

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

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RSAs 2621 of 2011 and 2400 of 2015
Date of decision: 15.02.2016

Ravinder Singh

..... *Appellant*

Versus

Nirmal Singh

.....*Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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

Mr. N S Sodhi, Advocate
for the respondent

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

Rekha Mittal, J.

This order shall dispose of RSA Nos. 2621 of 2011 and 2400 of 2015 titled *Ravinder Singh v. Nirmal Singh* as they have arisen between the same parties and require to be disposed of together in view of nature of the controversy raised therein.

RSA No. 2621 of 2011

Facts in brief, are that the respondent/plaintiff filed a suit for recovery of Rs.3,24,000.00 on the basis of pronote and receipt dated 11.02.2005 on the allegations that the defendant/appellant took a loan of Rs.3,00,000.00 and executed pronote and receipt in lieu thereof and agreed to pay interest @ 1-1/2% per month. The appellant failed to repay the loan

amount along with interest despite repeated demands.

The appellant/defendant filed the written statement, raising preliminary objections that the suit is not maintainable and the respondent has concealed the material facts from the Court. It is averred that the respondent gave Rs.3,00,000.00 to family firm of the answering defendant on 05.02.2003. The firm could not return the loan and the respondent pressurized the appellant to execute the pronote and receipt as a security by arranging a Panchayat. No consideration was passed in lieu thereof. The respondent has also filed a suit against the firm for recovery but has not disclosed this fact. The suit is time barred and the respondent/plaintiff has no *locus standi* to file the suit. All material averments of the plaint have been denied with a prayer for dismissal of the suit.

The respondent/plaintiff filed the replication, reiterating his stand taken in the plaint while denying the averments made in the written statement.

The controversy between the parties led to framing of following issues by the learned trial Court:-

1)Whether the plaintiff is entitled to recovery of Rs.3,24,000.00 on the basis of pronote and receipt dated 11.02.2005 along with interest as prayed for? OPP

2)Whether suit of plaintiff is not maintainable?OPD

3)Whether plaintiff has concealed the material facts from the Court? OPD

4)Whether suit of plaintiff is time barred? OPD

5)Whether plaintiff has got not locus standi to file the present suit? OPD

6)Relief.

The learned trial Court permitted the parties to adduce evidence in support of their respective contentions. The respondent/plaintiff examined Bishan Dass (PW1), Yash Pal (PW2), Joginder Pal (PW3) and himself appeared as PW4.

To rebut evidence of the respondent, the appellant examined Tarjinder Singh (DW1) and himself appeared as DW2.

On a careful and thorough analysis of the pleadings of the parties, evidence on record and rival submissions made by counsel for the parties, the learned Court determined issues No. 1 to 3, taken up together against the respondent, whereas issues No. 4 and 5 were answered against the appellant but ultimately the suit filed by the respondent was dismissed with costs.

The respondent preferred an appeal against the judgment and decree passed by the trial Court and the appellate Court reversed the findings recorded by the trial Court and the suit filed by the respondent was decreed with costs for recovery of Rs.3,24,000.00 with interest @ 12% per annum from the date of filing of the suit till date of decree and future interest @ 6% per annum till realization.

RSA No. 2400 of 2015

The respondent filed the suit for recovery on the premise that the firm M/s Gurcharan Singh and brothers, Commission Agents, New Grain market, Moga took a loan of Rs.3,00,000.00 from him through a cheque received by Ravinder Singh-appellant on behalf of the firm. He (Ravinder Singh) executed a receipt in this regard on the letter head of the

firm. The amount of the cheque was transferred in the account of the firm on 07.02.2003. The defendants, partners of the firm are collectively and individually liable to pay the amount but refused to do so. Ravinder Singh (defendant No. 2) has been made a party in his individual capacity as he received the cheque on behalf of the firm and issued the receipt.

Defendants No. 1, 5 to 7 filed the written statement taking preliminary objections that the suit is not maintainable; bad for misjoinder of parties; locus standi of the plaintiff to file the suit; suit being time barred and the respondent having concealed the true facts from the Court. It was averred that defendant No. 5 has no concern with the defendant firm. All other material averments of the plaint were denied with a prayer for dismissal of the suit with costs.

The appellant (defendant No. 2) filed a separate written statement, raising preliminary objections in line with the written statement filed by defendants No. 1, 5 to 7. It is pleaded that the answering defendant used to deal with the plaintiff for raising loan. He gave signed blank papers in the form of letter pads and pronotes to the plaintiff/respondent but the plaintiff has misused the same to file the present suit even after receiving the entire money along with interest in the sale of shop No. 166 of the plaintiff/respondent.

The other defendants except defendant No. 4 filed the written statement denying entitlement of the plaintiff/respondent to recover the suit amount.

The respondent/plaintiff filed replication reiterating his stand taken in the plaint while controverting the pleadings set up in the written

statement.

The controversy between the parties led to framing of following issued by the learned trial Court:-

- 1)Whether the plaintiff is entitled for the recovery of suit amount along with interest as prayed for? OPP*
- 2)Whether suit is not maintainable in the present form?OPD*
- 3)Whether suit is bad for mis-joinder of parties?OPD*
- 4)Whether suit is time barred?OPD*
- 5)Whether the plaintiff has no locus standi to file the present suit?OPD*
- 6)Whether the plaintiff has no locus standi to file the present suit?OPD*
- 7)Relief.*

The learned trial Court permitted the parties to adduce evidence in support of their respective contentions. The respondent examined Jagjit Singh (PW1), Jugraj Singh (PW2), Sushil Kumar Gupta (PW3) and his attorney Iqbal Singh as PW4.

To rebut evidence of the respondent, the appellant/defendants examined Zora Singh (DW2), he himself appeared as DW1 and tendered into evidence documents Ex.D1 and Ex D2.

On a careful and through analysis of the pleadings of the parties, evidence on record and rival submissions made by counsel for the parties, the learned trial Court determined issue No.1 in favour of the respondent and against the defendants No. 1 and 8, issues No. 2 and 3 were asnwered in favour of defendants No. 3 to 8, issues No. 4 to 6 have been answered in favour of the respondent and eventually, the suit filed by the

respondent was decreed for recovery of Rs.3,00,000.00 with interest @ 9% per annum from 07.02.2003 till realization of the amount against defendants No. 1 and 2 only, whereas the suit against defendants No. 3 to 8 was ordered to be dismissed.

The matter was carried in appeal by Ravinder Singh (appellant herein) but did not find favour with the Additional District Judge, Moga and the findings recorded by the trial Court were affirmed.

Still feeling dissatisfied, the present appeal has been preferred by Ravinder Singh.

RSA 2621 of 2011

The substantial questions of law that arise for adjudication are:-

- i) Whether the appellant has been successful in rebutting the presumption available to a promissory note under Section 118 of the Negotiable Instruments Act, 1881 (in short, NIA) that the same is for consideration?*
- ii) Whether the judgment passed by the Court in appeal allowing interest on the amount of interest of Rs.24,000.00 is legal?*

Counsel for the appellant/defendant would contend that the appellant has admitted execution of the pronote and receipt but with a specific averment that the same was executed as a collateral security by arranging a Panchayat and no consideration was passed in lieu thereof. The plea in this regard gets substantiated from the admission of Bishan Dass, Document Writer (PW1) as he admitted in cross examination that there was no transaction of money in his presence. Tarjinder Singh (DW1), one of the attesting witnesses of the receipt has corroborated version of the appellant that the pronote and receipt were executed as a collateral security in regard

to the loan obtained by the firm M/s Gurcharan Singh and brothers. In regard to that liability, the respondent filed a separate suit and regular second appeal No. 2400 of 2015 has been filed at the instance of the appellant to assail the judgments and decrees passed in the said suit.

Counsel for the respondent, on the contrary, has urged that statement of Tarjinder Singh (DW1/A) cannot enure to benefit of the appellant as Tarjinder Singh turned hostile and for that reason, he was not examined by the respondent. It is further submitted that in view of the facts elicited during cross examination of Tarjinder Singh, he was not present at the spot when the pronote and receipt Ex.P2 and P3 were prepared and signed by the appellant Ravinder Singh. For this purpose, he carried me through cross examination of Tarjinder Singh.

I have heard Counsel for the parties and perused the records.

It is an admitted position of the case that the pronote and receipt have been executed by Ravinder Singh-appellant. Ravinder Singh-appellant is a literate person as he is a law graduate. The loan by the firm M/s Gurcharan Singh and brothers was taken in the year 2003 and the receipt in regard thereof was signed by Ravinder Singh, whose wife is one of the partners of the said firm. If Ravinder Singh wanted to execute the pronote and receipt as a collateral security for ensuring repayment of the loan which was remitted in the account of the firm M/s Gurcharan Singh and brothers, there was no reason for him not to get mentioned that fact either on the pronote and receipt, may be, on its backside or by way of a separate writing. In the written statement, the appellant has raised the plea that he gave the pronote and receipt as a collateral security by arranging a Panchayat. It has not been detailed in the written statement as to who were

members of the said Panchayat and in whose presence he gave pronote and receipt as a collateral security. During cross examination of the witnesses of the respondent, the name of one Zora Singh being a Member of Panchayat has been brought on the fore. Zora Singh has not been examined by the appellant to substantiate his plea that the pronote and receipt were given by him as a collateral security on the intervention of the Panchayat. The plea of the appellant in regard to convening of any Panchayat or the pronote and receipt being executed as a collateral security with the intervention of any Panchayat does not get substantiated from materials on record. The question now arises is '*whether admission of Document Writer in cross examination and testimony of Tarjinder Singh are sufficient to hold that evidence led by the respondent to prove execution of the pronote and receipt as well as passing of consideration of Rs.3,00,000.00 coupled with the presumption available in favour of the respondent under Section 118 of the NIA stands rebutted?*'"

Before advertng to this issue, it is appropriate to note that civil suit is decided on the basis of balance of probabilities as parties to the suit are not required to prove their case beyond shadow of doubt as is required in a criminal trial.

Bishan Dass (PW1), Document Writer, in his cross examination has contradicted his examination in chief in regard to payment of Rs.3,00,000.00 by the respondent to the appellant at the time of execution of the pronote and receipt. At the same time, testimony of the respondent in regard to execution of the pronote and receipt and passing of consideration of Rs.3,00,000.00 stands corroborated from statement of Yash Pal (PW2), one of the attesting witnesses of the receipt. It has further been proved by

Joginder Pal, an official from Oriental Bank of Commerce, GT Road, Moga that on 11.02.2005, the respondent withdrew an amount of Rs.3,00,000.00 from his account, sufficient to prove that the respondent had necessary funds on the date of execution of the pronote and receipt.

Tarjinder Singh, in his affidavit Ex.D1/A filed by way of examination in chief has deposed “*that the plaintiff pressurized defendant through a Panchayat consisting of Jora Singh, Commission Agent, me and other to sign pronote and receipt as a collateral security for the reason that he/plaintiff was going abroad and the earlier debt will become time barred on his return.*” It is not the case of the appellant either in the written statement or during cross examination of the respondent and his witnesses that Tarjinder Singh was one of the Members of the Panchayat convened in whose presence the pronote and receipt were purportedly executed by the appellant as a collateral security. During his cross examination, the facts elicited and relevant in the present context (in English translation) reads as follows:-

“I have signed Ex P2 and P3 and identify my signatures on the same. The pronote was already scribed and I only put my witness. I do not know if Ex P2 and P3 have been signed by Ravinder Singh or not. When I attested as a witness, at that time defendant was present there. I do not know if Yash Pal was present there or not because I do not know him. When I attested as a witness, I read the pronote. I know how to read and write Punjabi. It is correct that it was written in the pronote that money in cash has been received. I do not know as to why it has been so written. There was no money transaction earlier besides the amount of pronote and receipt Ex. P2 and P3. Voluntarily stated

that money transaction in regard to pronote and receipt did not take place in my presence.

A casual reading of the cross examination of Tarjinder Singh (DW1) would indicate that he even denied presence of one of the attesting witnesses of the receipt and he refused to own signatures of Ravinder Singh on Ex P2 and P3. He clearly stated that Ravinder Singh did not sign the pronote and receipt in his presence as the documents had already been prepared before he reached the spot. All these facts go a long way to show that testimony of Tarjinder Singh does not substantiate plea of the appellant that pronote and receipt were executed either as a collateral security or no money was given at the time when Ravinder Singh appended his signatures on the pronote and receipt. In this view of the matter, the appellant cannot seek any aid to his contention from testimony of Tarjinder Singh either to prove that the pronote and receipt were executed as a collateral security or the amount of Rs.3,00,000.00 was not paid at the time execution of pronote and receipt.

Nirmal Singh, the respondent was cross examined at length but nothing material and tangible has been elicited to substantiate plea of the appellant that the pronote and receipt are without consideration or the same were executed as a collateral security. Keeping in view totality of the facts and circumstances discussed hereinbefore, I do not find any merit in the contention of the appellant that evidence on record is sufficient to rebut the presumption available under Section 118 of the NIA or the pronote and receipt were executed without consideration or as a collateral security. As a result, question No. 1 is answered against the appellant and in favour of the respondent.

The suit filed by the respondent was dismissed by the trial Court but the judgment and decree passed by the trial Court was reversed in appeal. The appellate Court passed a decree for recovery of Rs.3,24,000.00 along with interest @ 12% per annum i.e.1% per month from the date of filling of the suit till decree and future interest @ 6% per annum till realization.

The principal amount of loan is Rs.3,00,000.00 and the suit was filed for recovery of Rs.3,24,000.00 including Rs.24,000.00 towards interest. The pendente lite and future interest shall be payable only on the principal amount. That being so, the judgment and decree passed by the Court is modified to the extent that suit of the respondent is decreed for recovery of Rs.3,00,000.00 along with interest @ 12 % per annum with effect from 11.02.2005 till the date of decree and @ 6% per annum from the date of decree till realization.

For the foregoing reasons, the appeal stands disposed of in the aforesaid terms.

RSA 2400 of 2015

Counsel for the appellant contends that the appellant is admittedly not a partner of the firm namely M/s Gurbachan Singh and brothers in whose account loan amount of Rs.3,00,000.00 was remitted by way of encashment of cheque issued by the respondent/plaintiff. It is further argued that the mere fact that the receipt Ex.PY has been signed by the appellant for the firm M/s Gurbachan Singh and Brothers, prepared on the letter head of the said firm is not sufficient to fasten liability upon the appellant.

Counsel for the respondent, on the contrary, has submitted that

receipt in regard to taking of loan by the firm has been executed by appellant Ravinder Singh when admittedly, his wife is one of the partners of the firm. It is further argued that in the second suit filed by the respondent for recovery of Rs.3,00,000.00 along with interest on the basis of pronote and receipt filed against the appellant, he has raised a plea that he executed the pronote and receipt by way of collateral security in regard to loan taken by the firm. According to counsel, the appellant cannot wriggle out of his liability to pay the suit amount in view of oral and documentary evidence adduced by the respondent as well as his (appellant's) stand in the suit filed against him in his individual capacity.

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

The appellant has not denied his signatures on receipt Ex PY, basis of the suit filed by the respondent for recovery of Rs.3,00,000.00 along with interest. There is no dispute that the payment made through cheque bearing No. 147404 dated 05.02.2003 of Oriental Bank of Commerce issued by the respondent was remitted in the account of the firm M/s Gurcharan Singh and Brothers. Since the loan amount was received by the appellant on behalf of the firm, he cannot escape his liability by raising a plea that the amount has been remitted in the account of the firm and not in his individual account. There is no legal bar for a person to raise a loan for a third person. In view of the above, I do not find any error much less illegality in the consistent findings recorded by the Courts below when otherwise, no question of law much less a substantial one arises for adjudication.

In view of what has been discussed *hereinabove*, the appeal

sans merit and is accordingly dismissed with costs.

Xerox copy of this order be placed on the file of connected appeal.

(Rekha Mittal)
Judge

15.02.2016.
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