

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.2765 of 2015(O&M)

Date of Decision:- 21 .11.2017

Madan Kumar.

.....Appellant.

Versus

Feroz Khan.

.....Respondent.

Present:- Mr. Preetwinder Singh Dhaliwal, Advocate for the Appellant.

JASWANT SINGH, J.

CM No.6887-C of 2015 has been filed under Section 5 of the Limitation Act seeking condonation of 16 days delay in filing the present appeal.

For the reasons stated in the application, duly supported by affidavit of appellant itself, the CM is allowed and delay of 16 days in filing the present appeal being insignificant is condoned.

RSA No.2765 of 2015(O&M)

Plaintiff-Madan Kumar son of Mehar Chand is in second appeal aggrieved against the concurrent judgment and decree passed by the courts below, whereby his suit for recovery for Rs.2,72,000/- has been dismissed by Additional Civil Judge(Sr. Divn.), Barnala vide judgment and decree dated 26.03.2014 and findings thereof have been affirmed by Additional District Judge, Barnala vide judgment and decree dated 23.12.2014.

Courts below have wrongly dismissed the suit of the plaintiff, which is based upon a pronote and receipt dated 17.05.2004 (Ex.P-1 and P-2 respectively), by completely ignoring the fact that the same was proved on record by him by examining PW-1 Karam Singh (attesting witness), PW-3 Rakesh Kumar (Deed Writer). Thus, the courts below ought to have decreed the suit, especially when the signatures on the said pronote and receipt have been admitted by the defendant, while appearing in the witness box as DW-1.

After hearing learned Counsel for the appellant and perusing the paper book, this Court is of the considered view that the present appeal is devoid of any merit and deserves to be dismissed.

Admittedly, there is no financial relationship between the plaintiff and defendant apart from the impugned pronote and receipt. It is also not in dispute that brother-in-law of the plaintiff-appellant, namely, Madan Lal son of Durga Dass had, on the same day got executed agreement to sell Mark-DA in his favour from the defendant. On the basis of the said agreement to sell dated 17.05.2004, Madan Lal son of Durga Dass had filed a suit for specific performance which was dismissed vide judgment dated 7.02.2014 (Ex.DB). As per the said finding, defendant Feroze Khan had obtained a loan of Rs.1,71,746/- from Madan Lal son of Durga Dass. In this situation, the defence taken by the defendant that plaintiff Madan Kumar son of Mehar Chand had connived with his brother-in-law namely Madan Lal son of Durga Dass against the defendant to get the impugned pronote and receipt executed along with the agreement to sell on the same date, is more probable and convincing. In this view of the matter, both the courts below had rightly held that the plaintiff has not been able to prove due and

valid execution of the pronote and receipt and consequently, the witnesses examined by the plaintiff to prove pronote and receipt pales into insignificance.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)

JUDGE

November 21st , 2017

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>