IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.128

RSA No.1764 of 2017 (O&M)
Date of decision: 10.07.2017

Gurpreet Singh ....Appellant

versus

Bhagwan Singh ....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Mr. J.S. Bhandohal, Advocate
for the appellant.

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DEEPAK SIBAL, J. (Oral)

The respondent instituted a suit for recovery of ₹2,90,000/- (₹2,00,000/- as principal amount and ₹90,000/- interest) from the appellant. Future interest was also claimed. It was the case of the respondent that on 19.05.2011, the appellant had taken from him a loan of ₹2,00,000/- in cash and in acknowledgement of the same, the appellant had executed a receipt as also a pronote. The appellant had further agreed to pay interest on the loan @ 1.25% per month as also to repay the loan amount, alongwith interest, on demand. However, when the respondent demanded the loan amount, alongwith interest, the appellant initially put off the matter and then refused to pay the same leading to the filing of the above suit.

The appellant denied the claim set up by the respondent. The pronote on the basis of which the suit had been preferred by the respondent was stated to be a forged and fabricated document.

The trial Court framed the following issues:-

1) Whether defendant executed a pronote and receipt dated 19.03.2011 in favour of plaintiff after receiving an amount of ₹2,00,000/-? OPP
2) If issue no.1 is proved, whether plaintiff is entitled for the recovery of suit amount along with interest as prayed for? OPP
3) Whether pronote and receipt are forged and fabricated documents?OPP
4) Whether suit is not maintainable in the present form?OPD
5) Whether plaintiff has got no cause of action or locus standi to file the present suit? OPD
6) Relief.

In support of the above issues, the parties led evidence and after consideration of which the trial Court decreed the respondent's suit. The trial Court relied upon the testimony of the respondent-Bhagwan Singh, who appeared as PW-1 and deposed that on 19.05.2011, the respondent had loaned to the appellant an amount of ₹2,00,000/- which was acknowledged by him through a pronote and a receipt, both of which were exhibited as Ex. P1 and Ex. P2 respectively and proved. Gurjant Singh, the marginal witness to the above documents was also produced by the respondent as PW-2. He deposed that the pronote and receipt was scribed by one Satish Kumar, who was the Accountant of the appellant; the above was done in his presence; at the time of signing of the pronote, a receipt of ₹2,00,000/- had also been given by the respondent to the appellant and that he identified the signatures of the respondent on the receipt Ex. P-2.

In spite of lengthy cross-examination, the testimony of the above witnesses remained unshaken.

Financial capacity of the respondent to part with ₹2,00,000/- on 19.05.2011 was also proved through the deposition of the respondent as it was stated by him that he owned 20 bighas of land; sold milk in the locality and had also sold earth to Soma Company which was constructing a road in the area.

The appellant had denied the execution of the pronote and receipt Ex. P1 and Ex. P2. It was further alleged by him that these documents were forged and fabricated. However, no worthwhile evidence was led by him in support of his pleadings. No expert witness was got examined. Rather the signatures on both these documents were admitted by the appellant. It was further admitted by him that he had not approached any authority against the alleged forgery of the pronote and receipt by the respondent even though he had ample opportunity and time to do so.

Satish Kumar, the scribe of pronote and receipt who was produced by the appellant while admitting to have scribed the pronote stated that in his presence no money exchanged hands. He also denied the presence of Gurjant Singh. The trial Court discredited his deposition since he had admitted in the same to have scribed the pronote as also that he had scribed several pronotes for the appellant and that a pronote is not executed and signed unless consideration changes hands.

In view of the above as also for the reason that the appellant had admitted his signatures at three places upon the pronote and receipt, the trial Court found no credence in the case set up by the appellant especially in view of the presumption under Section 118 Negotiable Instruments Act, 1881 (for short the 'Act') that a pronote and receipt are presumed to be for consideration which presumption was not rebutted by the appellant.

The appellant assailed the judgment and decree of the trial Court through an appeal which was considered and rejected by the District Judge, Patiala, giving a cause to the appellant to approach this Court through the present appeal.

Learned counsel for the appellant seeks acceptance of the present appeal on the ground that the pronote and receipt which virtually formed the sole basis for the filing of the suit by the respondent were forged documents; Satish Kumar, who was admitted by the respondent to have scribed the afore documents had not been produced by the respondent to prove their execution and Satish Kumar, who was in fact produced by the appellant while admitting to have scribed the pronote and the receipt had specifically deposed that at the time when these documents were scribed neither the appellant was present nor any amount so mentioned in the above documents changed hands.

The plea of the appellant that the pronote and receipt which formed the basis for the filing of the suit by the respondent were forged and fabricated documents deserves rejection as it has concurrently been found by both the Courts below that no evidence in support of such plea was led by the appellant and that in spite of ample opportunity he also did not approach any authority including the police for taking action against the respondent for having committed forgery. Nothing has been pointed out by counsel for the appellant to persuade me to take a different view.

In his deposition, Satish Kumar admitted to have scribed the pronote and receipt Ex. P-1 and Ex. P-2 wherein the amount of ₹2,00,000/- being taken on loan by the appellant finds specific mention. The appellant admits his signatures on both the pronote and receipt. The cross-examination of Satish Kumar, who was admittedly the appellant's Accountant for 5/6 years leaves too many questions unanswered like why he scribed the pronote and receipt in favour of the respondent without the appellant being present and as to why he entered an amount of ₹2,00,000/- therein when, according to him, no such amount had actually changed hands, especially, when he admitted to have scribed several pronotes and receipts as also that pronotes and receipts are made only on exchange of the amounts mentioned therein. His testimony seeking to favour his employer was therefore, in my opinion, rightly rejected by both the Courts below.

On the other hand, the respondent led cogent evidence to prove his case. He himself appeared as PW-1 and also produced Gurjant Singh as PW-2, who was the eye-witness to the pronote and receipt. Their testimonies were put to lengthy cross-examination but the same remain unshaken.

The respondent, thus, proved the execution of the pronote and receipt and in view of Section 118 of the Act, such pronote and receipt are presumed to be for consideration unless the contrary is proved. No worthwhile evidence was led by the appellant to rebut such presumption.

In his cross-examination the appellant admitted that for the last 12 years he was running a commission agency through two firms and that he used to borrow money from others to lend the same to farmers on interest. He further admitted that when he used to borrow money he used to execute pronotes and receipts and Satish Kumar who was his Accountant for the last 5/6 years used to scribe them. He further conceded that due to losses in his business he had closed the same and that several other persons from whom he had borrowed money on interest had filed similar suits against him like the present one.

In view of the above, I find no question of law, much-less any substantial question of law, which arises for consideration in the present appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

10.07.2017
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No