

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

RSA No. 5967 of 2015 (O&M)

DATE OF DECISION : 16.11.2017

Hardeep Kaur

.... APPELLANT

Versus

Bahadur Singh

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. S.K. Sandhir, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

The present regular second appeal is at the behest of the plaintiff being aggrieved of the judgments and decrees passed by the learned courts below dismissing her suit for recovery.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

The facts as averred by the plaintiff are that the defendant borrowed a sum of ₹ 1,25,000/- on 18.01.2011 from her. In lieu of that, a pronote was executed in favour of the plaintiff and a receipt of the amount was also executed. It was averred that the defendant agreed to repay the amount along with interest at the rate of 24% per annum. As the defendant failed to repay the loan, a suit for recovery of ₹ 1,25,000/- as principal and a

sum of ₹ 16,250/- as interest was filed.

On notice, written statement was filed. The loan was denied.

The learned trial court framed the following issues :-

- (1) Whether the plaintiff is entitled to recovery of ₹ 1,41,250/- on the basis of pronote and receipt dated 18.01.2011 as prayed for? OPP
- (2) Whether the plaintiff is entitled to payment of interest? If so, on what rate? OPP
- (3) Whether the alleged pronote and receipt dated 18.01.2011 is forged and fictitious document ? OPD
- (4) Whether the plaintiff has no locus standi to file the present suit? OPD
- (5) Whether the plaintiff has not come to the court with clean hands? OPD
- (6) Whether the plaintiff is estopped by her own act and conduct from filing the present suit? OPD
- (7) Whether the suit of plaintiff is without any cause of action? OPD
- (8) Relief.

The plaintiff in support of her suit appeared herself as PW.1.

Jatinder Kumar Gupta, deed writer, was examined as PW.2. Balaur Singh and Surinder Singh, Numberdar, marginal witnesses deposed as PW.3 and PW.4, respectively. The original pronote and receipt were produced as Ex.P1 and Ex.P2, respectively. Attested copy of the relevant page of register of the deed writer was produced as Ex.P3.

The defendant himself appeared in the witness box as DW.1.

Issues No.1 and 2 were decided against the plaintiff, whereas issue No.3 was decided against the defendant. Issues No.4 to 7 were not pressed.

The learned trial court vide judgment and decree dated 05.02.2013 dismissed the suit.

Aggrieved of the aforesaid judgment and decree, first appeal was filed by the plaintiff. The learned first appellate court dismissed the appeal, vide judgment and decree dated 02.03.2015.

Aggrieved of dismissal of her suit, the judgments and decrees passed by the learned courts below have been challenged in the present appeal.

I have heard learned counsel for the appellant and have gone through the judgments and decrees of the learned courts below.

In the present regular second appeal, though five questions of law have been framed, but the counsel while arguing the appeal did not address arguments on the said questions of law. He has restricted his submissions to the issue that even if the marginal witnesses and the subscriber of the pronote in their examination or cross-examination have deposed against the pronote, yet the suit should have been decreed because of the presumption raised under Section 118 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

The case set up by the plaintiff is that the amount of ₹ 1,25,000/- was borrowed by the defendant, for which a pronote was

executed. In order to prove the execution of the pronote, the plaintiff relied upon the deed writer and the marginal witnesses. It would be pertinent to note that in case of a pronote, it does not contemplate attestation, but since PW.3 Balaur Singh and PW.4 Surinder Singh were present and they had attested the pronote and the receipt, they were produced and relied upon by the plaintiff.

Before going into the legal issue of presumption to be raised under Section 118 of the Act, it would be important to take note of the fact that what the witnesses of the plaintiff deposed before the learned trial court.

PW.2 Jatinder Kumar Gupta, the deed writer, admitted that at the time of execution of the document, he had not seen the identity card of Bahadur Singh (defendant). He further stated that the parties were not personally known to him. He was not in a position to state whether Bahadur Singh himself appeared for execution of the pronote or some one else appeared.

PW.3 Balaur Singh, the marginal witness, stated that the amount of ₹ 1,25,000/- was not handed over to the defendant in his presence. He further stated that the pronote and receipt were not executed in his presence. He admitted his signatures on the receipt but stated that the same was signed by him at the instance of the husband of the plaintiff.

PW.4 Surinder Singh, Numberdar, also stated that the amount was not handed over in his presence. He admitted his signatures on the

receipt but stated that he appended his signatures at the instance of the husband of the plaintiff and he specifically stated that Bahadur Singh was not present at the time, when he had put his signatures of the receipt.

Both the marginal witnesses were declared hostile on the request of learned counsel for the plaintiff himself. In view of the above stated facts, it is evident that the plaintiff failed to discharge the onus regarding execution of the pronote and receipt.

In this background, the contention of learned counsel for the appellant has to be dealt with. Section 118 of the Act is reproduced as under :-

“118. Presumptions as to negotiable instruments :- Until the contrary is proved, the following presumptions shall be made :

- (a) **of consideration** : that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
- (b) **as to date** : that every negotiable instrument bearing a date was made or drawn on such date;
- (c) **as to time of acceptance** : that every accepted bill or exchange was accepted within a reasonable time after its date and before its maturity;

- (d) **as to time of transfer** : that every transfer of negotiable instrument was made before its maturity;
- (e) **as to order of indorsement** : that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- (f) **as to stamp** : that a lost promissory note, bill of exchange or cheque was duly stamped;
- (g) **that holder is a holder in due course** : that the holder of a negotiable instrument is a holder in due course :

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.”

In the above Section, a presumption has been drawn in favour of the negotiable instrument and for the purpose of the present case, clause (a) would be relevant.

The presumption given is that if a negotiable instrument is made, it is made for a consideration.

In the present case, the initial onus will have to be discharged by the plaintiff that a negotiable instrument, i.e. the pronote, was executed.

Thereafter, the presumption would arise that it was for consideration. Had the plaintiff been able to prove that the pronote was duly executed, then the statements of the marginal witnesses that the amount was not handed over to the defendant in their presence would not have been relevant as the presumption would have been in favour of the plaintiff.

In the present case, the plaintiff faulted at the threshold to establish that the pronote was executed. The deed writer stated that he do not know if genuine Bahadur Singh (defendant) appeared before him or some other person impersonating himself as Bahadur Singh appeared at the time of execution of the pronote. Both the marginal witnesses relied upon have stated that the pronote and receipt were not executed in their presence and that the defendant was not present, at the time they signed the said pronote.

Section 118 of the Act will be of no help in the facts mentioned above.

The Hon'ble Apex Court in the case of **Rev. Mother Marykutty Vs. Reni C. Kottaram and another**, 2013 (1) SCC 327, relied upon the following observations in its earlier decision in **Bharat Barrel & Drum Mfg. Co. Vs. Amin Chand Pyarelal**, AIR 1999 SC 1008 :-

*“12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once **execution of the promissory note is admitted**, the presumption under Section 118 (a) would arise that it is supported by a*

consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument.” (Emphasis supplied)

From a perusal of the above decision, it is evident that presumption under Section 118 of the Act is rebuttable in nature and will come into play only once the execution of the promissory note has been established.

In the present case, execution of the pronote has not been established.

During the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the first appellate court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

November 16, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes