

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

R.S.A No.5598 of 2014

Date of decision : 03.05.2016

Prem Kumar

..... Appellant

Versus

Suba Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Narender Singh Kamboj, Advocate
for the appellant.

Mr. Ravi Sodhi, Advocate
for the respondent.

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

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-defendant against the judgment and decree dated 31.07.2014 passed by the learned District Judge, Sirsa, whereby the appeal filed by the plaintiff-respondent against the judgment and decree dated 29.11.2013 passed by learned Civil Judge (Junior Division), Sirsa, has been allowed and the decree for recovery of Rs. 2,30,000/- along with interest at the rate of 6 % per annum from the date of borrowing the amount till its final realization has been passed..

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The plaintiff-respondent has filed the suit for recovery on the grounds *inter alia* that he advanced a loan of Rs. 2,30,000/- to the

appellant-defendant on interest at the rate of 18 % per annum as he was in dire need of the said amount. The said amount was advanced on 31.07.2010 in the presence of the witnesses. In consideration thereof, the appellant-defendant executed the pronote and receipt in favour of the plaintiff-respondent. Appellant-defendant did not paid the principal amount nor the agreed rate of interest. Hence the suit.

4. Appellant-defendant contested the suit on the plea that the alleged pronote and receipt are false and forged documents. It was further pleaded that he had borrowed a sum of Rs.1 lac from the plaintiff and in lieu of the security, the plaintiff obtained his signatures on the blank pronote and receipt with promise to return back the same as and when the said amount would be paid and the defendant under *bonafide* belief, being a co-villager, put his signatures on blank pronote and receipt. No interest was agreed to be paid on the said amount as the same was repaid by the defendant within short spell of two months in the presence of respectables of the village. But, the blank signed pronote and receipt were not returned by the plaintiff to the defendant despite demand. All other averments in the plaint were controverted.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to recover a sum of Rs. 2,30,000/- from the defendant on the basis of pronote and receipt dated 31.07.2010, as alleged?OPP
2. Whether the suit of the plaintiff is not maintainable in the present for?OPD
3. Whether the plaintiff has no cause of action and locus standi to file present suit?OPD

4. Whether the plaintiff has not come to the court with clean hands and has concealed the true and material facts?OPD
5. Whether the suit of the plaintiff is false and frivolous?OPD
6. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the plaintiff-respondent with costs, vide impugned judgment and decree dated 29.11.2013.

7. Aggrieved with the aforesaid judgment and decree, plaintiff-respondent preferred the appeal, which was allowed by the learned District Judge, Sirsa, vide impugned judgment and decree dated 31.07.2014. A decree for recovery of Rs. 2,30,000/- along with interest at the rate of 6 % per annum from the date of borrowing the amount till its final realization was passed. Hence this Regular Second Appeal by the appellant-defendant.

8. I have heard Mr. Narender Singh Kamboj, Advocate, learned counsel for the appellant, Mr. Ravi Sodhi, Advocate, learned counsel for the respondents and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that the judgment passed by the learned First Appellate Court is based on conjunctures and surmises and is not legally sustainable. He contended that the learned First Appellate Court has not considered the genuineness of the documents produced by the plaintiff. The bare perusal of the pronote and receipt shows that the same are forged. Even, the signatures of scribe Sanjay Kumar Jain affixed on the pronote and receipt are different. Various columns in the pronote are blank. Even, the rate of

interest is not mentioned in the pronote. The column regarding principal amount is also blank, which shows that the pronote and receipt are not the genuine documents.

10. He further contended that in-fact, the plaintiff-respondent has obtained the signatures of the appellant on the blank pronote and receipt. The appellant-defendant has only borrowed a sum of Rs. 1 lac from the plaintiff-respondent and the same was returned within a period of two months. Scribe-Sanjay Kumar Jain, was not present at the time of advancing the loan. His signatures on the pronote seems to be forged. Thus, he contended that the pronote and receipt are the forged documents and no decree can be passed on the basis of such forged documents. Thus, he contended that the learned First Appellate Court has committed a serious error to decree the suit.

11. On the other hand, learned counsel for the respondent contended that the suit filed by the plaintiff-respondent was dismissed by the learned trial Court in an illegal manner. The defendant has not led any evidence to prove the plea in the written statement. There was no evidence to show that the pronote and receipt are the forged documents. No expert witness has been examined by the defendant. Moreover, he has admitted his signatures on the pronote and receipt. He contended that it is not believable that after making the payment of alleged amount of Rs. 1 lac, he will not take back the pronote and receipt. Thus, the story projected by defendant is not established. He contended that execution of the pronote is established from the statement of the plaintiff and the scribe. Thus, he contended that the learned First Appellate Court has

rightly decreed the suit.

12. I have duly considered the aforesaid contentions.

13. It is an admitted fact that the appellant-defendant has not led any evidence to establish the plea raised by him in the written statement. Even, the appellant-defendant himself did not stepped into witness box. The learned trial Court has dismissed the suit on the ground that the plaintiff was required to stand on his own legs and cannot take the benefit of the weakness in the case of the defendant. It was held that the pronote and receipt are incompletely filled as the principal amount delivered to the defendant is not mentioned therein. The rate of interest is also missing from the pronote. The signatures of scribe Sanjay Kumar Jain are not appended in the same manner on the pronote and receipt, which raises doubt about the genuineness of the claim of the plaintiff. It was also mentioned that there were some discrepancies in the statement of the witnesses. Thus, the suit was dismissed.

14. The learned First Appellate Court has laid down as under:-

“15. In the written statement, appellant-defendant has not denied presence of his signatures on pronote Ex.P-1 and receipt Ex.P-2 in question but raised a plea that the above said documents were forged by the plaintiff, the due execution of which is not proved in the presence of suspicious circumspsect on the grounds that the documents in question do not carry rate of interest and pronote itself does not find mention of signatures of recipient of the alleged amount coupled with the fact that the scribe of the documents put different kind of signatures on pronote Ex.P-1 and receipt Ex.P-2 and further the testimonies of PW-1 Sanjay Kumar Jain, Scribe and PW-2 Suba Singh-plaintiff suffer from variance regarding presence of one witness at the time of alleged execution of documents in question. Nothing substantial could transpire in the addressed arguments of learned counsel for defendant-respondent. The

non-mentioning of rate of interest as well as the name of attesting witness in the pronote Ex.P-1 and receipt Ex.P-2 does not affect its legality and validity. Further the stamps affixed on both pronote and receipt bear the signatures of defendant-respondent in token of having received the amount. A perusal of pronote Ex.P-1 and receipt Ex.P-2 reveals that the scribe of same put his signatures on pronote whereas on the receipt he has written his full name in the column of witness and this fact is also not adversely affecting the evidentiary value of the said documents. The defendant-appellant has not produced on record even an iota of evidence what to talk of substantial evidence. He himself even failed to step into the witness box in support of his claim. Thus, the due execution of pronote Ex.P-1 and receipt Ex.P-2 stands fully established by the plaintiff. Thus, the learned trial Court has committed error in not appreciating the evidence led by the plaintiff in right perspective and has illegally passed the impugned judgment and decree.”

15. The aforesaid findings recorded by the learned District Judge are the correct appreciation of the evidence brought on record and is in the right perspective. Whereas, the approach of the learned trial Court was erroneous. The execution of the pronote and receipt Ex.P-1 and Ex.P-2 is proved from the statements of the plaintiff-Suba Singh (PW-2) and PW-1 Sanjay Kumar Jain, the Scribe. Nothing substantial could be brought in their cross-examination. Learned counsel for the respondent has placed on file the certified copies of the pleadings, the pronote and receipt as well as the evidence recorded by the learned trial Court. The perusal of the pronote and receipt shows that in the pronote, PW-1 Sanjay Kumar Jain has put his initials in the column meant for scribe and in the receipt he has signed the column of witness, wherein he has put his full signatures. So, it cannot be a ground to doubt the genuineness of these documents. In the pronote as well as receipt, the amount of Rs. 2,30,000/-

stands categorically mentioned. So, it cannot be stated that the principal amount advanced by the plaintiff-respondent to the appellant-defendant has not been mentioned in the pronote and receipt Ex.P-1 and Ex.P-2 respectively. Mere omission in the column regarding rate of interest cannot render the execution of the pronote Ex.P-1 and receipt Ex.P-2 doubtful as PW-1 Sanjay Kumar Jain has categorically stated in his affidavit that the rate of interest could not be written in the pronote due to mistake. The appellant-defendant has impliedly admitted his signatures on the pronote and receipt Ex.P-1 and Ex.P-2. He has pleaded that his signatures were obtained on the blank pronote and receipt while advancing Rs. 1 lac, which is alleged to have been returned later on. As already mentioned, the appellant-defendant has not stepped into the witness box to establish his plea raised in the written statement. It is settled principle of law that the pleadings cannot take place of proof, the plea raised in the pleadings has to be proved by leading cogent and convincing evidence. So, the story projected by the appellant-defendant in the written statement that his signatures were obtained on blank pronote and receipt while he has borrowed only Rs. 1 lac from the plaintiff-respondent, which was returned within two months is not substantiated as the appellant-defendant has not stepped into the witness box nor he has produced any witness in whose presence he has returned the aforesaid money. It is not believable that appellant-defendant would have repaid huge amount of Rs. One lac without even obtaining any receipt thereof. He has also not examined any expert witness to show that signatures of PW-1 Sanjay Kumar Jain or his own signatures were forged on the pronote and receipt

Ex.P-1 and Ex.P-2. Thus, from the unrebutted evidence adduced by the appellant-defendant, the execution of the pronote Ex.P-1 and receipt Ex.P-2 stands fully established.

16. PW-1 Sanjay Kumar Jain, the scribe has categorically deposed that the sum of Rs. 2,30,000/- was advanced by the plaintiff to appellant-defendant in his presence. Plaintiff-Suba Singh while appearing in the witness box as PW-2 has also categorically deposed that he has advanced a sum of Rs. 2,30,000/- to the appellant-defendant and in consideration thereof, the appellant-defendant executed the pronote and receipt dated 31.07.2010. Moreover, once the execution of the pronote is established, it is presumed to be with consideration as per the provisions of Section 118(a) of the Negotiable Instruments Act, 1881.

17. There is no evidence on record to show the repayment of the aforesaid amount of Rs. 2,30,000/-. Thus, the learned First Appellate Court has rightly held the plaintiff-respondent entitled to receive the aforesaid amount along with interest from appellant-defendant.

18. Consequently, I do not find any illegality in the impugned judgment and decree dated 31.07.2014 passed by the learned First Appellate Court.

19. Thus, no question of law, much less, the substantial question of law arises in the present appeal.

20. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

May 03, 2016

s.khan

(DARSHAN SINGH)
JUDGE