

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2492 of 2012 (O&M)
Date of decision: 20.07.2017

Nazar Singh

... Appellant

Vs.

Rahuljit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Munish Raj, Advocate for
Mr. K.S. Chahal, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant regular second appeal, at the hands of defendant, is directed against the impugned judgment of reversal passed by the learned first appellate Court, whereby first appeal of the plaintiff was allowed, setting aside the judgment and decree dated 25.03.2011 of the learned trial Court and consequently, suit for recovery filed by the plaintiff was decreed by the learned District Judge vide impugned judgment and decree dated 02.03.2012.

Brief facts of the case, as noticed by learned trial Court in para 1 of its impugned judgment, are that plaintiff filed the suit for recovery of Rs.4,56,000/- along with interest from Nazar Singh on the ground that Nazar Singh had borrowed a sum of Rs.4,00,000/- on 15.05.2005 from plaintiff on the basis of pronote and receipt thereunder duly executed by Nazar Singh by affixing his thumb impression in the presence of witness of receipt. It was

further alleged that the principal amount was to be paid by the defendant with interest at the rate of Rs.1/- per month and that the defendant having failed to repay the debt despite demands, the suit had to be filed.

Upon notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether defendant has borrowed a sum of Rs.4 lacs and executed pronote and receipt on 15.05.2005 in favour of plaintiff? OPP
2. Whether plaintiff is entitled to recover principal amount of Rs.4 lacs? OPP
3. Whether plaintiff is entitled to interest, if so at what rate? OPP
4. Relief.

In support of their respective stands taken in the pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court held that the plaintiff has failed to prove his case. Accordingly, suit for recovery filed by the plaintiff was dismissed by the learned trial Court, vide its judgment and decree dated 25.03.2011. Feeling aggrieved, plaintiff filed his first appeal, which came to be allowed by the learned District Judge, vide his impugned judgment and decree dated 02.03.2012. Hence this regular second appeal at the hands of defendant.

Heard learned counsel for the appellant.

A bare reading of the impugned judgment passed by the learned first appellate Court will make it crystal clear that plaintiff has duly proved his case by leading cogent and convincing evidence, whereas defendant-appellant failed to produce any relevant material on record in support of his pleaded case. Since the learned trial Court fell in serious error of law, while dismissing the suit for recovery filed by the plaintiff, the learned first appellate Court committed no error of law in passing the impugned judgment of reversal, which has been found based on true facts of the case and the same deserves to be upheld.

With a view to prove his case, plaintiff examined Harjeet Singh PW1, who was one of the attesting witness of the promissory note and receipt. Plaintiff himself appeared as PW2. Both these witnesses duly proved on record that the promissory note and receipt were valid and genuine documents. Defendant-appellant had an opportunity to confront both these witnesses putting them the appropriate suggestion to prove his case. However, defendant-appellant failed to do so and that too for no good reasons. PW1 and PW2 stood the acid test of cross-examination.

Defendant could not elicit anything adverse from both these witnesses during their cross-examination. In this view of the matter, it can be safely concluded that promissory note Ex.P1 and receipt Ex.P2 were duly proved by the plaintiff by leading trustworthy evidence. Since the learned trial Court could not appreciate this material aspect of the matter, the learned first appellate Court was well within its jurisdiction to reverse the findings of the learned trial Court and first appeal of the plaintiff was rightly allowed vide impugned judgment and decree dated 02.03.2012 which deserve to be upheld,

for this reason also.

Statutory presumption under Section 118 (g) of the Negotiable Instruments Act, 1881 was also in favour of the plaintiff and against the defendant-appellant. Although such a presumption would always be rebuttable, but the defendant-appellant did not make even an effort to rebut this statutory presumption in favour of the plaintiff. Plaintiff, by producing the abovesaid evidence, discharged his initial onus and thereafter, the onus would shift on the defendant to disprove the abovesaid statutory presumption. However, as noticed hereinabove, defendant-appellant failed to lead any trustworthy evidence, except his own self-serving statement, so as to rebut the statutory presumption. In such a situation, defendant-appellant was bound to fail. That is what has been rightly held by the learned District Judge and the impugned judgment and decree deserve to be upheld.

There is another equally important aspect of the matter, which deserves to be noticed here. Defendant-appellant, while denying his thumb impression affixed on the promissory note Ex.P1 and receipt Ex.P2, alleged that these documents were the result of fabrication. However surprisingly, he did not try to prove this plea of fraud and fabrication alleged by him. It is very easy to raise the plea of fraud, but it is equally difficult to prove the same, because the plea of fraud is supposed to be proved like a criminal charge. Since the defendant-appellant proceeded on a casual approach in this regard, no fault can be found with the impugned judgment passed by the learned first appellate Court and the same deserves to be upheld, for this reason as well.

Before arriving at his judicious conclusion, learned District Judge rightly examined, considered and appreciated true facts of the case as well as

the evidence available on record, in correct perspective. The relevant and cogent findings recorded by learned first appellate Court in paras 23, 24, 36 and 38 of the impugned judgment, which deserve to be noticed here, read as under:-

“It also needs to be highlighted that during cross-examination PW1 Harjit Singh, one of the attesting witnesses of the promissory note and receipt has stated that promissory note and receipt were scribed at 11.00/11.30 a.m., it was typed by a typist who was Sikh gentleman, it was scribed in Court Complex in front of Bus Stand where Tehsildar and petition writers etc. used to sit, he came alone, when he reached there, appellant, respondent and one more person who was accompanying the respondent were present, three-four thumb impressions of the respondent were affixed on upper portion and same number of thumb impression were affixed on lower portion and the amount was paid in cash. He has not been confronted with a suggestion to the contrary on behalf of the respondent which, by necessary implication, implies that the respondent does not dispute correctness of this part of statement made by him.

Similarly, appellant Rahuljit Singh, while appearing as PW2 has stated during cross-examination that he knew the respondent for the last 10-12 years, he has given the amount for the first time to Nazar Singh, the respondent, he directly paid the amount to him (respondent) and that he paid the amount to respondent as he was known to him earlier. He has not been confronted with a suggestion to the contrary on behalf of the respondent which, by

necessary implication, implies that respondent does not dispute correctness of this part of statement made by PW2 Rahuljit Singh, the appellant.

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With the legal position as adumbrated in the cited judgments in the background, it needs to be stated that the respondent has himself appeared in the witness stands as DW1 and has stated that the promissory note and receipt in question are forged and fabricated documents and without consideration, but he has not been able to bring any cogent and reliable evidence to prove his plea except for his solitary self serving and statement of DW2 Harcharan Singh and DW3 Nihal Singh who have stated about sale of crops by the respondent at commission agent firm namely M/s Illwal Trading Company which is far from being sufficient to dislodge the presumption in favour of the respondent and to discard cogent and convincing evidence led by the appellant. As held in the cited judgments proof of execution of receipt, Ex.P2 in itself is sufficient to prove that the promissory note, Ex.P1 was executed by the appellant in lieu of consideration because the receipt Ex.P2 tantamounts to travel of the consideration from the hands of the loaner to those of the loanee and no further proof is required to prove that the promissory note was executed for consideration.

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It is needless to mention here that though in view of plea of

the respondent that his thumb impressions were obtained on blank documents, it is clear that he is not disputing his thumb impressions on promissory note and receipt in question but during cross examination while appearing as DW1 he has denied his thumb impression on promissory note and receipt. In the written statement, respondent has taken up plea that he used to sell his crops with commission agent shop of Jaswant Singh and Davinder Singh who used to obtain his signatures on blank papers which have been used by said firm to forged promissory note and receipt in favour of the respondent and he has not talked even a word about M/s Illwal Trading Company, Sangrur or its partners but while appearing as DW1 he has stated that instant suit has been filed by the appellant at the instance of M/s Illwal Trading Company, Sangrur by stating that sisters of the appellant who is a permanent resident of Barnala are married with Rai Singh and Ranjit Singh Maur, Advocate sons of Gobinder Singh and Gobinder Singh, father of Ranjit Singh Maur, Advocate is partner/associated with M/s Illwal Trading Company. Even evidence of DW2 Gurcharan Singh and DW3 Nihal Singh, both Mandi Supervisors, Market Sangrur, is with regard to firm M/s Illwal Trading Company and they have not stated about dealings of the respondent with commission agent shop of Jaswant Singh and Davinder Singh, Grain Market, Sangrur and this evidence being beyond pleadings cannot be looked into and thus, has misfired because in Anathula Sudhakar versus P. Buchi Reddy,

2008 (2) Apex Court Judgments 660 (Supreme Court) it has been held by the Hon'ble Supreme Court of India that no amount of evidence or arguments can be looked into or considered in the absence of pleadings and issues is a proposition that is too well settled."

Despite making his best efforts, learned counsel for the appellant could not improve upon the case of the defendant-appellant before this Court and rightly so, it being a matter of record because there was no supporting material available in favour of the appellant. When confronted as to why the material witnesses PW1 and PW2 produced by the plaintiff were not cross-examined on the crucial issues by the defendant, learned counsel for the appellant had no answer and rightly so, it being again a matter of record. Having said that, this Court feels no hesitation to conclude that learned first appellate Court was well justified in reversing the patently illegal findings recorded by the learned trial Court, because of which the impugned judgment deserves to be upheld.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the findings recorded by the learned first appellate Court. Further, no question of law, much less substantial question of law arises for consideration of this Court, which is sine qua non for entertaining the regular second appeal, while exercising the appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reference can be made to the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

20.07.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No