IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5646 of 2014 (O & M)
Date of decision :01.08.2017

Lakhwinder Singh @ Lakha Singh ...Appellant

Versus

Nand Kishor ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Narula, Advocate for the appellant.

Mr. Arihant Jain, Advocate with
Mr. Rishav Jain, Advocate for the respondent.

ANIL KSHETARPAL, J.

Defendant-appellant is in Regular Second Appeal against concurrent findings of fact arrived at by the Courts below in a suit for recovery of Rs.13,20,500/- as per pro-note and receipt.

Plaintiff-respondent had filed a suit for recovery of Rs.13,20,500/- (Rs.9,50,000/- as principle and Rs.3,70,500/- as interest) with respect to the pro-note dated 21.07.2006.

In defence defendant pleaded that he was having dealings with M/s Sat Pal Vinod Kumar Commission Agents Cheeka Mandi Cheeka and they used to obtain his thumb impressions on blank pro-notes as security and that blank pro-note has been misused by the plaintiff in collusion with M/s Satpal Vinod Kumar.

Plaintiff examined both the attesting witnesses of the pro-note apart from producing his bank account statement showing that Rs.9,80,000/- withdrawn on 21.07.2006 and pro-note was executed. Plaintiff has also appeared in the witness-box and supported the pleadings.

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In defence, defendant has examined three witnesses.

Learned trial court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff to the extent of Rs.9,50,000/- along with interest at the rate of 1.5% per month till the filing of the suit and future interest at the rate of 6% per annum on the principal amount i.e. Rs.9,50,000/-.

Learned Ist Appellate Court after re-appreciating the evidence available on the file, dismissed the appeal filed by the defendant-appellant.

Learned counsel for the appellant has made the following submissions:-

(i) the presumption of correctness attached to a pro-note, which is a negotiable instrument, stands rebutted and, therefore, the Courts were not correct in decreeing the suit. The suit was not maintainable as the plaintiff has failed to prove that he is registered under Punjab Registration of Money Lender's Act, 1938.

(ii) Plaintiff had deposited the amount only on 20.07.2006, therefore, it was obvious that the amount was deposited only to show an entry.

I have considered the submission of learned counsel for the parties and with their able assistance gone through the documents available on the file. There is no dispute that pro-note bears thumb impression of plaintiff. The thumb impressions are on the revenue stamps as well as on the blank space. The thumb impression is also put on the receipt. A look at the pro-note Ex.P-1 it is clear that the appellant had put thumb impression at six places out of which four thumb impressions are on the revenue stamps. The pro-note is also signed by two attesting witnesses, who have been examined as PW-1 and PW-2. They have supported the case of the plaintiff. Defendant

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has not been able to lead any evidence to rebut the statutory presumption available to a Negotiable Instrument.

Learned counsel for the appellant has further submitted that in absence of a license, the suit filed by the plaintiff is not maintainable. To examine the issue, it would be appropriate to extract the definition of money lender as defined in Section 2(9) of Punjab Registration of Money/Lenders' Act, 1938, which is extracted as under:

> *(9) "Money-lender" means a person, or a firm carrying on the business of advancing loans as defined in this Act, and shall include the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise of such person or firm; provided that nothing in this definition shall apply to -*
>
> *(a) a person who is the legal representative or is by inheritance the successors-in-interest of the estate of a deceased money-lender together with all his rights and liabilities; provided that such person only -*
>
> *(i) winds up the estate of such money-lender;*
>
> *(ii) realises outstanding loans;*
>
> *(iii) does not renew any existing loan, nor advance any fresh loan;*
>
> *(b) a bona fide assignment by a money-lender of a single loan to any one other than the wife or husband of such assignor, as the case may be, or any person, who is descended from a common grand-father of the assignor."*

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It is clear from the reading of the aforesaid that money lender is a person, who is in the business of advancing loans. It is not the case of defendant that plaintiff is in the business of advancing loan. The Act would apply only if a person is to be proved in the business of advancing loan. Since that was not the case of the defendant, therefore, this argument has no force.

Learned counsel for the appellant argued that money was deposited on 20.07.2006 and was withdrawn on 21.07.2006, therefore, the deposit was only to establish genuineness of the pro-note.

I have considered the argument. There is no dispute that the payment was withdrawn on 21.07.2006 and on 21.07.2006 itself the pro-note was executed and money was handed over to defendant. Whether the amount was deposited a day before or on the same day would not make any difference. It was the bank account which was being maintained by the plaintiff. Plaintiff had deposited certain amount. On the next date, the amount was withdrawn. This does not advance the case of the defendant/appellant.

For the reasons recorded above, I do not find any ground of interference in concurrent findings of the Courts below.

Hence, Regular Second Appeal is dismissed.

01-08-2017 **(ANIL KSHETARPAL)**
sheetal **JUDGE**

Whether speaking / reasoned : Yes

Whether Reportable : No

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