

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4930 of 2014 (O&M)

Date of decision: 02.03.2017

Mora Singh

... Appellant

Vs.

Bachittar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Mandeep K. Sajjan, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby the suit for recovery filed by the plaintiff was decreed.

Brief facts of the case, as noticed by the learned trial Court in para 2 of its impugned judgment, are that the defendant on 10.05.2003 incurred an amount of Rs.3,50,000/- from the plaintiff for his domestic use and executed a promissory note and receipt in favour of the plaintiff in the presence of marginal witnesses and the defendant agreed to repay the said amount along with interest at the rate of 1½% per mensem. Since 10.05.2003 till filing of the suit, in spite of the repeated requests of the plaintiff, the defendant had failed to repay the said amount to the plaintiff along with interest accrued thereupon. The plaintiff had requested the defendant many a times to repay the said amount to the plaintiff and also presented the promissory note and receipt before the

defendant but the defendant refused to pay the said amount and that the defendant was legally liable to repay the said amount of Rs.3,50,000/- along with interest at the rate of 1½% per mensem from 10.05.2003 till 10.12.2005 along with future interest. That the plaintiff also served a notice on 05.07.2005 upon the defendant, but the defendant failed to repay the said amount and that the cause of action has arose to the plaintiff against the defendant on 10.05.2003 when the defendant received an amount of Rs.3,50,000/- and executed a pronote and receipt.

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

1. Whether the defendant executed Promissory Note and receipt in favour of the plaintiff on 10.05.2003 ? OPP
2. Whether the plaintiff is entitled to recover the suit amount from the defendant as prayed for? OPP
3. Whether plaintiff is entitled to recover interest? If so, at what amount? OPP
4. Whether the suit is false, frivolous and vexatious to the knowledge of the plaintiff? OPD
5. Whether the plaintiff has not come to the Court with clean hands? OPD
6. Relief.

With a view to substantiate their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After hearing

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 leading cogent and well-convincing evidence. Accordingly, the suit was decreed, vide impugned judgment and decree dated 26.07.2012. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned District Judge vide impugned judgment and decree dated 09.12.2013. Hence this regular second appeal at the hands of defendant.

Heard learned counsel for the appellant.

A bare perusal of the most relevant document, which was the basis of the suit filed by the plaintiff-respondent, in the form of pronote Ex.P1, would make it crystal clear that it was a genuine document, which has been duly proved by the plaintiff by appearing in the witness box as PW2. There was sufficient corroboration of the evidence of the plaintiff in the form of Swaran Singh PW1. Receipt of pronote was also duly proved as Ex.P2. Both these documents are available at page 93 of the lower Court record and have been duly examined by this Court. None of these material documents have been found surrounded by any suspicious circumstances, nor the defendant-appellant was able to refer to any such suspicious circumstance about both these documents Ex.P1 and Ex.P2. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to decree the suit of the plaintiff and the impugned judgments and decrees deserve to be upheld.

Before arriving at a judicious conclusion, learned first appellate Court examined, reconsidered and appreciated the true factual as well as legal aspects of the matter, recording well-convincing findings, which have been

found based on sound reasons. The cogent findings recorded by the learned District Judge in para 11 of the impugned judgment, which deserve to be noticed here, read as under: -

“It has been contended by learned counsel for the defendant that to dispute the genuineness of the opinion of Sukhjinder Singh DW2, the plaintiff has not adduced any contrary evidence. It may be mentioned here that the science of identification of handwriting cannot be termed to be a perfect science. It is a matter of common observation that an expert tends to toe to the version adopted by a party engaging his services. The opinion of an expert has to be evaluated in the light of other attending circumstances appearing on the record. In the case in hand, there is positive evidence of the plaintiff and Swaran Singh DW.1 in whose presence the promissory note & receipt was executed. Both the witnesses have testified with regard to due execution of the promissory note & receipt by the defendant on receipt of amount of Rs.3,50,000/- from the plaintiff. Furthermore, during course of cross-examination of the plaintiff, the defendant has sought to put forth a case to the effect that the plaintiff was having blank signed promissory note & receipt, which was procured from Nand Kishore Gagan, who is working as commission agent and later on converted the same into the promissory note & receipt in question. In these circumstances, it is evident that the defendant is not disputing the existence of his signatures on the promissory note & receipt in question. The defendant has sought to put forth a version to the effect that blank

promissory note & receipt bearing his signatures were taken by his commission agent Nand Kishore Gagan, which was converted into the promissory note & receipt in question. In these circumstances, it has to be assumed that the defendant is not disputing existence of his signatures on the promissory note & receipt. Furthermore, the defendant has put his signatures on the indemnity bond in the court and the summons issued to him, in English language. The written statement filed by the defendant bears signatures in Punjabi language. Even the promissory note & receipt bears signatures of the defendant in Punjabi language. It appears that at the earlier instance, the defendant made an attempt to conceal his signatures in Punjabi language by putting signatures in English language on indemnity bond and summons. The expert has examined standard signatures of the defendant appearing on the Written Statement, statement made in the court, affidavit and Vakalatnama which are subsequent to the execution of the promissory note & receipt. Besides, he has also compared the standard signatures of the defendant appearing on the photo copy of the Account Opening Form pertaining to the account of the defendant in The Ferozepur Central Co-operative Bank Ltd. It is significant to note that photo copy of the Account Opening Form was produced by the defendant during course of his statement in the court. The original Account Opening Form was neither summoned nor got produced from The Ferozepur Central Co-operative Bank Ltd. As such, the authenticity of copy of Account

Opening Form cannot be termed to be free from doubt. In these circumstances, the expert evidence adduced by the defendant does not sound to be reliable, particularly when during course of cross-examination, he has not sought to dispute existence of his signatures on the promissory note & receipt.”

Evidence of the defendant-appellant produced in the form of DW2-handwriting and fingerprints expert was not found worth reliance. In fact, the best evidence in favour of the appellant could have been only the bank record, particularly his bank opening form, but he withheld the best evidence from the notice of the Court and that too for no good reasons. It was noticed by the learned District Judge that neither the defendant-appellant summoned his account opening form nor he got it produced from the Ferozepur Central Cooperative Bank. He also did not produce any official of the bank as a witness with a view to prove the account opening form. In this view of the matter, the learned first appellate Court was well justified in dismissing the first appeal of the defendant. Under these circumstances, it can be safely concluded that since the learned Courts below did not commit any error of law, while passing the impugned judgments and decrees, the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the abovesaid cogent findings recorded by the learned District Judge. He also could not raise any question of law, much less substantial question of law, 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality has been found in either of the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. The regular second appeal, having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

02.03.2017
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No