IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5208 of 2012 (O&M)
Date of Decision: 4.9.2017

Amarjit Kaur ...Appellants

Versus

Jeewan Singh ...Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Nitesh Singhi, Advocate for the appellant

Mr.S.S.Siao, Advocate for the respondent

RAJIV NARAIN RAINA, J. (Oral)

1. This second appeal has been preferred against the judgment dated 26th September, 2009 passed by learned Additional Civil Judge (Sr.Division), Samrala, whereby a money decree has been passed in favour of the plaintiff and against the defendant by allowing his suit. The first appeal filed by the defendant was dismissed vide judgment and decree dated 9th August, 2012 passed by the learned Addl. District Judge, Ludhiana.

2. The case in hand is that the defendant took loan from the plaintiff in the year 2000 in a sum of ₹ 70,000/- for household expenses with interest at the rate of 1.5% p.m with the promise to return the amount on demand. The defendant failed to return the money, and therefore, the money decree has followed. The defence of the appellant/defendant to the suit for recovery was that plaintiff had obtained; as is often the usual stock defence in such cases when signature is not advised to be disputed to earn the wrath of the criminal

law, her signatures on a blank promissory note and receipt for commisseration of the defendant by creating a false document for the recovery of the alleged loan amount.

3. Side-stepping the claim, the defendant pleaded that the true facts were that the actual loan she admitted was only ₹ 40,000/- which was fabricated by the plaintiff to read ₹ 70,000/- to defraud her. The defendant had repaid ₹ 55,000/- i.e. ₹ 40,000/- as principal amount and ₹ 15,000/- as accrued interest in the presence of witnesses and nothing remained to be paid. This was her defence by explaining the loan.

4. In order to prove the loan, the plaintiff examined the deed writer who in his testimony supported due execution of pronote and accompanying receipt dated 18th February, 2000, Ex.P1 and P-2. The loan was given in cash and the deed writer was witness to the transaction. Besides, the attesting witness on the pronote, one Naveen Kumar PW2 was produced who supported the version of the plaintiff. The plaintiff appeared as his own witness as PW3 and affirmed his version in the plaint. He was cross-examined. During cross-examination he was confronted with one writing Ex.D1 produced by the defendant and the plaintiff admitted his signature thereon, but denied that the said writing pertained to the amount in dispute, and therefore, could not be taken into consideration.

5. The trial court considered the evidence and found due execution of pronote and receipt in favour of the plaintiff/claimant. The rate of interest was found excessive and was suitably reduced to 12% per annum by the court. No evidence was led on issue no.2 by the defendant that the suit is not maintainable in the form presented.

6. The suit was decreed by the learned Additional Civil Judge (Sr.Divn.), Samrala by judgment and decree dated 26th September, 2009. The defendant became a judgment debtor. The appeal filed by the plaintiff failed in the Court of the learned Additional District Judge, Ludhiana by pronouncing a detailed judgment, which to my mind was on account of the fact that the judgment of the trial court is short and crisp. The only document in defence of the defendant appellant was Ex.D1 being the writing allegedly written by the plaintiff in long hand. Due regard was paid by the first appellate court to this writing and the Judge found that it is neither signed by the parties to the suit nor by any witness. No date has been mentioned regarding the execution of Ex.D1. There was no mention of any name in the receipt. It is a mere piece of paper wherein some calculations have been made. The first appellate court held that even if the plaintiff admitted in his cross-examination that calculation was in his hand, he denied that this pertained to the pronote and the receipt.

7. There was no evidence by the defendant to connect the transaction by legally acceptable and bridging evidence connecting it inevitably to the subject matter in the recovery suit. Since there is nothing mentioned in the writing Ex.D1 as to who had paid amounts of money and to whom paid and of what amount vide Ex.D1. In these facts and circumstances the first appellate court has rightly held that the document Ex.D1 cannot be said to relate to the disputed amount mentioned in the pronote Ex.P1 and receipt P-2 which has been duly proved on record. There was no evidence that the dispute between the parties stood settled for ₹ 55,000/- as against the disputed amount of the pronote and to the satisfaction of the claim of the plaintiff.

8. To make matters more arduous for the defendant, her evidence was closed by the order. She did not apply for its revision in the High Court and succumbed to the order. Thus, the evidence of the plaintiff had remained unrebutted and unchallenged on the record. As such it inspires confidence that the transactions took place between the parties and court could verily hold them to be legal and valid in creating liability upon the defendant. It may be mentioned that by interim order dated 7th April, 2015 passed by this Court, execution proceedings were stayed, subject to deposit of 50% of the decretal amount within a period of 15 days from the date of the order. On the next date i.e. on 25th May, 2015, this Court has recorded that the previous order has been complied with. As a result, 50% of the disputed amount under the money decree has been deposited and as of now, only the other half i.e. the half of the principal amount + interest as decreed will remain executable.

9. On the basis of the lack of evidence and materials on record, it is not possible for this Court to interfere with the concurrent findings of fact recorded by the courts below. The judgments and decrees of the courts below do not suffer from any legal or factual infirmity nor can the same be said to be tainted with any error apparent on the face of record so as to require interference by this Court in this appeal. No question of law, much less a substantial one, arises for consideration in this appeal.

10. The case stands concluded by findings of fact proving the loan transaction and second appeal against an appellate decree does not lie only to disturb them by arguing a case the third time. Trying to make this Court re-appreciate a view taken on facts only to substitute opinion

on those facts as against concurrently expressed findings of the two courts *a quo* is not within the scope of jurisdiction in the present appeal.

11. For the foregoing reasons, this appeal is held to be without substance and is hereby dismissed.

(RAJIV NARAIN RAINA)
4.9.2017 **JUDGE**
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *No*

Md. Firoz Khan
2017.10.11 12:33