

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

RSA No.2298 of 2011 (O&M)

Date of Decision.29.09.2016

Natha Singh

.....Appellant

Vs.

Tarsem Kumar

.....Respondent

Present: Mr. Arun Bansal, Advocate
for the appellant.

Mr. Sherry K. Singla, Advocate and
Mr. Sunny K. Singla, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

C.M. No.6356-C of 2011

It is too late in a day to receive the documents by way of additional evidence as it had not been explained as to how despite “exercise of due diligence”, the documentary evidence sought to be produced on record could not be led before the Courts below.

The application is dismissed.

RSA No.2298 of 2011

The appellant-defendant is aggrieved of the judgment and decree passed by the lower Appellate Court whereby the suit for recovery of ₹2,30,000/- with interest at ₹1,65,000/- claimed thereon and with interest pendente lite @1% per annum and with future interest @6% per annum till date of realization, has been decreed.

Mr. Arun Bansal, learned counsel appearing for the appellant submits that the suit was founded on the basis of pronote and receipt dated 26.05.2001 alleged to have been executed by the appellant. The pronote

and the receipt were denied as the same were disproved through the

testimony of handwriting expert. No doubt the respondent-plaintiff had also examined PW6, Anil Kumar Gupta, handwriting expert. The plaintiff was subjected to detailed cross-examination and he was specifically asked to produce the account statement and therefore, the lower Appellate Court has erroneously drawn presumption as per the provisions of Section 118 of the Negotiable Instruments Act. Prior to the alleged transaction, the respondent-plaintiff had also purchased the land from the defendant. Regarding that there is also dispute. Once he purchased the land then what was the occasion of lending money to the appellant-defendant. All these facts have escaped notice of the lower Appellate Court and therefore, there is illegality and perversity, thus, urges this Court for setting aside the judgment and decree passed under challenge by formulating the substantial questions of law as formulated in the memorandum of appeal.

Per contra, Mr. Sherry K. Singla, learned counsel appearing for the respondent-plaintiff submits that the aforementioned pronote and receipt have been proved through the testimony of attesting witnesses, rightly so, the lower Appellate Court has drawn the presumption and therefore, urges this Court for confirming the finding rendered by the lower Appellate Court.

I have heard learned counsel for the parties and appraised the paper book. During the course of hearing, I called upon the parties to show copy of the pronote and receipt for comparison of signatures of appellant-Natha Singh with the affidavit and on comparison of the same found that signatures on the affidavit, pronote and the receipt are same. This exercise has to be done by the Court below. It can play role of expert. It is conceded position that experts engaged by respective parties give finding in their favour. Both the parties were known to each other in view of sale deed

having been executed prior to loan transaction and therefore, it cannot be said that the appellant-defendant was a stranger to the respondent plaintiff. Even the attesting witnesses have been extensively cross-examined but nothing contrary surfaced.

As regards the non production of the account statement, once the aforementioned documents have been proved, the presumption under Section 118 of the Negotiable Instruments Act has rightly been drawn in favour of the respondent-plaintiff.

For the foregoing reasons, I do not differ with the findings rendered by the lower Appellate Court as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 29, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No