

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1940 of 2016 (O&M)

Date of decision: 24.05.2016

Wazir Singh

....Appellant

Vs.

Gurdeep Singh

....Respondent

CORAM:-HON'BLE MR.JUSTICE AMOL RATTAN SINGH

- (1) To be referred to the Reporters or not?
- (2) Whether the judgment should be reported in the Digest?

Present:- Mr.Naresh Kumar Manchanda, Advocate, for the appellant

AMOL RATTAN SINGH, J.

This is the second appeal of the defendants, after the suit filed by the respondent/plaintiff (hereinafter referred to as the plaintiff), seeking recovery of Rs.2,29,100/-, was decreed in his favour to the extent of the principal of Rs.2 Lacs, along with interest @ 6% per annum. The claim of the plaintiff for interest @ 24% per annum was declined.

The first appeal filed by the appellant defendant was also dismissed, leading to the filing of the present second appeal.

2. Briefly, the facts, as taken from the judgment of the learned Civil Judge (Sr.Divn.), Fazilka, are that the plaintiff had pleaded that he had advanced an amount of Rs.2,00,000/- as loan to the defendant on 21.08.2013, in respect of which the defendant had executed a promissory note and a receipt of the same date and had also agreed to repay, on demand, the aforesaid sum along with interest @24% per annum.

The amount not having been paid, a legal notice was sent to the defendant on 13.03.2014. With no response thereto, the suit was filed.

3. Upon notice issued, the defendant appeared and filed his written statement, in which other than the usual preliminary objections, he wholly denied having taken a loan and even having executed any promissory note and receipt, which he stated to be forged and fabricated documents.

4. A replication having been filed, the following issues were framed by the learned Civil Judge:-

- “1. Whether defendant borrowed a loan of Rs.2,00,000/- and in lieu thereof executed a pronote and receipt dated 21.08.2013 in favour of the plaintiff? OPP.
2. If issue No.1 proved. Whether the plaintiff is entitled for the recovery of Rs.2,29,100/- i.e. (Principle Rs.2,00,000)- + Interest Rs.28,000/- + Legal Notice expenses Rs.1100/-) ?
3. If issues No.1 and 2 proved, Whether the plaintiff is entitled for future and pendente lite interest, if so, to what extent ?
OPP.
4. Whether the suit of the plaintiff is not maintainable in the present form?OPD
5. Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from the Court ?
OPD.
6. Whether the plaintiff has got no right, cause of action or locus standi to file the present suit? OPD.
7. Whether the pronote and receipt are forged and fabricated documents and does not bear the signatures of defendant?
OPD.
8. Relief.”

Plaintiff Gurdeep Singh examined himself as PW-1 and one Makhan Singh, another Gurdeep Singh S/o Makhan Singh and Typist Het Ram, as Pws 2, 3 and 4. respectively.

The defendant only examined himself as DW-1.

5. Upon appraisal of the evidence, the learned Civil Judge found that the original pronote and receipt, Ex.P-4 and Ex.P-5, had been duly proved by the plaintiff, as also the marginal witnesses, Makhan Singh and Gurdeep Singh S/o Makhan Singh, both of whom identified their signatures on the two documents, i.e. the pronote and receipt.

The legal notice, Ex.P-1, postal receipt Ex.P-2 and acknowledgement Ex.P-3, were also found to be proved, with the scribe to the pronote and receipt, PW-4 Het Ram, also having identified his signatures and having testified in favour of the plaintiff, to the effect that the contents of the pronote and receipt had been read over to both the parties, in the presence of the marginal witness, after which the defendant had signed the same in English.

6. Defendant Wazir Singh, other than denying his signatures on the pronote and receipt, in fact, also denied his signatures on the Vakalatnama/Power of Attorney that had been issued in favour of his counsel. He also denied the signatures on the written statement, thereby leading the Court to draw an adverse inference against him 'and his intentions'.

In the circumstances, it was further, thereafter, held by the learned Civil Judge, that where the defendant even denied his signatures on his written statement and Vakalatnama, the onus shifted on him to prove that he had not signed the pronote and receipt.

He not having been able to discharge the onus, the suit was decreed in favour of the plaintiff, however, as already noticed, only to the extent that he was

held entitled to recover a sum of Rs.2,00,000/- with interest @6% per annum only, on the aforesaid sum, and not 24% as claimed.

7. In the first appeal filed by the appellant-defendant, the learned first appellate Court, also on the same grounds, held that since he was denying his signatures on the written statement, as also on the power of attorney in favour of his counsel, and on the other hand, the execution of the pronote and receipt were duly proved by the witnesses on behalf of the plaintiff, the judgment of the learned Civil Judge was to be upheld and the first appeal dismissed.

8. Before this Court, learned counsel for the appellant though pointed to the fact that the appellant had denied his signatures on the pronote and receipt, he obviously could not deny what was recorded by the courts below, to the effect that the defendant, despite 'disowning' his counsel, had even denied his signatures on the written statement itself and the power of attorney in favour of his counsel, though he stood as a defence witness in his own case. Thus, the defendant having denied his admitted signatures also, altogether, his intention was only too clear, that he wished to disprove his signatures even on admitted documents so as to try and create a confusion.

9. No doubt, the onus to prove a document is wholly on the person who claims to be the beneficiary thereof, but the plaintiff having produced the marginal witnesses, as also the scribe, and having examined himself also in support of the said documents, he could do no more; whereas on the other hand, if the defendant wished to prove that the signatures on the documents were not his, as contended, the least he could have done was to have his admitted signatures and the disputed ones, compared by a handwriting expert (though his signatures on the pleadings were disputed by him).

In the opinion of this Court too, his intention was only too clear in

trying to wriggle out of his liability to pay the loan taken by him. Hence, in the aforesaid circumstances, I see no error in the judgments of the Courts below and consequently, finding no merit in this appeal, the same is dismissed, *in limine*, with no order as to costs.

24.05.2016
anil

(Amol Rattan Singh)
Judge