

Sr. No.106

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

**RSA No.3862 of 2017(O&M)
Decided on:17.08.2017**

Ram Mehar

.....Appellant

versus

Anil

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. Sanjiv Gupta, Advocate
for the appellant.**

Rajbir Sehrawat, J.(Oral)

CM No.9637-C of 2017

This is an application for permission to make up the deficiency in the court fees.

Learned counsel for the appellant submits that the requisite court fees have already been fixed as of today.

In view of this, present civil misc application is allowed and the permission to make up the deficiency in the court fees is granted.

CM No. 9638-C of 2017

This is an application for condonation of delay of 170 days in refiling the appeal.

For the reasons mentioned in the application, delay of 170 days in refiling the appeal is condoned.

Civil misc application stands allowed.

RSA No. 3862 of 2017(O&M)

The present appeal is filed by the defendant against whom suit for recovery has been decreed. His appeal was also dismissed. He is challenging the concurrent findings of both the Courts below.

The brief facts of the case as pleaded by the plaintiff are that parties to the suit are related, inter se, and were having good relations. The appellant wanted to purchase certain land and therefore, he required money for that purpose. Hence the defendant demanded an amount of ₹ 5,50,000/- from the plaintiff as temporary loan. The plaintiff advanced that loan and got the pronotes executed in lieu of that advancement. A stipulation was also provided that the amount shall carry an interest of 24% per annum. Since the money was not returned, therefore, the plaintiff filed a suit for recovery of ₹6,93,000/- which included the agreed interest as well; upto the; date of filing the suit.

The defendant/appellant filed the written statement and in that he pleaded that he never executed the pronotes in favour of the plaintiff. It is his pleading that, in fact, he had taken ₹ 4 lakh as temporary loan from one Surjan and he had returned that amount to the said Surjan. It is further plea of the appellant that the blank signed papers which were given to Surjan as security have been misused by the present plaintiff/respondent to fabricate the agreement and hence the suit deserves to be dismissed. Both the Courts below recorded concurrent findings upholding the claim of the plaintiff and recorded findings that the present appellant failed to prove any fraud in the case. It is further recorded that the appellant herein had not led any evidence to deny the liability or to prove the repayment of the loan.

While arguing the present case, learned counsel for the

appellant has submitted that no consideration had passed in the present case in lieu of the pronotes and that there is no evidence to show that consideration exchanged hands. Therefore, the learned counsel for the appellant submits that there was no valid agreement and hence appellant is not liable to refund the amount. *Secondly*, learned counsel for the appellant has submitted that he had taken money from Surjan for family need and had, in fact, returned the money to him. Next contention of learned counsel for the appellant is that since pronote is of advancement of loan and the plaintiff had no license for working as a money lender, therefore, his claim for recovery of alleged loan amount could not have been maintained. Last argument of learned counsel for the appellant is that the interest awarded by the Court @9% after the date of filing of suit is illegal and the interest calculated by plaintiff @24% till the date of filing of the suit is exorbitant. Therefore, the same should not have been allowed.

After hearing learned counsel for the appellant and perusing the file, this Court is of the view that there is no illegality or infirmity in the findings recorded by the Courts below against the present appellant. Learned Courts below have rightly held that the present appellant had not even claimed in the written statement that the pronotes in question do not bear his signatures. The Court has further held that the appellant had not led any evidence to rebut the evidence led by the plaintiff and that it is not sufficient merely to allege that the receipts contained in pronote were the result of misuse by the plaintiff. The Courts have also recorded the finding that present appellant had not made any complaint regarding misusing of pronotes or receipts to any authority like police or anywhere else. The conclusion and the findings recorded by the Courts below are quite justified

and right as per the law.

The contention of learned counsel for the appellant is that no consideration exchange hands in the case is noticed to be rejected. The pronotes and the receipts have been duly proved on the file by examining the witness and production of relevant record. In view of the documentary proof qua payment of consideration, no other evidence was required. It is to be noted that even in the written statement, the present appellant had not denied the signatures on the pronotes and receipts. Therefore, question of any dispute surviving regarding the passing of the consideration between the parties does not arise.

The second contention of learned counsel for the appellant that he had taken money from Surjan and returned the same is also totally irrelevant. The said Surjan has appeared as witness in the present case and he has deposed regarding the transaction of advancement of money by him to the present appellant; which was a separate transaction. He has stated in the deposition that he had also advanced the money to the defendant and got the pronotes executed. However, as per the deposition of this witness; after return of the money by the appellant to Surjan, the pronotes were returned to the defendant. This witness has nowhere stated that no money was advanced by the plaintiff in the present case to the appellant. He has categorically denied the suggestion that the pronotes executed by the present appellant in favour of the plaintiff in the present case were fabricated and also denied the suggestion that no money was advanced by the plaintiff in the present case to the appellant. Hence, this shows that the present appellant got money from two different persons through different transactions by executing different pronotes to both the lenders. Therefore, this witness Surjan has

deposed regarding the transaction with him only. Simply because there is transaction between the appellant and Surjan does not, by implication, disprove the fact of second transaction between the appellant and the plaintiff in the present case.

The contention of learned counsel that no money lending license was available with Plaintiff Anil Kumar or that he did not have the capacity to arrange for the money which was advanced by him to the appellant is also misconceived. Once the parties entered into an agreement and the transaction is proved between the parties then the borrower cannot question the capacity of the lender to arrange for money. The transaction between the parties would be governed by the agreement entered into between the parties and the borrower cannot avoid the liability by questioning the capacity of the lender to arrange for money. Otherwise, also in the present case, the plaintiff has duly proved the source of money; which he received from another person just to help out the present appellant. So far as the money lending license is concerned, there is nothing on record to show that the plaintiff in the present case was carrying on a regular financial business of advancing loans. Therefore, there is no requirement of license of money lending as such. Hence the Courts below have rightly recorded the finding that money was, in fact, advanced by the plaintiff in the present case.

So far as, the interest part is concerned, the plaintiff in the present case was very much entitled to the interest at the agreed rate and therefore, the same has already been allowed. There doesn't appear to be any illegality in that. So far as interest after the filing of the suit is concerned, the Court has allowed @9% which is totally justified. Therefore,

no interference by this Court is called for even on this aspect also.

No other argument was raised by learned counsel for the appellant.

In view of the above; findings no merit in the present appeal and the same is hereby dismissed; upholding the findings, judgments and decrees passed by the Courts below.

17th August, 2017
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*