

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.2102 of 2016 (O&M)

Date of decision: 23.5.2016

Tarsem Singh

...Appellant

versus

Gurdeep Singh

...Respondent

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

Present: Mr.A.S.Kakkar, Advocate,
for the appellant.

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

AMOL RATTAN SINGH, J. (ORAL)

1. This is the second appeal filed by the defendant in a civil suit filed by the respondent-plaintiff (hereinafter referred to as the plaintiff) seeking recovery of Rs.2,56,350/-, which was decreed in his favour by the learned Civil Judge (Senior Division), Faridkot, and the first appeal filed by the present appellant was dismissed by the learned District Judge, Faridkot.

2. Briefly, the facts, as taken from the judgment of the learned Civil Judge, are that the appellant-defendant (hereinafter referred to as the defendant) is stated to have borrowed a sum of Rs.2,00,000/- from the respondent-plaintiff on 2.4.2012, at an interest of 2% per month and had executed a pronote and receipt on the same date, in favour of the plaintiff.

He not having returned the amount, the suit was instituted by the plaintiff on 12.8.2014.

3. Upon notice issued, the defendant filed his written statement in which, other than the usual preliminary objections, on merit, he stated that actually in the year 1998, he had started a business known as 'Vicky Garments' at Village Bargari, and the plaintiff, who was running a finance company, had financed the defendants' shop. At that time, the defendant had signed various documents, including pronotes and cheques on the asking of the plaintiff, but had thereafter cleared his entire debt to the plaintiff, within four months. However, having full faith in the plaintiff, he did not take back the blank cheques and pronotes, which continued to lie with the plaintiff.

It was further contended that in the year 2012, he (defendant) had sufficient funds and was never in need of money from any one and, therefore, there was no question of borrowing a 'large amount of Rs.2,00,000/-' from the plaintiff. It was also submitted that the stamps affixed on the pronote were of the year 2000 and that the attesting witnesses were not known to the defendant. Further, he contended that there would be no reason for him to pay a heavy rate of interest at the rate of 2% per month on the borrowed amount.

Hence, the entire claim of the plaintiff was denied by the defendant.

4. Upon the pleadings of the parties, the following issues were framed by the learned Civil Judge:-

- “1. Whether the defendant has borrowed a sum of Rs.2,00,000/- from the plaintiff and executed pronote and receipt dated 2.4.2012 in lieu thereof? OPP

2. Whether plaintiff is entitled for recovery of suit amount from the defendant along with interest? OPP
3. Whether suit is not maintainable? OPD
4. Whether plaintiff has no cause of action to file the present suit? OPD
5. Whether proper court fee has not been affixed on the plaint? OPD
6. Whether plaint has not been properly verified as required under law? OPD
7. Relief.”

5. In support of his case, the plaintiff examined himself, one Gurdeep Singh and Kulwinder Singh, whereas the defendant also examined himself, one Sikander Singh and Jagtar Singh, as also Kirandeep Singh, a Sales Officer in the HDFC Bank, Kotkapura.

6. The learned Civil Judge, after initially expressing some misgivings, held that when the matter is gone into more deeply, with the defendant having actually admitted to and having identified his signatures on the pronote and receipt, though not remembering when he had signed it, the last part of his testimony was not fully in consonance with his written statement, inasmuch as, in the written statement it was said that he had signed the pronote and cheques about 14 years ago, whereas in his testimony he stated that he did not know when he had signed it.

Further, from the testimony of DW2 Jagtar Singh, the learned Civil Judge found that though this witness had stated that he was a partner in a finance company with the plaintiff, which company worked from 2001

to 2004 and had also financed Sikander Singh (DW1), from whom also signed blank pronotes and cheques were obtained, which were still lying with the plaintiff, the story was not believable. This was found to be so by that Court, firstly on the ground that though the company was being run jointly by this witness (DW2 Jagtar Singh) and the plaintiff, the documents were all still lying with the plaintiff only, with no terms and conditions of final settlement brought on record even after 2004.

Further, though this witness (Jagtar Singh) gave the name of the 'company', he admitted that it had never been allotted any income tax number, nor was it registered and further, that it had no bank account. He also could not produce any printed copies of any documents, to show that the company had lent any money to any person. This witness also could not remember the name of the person from whom the shop to run the company was taken on rent.

Still further, DW2 Jagtar Singh, despite stating that he was a partner of plaintiff, Gurdeep Singh, did not know anything about his financial status.

7. The learned Civil Judge further found that DW1, Sikandar Singh, after having admitted that he had also signed blank pronotes and cheques in favour of the 'company' of the plaintiff, after having taken a loan, in his cross-examination stated that the pronotes and receipts were executed actually by defendant Tarsem Singh. He too did not know the name of the finance company from whom he took a loan, and though he produced a loan book as Ex.D1, it did not bear the name of the finance company. It also did not contain any proof of who had made the entries, except the signature of

DW2, Jagtar Singh. Specifically, the signature of the plaintiff, Gurdeep Singh, was not found on the said loan book. Thereafter, DW1 stated that the loan had been given to him by DW2 and that Tarsem Singh had also taken a loan two to four times, to run his shop.

The learned Civil Judge further found that the defendant had actually been borrowing money, as was clear from a judgment and decree produced in evidence by the plaintiff (Exs.P3 and P4) and hence, it could not be inferred that he had not borrowed the money from the plaintiff, in the face of the signed pronote and receipt.

8. As regards the contention that the appellant-defendant had no need for any money in the year 2012, the Court found that an amount of Rs.4,00,000/- was lying in the account of the defendants' wife, but simply because of that, it could not be inferred that he had no need for more money, to the tune of Rs.2,00,000/-.

Consequently, the suit of the plaintiff was decreed in his favour but interest was awarded only @ 6% per annum, as against 24% per annum claimed by the plaintiff.

9. In the first appeal filed by the appellant-defendant, the learned District Judge, after considering the aforesaid evidence and after citing judgments, eventually on the same reasoning as given by the learned Civil Judge, found that the appellant-defendant had not been able to prove that his signatures on the pronote and receipt (Ex.P1 and Ex.P2) were obtained by any fraud, or that they were obtained 14 years earlier, especially as it was unnatural that any person, after repaying his entire loan, would not insist upon return of the blank documents allegedly signed by him.

Consequently, holding that a presumption existed under Section 118(a) of the Negotiable Instruments Act, 1881, with regard to the legality of the pronote executed in favour of the plaintiff, the appeal was dismissed.

10. Before this Court, Mr.Kakkar, learned counsel for the appellant, other than reiterating what had been argued before the Courts below, submitted that the fact that the stamps on the pronote were of the year 2000, proving that the pronotes and receipts were actually signed 14 years prior to the suit having been instituted and as such, in any case, even if there was any outstanding loan (though not admitted at all), payable by the appellant-defendant to the respondent-plaintiff, it had, in any case, become time barred.

On specific query put to him, learned counsel has not been able to show any statutory provision by which there is a time limit prescribed on the use of revenue stamps printed. It is, obviously, for the same reason, that, in fact, an application filed before the learned Civil Judge (referred to in the judgment of the learned lower appellate Court), seeking that the stamps on the pronote be sent to the Government Press at Nashik, for the purpose of determining their age, was dismissed. Obviously, even if the Government Press had authenticated that the stamps were of the year 2000, simply because of that, the validity of the pronote would not expire or be otherwise watered down, in the absence of any statutory provision on the life span of the stamps. Thus, in the absence of any such provision, even if old stamps are lying with any person, he would not be debarred from using them at any subsequent point of time, unless the stamps were specifically

'demonitised', in some manner that currency notes some times are.

In any case, though the Court may be suspicious of old stamps having been used 10 to 12 years later, in my opinion, unless the defendant could actually prove by other evidence that the pronotes and receipt were executed beyond the period of limitation, the onus of which was on the appellant-defendant, the presumption of the validity of the documents would be in favour of the plaintiff and not the defendant.

Thus, with the appellant having admitted his signatures on the pronote and the receipt, even this plea is not available with him, with the onus thereafter having shifted upon him, to disprove the validity thereof.

11. Consequently, finding no error in the judgments of the Courts below, the appeal is dismissed, *in limine*, with no order as to costs.

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12. In view of the fact that the appeal has been dismissed in limine, on merits, as above, the question of condonation of the delay of 21 days in filing, and 102 days in refiling the appeal, is rendered to be academic and is not gone into.

23.5.2016
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(AMOL RATTAN SINGH)
JUDGE