

RSA No. 1863 of 2015 (O&M)

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

**RSA No. 1863 of 2015 (O&M)
Date of Decision: 31.8.2017**

Kewaljit Singh

.....Appellant

Vs.

Amrik Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sham Lal Bhalla, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for recovery was dismissed by the learned trial court, vide its impugned judgment and decree dated 7.3.2014 and first appeal of the plaintiff was also dismissed by the learned Additional District Judge, vide his impugned judgment and decree dated 16.10.2014.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that of the plaintiff filed suit for recovery of ₹6,80,000/- i.e. ₹4,00,000/- as principal amount and ₹2,80,000/- as interest on the basis of pronote and receipt dated 11.11.2003 along with future interest on the averments that defendant borrowed a sum of ₹4,00,000/- in cash from the plaintiff on 11.11.2003 on interest at the rate of 2% per month and in lieu thereof, defendant after receipt of ₹4,00,000/-, executed a pronote and receipt in favour of plaintiff in the presence of its marginal witnesses. It was alleged that defendant had not paid any amount to plaintiff either out of

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principal amount or towards interest despite repeated requests and a registered AD notice dated 23.9.2006 was also got issued by plaintiff through counsel, upon the defendant, but he did not respond despite information given at his house by concerned postman and same was returned to the plaintiff and even after service of said notice, the plaintiff asked the defendant to make payment of suit amount, but he totally refused to pay the same.

Upon notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. He specifically declined to have received the amount in question from the plaintiff. He further pointed out detailed circumstances under which he was made to sign some documents, which were later on converted by the plaintiff into pronote and receipt. Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to recover the suit amount alongwith interest?OPP
2. Whether this Court has no jurisdiction to try the present suit? OPD.
3. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has failed to prove his case. Accordingly, his suit for recovery of ₹6,80,000/- was dismissed by the learned trial court, vide its impugned judgment and decree dated 7.3.2014. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned District Judge, vide his impugned judgment and decree dated 16.10.2014. Hence this regular second

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appeal at the hands of the unsuccessful plaintiff.

Heard learned counsel for the appellant.

A bare combined reading of the both the impugned judgments and decrees passed by both the learned courts below would show that plaintiff-appellant miserably failed to prove his pleaded case, by bringing on record cogent and sufficient evidence. Presumption under Section 118 of the Negotiable Instruments Act, was sufficiently rebutted by the defendant-respondent, by leading cogent and convincing evidence. The pronote and receipt were the sole basis of the case of the plaintiff-appellant. However, he miserably failed to prove due execution of the pronote (Ex.P-1) and receipt (Ex.P-2). Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

With a view to rebut all the evidence led by the plaintiff-appellant, defendant came up with specific plea that no money was borrowed by him from the plaintiff. Son of the defendant was picked up by the CIA staff. It was further pleaded and proved by the defendant that because his son was being kept in illegal custody and only with a view to get his son released, defendant had to put some signatures on blank papers, which were later on misused by the plaintiff to file the present suit for recovery. Defendant also produced DW2-Rupinder Singh and DW3-Didar Singh in addition to Head Constable Dara Singh as DW4.

In view of sufficient and clinching evidence brought on record by the defendant, learned courts below rightly recorded their concurrent findings of facts, holding that plaintiff-appellant was not a bonafide litigant. In such a situation, plaintiff was bound to fail. That is what has been held by both the

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learned courts below. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 12 and 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“After considering the evidence adduced by the parties in the light of their respective pleadings, it is observed that so far as the factum of pronote Exc.P-1 and receipt Ex.P-2 bearing the signatures of the defendant is concerned, the same is amply proved on record and has been admitted by the defendant while appearing in the witness box. As per learned counsel for the appellant, in such circumstances, the presumption under Section 118 of the Negotiable Instruments Act comes into play and the learned trial court over looked this fact whereas this proposition has been controverted by the learned counsel for the respondent by relying upon 2007(2) Criminal Court Cases 89 (Supra) and also 2009(3) RCR (Civil) 127 (Supra), wherein it has been held that presumption under Section 118 of the Negotiable Instruments Act is rebuttable. If, it is established by the defendant that such execution of the Instrument was not for any consideration. In this regard, perusal of evidence on record adduced by both the parties important the version of the defendant that the brother of plaintiff namely Jastejpal Singh was working as gunman with the Inspector Gurmeet Singh Pinki and is admitted by the plaintiff in his replication besides being proved on record by DW-4 HC Dara Singh besides, there is wavering stand taken by the plaintiff as to where from the amount of pronote came to him. In his testimony as

PW-3, the plaintiff has claimed that the defendant had sold his Harri crop with him as he is doing the work of commission agent and admitted in his cross examination that he had duly reflected the sale of crop and the payment made to the defendant in his account books. However, he failed to prove any such account book on record despite being so directed. Moreover his stand regarding the amount in question is also discrepant as at one point in his cross examination, he claimed the amount to be withdrawn from his account whereas later he claimed this amount of Rs.4 lacs having been received from his brother living abroad. On his insistent that he can tell the detail of the transaction after seeing the account books. He was asked to bring the account books in court, but despite that he did not bring this account books and income tax statement in court by claiming that there is no such entry of the amount in his book. The plaintiff in this way has neither proved any transaction with the plaintiff as commission agent nor could he proved any such money transaction being reflected in the account books or income tax return filed by the plaintiff. Learned trial court has rightly observed that such withholding of the account books of the plaintiff leads to drawal of adverse inference against him. Moreover, there are discrepancies in the version given by the witnesses examined by the plaintiff. According to plaintiff, the pronote and receipt was scribed by Swaran Singh Accountant of the adjoining shop while as per PW-2 Gurcharan Singh, attesting witness, the pronote and receipt were scribed by the brother of PW-1 Jarnail Singh whereas PW-1 Jarnail Singh is silent regarding pronote being scribed by his brother. Further as per PW-1 Jarnail Singh, all the witnesses and the defendant had signed with the same pen on the pronote and receipt whereas on perusal of pronote and receipt plaintiff Amrik Singh had signed with black pen while Gurcharan Singh and Jarnail Singh signed with blue pen and this also create doubt regarding presence of the witness at the spot at the time of alleged transaction. Further as per PW-1 he was not aware whether

stamps were affixed on the pronote Ex.P-1 and receipt Ex.P-2 whereas according to PW-2, stamps were also affixed on the same. Even DW-3 Didar Singh has also corroborated the version of the defendant that his son was picked up by the police of CIA Staff, Sirhind to falsely implicate him in some poppy husk case and that Inspector CIA Staff had sent a message to the defendant to bring Rs.50,000/- for release of his son, which he could not pay, but he promised to pay this amount within two months and for this police officials had got signatures of defendant on blank pronote and receipt which have been later on misused by him in connivance with his gunman, who happens to be the brother of the plaintiff. Nothing contradictory cropped in the cross examination in this regard.

Thus, from the above discussion, it is evident that although defendant admitted his signatures on the pronote Ex.P-1 and the receipt Ex.P-2 but he had succeeded in justifying the circumstances in which he was compelled to sign upon the same. No doubt, the presumption under Section 118 of the Negotiable Instruments Act comes into play when execution of promissory note is established, but at the same time, this presumption being rebuttable in the light of law discussed above and from the evidence adduced by the parties on record, the defendant has succeeded in rebutting such presumption to prove the circumstances under which he was compelled to sign on pronote Ex.P-1 and receipt Ex.P-2 without paying any consideration for the same and as such, plaintiff could not take any benefit of such execution. Learned trial court has rightly come to the conclusion that in such circumstances, nothing was paid to the defendant by the plaintiff while getting pronote Ex.P-1 and receipt EX.P-2 executed from him and as such the learned trial court has rightly concluded that the plaintiff was not entitled to recovery of such amount from the defendant.”

During the course of hearing, learned counsel for the appellant

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failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

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 appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

31.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No