

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

RSA No.1625 of 2013 (O&M)

Date of Decision: 15.9.2017

Harmesh Kumar

... Appellant

Versus

Taranjit Singh

... Respondents

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

Present: Mr.Roopam Jain, Advocate for the appellant.

RAJIV NARAIN RAINA, J. (Oral)

1. This second appeal has been filed against the judgment and decree dated 6th December, 2012 passed by the learned District Judge, Faridkot whereby the suit of the plaintiff has been dismissed by reversing the judgment and decree dated 11th September, 2012 passed by the trial court. Plaintiff has filed suit for recovery of ₹ 9,28,880/- including principal amount of ₹ 6,83,000 and accrued interest to the tune of ₹ 2,45,880/- at the rate of 1% per month on the basis of a promissory note and money receipt dated 5th April, 2006.

2. I have heard learned counsel for the appellant and perused the lower court records.

3. A coordinate Bench of this Court also perused the record and the moot pronote and vide order dated 16th December, 2016 observed as under:-

“Pursuant to the order dated 3.11.2016, the original records of the court’s below have been received, a perusal of which shows that what was contended before the court’s below, to the effect that the numerals ‘6’ and ‘3’ were added in a different ink before the numerals “83,000” and “41,500” respectively, is seen to be so

even to the naked eye, however, it is also seen that thereafter there is a continuous writing of “6,83,000” followed by the same amount given in words, in *Gurmukhi*, i.e. six lacs and eighty three thousand.

Learned counsel for the respondent seeks time to inspect the records and address arguments thereafter.

Adjourned to 17.02.2017.”

4. I have today seen the original pronote available in the LCR. I find myself in agreement with and confirm the above observations. Even the hand writing expert rendered opinion that “6,83,000” with the number “6” and two commas have been inserted visibly in a different shade of ink which is clearly darker than the figure “83,000” and creates grave suspicion in mind on the authenticity of the pronote with the disputed amount, especially in a deal between a small farmer-defendant with marginal land holding and the plaintiff-commission agent transacting a huge loan.

5. The learned District Judge has rightly reversed the judgment and decree of the trial court for good and sufficient reasons after appreciating the evidence on record and recording positive findings on the genuineness of the pronote. A pronote representing a huge transaction of ₹ 6,83,000/- must be free from all doubts and any suspicion casting a dark shadow on the alleged instrument renders it unenforceable in law, except to the extent admitted by the defendant. If the defendant took inconsistent stands on whether he consciously signed the pronote as debt and would later depose that he signed only for ₹ 83,000/-, then his stand would be seen as in defence to the suit which was itself based on a suspicious document. Tampering cannot be ruled out on the pronote and it would, I think, be rather unsafe to rest a decree on. I would, therefore, not think it wise to tinker with the findings of the first

produced by the parties is not the business of this Court, either in exercise of jurisdiction under Section 100 CPC or under Section 41 of the Punjab Courts Act, 1918 when it does not give rise to a question or a substantial question of law, even if erroneous. High Court will not substitute opinion or discretion judiciously exercised by the lower courts on the materials available.

6. It is not possible for this Court to upset the findings of fact recorded by the first appellate court. The preponderance of probabilities leans apparently in favour of the defendant. The judgment and decree of the first appellate court does not suffer from any illegality, irregularity or perversity. Nor the same can be said to be tainted with any error apparent on the face of the record so as to require interference by this Court in this appeal.

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

(RAJIV NARAIN RAINA)
JUDGE

15.9.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No