

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

RSA No.4483 of 2011 (O&M)

Date of decision : 02.08.2016

Kaur Singh

...Appellant

Versus

Ajmer Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. N.S. Dandiwal, Advocate for the appellant.

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

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit of the respondent-plaintiff for recovery of ₹2,90,000/- containing the element of principle and interest at the rate of 9% p.a. from the date of execution of the pronote and receipt i.e. 23.12.2003 till the date of decree and future interest at the rate of 6% p.a. till realisation of the decretal amount, has been decreed.

Mr. Dandiwal, learned counsel appearing on behalf of appellant-defendant submits that trial Court on the preponderance of the

evidence, dismissed the suit but the lower Appellate Court perversely and falsely reversed the findings. In fact, the appellant-defendant is resident of Village Kot Fatta, whereas respondent-plaintiff belongs to Village Bhagi Wander. Rajinder Singh Makkar, Advocate, is resident of Bathinda. He is scribe of the pronote and marginal witness Gurnaib Singh, who is none-else but the brother-in-law of the plaintiff. Rajinder Singh Makkar, in his cross-examination admitted that he did not know plaintiff but knew defendant as defendant was selling the cotton crop to him but he did not produce on record the proof of business of cotton. Parties to the lis were strangers, therefore, presumption under Section 118(a) of Negotiable Instruments Act, should have been drawn against the plaintiff but the lower Appellate Court heavily relied upon the statement of Mr. Rajinder Singh Makkar who is scribe and Gurnaib Singh by holding that signatures has been proved. He further submits that expert of the respondent-plaintiff had admittedly not taken the photographs of admitted and disputed signatures whereas defendant's expert stated that signatures are wrong. Lower Appellate Court should have relied upon the report of the expert and thus urges this Court for setting aside of the judgment and decree and for formulation of the following substantial questions of law:-

1. Whether there has been any misreading and misconstruing of oral and documentary evidence resulting into perversity?
2. Whether presumption under Section 118(a) of the Negotiable Instruments Act should have been drawn in favour of the plaintiff or not?

Mr. Sherry K. Singla, learned counsel appearing on behalf of

respondent-plaintiff submits that scribe of the attesting witnesses have been coherent and consistent with the stand and their testimony should not be shattered as has gone un-shattered. The payment of the amount has been proved through the testimony of aforementioned witnesses. It is now common practice that the expert toe to the line of his party and rightly so, lower Appellate Court disbelieved the report of both the experts and on the appreciation of the oral and documentary evidence, decreed the suit. There is no illegality and perversity. On going through the entire cross-examination of Rajinder Singh, it is proved that Rajinder Singh was known to defendant and, therefore plea of stranger is neither here or there and thus prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submission of Mr. Dandiwal, for following reasons:-

1. Rajinder Singh Makkar, Scribe of the pronote categorically, on putting question in cross-examination, answered that he did not know the plaintiff, how could have introduced as a witness of the plaintiff.
2. He also not produced on record any documents with regard to the business of cotton, thus business transaction between him and defendant could not be proved.
3. Gurnaib Singh is the brother-in-law of the respondent-plaintiff and Handwriting Expert of the plaintiff did not take the photographs of disputed and admitted signatures whereas on the other hand, the expert of the defendant who had taken the

photographs and found that there was no signature of Rajinder Singh Makkar. In my view, the lower Appellate Court ought to have taken into consideration the report of the expert by discarding the report of the respondent-plaintiff.

4. Both the parties are of different village. There is no link of relationship or introduction by third person known to them, which has been proved on record.
5. No stranger would extend the loan without any surety.

For the foregoing reasons, I am of the view that findings rendered by the lower Appellate Court suffers from fallaciousness, illegality and perversity and accordingly, set aside and that of the trial Court is restored.

Questions of law as noticed above are answered in favour of appellant-defendant and against the respondent-plaintiff.

Appeal stands allowed, in aforementioned terms and suit has been dismissed.

02.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No