

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

RSA-216-2016 (O&M)

Date of decision: 15.03.2016

Faquiria Ram

...Appellant(s)

Versus

Madan Lal

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. K.S. Chahal, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 31.10.2014, passed by the learned Additional Civil Judge (Senior Division), Samana (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been decreed; and judgment and decree dated 16.07.2015, passed by the learned District Judge, Patiala (for short, the first Appellate Court), whereby, the appeal preferred by defendant-appellant against the impugned judgment and decree dated 31.10.2014, of the trial Court, has been dismissed.

The plaintiff filed suit for recovery of Rs.2,96,000/0

(Rupees two lacs as principal amount and Rs.96,000/- on account of interest), details whereof have been furnished in the plaint, on the basis of pronote and receipt. As per the averments made in the plaint, the plaintiff extended a loan of Rs.2,00,000/- to the defendant in the presence of marginal witnesses on 05.12.2009, at Samana and in token of receipt of the loan amount in cash, the defendant executed a pronote and receipt. The pronote and receipt dated 05.12.2009 was scribed at the instance of the defendant, which was read over and explained to him in the presence of the witnesses. The defendant, after admitting the contents of the pronote and receipt, put his thumb impression thereon, in the presence of witnesses, namely, Tarsem Lal son of Vaskhi Ram and Hussan Lal son of Roshan Lal. The marginal witnesses also put their respective signatures on the same in the presence of the defendant and the plaintiff. The defendant agreed to repay the borrowed amount along with interest @ 1.50% per month, on demand and order. However, when the plaintiff requested the defendant to return the loan amount, the defendant refused to do so and did not return even a single penny till date.

The defendant contested the suit and filed written statement averring therein that the plaintiff concocted a false story to grab the money. He denied having executed any pronote or

receipt in favour of the plaintiff. It was pleaded that the alleged pronote and receipt dated 05.12.2009 is a result of fraud, forgery and fabrication. The defendant and his brother Kaka Ram used to sell the crops to M/s Kapoor Chand Madan Lal, Commission Agent, Moonak, in which the plaintiff is a partner. The plaintiff used to put thumb impressions of defendant on the bahi and blank papers, which were used for fabricating the alleged pronote and receipt dated 05.12.2009.

The learned trial Court, after appreciating the evidence on record, recorded issue-wise findings and decreed the suit of the plaintiff. Feeling aggrieved, the defendant-appellant went in appeal before the learned first Appellate Court, which affirmed all the findings recorded by the trial Court and dismissed the appeal of the defendant vide impugned judgment and decree dated 16.07.2015.

Hence, this appeal at the behest of the defendant.

Learned counsel for the appellant contends that the plaintiff is a partner in firm M/s Kapoor Chand Madan Lal Commissioner Agent, to whom, the defendant-appellant and his brother used to sell their crop. The plaintiff used to get the thumb impressions of the defendant on the blank documents as security.

When the appellant stopped dealing with their firm, one such

document was used by inserting '0' and making the amount from Rs.20,000/- to Rs.2,00,000/-.

I have heard learned counsel for the appellant and perused the record.

In the present case, the defendant-appellant did not appear in the witness box to prove that the pronote and receipt relied upon by the plaintiff were forged documents. The argument that the defendant is a person of low IQ has to be rejected as there is no evidence on record to prove the same.

In defence evidence, the brother of the defendant, namely, Kaka Ram appeared as DW1, his son Raj Kumar appeared as DW2 and Dina Ram appeared as DW3, however, their testimony could not rebut the evidence of the plaintiff convincingly. The documents tendered in defence evidence i.e. jamabandi for the year 2011-2012, Ex.D1 and copy of licence No.554 issued by the office of the Market Committee, Khanaur, Mark X, have not been properly proved on record. Furthermore, there is nothing on record to show that the defendant initiated any criminal action against the plaintiff and the attesting witnesses of the alleged pronote and receipt for indulging in forgery and fabrication of the documents. The defendant also did not take to examine any finger print expert to prove that he did not affix his

thumb impression on the alleged pronote and receipt. The plaintiff has proved that the pronote and receipt, Ex.PW1/1 and PW1/2, respectively, were duly executed by the defendant and it is to be presumed that it was for consideration unless the presumption under Section 118 of the Negotiable Instruments Act is rebutted. In this case, the defendant has failed to rebut the presumption.

In view of the above discussion, this Court does not find any perversity with the concurrent findings returned by the learned Courts below, which call for any interference by this Court. No question of law, much less substantial question of law arises in the present appeal.

Dismissed in limine.

15.03.2016

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(JITENDRA CHAUHAN)
JUDGE