

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

**RSA No.4581 of 2015 (O&M)
Decided on: 01.03.2016**

Kulbir Singh

....Appellant

Versus

Kaptan Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. M.S. Kathuria, Advocate
for the appellant.

REKHA MITTAL J.

The present appeal has been directed against the judgment and decree dated 27.01.2015 passed by the District Judge, Jhajjar whereby the appeal preferred against the judgment and decree passed by the Civil Judge (Senior Division), Bhadurgarh (for brevity 'the trial Court') has been dismissed and the findings recorded by the trial Court have been affirmed.

The respondent/plaintiff filed a suit for recovery alleging that on 22.01.2002, the appellant borrowed a sum of Rs.90,000/-, executed a pronote and receipt in lieu thereof and agreed to repay the loan amount along with interest @ 2% per mensem but failed to respond to the demand for repayment made by the respondent.

The appellant filed the written statement, raised

preliminary objections *qua* locus standi, maintainability, estoppel, the respondent having not come to the Court with clean hands and there being material alteration manipulation in the pronote dated 22.01.2002. On merits, he has denied taking of loan, execution of pronote and receipt and his liability to pay any amount much less with interest.

The learned trial Court, on consideration of the pleadings of the parties, issues framed for determination, evidence adduced and submissions made by respective counsels uphold plea of the respondent in regard to taking of loan by the appellant, execution of pronote and receipt in lieu thereof and accordingly the suit was decreed for recovery of Rs.90,000/- along with interest @ 6% per annum from the date it became due till realization. As has been noticed hereinbefore, the appeal preferred by the appellant did not find favour with the District Judge, Jhajjar and as a natural corollary, the findings recorded by the trial Court were affirmed without any variance.

Still feeling dis-satisfied, the present appeal has been preferred by the unsuccessful defendant.

Counsel for the appellant has assailed concurrent findings of fact and law by raising certain factual contentions. The first submission made by counsel is that as per plea of the respondent, the loan was taken on 27.01.2002 and the suit was filed

on 21.01.2005, just few days before expiry of stipulated period of 3 years provided under the Limitation Act which creates a doubt in *bona fides* of claim of the respondent/plaintiff. Another submission made by counsel is that the receipt was purportedly attested by two witnesses but the respondent examined only one of the attesting witnesses namely Sukhbir who belongs to a village other than village of the appellant, therefore, his testimony is not sufficient to corroborate version of the respondent.

Counsel has strenuously argued that as the pronote has been altered/manipulated, no presumption under Section 118 of the Negotiable Instruments Act is available in favour of the respondent that pronote was executed for a valuable consideration incorporated therein.

I have heard counsel for the appellant and perused the judgments passed by the Courts below.

Before adverting to the submissions made by counsel for the appellant, it would be pertinent to mention at the outset that the Hon'ble Apex Court in “*Govindaraju vs Mariamman*”, (2005) 2 SCC 500, has held that even if the High Court was of the view that the findings of fact recorded by the Courts below were wrong, these findings of fact could not be disturbed without coming to the conclusion that the findings were perverse i.e. based on misreading of evidence or based on no evidence.

In the case at hand, counsel for the appellant has not pointed out that the findings of fact recorded by the Courts below are either based on misreading of evidence or based on no evidence. The mere fact that the respondent/plaintiff instituted the suit few days before expiry of period of limitation is not of any significance in the light of defence plea raised by the appellant. It is not the case of the appellant that he had already returned the loan amount and for that reason, the respondent waited to the last date of limitation for filing the suit.

The respondent examined an attesting witness to the receipt to corroborate his version that the appellant took a loan of Rs.90,000/- and executed pronote and receipt in lieu thereof. It is none of the requirements in law to examine any of the attesting witness of a pronote/receipt much less examining both the witnesses. The plea of the appellant that the pronote was altered/manipulated is mis-conceived and merits rejection. As a matter of fact, the appellant tried to raise a contention that in the photocopy of the pronote and receipt, something was written which was not there in the original pronote and receipt. The Court in appeal in para 13 of the judgment has adverted to this contention of the appellant by holding that there are no addition and alteration in the pronote Ex.P-1. Respondent had produced on record photocopy of pronote (Mark-A) and photocopy of receipt (Mark-B) at the time of filing of the suit. Respondent has explained that photocopy of

the pronote produced at the time of filing of the suit was a photocopy of another photocopy of the original pronote and in the photocopy of the pronote, he had mentioned his name and the explanation given by the respondent was found to be satisfactory. Counsel for the appellant has not made any submission that either the explanation tendered by the respondent is not on record or the Appellate Court has committed any illegality much less perversity in accepting the said explanation. Analyzed from any angle, I do not find any reason to disturb consistent findings of fact recorded by the Courts below in the face of situation that the findings cannot be said to be perverse. In fact, no question of law much less a substantial one arises in the circumstances as would warrant admission of the appeal for hearing on merits.

For the foregoing reasons, finding no merit, the appeal is dismissed *in limine*.

(REKHA MITTAL)
JUDGE

01.03.2016

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