit pronote is supported by valid consideration or legally enforceable consideration. Take for instance, a pronote executed for a time barred debt. It is still a valid consideration. The falsity of the plea of the plaintiff also would be a factor to be considered by the court. The burden of proof is of academic interest when the evidence was adduced by the parties. The court is

required to examine the evidence and consider whether the suit as pleaded in the plaint has been established and the suit requires to be decreed or dismissed.”

[20]. The presumption in the context of Section 118(a) of the Act is to be raised unless and until contrary is proved with regard to consideration, date of instrument, time of acceptance of the promissory note, time of transfer of the promissory note, as to order of endorsement, as to appropriate stamps and holder being a holder in due course. Literally it means 'taking as true without examination or proof'. All such presumptions come under the domain of classified categories under the Evidence Act such as (i) may presume 'which will be rebuttable', (ii) shall presume also rebuttable and (iii) conclusive presumption (irrebuttable in nature). A presumption in itself is not a piece of evidence which can be relied by the plaintiff seeking benefit of the same, but it makes a prima facie case for the party for which it exists on the basis of evidence on record. Word 'until the contrary is proved' casts obligation on the defendants to lead evidence so as to dispel the presumption attached to a document whose execution is otherwise proved.

[21]. The presumption under the aforesaid provision arises only when it is supported by passing of consideration. Such a

presumption is rebuttable in nature. The standard of proof required for such rebuttable is preponderance of evidence and probability. It is not required to be rebutted on strict proof beyond reasonable doubt as is required in criminal cases. In nutshell it can be summarised that for rebutting such a presumption, what is needed is to raise a probable defence. The standard of proof is dependent upon the preponderance of the evidence which is to be adduced by the party, seeking to rebut the presumption. On the aforesaid aspect of the case, reliance can be placed upon **Vijay vs. Laxman and another (2013) 3 SCC 86.**

[22]. In the light of aforesaid legal position, plaintiff was to establish the date of instrument and time of acceptance of the promissory note. The plaintiff did not satisfy the initial onus viz-a-viz. passing of consideration and, therefore, the presumption arising out of Section 118(a) of the Act would not be attracted. Passing of consideration was the condition precedent which would bring the case under the domain of presumption under Section 118 (a) of the Act. Withholding of diary and non-examination of husband of the plaintiff, played a vital role in the weakness of the case of the plaintiff.

[23]. The pronote carries the endorsement of the word 19 to complete it for the year, whereas the transaction took place in

the year 2007. The document itself is not proved to be beyond reasonable doubt, therefore, the presumption in terms of the Section 118(a) of the Act does not arise as the same would arise only where execution of instrument is proved. Such a presumption is always rebuttable in nature and defendant was always at liberty to show that there was no consideration paid by raising probable defence.

[24]. In the light of word 19 to complete it for the year appearing on the pronote in respect of transaction which took place in the year 2007, a probable defence was raised by the defendant and the plaintiff has not discharged the onus refuting the defence as onus was shifted upon her not only on the aspect of validity of the instrument, but also for showing that the document was based on consideration.

[25]. The defendant has discharged the onus by showing that the existence of consideration was improbable and doubtful and, therefore, plaintiff was required to prove that the pronote was executed for consideration. The failure on the part of plaintiff have to entail in declining the grant of relief on the basis of negotiable instrument. Proforma of the pronote was seven years old. Plaintiff did not examine her husband Shivji Ram and also did not produce the diary as maintained by her in due course of business. Plaintiff was not having any dealing with the

defendant according to her case. All these facts demonstrated that the pronote and receipt were not lawfully proved.

[26]. Though the defendant had adduced instances of money lending by the plaintiff and the statement of the plaintiff also corroborated to some extent, but the lower Appellate Court has not adhered to the aforesaid fact and endorsed the finding that the plaintiff was not engaged in money lending business and, therefore, findings on issue No.5 were affirmed in favour of the plaintiff. The said findings in any case do not advance the case of plaintiff in the context of proving passing of consideration and presumption of existence of loan.

[27]. With regard to substantial question No.(a) on the question of misreading of evidence, it has to be negated inasmuch as that the lower Appellate Court has recorded the finding based on evidence to show that the pronote itself depicted the year mark of 19 to complete it for the year, whereas the transaction allegedly took place in the year 2007. The plaintiff did not adduce any evidence of fiduciary relationship between the parties. Husband of the plaintiff was not examined and the diary allegedly maintained by the plaintiff was withheld. In the light of these facts, substantial question No.(a) as framed by the appellant has to be answered in negative, thereby holding that the impugned judgment and

decree passed by the lower Appellate Court was not based on any misreading of evidence.

[28]. Substantial question No.(b) is rested upon the evidentiary value of admission made by the defendant inasmuch as that his signatures were obtained by husband of the plaintiff on some papers when he was dealing with him on the shop of commission agency. Since the pronote and receipt were found to be suspicious for which lower Appellate Court has based its conclusion in favour of the defendant. On the same analogy this Court is of the view that the execution of alleged pronote and receipt which took place in the year 2007 on a proforma of pronote with word 19 to complete it for the year is not proved. The age of the document was the key issue which was not substantiated and brought out on record by the plaintiff with the help of any expert evidence. The presumption in terms of Section 118(a) of the Act would arise only when execution of document is established. Once the defence made by the defendant was on explanatory note, it was obligatory on the part of the plaintiff to prove its case. Husband of the plaintiff was not examined and the diary allegedly maintained by the plaintiff was withheld. In the light of these facts, substantial question Nos(b) to (d) have to be answered against the appellant.

[29]. In the light of observations made hereinabove, this

Court is left with no option, but to dismiss the appeal. The finding recorded by the lower Appellate Court are not found to be result of misreading of evidence or having suffered with perversity of any type. This appeal is accordingly dismissed, leaving the parties to bear their own costs.

July 20, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**