

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

**RSA No.6590 of 2016
Date of Decision:1.9.2017**

Ashwani Kuamr

...Appellant

Versus

Sh.Suresh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Raj Kaushik, 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 its impugned judgment and decree dated 13.3.2015 and first appeal of the defendant was also dismissed by the learned Additional District Judge, vide its impugned judgment and decree dated 11.4.2016, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that the plaintiff filed a suit for recovery of Rs.91,300/- (principal amount Rs.55,000/- + interest Rs.36,300/-) alongwith interest from the defendant on the averments that on 17.05.2008 the defendant had borrowed a sum of Rs.55,000/- from the plaintiff and regarding this the defendant had also executed pronote and receipt in favour of the plaintiff. The defendant after admitting the contents of the pronote and receipt to be correct had put his signatures on the same

and the witnesses had also put their signatures on the same. The defendant had given undertaking to pay interest at the rate of 2% per month to the plaintiff. The original pronote and receipt were handed over to the plaintiff. The plaintiff requested the defendant to pay the aforesaid amount but the defendant denied to pay the same and ultimately legal notice was sent to the defendant on 21.12.2000 but no reply to the same was given by the defendant. Hence, finding no other alternate, this suit was filed by the plaintiff.

Defendant was put to notice. Defendant appeared and filed his contesting written statement, raising more than one preliminary issues. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- i. Whether the defendant had borrowed an amount of Rs.55,000/- from the plaintiff as alleged? OPP
- ii. If issue no.1 is proved, whether plaintiff is entitled to interest, if so at what rate? OPP
- iii. Whether the present suit is not maintainable in the present form? OPD
- iv. Whether the present suit is time barred? OPD
- v. Whether the plaintiff has concealed the true and material facts from the court of so to what effect? OPD
- vi. Whether the defendant is entitled for special costs under section 35A of CPC? OPD
- vii. Relief

In order to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as

oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has duly proved his case, by bringing on record cogent and convincing evidence. On the other hand, defendant except appearing himself as DW-1 did not produce any other evidence, for the reasons best known to him. Accordingly, suit for recovery filed by the plaintiff was decreed, by the learned trial court, vide its impugned judgment and decree dated 13.3.2015. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned District Judge, vide his impugned judgment and decree dated 11.4.2016. Hence, this regular second appeal, at the hands of unsuccessful defendant.

Heard learned counsel for the appellant.

An admission is the best evidence that an opposite party can rely upon. Although the admission may not be conclusive, yet it is decisive of the matter, unless successfully withdrawn or proved erroneous. Admissions, if true and clear are by far, the best proof of the fact admitted.

So far as the case in hand is concerned, it is a matter of record that the defendant-appellant had admitted his signature on the pronote. Further, appellant could not successfully withdraw his admission nor the admission made by him could be proved erroneous. After admitting his signatures on the pronote, stand taken by the defendant-appellant that he was not paid the amount in question, does not appeal to reason at all. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court in **Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and others, 1960 AIR (SC) 100. Avtar Singh and others Vs. Gurdial Singh and others, 2006(112) SCC 552, Gautam Sarup Vs. Leela Jetly and others, 2008(7) SCC 85, S.R.Srinivasa Vs. S.Padmavathamma, 2010(5) SCC 274, Union of India Vs. Ibrahim Uddin and another, 2012(8) SCC 148** and judgment of this Court in **Hem Raj Vs. State of Punjab and another, 1985(1) PLR 712.**

The relevant observations made by the Hon'ble Supreme Court in para 15 of its judgment in **Gautam Sarup's case** (supra), which can be gainfully followed in the present case, read as under:-

“A thing admitted in view of Section 58 of the Indian Evidence Act need not be proved. Order VIII Rule 5 of the Code of Civil Procedure 6 provides that even a vague or evasive denial may be treated to be an admission in which event the court may pass a decree in favour of the plaintiff. Relying on or on the basis thereof a suit, having regard to the provisions of Order XII Rule 6 of the Code of Civil Procedure may also be decreed on admission. It is one thing to say that without resiling from an admission, it would be permissible to explain under what circumstances the same had been made or it was made under a mistaken belief or to clarify one's stand inter alia in regard to the extent or effect of such admission, but it is another thing to say that a person can be permitted to totally resile therefrom.”

Plaintiff-respondent has duly proved his pleaded case by producing on record documentary as well as oral evidence, which was rightly found sufficient by both the learned courts below to decree his suit.

Besides his own testimony as PW2, plaintiff also produced attesting witness to the pronote and receipt, thus, the evidence of the plaintiff was duly corroborated and he proved his case as per his pleadings. Pronote Ex.PW1/B and receipt Ex.PW1/C as well as legal notice Ex.PW3/A were duly proved by the testimonies of PW-1-Abhay Singh and PW-2 Suresh Kumar. There was no plausible and contrary evidence brought on record by the defendant-appellant. Under such peculiar fact situation, plaintiff was bound to succeed and defendant-appellant was bound to fail. That is what has been held by both the learned courts below, while recording their concurrent findings of facts. Under these undisputed facts and circumstances of the case, 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, for this reason also.

Defendant-appellant took the plea of fraud, but miserably failed to prove the same. It goes without saying that the plea of fraud is to be proved like a criminal charge and onus would be on him who asserts. In the present case, although defendant-appellant raised the plea of fraud but did not even make an effort to prove the same by leading cogent and convincing evidence. Such an attempt made on behalf of any party would also speak volumes about the conduct of said party to the litigation. Had there been any substance in the plea of fraud raised by the appellant, he would have certainly replied the legal notice Ex.PW3/A, which was the first occasion for him to do so. However, defendant-appellant kept mum in this regard and did not raise any complaint against the plaintiff before any competent authority. Receipt of the amount in question by the appellant was also duly

proved by PW-1 Abhey Singh. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned courts below and the impugned judgments and deserve to be upheld, for this reason as well.

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 18 and 19 of its impugned judgment, which deserve to be noticed here, read as under:-

“Now coming to the plea of the appellant that he was not paid Rs.55,000/- is without any force. Even from testimony of PW2 Suresh coupled with the testimonies of attesting witness to pronote and receipt, it stands proved that the defendant borrowed Rs.55,000/- from the plaintiff and agreed to pay interest @ 2% per annum but he failed to repay that amount and thereafter legal notice Ex.PW3/A was sent by the plaintiff through Shri Subhash Chand Yadav Advocate and legal notice sent by the plaintiff has been proved by Shri Braham Prakash Clerk to Shri Subhash Chand Yadav, Advocate when he appeared as PW3. Though PW1 Abhey Singh has stated that the amount of Rs.55,000/- was not paid in his presence but at the same time he has deposed that he was called by Ashwani the defendant and Ashwani had admitted that he had already received the money from the plaintiff. Also it is categorically mentioned that pronote and receipt was executed at about 4-5 P.M. At the house of Suresh and he was called by Ashwani the defendant and Ashwani was having pronote and receipt with him and only 5-10 minutes had been consumed in filling up the pronote and receipt. So from the testimony of PW1 Abhey Singh it cannot be said that amount of Rs.55,000/-was not

received by the defendant.

The plea of the defendant that plaintiff obtained his signatures on the pronote and receipt on the assurance that he would pay the amount of Rs.55,000/- after withdrawing the same from the bank but the payment was not made to him cannot be accepted. Even in this case legal notice was sent to the defendant demanding the amount of pronote but till date no complaint regarding commission of fraud by the plaintiff upon the defendant has been made to any authority or to the court rather in the reply to the notice Mark-P2 the defendant has denied the handing over of pronote and receipt to plaintiff after signing the same by him, rather the defendant when appeared as DW1 had admitted his signature on pronote Ex.PW1/B and receipt Ex.PW1/C. Even he has admitted the receipt of legal notice Ex.PW3/A. He has also admitted that after filing the suit no panchayat was convened nor any application was moved in the police station by him. So from conduct of the defendant coupled with the testimonies of PW1 Abhey Singh and PW2 Suresh Kumar, it can be safely held by preponderance of probabilities that the defendant took loan of Rs.50,000/-from the plaintiff and executed pronote and receipt in favour of, plaintiff and agreed to pay interest @ 2% but failed to repay the same. So the plaintiff has rightly been granted decree for recovery of Rs.91,300/- alongwith interest @ 6% per annum from the date of institution of suit till realization of decreetal amount.”

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.

4.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

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