

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

RSA No.4806 of 2014 (O&M)
Date of decision : 01.09.2017

Darshan Singh

...Appellant

Versus

Jodh Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.P.S. Ghuman, Advocate for the appellant.

Mr. R.S. Pandher, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had filed a suit for recovery of ₹7,40,000/- on the basis of a pronote and receipt duly executed by the defendant.

Defendant contested the suit and pleaded that the plaintiffs have been setup by one Ranjit Singh, his uncle.

Learned trial Court after appreciating the evidence available on the file and after seeing the receipt wherein defendant-appellant had with his own hand written a note that he has received ₹7,40,000/-, decreed the suit filed by the plaintiff.

Appellant-defendant filed the first appeal. Learned First Appellate Court also after appreciating the evidence available on the file

upheld the finding of the trial Court.

Learned counsel for the appellant has submitted that presumption in favour of the plaintiffs stands rebutted from the statement of one of the plaintiff himself. He has further submitted that the plaintiffs have failed to prove that at the time of the execution of the pronote and receipt, amount was paid. He has further submitted that the plaintiffs have failed to prove their capacity to lend huge amount.

On the other hand, learned counsel for the respondents has submitted that there is a concurrent findings of fact arrived at by the Courts which cannot be set aside unless the judgments passed by the Courts are perverse or result of misreading of the evidence.

First submission of the learned counsel is that presumption as available under Section 118 of the Negotiable Instruments Act stands rebutted.

I have considered the submission. Defendant had to plead and prove the circumstances to show that the aforesaid presumption stood dispelled. In the present case, learned counsel for the appellant is solely relying upon the statement of PW2-Jodh Singh namely the plaintiff No.1. Of course the plaintiff has in one sentence stated that he did not had financial resources but in next sentence, he has submitted that he has brought the amount from the shop of a Commission Agent. One line cannot be taken in isolation and read against the plaintiff. The entire statement of the plaintiff is to be considered and taken into consideration. Therefore, I do not find that in this case, presumption stands rebutted.

Learned counsel for the appellant has further submitted that the

plaintiffs have failed to prove that the amount was paid to the defendant at the time when the pronote and receipt were executed.

I have considered the submission. A bare look at the pronote and receipt would show that Darshan Singh had signed in English on five Revenue Stamps. Pronote is in a printed form which is known to everybody. Still further, defendant-appellant with his own hand has written that he has received ₹7,40,000/-. As many as 4 signatures of Darshan Singh exist on the pronote and receipt. Apart therefrom, Darshan Singh is not a simple farmer. He is a Ex-Sarpanch. His wife has also remained a Ex-Sarpanch. In such circumstances, it is not be prudent to assume that Darshan Singh signed pronote and receipt without receiving the consideration.

Learned counsel for the appellant has further submitted that the plaintiffs are not proved to be financially sound and, therefore, the finding should be returned that the pronote is without consideration.

I have considered the submission. I have already dealt with the aforesaid issue in foregoing paragraph.

In view thereof, there is no scope for interference in the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

All pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

01.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No