

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

130

RSA No.4068 of 2017 (O&M)

Date of decision: 29.08.2017

Piara Singh and another

..... Appellants

Versus

Shilpa Vohra

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Akhilesh Vyas, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM Nos.10462-63-C of 2017

There is a delay of 240 days in filing and 93 days in re-filing the appeal.

For the reasons mentioned in the applications, the same are allowed and the delay of 240 days in filing and 93 days in re-filing the appeal is condoned.

RSA No.4068 of 2017

Defendants are in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff filed a suit for recovery of ₹ 3,43,000/- i.e. ₹ 2,00,000/- principal and ₹ 1,43,000/- as interest on the basis of pronote and receipt dated 02.05.2011.

Defendant contested the suit on the ground that the signatures and thumb impression of the defendants were taken by the Deed Writer-

Lajwant Singh Vohra on the pretext that defendants shall start getting old age pension.

Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff. Learned trial Court noticed that the pronote is a Negotiable Instruments Act and as per Section 118 of the Negotiable Instruments Act, the execution of the pronote and receipt carried a presumption that these instruments were executed for consideration.

Defendants-appellants filed the first appeal. Learned First Appellate Court also after re-appreciating the evidence available on the file dismissed the appeal filed by the defendants and upheld the judgment passed by the learned trial Court.

Learned counsel for the appellants has submitted that the payment of amount has not been proved. He further submitted that the appellants had filed an application for remand of the case which has not been decided. He further contended that there is a contradiction in the evidence of plaintiff and Lajwant Singh Vohra.

As far as payment of the amount is concerned, there is a presumption in favour of the plaintiff. Husband of the plaintiff has stepped into the witness box as PW-3 and has stated that the amount was withdrawn by them from the bank.

Learned counsel for the appellants has tried to project that there is a contradiction in the statement of plaintiff and PW-3 Lajwant Singh Vohra. It is pointed out that Shilpa Vohra-plaintiff states that the amount was withdrawn from the bank from her own credit facility whereas Lajwant Singh Vohra claims that the amount was withdrawn from the bank

from his account having credit facility.

I have considered the arguments. Plaintiff and PW-3 are husband and wife. There is a consensus that the amount was withdrawn from the bank. Whether the amount was withdrawn by the husband or wife, it would not make any difference.

Next argument of learned counsel for the appellants is that an application was filed before the First Appellate Court for remand of the case. This application has not been decided by the 1st Appellate Court. I have seen the application which has been filed before the District Judge. The Court has power to remand only after setting aside the judgment passed by the Court. A reading of the application would show that no reason was given in the application as to why the case should be remanded back. Defendants had prayed that the case should be remanded for completion of plaintiff's witnesses. No ground is made out from the facts of the case to remand the case. It is not the case of the defendants that they were not given opportunity to cross-examine the witnesses produced by the plaintiff. Counsel for the defendants was given opportunity to cross-examine each witness produced by the plaintiff. Therefore, there is no force in the submissions of learned counsel for the appellants.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

29.08.2017

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No