IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.154 of 2015 (O&M)
Decided on: 11.02.2016

Jaswinder Singh

....Appellant

Versus

Harbhajan Singh

....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gurmeet Singh Saini, Advocate for the appellant.

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1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

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REKHA MITTAL J. (Oral)

The present appeal has been directed against the judgment and decree dated 03.09.2014, passed by the District Judge, Ferozepur, whereby the appeal preferred by Jaswinder Singh-appellant against the judgment and decree dated 22.08.2012, passed by the Additional Civil Judge (Senior Division), Zira, has been dismissed and the findings recorded by the learned trial Court have been affirmed.

The facts relevant for disposal of the present appeal are that Harbhajan Singh-respondent filed a suit for recovery of

Rs.1,90,000/- as principal amount and Rs.60,000/- towards interest on the premise that the appellant borrowed an amount of Rs.1,90,000/- and executed a pronote and receipt in lieu thereof on 27.10.2006. The pronote and receipt were scribed by Vijay Kumar Bajaj, Document Writer, Talwandi Bhai and witnessed by Gurjant Singh and Sarban Singh. The appellant agreed to repay the loan amount on demand along with interest @ 2% per month. The appellant failed to repay the loan amount along with interest despite repeated demands. Hence, the suit.

The appellant-defendant filed a written statement challenging maintainability of the suit, the suit being not properly valued for the purpose of Court fee and jurisdiction and the jurisdiction of the Court to try and decide the suit. He has altogether denied taking loan of Rs.1,90,000/-, execution of the pronote and receipt or agreement to repay the loan amount with alleged rate of interest. It is further averred that the pronote and receipt is a forged and fabricated document. He had obtained an amount of Rs.10,000/- from the respondent and returned a sum of Rs.11,000/- including interest to the respondent. At the time of advancing loan of Rs.10,000/-, the respondent obtained his signatures on blank proforma of pronote and receipt. All other materials averments of the plaint have been denied with a prayer for dismissal of the suit.

The respondent preferred replication reiterating his stand taking in the plaint while controverting the allegations raised in the written statement.

The learned trial Court bestowed its thoughtful consideration to the rival submissions made by counsel for the parties in the light of pleadings, issues framed for determination, evidence adduced on record and accepted claim of the respondent-plaintiff by holding that the suit is decreed for recovery of Rs.2,50,000/- along with interest @ 6% per annum from the date of filing of the suit till realization of the decretal amount.

The appeal preferred by the appellant-defendant was dismissed by the District Judge, Ferozepur, with a slight modification whereby the suit was ordered to be decreed for recovery of Rs.1,90,000/- along with interest @6% per annum from the date of institution of the suit till realization.

Counsel for the appellant has challenged the judgments passed by the Courts below primarily on two counts. The first submission made by counsel is that the respondent examined the Document Writer-Vijay Kumar Bajaj, but the witness in his cross-examination has deposed that no money was paid by the respondent to the appellant in his presence. Another submission made by counsel is that the respondent did not have the capacity to advance a loan of Rs.1,90,000/-, sufficient to falsify and belie his story that he lent an amount of Rs.1,90,000/- to the appellant and the pronote and receipt were executed in lieu thereof.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

The civil proceedings are decided by a Court on the basis of preponderance of probabilities *viz-a-viz*, proof beyond doubt required in criminal cases. To establish his claim, the respondent appeared in the witness-box and examined Sarban Singh-PW2 and Vijay Kumar Bajaj-PW3. Sarban Singh-PW2 is one of the attesting witnesses of the pronote and receipt, basis of the suit. Counsel for the appellant is not in a position to point out any discrepancy or flaw in testimonies of the respondent and that of Sarban Singh-PW2. Under these circumstances, the mere fact that the Document Writer has deposed that money was not transacted in his presence is not sufficient to discard case of the respondent in its entirety.

As per the settled position in law, the statement of a witness is to be read as a whole and the entire evidence is to be appreciated by the Court to arrive at a particular conclusion. The appellant has admitted his signatures on the pronote and receipt though with a plea that the same were obtained when the pronote and receipt was blank. He has further averred that he obtained a loan of Rs.10,000/- from the respondent and returned an amount of Rs.11,000/- including interest. He has not specified the date, month and year of taking loan of Rs.10,000/- or return of an amount of Rs.11,000/- meaning thereby that the facts pleaded by the appellant are vague and thus, cannot be taken into consideration. Even otherwise, it is difficult to accept that if a person has returned the loan, he would not insist for return of the documents got signed from him at the time of taking of loan or at least a receipt in token of payment. In this view of the matter, I am unable to subscribe to the contentions of the appellant that the consistent findings recorded by the Courts below warrants intervention on the sole ground that the Document Writer has stated in his cross-examination that the money was not paid in his presence.

This brings the Court to the second submission in regard to incapacity of the respondent to advance a loan of Rs.1,90,000/-. The appellant in the written statement has raised a categoric plea that the respondent is a moneylender without having any money-lending licence. The plea in the written statement runs counter to what has been urged by counsel for the appellant. Under these circumstances, the second contention is devoid of merit and is accordingly rejected.

For the reasons aforestated, finding no merit, the appeal fails and is accordingly dismissed *in limine*. No order as to costs.

(REKHA MITTAL)
JUDGE

11.02.2016
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