

RSA No. 5158-2015

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

RSA No. 5158-2015 (O & M)

Date of Decision: 15.02.2016

Jasmail Singh

... Appellant (s)

Versus

Karam Singh

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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

Present: Mr. Rishav Jain, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J. (Oral)

CM-12315-C-2015

Allowed, as prayed for. For the reasons mentioned in the application, delay of 795 days in re-filing the instant appeal is condoned.

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This regular second appeal of the defendant is directed against the judgment and decree dated 14.11.2008 passed by learned Civil Judge (Sr. Divn.), Malerkotla whereby suit for recovery filed by the respondent-plaintiff has been decreed and against the judgment and decree dated 04.12.2012 passed by learned Additional District Judge,

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Sangrur whereby appeal filed by the defendant has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff filed suit for recovery with the averments that on 15.12.2003, defendant borrowed a sum of Rs.4 lacs from him with a promise to return the same on demand with interest @ 2% per month. The defendant executed a pronote and receipt in lieu of the said loan amount in favour of the plaintiff, but the defendant did not return the principal amount or interest despite repeated requests made by the plaintiff and finally refused to make the payment. Hence, suit was filed.

Upon notice, the defendant resisted the suit and filed written statement taking various preliminary objections. It was denied that the defendant had borrowed any amount from the plaintiff and the defendant executed the pronote and receipt in favour of the plaintiff. The pronote and receipt are forged and fabricated documents and without consideration. Other averments in plaint were denied and dismissal of suit was prayed for.

On the basis of pleadings of parties, the Court of first instance framed following issues:

“1. *Whether the defendant executed a pronote and*

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receipt dated 15.12.2003 in favour of plaintiff?OPP

2. *Whether the plaintiff is entitled to recover the principal amount alongwith interest, as prayed for?OPP*
3. *Whether the suit is not maintainable in the present form?OPP*
4. *Whether the alleged pronote and receipt are forged, fabricated and without consideration?*
5. *Relief.”*

After appreciating the evidence, the Court of first instance decreed the suit vide impugned judgment and decree dated 14.11.2008 and the defendant was directed to make the payment of Rs.4 lacs along with interest @12% per annum from the date of pronote and receipt i.e. 15.12.2003 till the date of decree and future interest @ 6% per annum on the principal amount of Rs.4 lacs from the date of decree till realization of entire decreetal amount. Feeling aggrieved, the defendant preferred an appeal before learned Additional District Judge, Sangrur which has been dismissed vide impugned order dated 04.12.2012. Hence, this regular second appeal.

I have heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant has referred to following substantial questions of law formulated in the grounds of appeal for consideration by this Court:

- (i) *Whether the impugned judgments and decree are*

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against the principles of natural justice, as no proper opportunity has been afforded to the appellant to lead evidence and moreover the findings of the courts below based on the evidence on record are perverse being based on no evidence or based on irrelevant material?

- (ii) Whether the courts below have drawn wrong inference from the proved facts by applying the law erroneously?*
- (iii) Whether the findings and observations of the courts below are perverse, beyond pleadings and are sustainable in the eyes of law?*
- (iv) Whether the judgment of the lower Appellate Court which is against the provisions of Order 41 Rule 31 CPC is sustainable in the eyes of law?*

I have heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant submitted that both the courts below have not properly appreciated the evidence and there is misreading of material evidence by the courts below. The plaintiff has failed to prove the due execution of the pronote and receipt. The courts below have wrongly drawn adverse inference against the defendant. The plaintiff was duty bound to prove the due execution and the consideration.

I have considered the contentions of learned counsel for the appellant.

Both the courts below have concurrently held that to prove

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the due execution of pronote and receipt, the plaintiff examined PW 3 Hardeep Singh, scribe and PW 1 Gurmail Singh, marginal witness. The depositions of these two witnesses are supported by the plaintiff himself as PW 2. On the other hand, the defendant has not examined even a single witness to rebut the evidence led by the plaintiff. The evidence led by the plaintiff remains unrebutted and unchallenged, therefore, both the courts below have rightly drawn an adverse inference against the defendant while relying upon law laid down in *Iswar Bhai C. Patel @ Bachu Bhai Patel vs. Harihar Behera & Anr.* 1990 (2) Civil Court Cases 1.

Learned counsel for the appellant has failed to show that findings recorded by the courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, the concurrent findings recorded by the courts below do not warrant interference in regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

15.02.2016

parveen kumar

**(Paramjeet Singh Dhaliwal)
Judge**