

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

RSA No.595 of 2011 (O&M)

Date of Decision: 15.01.2016

Shera Ram

...Appellant

Vs.

Ruhel Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Raj Kumar Kakkar, Advocate
for the appellant.

Amol Rattan Singh, J (Oral)

This appeal has been filed by the defendant before the Court of the Additional Civil Judge (Sr. Divn.), Jalalabad (West), in a civil suit filed by the respondent-plaintiff (Ruhel Singh), seeking recovery of Rs.3,78,000/- from the defendant-appellant (Shera Ram). The suit having been decreed in favour of the plaintiff by that Court, vide judgment and decree dated 04.09.2009, the appellant had filed an appeal before the learned District Judge, Ferozepur, which too was dismissed, vide judgment and decree dated 31.08.2010.

2. This appeal was filed in the year 2011 and for the first time after it had been filed, it has been argued today, almost 5 years after it was filed.

Be that as it may, in the suit filed by the plaintiff (respondent in the present appeal), it was stated that the defendant (appellant in the present appeal), had borrowed Rs.2,25,000/- from him (Ruhel Singh) for his

personal needs and after having received the amount in question, he executed a promissory note-cum-receipt on 08.05.2002, agreeing to pay back the said amount with interest @ 2 % per month. No date for repayment was fixed but it was stated that the amount would be paid as and when demanded. The pronote is stated to have been executed in the presence of marginal witnesses and other respectable people. However, upon the respondent-plaintiff having demanded repayment of the loan amount given to the appellant-defendant and the appellant not doing so, eventually the respondent had a legal notice issued to the appellant, through his counsel, on 22.06.2013 but with still no result.

3. Consequently, the suit was filed by the plaintiff-respondent (Ruhel Singh), to which the appellant (Shera Ram) filed a written statement, in which, apart from preliminary objections, it was stated on merits that he (appellant-defendant) had dealings with M/s Des Raj Ram Chand, Commission Agent, Jalalabad, to whom the appellant used to sell his agricultural produce. Being his commission agent, he also used to take advance money from Des Raj, who adjusted the same against the agricultural produce sold by the appellant to him.

The said Des Raj is stated to have obtained the signatures of the appellant on various blank papers, stamp papers and stamp pronotes-cum-receipts, as security. It was pleaded that dealings with the said Des Raj did not last long, as Des Raj was unfair and therefore, the appellant settled his account fully and finally and demanded all the blank signed documents

back.

Des Raj is stated to have torn some blank documents in front of him, stating that all such documents as had been taken for security purposes had been destroyed. However, after a lapse of time, he (Des Raj) started making demands from the appellant with regard to the outstanding dues and on the appellants' plea that there was nothing further due to him, he allegedly used the pronote-cum-receipt in question, which was a blank signed document, to fraudulently try and obtain the demanded sum of Rs.2,25,000/- from him, in connivance with the plaintiff-respondent (Ruhel Singh).

4. The relevant issues, of whether the respondent (Ruhel Singh) had loaned Rs.2,25,000/- to the appellant (Shera Ram) and as to whether he is entitled to any interest and whether the suit was filed within limitation, having been framed by the first Court, evidence was led by the parties.

The respondent stepped into the witness box as PW-1 and vide his affidavit, Ex.PW1/A, reiterated the averments made in the plaint. He also examined one Daulat Ram son of Darjodhan Dass as PW-2, who was an attesting witness to the pronote. PW-2 also fully supported the case of the plaintiff-respondent.

The appellant, however, led no evidence whatsoever in his defence, despite many opportunities given to him, as recorded in the judgment of the learned trial Court. Eventually, his defence was closed vide order dated 06.01.2009.

5. On the basis of the aforesaid evidence, with the defendant-appellant not having been able to disprove in any manner the authenticity of the pronote-cum-receipt (Exs. P5 and P6), and the plaintiff-respondent himself having stepped into the witness box to testify, along with one of the witnesses to the execution of the pronote, no evidence to dislodge the averments in the plaint were found by the Court.

The allegation that Des Raj aforesaid had, in connivance with the plaintiff-respondent, forged the pronote and receipt, was also disbelieved, in view of the fact that not even the appellant himself stepped into the witness box and, as already noticed, he did not examine any other witness either, in his favour. Consequently, holding that the execution of the pronote stood proved, showing that the appellant owed Rs.2,25,000/- to the respondent-plaintiff, which he had borrowed, the suit of the plaintiff was decreed.

However, on issue No.2, with regard to the interest payable by the appellant, the learned Civil Judge held that the plaintiff was entitled to recover only 1% interest per month from the appellant and not 2%, i.e. he was entitled to interest @ 12% per annum, from the date of execution of the pronote till the date of decree, with future interest @ 6% per annum.

6. Consequently, the suit of the plaintiff-respondent having been decreed as above, that judgment and decree was challenged before the learned District Judge, who, on the same reasoning as the first Court, finding no fault with it, dismissed the appeal.

Section 20 of the Negotiable Instruments Act, 1881, was also referred to by the learned first appellate Court, to hold that once an instrument is signed by a person and is delivered to another person, it becomes a negotiable instrument, even if it is wholly blank or with an incomplete address. Further, Section 118 of the said Act was also referred to, to draw a presumption that once a negotiable instrument is drawn up, it would be for consideration.

Thus, it was further held, that even if the plaintiff-respondent had not deposed as to who had scribed the promissory note and receipt, it did not render his case doubtful, especially when the defendant-appellant had admitted his signatures on the same. It was further noticed that even though Des Raj was the husband of the sister of the plaintiff-respondent, the plaintiff could not be termed to be “a made up witness”, as no forgery and fabrication of the documents (Exs. P-5 and P-6) could be proved by the defendant (appellant).

The interest and future interest awarded by the civil Court, was also upheld by the first appellate Court and the appeal, consequently, dismissed.

7. Mr. Raj Kumar Kakkar, learned counsel appearing for the defendant (appellant before this Court), submitted that though, undoubtedly, the appellant led no evidence whatsoever in his favour, before the trial Court, however, he may now be allowed to appear as his own witness before that Court, to prove his case.

Other than that, no further arguments could be addressed by the learned counsel, except for what was already pleaded and argued before the Courts below, as has been discussed above.

8. Having heard learned counsel and having considered the impugned judgments, I find myself unable to agree with the contention of the learned counsel for the appellant, that at this belated stage of a second appeal, (that too 5 years after it was filed) and in any case 6 years after the decision of the learned Civil Judge, the matter should be remitted back to it, simply to allow the appellant to appear as a witness in his own case, when that opportunity was obviously always available to him at the stage when the first Court was seized of the suit filed by the plaintiff-respondent.

It has been specifically stated by the learned Civil Judge that a sufficient number of opportunities were asked for and taken by the appellant to lead evidence, including “two last opportunities”, without him having either examined any other witness, or even having stepped into the witness box himself. Ultimately, a detailed order is stated to have been passed on 06.01.2009 by that Court, closing the evidence of the defendant (present appellant).

That factual position is also not disputed by the learned counsel.

Further, it is seen that the suit was instituted on 09.05.2005. Hence, obviously, if the defence of the appellant was closed 3 years and 8 months after that, after having given ample opportunities to lead any kind of

evidence, it does not lie in the mouth of the appellant at this stage, that he be allowed to appear as his own defence witness, so as to re-open the entire proceedings all over again.

Other than that, obviously, other than his own testimony, which he may swear if allowed to do so by this Court, not a whisper has been made of any kind of other evidence, documentary or oral, on the basis of which the averment in the suit filed by the respondent-plaintiff can be overturned.

In view of the above, finding no merit in this appeal, the same is dismissed but with no order as to costs.

January 15 , 2016

vcgarg

**(AMOL RATTAN SINGH)
JUDGE**