

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

**RSA No.1324 of 2016 (O&M)
Date of Decision: 17.07.2017**

Gurmail Singh

... Appellant

Versus

Bhupinder Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Inderpal Singh Parmar, Advocate,
for the Appellant.

ANIL KSHETARPAL, J.

CM 8443-C OF 2017

This is an application under Order 41 Rule 5 CPC for grant of temporary relief.

With the consent of learned counsel for the appellant, the main case itself is being taken up and heard today. Therefore, the date of hearing is preponed to today.

The application stands disposed of.

RSA No.1324 of 2016

Defendant-appellant has filed the present appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff filed a suit for recovery of Rs.4,80,000/- i.e. Rs.3,00,000/- as principal amount and Rs.1,08,000/- as interest, on the basis of pronote and receipt executed in his favour by the defendant. In the written statement, defendant denied execution of any pronote, however, submitted that he used to sell his crop at the shop of one Ajmer Singh in the

and the receipt in question. Defendant further asserted that the pronote bears stamp of 20 paise, printing whereof was stopped in the year 1992. Therefore, his old signatures on the pronote and receipt have been misused.

To prove the execution of pronote, plaintiff examined Ajmer Singh as PW2 and Jasmer Singh as PW3. Defendant in his defence stepped into the witness box as DW3 and examined Sunil Kumar, Assistant Treasury Officer as DW2. Learned trial Court as well as first Appellate Court after appreciating the evidence on the file, decreed the suit filed by the plaintiff. Suit was decreed with interest at the rate of 6% per annum with effect from 11.03.2011 till actual realisation.

In the Regular Second Appeal, counsel for the appellant has submitted that since the Government Press had stopped printing the stamp of 20 paise in the year 1992, therefore, execution of pronote dated 11.03.2011 is clearly doubtful. It has been contended that the old pronote and receipt have been used. He has further contended that since defendant very fairly admitted transactions with Ajmer Singh upto the year 1991, therefore, it is obvious that signatures on the pronote and receipt have been misused.

I have considered the argument of the learned counsel for the appellant and with his assistance gone through the paper book.

As per Sunil Kumar, Assistant Treasury Officer, who appeared as DW2, the Central Government stopped printing of stamp of 20 paise with effect from 20.10.1994. However, it has not been stated that stamp of 20 paise went out of circulation or lost its legal status. Defendant has not produced any notification or rule to prove that affixing of stamp of 20 paise was not permissible after 1994.

Defendant has admitted his signatures on the pronote as well as receipt, which are Ex. P1 and P2 on the file. Signatures on both the documents along with statement of witnesses examined by plaintiff prove beyond doubt that pronote was duly executed. Pronote is a negotiable instrument. There is a presumption of truth attached with such negotiable instruments. Defendant has failed to bring forth any evidence to rebut the presumption.

Second submission of learned counsel is with respect to the signatures of the defendant having been misused by the plaintiff. It has been found by the Courts below that defendant-appellant has failed to prove the same. Apart from the bald statement of defendant, no evidence has been led to prove that signatures on old pronote and receipt have been used by the plaintiff. The appellant has not been able to bring forth any substantial question of law. The questions of law framed by the appellant are as under:-

- (i) whether the Courts below have not properly appreciated the evidence on record?
- (ii) whether the pronote and receipt dated 11.03.2011 bearing stamp of 20 paise is a result of fraud?

In my considered opinion, both the questions are not substantial questions of law.

In Punjab and Haryana, Regular Second Appeals are governed by Section 41 of the Punjab Courts Act, 1918 (for short 'the Act'). Section 41 of the Act reads as under: –

“41. Second appeals – (1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds,

namely :

- (a) the decision being contrary to law or to some custom or usage having the force of law;*
- (b) the decision having failed to determine some material issue of law or custom or usage having the force of law;*
- (c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits.*

Explanation – *A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of his section.*

(2) An appeal may lie under this section from an appellate decree passed ex parte."

Reading of Section 41 of the Act would show that the Second Appeal can only be entertained on limited grounds as spelled out in Section 41 of the Act.

The appellant has not been able to make out any ground, which may fall within the scope of Section 41 of the Act.

Finding no merit in the appeal, the same is ordered to be dismissed.

17.07.2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No