

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

**RSA No.2206 of 2014
Date of decision:20.12.2016**

Hans Raj and another

... Appellants

Vs.

Sikander Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pritam Saini, Advocate with
Mr. Vikas Singh, Advocate and
Mr. Navdeep Singh Brar, Advocate
for the appellants.

Mr. G.S.Bal, Senior Advocate with
Mr. A.D.S.Bal, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby, the suit for recovery of ₹12,00,000/- along with interest @ 6% per annum from the date of pronote and receipt dated 27.09.2003, has been decreed.

Mr. Pritam Saini, learned counsel appearing on behalf of the appellant-defendants submits that the suit aforementioned was filed for recovery of ₹19,00,000/- (₹12,00,000/- as principal amount and ₹7,00,000/- as interest) on the premise that the parties were known to each other. The defendants had approached the plaintiff for loan of ₹12,00,000/- and undertook to repay the same along with interest. Since Mohinder Singh,

Special Power of Attorney of the plaintiff was known to the parties, the plaintiff as per assurance of the defendants as well as of Mohinder Singh agreed to lend the said amount (₹12,00,000/-) to the defendants in the presence of Balwinder Singh and Mohinder Singh and in lieu thereof, the defendants executed a pronote and receipt dated 27.09.2003 in favour of the plaintiff and also agreed to pay interest @ 1.56% per month to the plaintiff. However, a categorical stand of the appellants before the Lower Appellate Court was that the pronote was not executed by Hans Raj as each and every document allegedly appending his signatures is in Vernacular and not in English and in this regard, a copy of the sale deed dated 11.07.2003 Ex.D3 had been brought on record to lend support to the aforesaid averment. One of the other attesting witnesses, namely, Balwinder Singh had not been examined. The attorney himself is a witness, though he was an interested party, therefore, his evidence should not have been looked into. Nothing prevented the respondent-plaintiff to examine the other witness, namely, Balwinder Singh to substantiate the claim of recovery and therefore, the presumption under Section 118 of the Negotiable Instruments Act was not liable to be drawn. There are no signatures of Hans Raj either in vernacular or in English except on receipt. PW1-Sikander Singh when appeared in the witness box when subjected to cross-examination did not give the exact date or time as to when the loan was advanced. Rather, stated that it was given on the same day, i.e., when the sale deed was registered, whereas, pronote is of much later point of time, i.e., after two months. Ex.D2 and Ex.D4 are the

Power of Attorneys executed by Sikander Singh in favour of Hans Raj and Mohinder Singh. The plaintiff has not been able to rebut the aforementioned evidence in rebuttal by taking the aid of any handwriting expert or even called appellants to give similar specimen signatures as available on the pronote. All these factors have not been taken into consideration by the Courts below, thus, there is gross illegality and perversity in the findings rendered by both the Courts below.

In support of his aforementioned contention, relies upon the ratio decidendi culled out by this Court in **Sadhu Singh (deceased) through his legal heirs vs. Jang Singh 2012(3) RCR (Civil) 517; Rawat Singh vs. Mahender Singh 2011 (2) Law Herald 1563 and Sohan Singh vs. Amritpal Singh 2011(4) PLR 305.**

The arguments of Mr. G.S.Bal, learned Senior Counsel assisted by Mr. A.D.S.Bal, Advocate appearing on behalf of the respondent are that the receipt carries a presumption of truth as per the provisions of Section 118 of the Negotiable Instruments Act. The appellant-defendants have not been able to connect the alleged loan transaction with the sale deeds, aforementioned, vis-a-vis pronote. The concurrent findings of facts and law cannot be interfered until and unless, there is gross illegality and perversity. In fact, the pronote and receipt were executed in lieu of loan of ₹12,00,000/-. Though in one line of cross examination, it has surfaced that the loan was extended but the entire cross examination has to be read as a whole and not in isolation. Ex.D3, sale deed do not show that same was

executed in favour of both the defendants, rather was executed in favour of defendant – Hans Raj, therefore, the consideration of pronote and receipt in question is neither here nor there. All these factors have been taken care of by both the Courts below, thus, there is no illegality and perversity in the findings under challenge and urges this Court for affirming the impugned judgments and decrees.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below, record of the Courts below and of the view that there is force and merit in the submissions of Mr. Pritam Saini, for, Ex.D1, Ex.D3 and Ex.D2, Ex.D4, are the documents showing the signatures of appellant – Hans Raj in vernacular (Punjabi). No other effort has been made by the plaintiff to get compared the signatures by handwriting expert. In my view, the adverse inference was liable to be drawn which has not been taken into consideration, thus, there is an abdication.

I cannot remain unmindful of the fact that the presumption under Section 118 of the Negotiable Instruments Act cannot be drawn as the plaintiff miserably failed to prove the source, for, the alleged pronote does not bear the signatures of Hans Raj, appellant. It is only the receipt. Even the suit had been filed only two days before expiry of the limitation. The other attesting witness, namely, Balwinder Singh has not been examined, except Hans Raj and Mohinder Singh, power of attorney holder, who would always support each and every document. Even examination of defendant No.2 -Jai Gopal, who is nephew of DW1- Hans Raj, in my view,

would not fatal to the case. The signatures of Sikander Singh are conspicuously wanting on the pronote except on receipt, thus, there was no contract between the parties and in these circumstances, the suit could not have been filed. In my view, the plaintiff miserably failed to prove the source of extending the loan. All these factors, if being taken into consideration, collectively perhaps the suit would not have been decreed.

I am in agreement with the aforementioned ratio decidendi culled by this Court in the law cited by Mr. Saini as it was incumbent upon the plaintiff to prove the source of extending the loan and independent witness regarding the payment of loan. No bank statement or any other document has been produced on record.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the

provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being

a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

Accordingly, the judgments and decrees of the Courts below are set aside. The appeal stands allowed.

(AMIT RAWAL)
JUDGE

December 20, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No