

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

RSA No.3813 of 2017 (O&M)

Date of decision : 04.10.2017

Ram Singh

...Appellant

Versus

Avtar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J. (ORAL)

CM No.9443-C of 2017

Application is allowed.

Exemption is granted, as prayed for.

Main Case

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

The plaintiff had filed a suit for recovery and permanent injunction on the basis of the pronote and receipt dated 16.04.2005. The defendant denied that he had borrowed any amount from the plaintiff on the basis of pronote and receipt. However he admitted that he had borrowed certain amount from the father of the plaintiff and had executed the pronote and receipt.

The pronote and receipt bears the thumb-impressions and the

signatures of the defendant-appellant in Punjabi.

Learned trial Court after appreciating the evidence available on the file recorded a finding of fact that the execution of the pronote and receipt is proved and the defendant did borrow the amount.

Defendant-appellant filed the first appeal. The First Appellate Court also after re-appreciating the evidence available on the file upheld the finding of the trial Court and dismissed the appeal.

Learned counsel for the appellant has argued that learned First Appellate Court has committed an error in reading the evidence inasmuch as there is no admission of the defendant-appellant admitting his thumb-impression and signatures. He has referred to me the statement of the defendant-appellant who has been examined as DW1. The cross-examination of the defendant-appellant makes a interesting reading. Relevant extract of the cross-examination of the defendant is extracted as under:-

“I know plaintiff Avtar Singh, he belongs to my village. I am 8th class passed. I write Punjabi. I use to sign in Punjabi and English both languages. I borrowed a sum of Rs.2,50,000/- or 3,00,000/- from Jarnail Singh. Jarnail Singh is father of plaintiff. I executed pronote and receipt at the time of borrowed of amount from Jarnail Singh. I did not return the borrowed amount to Jarnail Singh. I did not borrow any amount from plaintiff Avtar Singh.”

Pronote is a negotiable instrument. As per Section 118 of the Negotiable Instruments Act, 1881, the negotiable instrument has a presumption of consideration, date, time of acceptance, time of transfer, endorsement, stamps and holder in due course. It was for the defendant-

appellant to rebut the statutory presumption available to the negotiable instrument. Defendant has only examined himself in the evidence. Defendant has not led any other evidence.

Second submission of learned counsel for the appellant is that the payment under the pronote and receipt is not established as there is some variation. He has submitted that the plaintiff has appeared in the witness-box and has stated that transaction had taken place 2-3 days earlier but the document was executed subsequently.

In my considered opinion, such statement would not improve the case of the appellant. Plaintiff has stated positively that the payment was made. Merely because negotiable instrument was executed subsequently after some period of time, would not absolve the appellant from its liability to repay the amount.

Still further, the appellant has not only signed or thumb-marked on the pronote and receipt, he has also signed the register of the scribe which is Ex.P5. The appellant has failed to produce any evidence on file to prove that the signatures and thumb-impression of the appellant are not affixed on the pronote and receipt and on the register of the scribe.

In these circumstances, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

04.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No