

RSA No.4190 of 2013 (O&M)

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

RSA No.4190 of 2013 (O&M)

Date of Decision: January 12, 2016

Amrik Singh

...Appellant

Versus

Gurmail Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

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

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.11319-C of 2013

Exemption is granted from filing the certified copy of judgment and decree dated 07.09.2011, passed by the Additional Civil Judge (Senior Division), Moga and typed copy of judgment and decree dated 12.02.2013 passed by the Additional District Judge, Moga, subject to all just exceptions.

Application stands disposed of.

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Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Moga, dated 07.09.2011, whereby, the suit for recovery of an amount of ₹10,21,250/-, out of which ₹7,60,000/- was the loan amount and the remaining was interest, stands decreed for recovery of ₹7,60,000/-

alongwith interest at the rate of 12% per annum from 05.05.2005, the date of advancing the loan till the date of the filing of the suit and from the said date, at the rate of 6% per annum over the decretal amount till the actual realization of the entire amount, appeal against which preferred by the appellant-defendant stands dismissed by the Additional District Judge, Moga, on 12.02.2013.

It is the contention of the learned counsel for the appellant that the appellant has been selling his crop to the respondent-plaintiff as he was a commission agent and in this process, he had obtained signatures of the appellant on blank papers. The appellant being an illiterate person, believed the respondent-plaintiff and signed the said blank papers which have been converted into a pronote by putting up the principal amount, which is being sought to be recovered i.e. ₹7,60,000/- alongwith interest at the rate of 2% per month. He contends that the said document is a piece of fraudulent transaction which cannot be made the basis for granting the decree. Assertion has also been made that two marginal witnesses who had appeared in the witness-box, are stock witnesses and had also signed the other pronotes with regard to some other persons as well, where cases are pending for recovery. He, thus, contends that the findings recorded by the Courts below cannot sustain and deserve to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone

through the impugned judgments but do not find anything which would call for any interference by this Court.

It is not in dispute that the document i.e. pronote dated 05.05.2005 (Ex.P-1) and receipt (Ex.P-2) have been duly proved on record by Gurmail Singh-respondent-plaintiff (PW-2), Mukhtiar Singh (PW-3) and Gurdev Singh (PW-1). The onus, therefore, was upon the appellant-defendant to prove that the said document is not admissible as it is a creation of a fraud. No evidence has been led in this regard by the appellant-defendant. An effort has been made by the learned counsel for the appellant to assert that the two marginal witnesses, namely, Gurdev Singh (PW-1) and Mukhtiar Singh (PW-3) are stock witnesses but that itself is not enough to prove that the said pronote has not been duly executed. The signatures on the document are not denied by the appellant-defendant. Further, merely because the respondent-plaintiff has filed various suits for recovery against different persons, would not lead to a presumption that he is habitual in preparing false pronotes and receipts of agreements by obtaining signatures of the customers on blank pronotes and receipts. An argument was also raised by the learned counsel for the appellant with regard to the financial capacity of the respondent-plaintiff to advance loan to several persons but no cross-examination of the plaintiff has been done on this aspect. The findings, thus, recorded by the Courts below, cannot be faulted with.

A perusal of the impugned judgments would show that the

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concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.11320-C of 2013

In view of the order passed in the main appeal, the present application for staying the operation of the impugned judgments and decree passed by the Courts below during the pendency of the appeal, has become infructuous.

Disposed of as such.

January 12, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**