

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

RSA No.4772 of 2017 (O&M)

Date of Decision: 24.10.2017

Nirmal Singh

... Appellant

Versus

Paramjit Kaur

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. B.S. Bhalla, Advocate,
for the appellant.

ANIL KSHETARPAL, J. (ORAL).

By this common judgement, I shall be disposing of RSA Nos.4772 of 2017 and 4916 of 2017 as common issue arises for consideration.

The defendant/appellant is in Regular Second Appeal against the judgement passed by the learned first Appellate Court.

The plaintiff had filed a suit for recovery on the basis of pronotes and receipts executed by the defendant on various dates. It is the admitted position on the record that signatures on the pronotes and receipts are admitted. The defendant had pleaded that the signatures on the pronotes and were taken when these documents were blank.

Learned trial Court after appreciating the evidence available on the file recorded a finding of fact that the defendant failed to prove this plea. Learned trial Court decided issues No.2 and 3 against the defendant. Issues No.2 and 3 are extracted as under: –

“2. Whether promissory note and receipt are forged and

fabricated documents? OPD

3. Whether plaintiff had obtained the signatures of defendant on blank papers? OPD”

However, learned trial Court dismissed the suit filed by the plaintiff finding certain small contradictions in the statement of the plaintiff and the attesting witness.

Only plaintiff filed the first appeal. Learned first Appellate Court after appreciating the evidence has decreed the suit filed by the plaintiff.

Learned first Appellate Court has recorded a finding of fact after appreciating the evidence and taking help of the presumption available under Section 118 of the Negotiable Instruments Act, 1881.

Learned counsel for the appellant has vehemently argued that there are certain contradictions in the statement of the witness produced by the plaintiff. He has tried to highlight that the payment of the entire amount is not proved by the plaintiff.

I have considered the submissions of the learned counsel for the appellant.

As per Section 118 of the Negotiable Instruments Act, 1881, a negotiable instrument has a presumption of consideration, date, time of acceptance, time of transfer, order of enforcement, stamp and that a holder is holder in due course. It was for the defendant to rebut the aforesaid presumptions available under the statute. The defendant has failed to rebut the presumptions which are statutory in nature. At the cost of repetition, it

may be noticed that the learned trial Court had recorded a finding on issue No.2 and 3 against the defendant. The defendant did not choose to file either appeal or challenge the finding before the first Appellate Court.

Still further, learned first Appellate Court has discussed the evidence in detail and noticed all the contradictions and thereafter recorded a finding that the plaintiff has proved her case. Such finding is not shown to be perverse or suffering from material irregularity.

For the reasons recorded above, both the appeals are dismissed.

(ANIL KSHETARPAL)
JUDGE

24.10.2017
sk

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No