

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.4800 of 2015
Date of Decision:20.9.2017**

Hari Ram

...Appellant

Versus

Tarsem Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.H.S.Sammi, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendant is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for recovery filed by the plaintiff was decreed by the learned trial Court, vide impugned judgment and decree dated 31.7.2014 and first appeal of the defendant was also dismissed by the learned District Judge, vide impugned judgment and decree dated 7.5.2015.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of the impugned judgment, are that the plaintiff filed a suit for recovery of Rs.3,07,500/- i.e. Rs.2,00,000/- as principal amount and interest Rs.1,07,500/- as interest at the rate of 1.5% per month from 15.5.2008 to 10.5.2011 on the basis of pronote and receipt dated 15.5.2008 executed by the defendant in favour of plaintiff along with future interest at the rate of 18% per annum till final realization. It was averred that the defendant borrowed for domestic expenses/necessities an amount of Rs.2,00,000/- from the plaintiff on interest at the rate of 1.5% per month on

15.5.2008 in the presence of witnesses Ranjit Singh and Gulam Deen and executed a pronote and receipt dated 15.5.2008 in favour of plaintiff. Said pronote was scribed by Mohan Lal and the same was read over to defendant and after admitting the contents of the same to be correct, defendant thumb marked the same in the presence of plaintiff and attesting witnesses and got the same attested from witnesses in his presence. It was further averred that the defendant promised to return the said borrowed amount alongwith interest as and when demanded by plaintiff and that plaintiff many times requested the defendant to return the said amount alongwith interest, but the defendant put off the matter on one pretext or the other and ultimately refused to return the same. Thereafter, the plaintiff got issued legal notice dated 21.4.2011 to the defendant requesting him to make the payment, but the defendant failed to make the payment.

Having been put to notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication to the written statement. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the defendant borrowed a sum of Rs.2,00,000/- from the plaintiff on 15.5.2008 and executed a pronote and receipt in lieu thereof?OPP
2. If issue No.1 is proved in affirmative, whether the plaintiff is entitled to recovery principal sum of Rs.2,00,000/- as prayed for?OPP
3. Whether the plaintiff is entitled to recovery of any interest, if so at what rate?OPP

4. Whether the plaintiff has no cause of action to file the present suit?OPD

5. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has duly proved his case by bringing on record cogent and convincing evidence. Accordingly, suit for recovery filed by the plaintiff was decreed by the learned trial Court, vide its impugned judgment and decree dated 31.7.2014. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 7.5.2015. Hence this regular second appeal, at the hands of the defendant.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below, would make it crystal clear that the defendant-appellant was trying to play smart not only with the plaintiff but also with the courts as well. The malafide intention on the part of the defendant-appellant was that he wanted to avoid his financial liability. His pleadings and evidence were also not going hand in hand. Defendant-appellant contradicted himself to such an extent that the same cannot be reconciled under any circumstances. While appearing as DW-1, defendant exposed himself in his cross-examination which has completely shattered his pleaded case. As DW-1 defendant-appellant tried to make his self

serving statement, because there was no other corroborative evidence produced by him.

At one stage, appellant took the stand that since there was criminal litigation pending between the parties, there was no scope for him to take loan from the plaintiff. However, during his cross-examination, this stand was found to be factually incorrect and misleading for the reason that he executed the pronote and receipt Ex.P1 and Ex.P2, respectively in favour of the plaintiff on 15.5.2008, whereas the criminal litigation started at a much later point of time. Having said that, this Court feels no hesitation to conclude that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

Another ground taken by the defendant-appellant, while contesting the claim of the plaintiff, was that his thumb impression were obtained on blank papers under police pressure. Had it been true, defendant-appellant was not expected to keep quiet during all this period. Admittedly, he did not lodge any complaint against either the plaintiff or any other police official, who might have put the pressure on the appellant for putting his thumb impressions on blank papers. No explanation, even worth the name is forthcoming as to why the appellant did not raise any protest in this regard.

On the other hand, plaintiff duly proved his case by leading cogent and convincing evidence. Plaintiff examined himself as PW-1. He also examined marginal witnesses Gulam Deen as PW-2 and Scribe Mohan Lal as PW-3. Thus, the plaintiff established on record that he advanced the loan to the defendant which was not repaid by the defendant. Pronote Ex.P1

and receipt Ex.P2 were also duly proved on record, in accordance with law. Since both the learned courts below considered each and every relevant aspect of the matter, before recording their concurrent findings of facts, the impugned judgments and decrees deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 13 and 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“After minutely perusing the version of the parties in consonance with the evidence adduced by them, it is observed that the plaintiff by examining himself as PW1 as well as marginal witness Gulam Deen as PW2 and scribe Mohan Lal as PW3 has categorically proved the transaction whereby the defendant had taken cash loan of Rs.Two Lacs on 15.5.2008 in the presence of witnesses and in consideration thereof he had executed pronote Ex.P1 and receipt Ex.P2 in favour of the plaintiff promising to repay the loan amount alongwith interest. It is also proved on record that the defendant had thumb marked on the pronote as well as receipt in the presence of witnesses. In his cross-examination, the plaintiff clarified that the amount of Rs.Two Lacs was lying with him as his earning from his agriculture produce and from the shop. Although, PW3 admitted the pendency of criminal case in which the plaintiff is also co-accused with him, but he has categorically denied the thumb impression of defendant to have taken under Police pressure in any manner.

So far as the version of defendant/appellant is concerned, he has denied executing pronote Ex.P1 and receipt

Ex.P2 and claimed his thumb impressions having been taken by the plaintiff under police pressure on blank papers and later converting the same into the alleged pronote and receipt. The defendant also claimed that since criminal litigation was pending between the parties, so there is no question of taking loan from the plaintiff. However, perusal of record falsifies this stand of the defendant as it is evident from his own admission while appearing as DW1 that the dispute between the parties arose in the year 2009, 21.6.009 to be more precise, whereas the pronote and receipt in dispute pertained to 15.5.2008, one year prior to the alleged dispute. There is nothing on record that there was only litigation between the parties as on 15.5.2008. The cross-examination of the defendant as DW1 has also important, wherein he denied his thumb impressions on the pronote. He has put in the version that the Police had got his thumb impressions on blank papers, which he admitted to be plain white paper, but the perusal of the pronote and receipt Ex.P2 reveals that the same is on printed performa green in colour and by stretch of no imagination, can be a plain white paper be converted into greenish printed performa by having stamps affixed on the prescribed place and thumb impressions of defendants also appearing upon the stamps as well as partly on the pronote and receipt, which is only suggestive of the fact that the thumb impressions was put after affixing the stamp at the requisite place and the version of getting the thumb impressions on blank white papers is nothing, but a false plea of the defendant just to avoid liability. This becomes even more doubtful from the fact that the defendant admitted in his cross-examination that he had not filed any complaint against the said police officials for getting his thumb impressions. In this manner, the defendant could not substantiate his stand that the thumb impressions were taken on any blank white paper under Police pressure or that the same has been misused by the plaintiff in any manner. No reliance on such a version of the

defendant could be placed, as both the pleas taken by the defendant stood shattered to the ground from his own cross-examination. Moreover, the plaintiff by adducing well corroborated as well as documentary evidence proved the execution of the pronote Ex.P1 and receipt Ex.P2 by the defendant in favour of plaintiff on 15.5.2008 after receiving Rs.Two Lacs as loan in the presence of the witnesses. Learned trial court has correctly appreciated the evidence on record in coming to the conclusion that the plaintiff had proved the said transaction and as the defendant had executed the pronote and receipt Ex.P1 and Ex.P2 respectively in favour of the plaintiff, so as to interfere therein.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

20.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No