

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.2847 of 2014 (O&M)
Date of Decision.14.09.2016

Sohan Singh

.....Appellant

Vs

Bhagwan Singh

.....Respondent

Present: Mr. G.P. Vashist, Advocate
for the appellant.

Mr. C.S. Bagri, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The prayer is made for stay of the execution proceedings as the main case is fixed for 15.12.2016. Both the parties are ad idem that instead of hearing the application for stay, the main appeal itself be taken on board. With the consent of both the parties, the main case is taken up on board today itself for final hearing.

Mr. G.P. Vashisht, learned counsel appearing for the appellant-defendant submits that in suit for recovery, non appearance of the plaintiff, who alleged to have advanced the loan amount, would fetter his case, in essence, his examination-in-chief submitted by way of affidavit was not signed and attorney cannot depose about the personal communication between the principal and the defendant. In fact the agent would not know about the transaction. In support of his contention, he relies upon judgment of Hon'ble Supreme Court in **Man Kaur (D) through LRs Vs. Hartar Singh Sangha 2010 (10) SCC 512**, thus, urges this Court for setting aside of the judgment and decree under challenge.

Per contra, Mr. C.S. Bagri, learned counsel appearing for the

respondent submits that the plaintiff had put in appearance and he was

extensively cross-examined. He was suffering from ailment and was aged 70 years. In this backdrop of the matter, the attorney was summoned. Even the pronote and receipt had been proved through the testimony of attesting witnesses whereas on the other side, the defendant has failed to dispel the presumption of truth as per Section 118 of the Negotiable Instruments Act, thus, urges this Court for confirming the finding rendered by the Courts below.

I have heard learned counsel for the parties, appraised the paper book and of the view that it is a matter of record that the plaintiff had put in appearance and was subjected to extensive cross-examination and therefore, the appellant-defendant cannot complain that he was prevented from putting certain questions in cross-examination. Both the attesting witnesses have proved the pronote and receipt containing the signatures of appellant-defendant. Nothing prevented the defendant to bring any direct, cogent, much less, corroborative evidence to dispel the same. Having failed to do so, I am of the view that the appellant-defendant cannot be permitted to re-agitate the grievance as per the ratio decidendi culled out in **Man Kaur's** case (supra). In my view, the respondent-plaintiff has discharged the onus with regard to advancing of loan.

For the aforementioned reasons, I do not intend to differ with the findings rendered by the Courts below as the same are based upon correct appreciation of oral as well as documentary evidence, much less, no ground for inteference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 14, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No