

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

RSA No.1595 of 2015 (O&M)

Date of Decision: August 23, 2017

Lakhwinder Kaur and another

..... Appellants

Versus

Sheela Rani and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Raman Mohinder Sharma, Advocate
for the appellants.

DEEPAK SIBAL J. (ORAL)

Respondent No.1, who was the plaintiff before the trial Court had filed a suit seeking therein recovery from the predecessor in interest of the appellants an amount of Rs.81,600/- (Rs.60,000/- as principal amount and Rs.21,600/- as interest). Future interest was also claimed.

The case set up by respondent No.1 was that on 08.03.2006, Raghubir Singh (now deceased) took a cash loan of Rs.60,000/- from respondent No.1 and as a token of acceptance of such transaction, executed a pronote and a receipt in the presence of marginal witnesses. Raghubir Singh further agreed to repay the loan amount along with interest @ 1.56 % per month but despite repeated demands by respondent No.1, neither the money, nor the interest was repaid leading to the filing of the suit.

Upon notice, the defendant-Raghubir Singh appeared before the trial Court. However, on 04.06.2010, while the suit was pending, Raghubir Singh died and therefore, the appellants, who are his legal representatives substituted him and defended the suit. They denied any loan to have been

taken by Raghbir Singh. The pronote and receipt were termed as forged and fraudulent documents. The trial Court, after considering the evidence led and the pleas raised by the either side, decreed the suit filed by respondent No.1. The appeal preferred by the appellants against the judgment and decree of the trial Court was partly allowed by the Appellate Court as some relief with regard to the rate of interest was granted. It is in these circumstances that the present second appeal has been filed.

The sole argument raised by learned counsel for the appellants is that the concurrent findings recorded by the trial Court as also the Appellate Court are liable to be set aside on the ground that respondent No.1 had failed to explain the source of funds at the time of the alleged disbursement of the cash loan of Rs.60,000/- to Raghbir Singh. In the absence of any valid explanation with regard to the source of funds, the claim of respondent No.1 was not liable to be accepted.

I have considered the above submission raised by learned counsel for the appellants but find no merit in the same.

The pronote and receipt which acknowledged the loan taken by Raghbir Singh was produced and duly proved by respondent No.1. The same was done not only through her own deposition but also through the statements of the scribe-Didar Singh and marginal witness-Ajaib Singh. All the above witnesses were categorical that Raghbir Singh had received a sum of Rs.60,000/- from respondent No.1 and in token of its receipt, he had executed the pronote and receipt in favour of respondent No.1 with an undertaking therein to repay the amount along with interest on demand.

Didar Singh, who was the scribe, stated that the above documents were scribed at the instance of Raghbir Singh and on being scribed, they were read over to Raghbir Singh, who only after understanding

the contents thereof, appended his signatures thereupon in the presence of the marginal witness. His signatures were appended only after he had received an amount of Rs.60,000/- in cash from respondent No.1. He further stated that the marginal witness had also put his signatures on the pronote and receipt in the presence of respondent No.1-Raghubir Singh and that after stamping the document, he made an entry in his register at Sr. No.3 dated 08.03.2006 on which also got appended the signatures of Raghubir Singh. A copy of the register maintained by him was also produced in evidence.

To the same effect was the deposition of Ajaib Singh, the marginal witness and respondent No.1-Sheela Rani.

Lengthy cross-examination of the above three witnesses revealed nothing which would even dent the case of respondent No.1.

On the other hand, Lakhwinder Kaur-appellant No.1 in her deposition admitted that she had no knowledge with regard to the transactions of her husband Raghubir Singh. Though she denied Raghubir Singh's signatures on the pronote and receipt, she did not lead any evidence which would go on to prove that such signatures were a result of forgery. Further, no action under the criminal law was also initiated by the appellants for the alleged forgery and fabrication of the pronote and receipt.

Though Gulzar Singh, who was the other attesting witness of the pronote and receipt was produced by the appellants and in his examination-in-chief, he denied the execution of the pronote and receipt but since he failed to present himself before the trial Court for his cross-examination, his statement cannot be relied upon.

The argument of learned counsel for the appellants that the case set up by respondent No.1 with regard to the grant of loan of Rs.60,000/- by her to Raghubir Singh should not be accepted as she has failed to show the

source of funds is an argument which requires to be considered only to be rejected. The execution of the pronote and receipt has been duly proved. Respondent no.1 duly discharged her onus by proving the pronote and the receipt through her own deposition as also by producing the scribe and a marginal witness to the same. Documents in support of her case were also produced and proved. Having discharged her onus, it was then for the appellants to rebut the presumption under Section 118 of the Negotiable Instruments Act, 1881 that the afore-referred pronote and receipt were without a valid consideration. No evidence to that effect was led by the appellant. In the absence of the same as also in view of the genuineness of the pronote and receipt which was established by respondent No.1, the sole argument by learned counsel for the appellants does not merit acceptance.

In view of the above, I find no question of law, much less any substantial question of law to arise in the present appeal warranting any interference on my part.

Dismissed.

August 23, 2017

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(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No