

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

R.S.A. No.4141 of 2015 (O&M)

Date of decision: 29.02.2016

Mohan Lal and another

...Appellants

Versus

Gurmail Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Jai Bhagwan, Advocate
for the appellant.

Jitendra Chauhan, J.

CM No.10049-C of 2015

For the reasons contained in the application, same is allowed and delay of 6 days in re-filing the present appeal is condoned.

Main Case

1. This regular second appeal is directed against the judgment and decree dated 16.01.2015, passed by the learned Additional District Judge, Sangrur, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 20.01.2012, passed by the learned

Additional Civil Judge, Sr. Divn., Sunam, (for short, the 'trial Court'), has been dismissed.

2. Brief facts of the present case are reads as under:-

“M/s Verma Trading Company, Dirba is running a commission agency at Dirba and Mohan Lal is the sole proprietor of the said concern. The concern is an income tax assessee and maintaining the regular account books. Defendant had been selling his crop through the plaintiff and the accounts were settled with the defendant on 10.12.2005 and the entry to this effect was made in the account books and no amount was due towards each other and defendant executed a receipt in favour of the plaintiff. The defendant assured the plaintiff to sell his crop and he obtained Rs.6,50,000/- from the plaintiff as loan on 28.04.2007 and agreed to return it with interest at the rate of 1.12% per month and defendant executed a pronote and receipt in favour of the plaintiff in consideration of the loan amount. Till the filing of the suit Rs.6,70,000/- are due against the defendant.”

3. On behalf of the appellant, it is contended that the learned Courts below have erroneously ignored the statement of the clerk of the plaintiff, Sh. Harpal Singh, who regularly maintained the accounts books and the report of the handwriting

and finger print expert which clearly proves the signature of the respondent over the pronote and the receipt. The learned counsel further contends that the findings of the learned Trial Court that the plaintiff has failed to examine the witnesses of the pronote and receipt, is erroneous as there is no requirement of law to attest the pronote and receipt by two marginal witnesses. The learned counsel contends that the statement of the plaintiff corroborated by statement of munim prove the execution of pronote and receipt by the defendant.

4. The learned counsel cites '**Arjinder Singh Vs. M/s Virk Brothers and another**', 2012(2) PLR 104 and '**Avtar Singh (died) through LRs Vs. Dalip Singh (died) through LRs.**', 1993(2) RRR 527.

5. I have heard the learned counsel and perused the entire record on file.

6. The learned Courts below have passed the judgments and decrees after appraisal and appreciation of the oral as well as documentary evidence. In his testimony, PW2-Harpal Singh, has stated that the alleged amount was paid in his presence, but his signature is not there over the pronote and the receipt. Therefore, his statement cannot be relied upon. As far as the absence of the respondent at the time of execution of the pronote and the receipt

is concerned, DW1-Ramphal Singh, the attesting witness, who scribed the alleged pronote and receipt records that the respondent was not present at the relevant time and the pronote was not signed in his presence. Further, the appellant has not examined the witnesses to the pronote and the receipt. Therefore, the signature of the respondent over the pronote and the receipt are not proved. To prove the due execution of the pronote and the receipt the appellant has placed on record the 'bahi' entries, but the appellant has not led any cogent evidence to prove the execution of pronote & receipt. In these circumstances, this Court finds no fault in the findings recorded by the learned Courts below.

7. On consideration, this Court finds that the contentions raised by the learned counsel for the appellant have no merit. No evidence has been shown to have been ignored from consideration. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

8. Dismissed in limine.

29.02.2016

ashok

(JITENDRA CHAUHAN)

JUDGE