

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

RSA-5082 of 2015 (O&M)

Date of decision: 06.05.2016

Saudagar Singh

...Appellant

Versus

Kundan Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Sharma, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

CM-12159-C-2015

Keeping in view the averments made in the application which is supported by an affidavit, the same is allowed. The delay of 03 days in filing the present appeal is hereby condoned.

CM-12160-C-2015

This is an application for condonation of delay of 40 days in refiling the appeal. It is averred that the delay has been caused due to miscalculation of dates and due to certain objections

raised by the Registry on 06.07.2015. Thereafter, delay was caused as the brief was misplaced in some other files.

Keeping in view the averments made in the application and the accompanying affidavit, and the fact that the objections were minor in nature, there appears to be sufficient cause for allowing the same. The delay of 40 days in refiling the present appeal is hereby condoned subject to all just exceptions.

RSA-5082-2015

The suit for recovery filed by the plaintiff/respondent (for short 'the respondent') was dismissed by the trial Court, vide judgment and decree dated 27.02.2013.

2. Aggrieved against the findings of trial Court, respondent filed an appeal which was allowed by the learned Appellate Court, vide judgment and decree dated 18.02.2015.

3. The Appellate Court reversed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal has been filed by the defendant/appellant.

4. The brief facts of the case are that on 31.05.2007, appellant borrowed a sum of Rs.1,80,000/- from the respondent. He agreed to pay 1.50% interest per month on the principal

amount and in lieu thereof, a pronote and a receipt were executed in the presence of marginal witnesses. Appellant had further agreed to repay the amount on demand. However, neither the appellant paid the amount nor the interest thereupon to the respondent despite repeated requests.

5. It is contended that the appellant neither raised a loan nor executed any pronote or receipt in favour of the respondent. The 1st Appellate Court has gravely erred in ignoring the findings recorded by the trial Court. The signatures of the appellant were obtained by, Dalbinder Singh, a commission agent in a good faith on the pretext of giving land on chakota with a promise to advance some money to the appellant. The signatures were obtained on blank papers. Later on, the advance of loan was refused on the excuse that his father did not agree to the same, however, the receipts were not returned, which have been misused by the respondent, which is duly established from the testimony of DW-2, Inderjit Singh, Handwriting and Fingerprint expert, who has specifically stated that the first two lines of the pronote and remaining body of pronote are in the different hand and further the trial Court has rightly noticed that there were overwriting of digits on the said pronote.

6. Heard, the learned counsel for the appellant and perused the record. Along with the appeal, the appellant has filed CM-12162-C-2015 for permission to lead additional evidence by way of placing on record Annexures A1 to A3.

7. Hon'ble the Supreme Court in '**Malayalam Plantations Ltd. Vs. State of Kerala and others**', 2011(3) RCR (Civil) 609, had held that it is trite to observe that under Order 41 Rule 27 CPC, additional evidence could be adduced in one of the three situations, namely, (a) where the trial Court has illegally refused the evidence although it ought to have been permitted; (b) where the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; and (c) where additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch the weak points in the case.

8. Analysed on the touchstone of the aforesaid observations made by Hon'ble the Supreme Court in the reported case, there is sufficient material on record to decide the case on

merits without allowing the application for additional evidence.

The documents mentioned in the said application were within the knowledge of the defendant/appellant. Hence, the application is hereby dismissed.

9. The respondent had filed suit for recovery against the appellant alleging that on 31.05.2007, the appellant had borrowed Rs.1,80,000/- from the respondent. Pronote cum receipt Ex. P1 and Ex.P2 were also executed in favour of the respondent at the time of advancing the loan, however, the appellant refuted the claim of the respondent by asserting that he never raised any loan from the respondent and the said pronote and receipt, Ex.P1 and Ex.P2 were fabricated and forged documents, however, he admits the signatures on said pronote and receipt. The due execution of said pronote and receipt was duly established by the testimony of PW-1, Darshan Singh, the attesting witness, who had specifically stated that on 31.05.2007, the respondent had advanced a sum of Rs.1,80,000/- in cash to the appellant and he (appellant) agreed to return the amount along with interest @ 1.5% per month. The main plea taken by the appellant that he signed the partially filled pronote in good faith on mere asking of one Dalwinder Singh, who is a

commission agent, does not seem to be truthful as there is no mention as to how much money the appellant proposed to raise and when did he approach the said Dalwinder Singh. Further, it is improbable that appellant signed the partially filled up note without any amount. The testimony of DW-2, Dr. Inderjit Singh is of no help to the appellant as he is the witness of the appellant, who had admitted that he did not take any specimen writing of the writer of note and receipt. It has also come in the testimony of appellant and his son, Sukhdeep Singh that neither the respondent nor the attesting witness, Darshan Singh had enmity against the appellant. Had the signatures of the appellant were obtained on partially filled up, he could have filed a complaint against Dalwinder Singh or the respondent but he did not opt to do so. The minor alterations in the pronote and receipt might have occurred as it was filled up by the son of the appellant who is a student. There is no cutting in the amount written in the words in note and receipt and this fact has been duly proved on record by leading cogent and convincing evidence on record. The appellant has failed to bring on record any cogent evidence or any document to assert that the said pronote and receipt are fabricated documents.

10. Therefore, in view of above facts and circumstances of the case, this Court is of the opinion that 1st Appellate Court has rightly dealt with the issues in the right perspective, which have been found to be based on proper appreciation of the pleadings and material available on record. Therefore, this Court concurs with findings recorded by 1st Appellate Court.

11. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal.

Dismissed in limine.

06.05.2016

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(JITENDRA CHAUHAN)
JUDGE