

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

RSA No.34 of 1990 (O&M)

Date of decision : 06.02.2018

Sital Parkash

...Appellant

Versus

Zile Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. K.S. Malik, Advocate for the appellant.

None for the respondent.

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**ANIL KSHETARPAL, J.**

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court and dismissing the suit filed by the plaintiff-appellant for recovery of ₹22,000/- (₹15,000/- as principle and ₹7,000/- as interest thereon) on the basis of pronote and receipt dated 18.11.1982.

It is the case of the plaintiff-appellant that the defendant borrowed a sum of ₹15,000/- as a loan on interest at the rate of 18% p.a. on the principle amount on 18.11.1982. It is alleged that defendant did not repay the loan in spite of repeated demands.

On the other hand, defendant contested the suit and alleged that the pronote and receipt are forged documents. He had submitted that the thumb impression of the defendant were obtained at the time when the

defendant came to sell his agricultural produce at Commission Agent's shop of the plaintiff and the same was later on misused and has been converted into pronote and receipt. The defendant pleaded that he never borrowed the amount as alleged. The defendant further asserted that he is illiterate person and he does not know the nature of the document.

On appreciation of the evidence produced on the file, learned trial Court decreed the suit whereas on re-appreciation of the evidence available on the file, Additional District Judge, the First Appellate Court reversed the judgment of the trial Court and dismissed the suit. Learned First Appellate Court has in its detailed judgment given more than 5 reasons to accept the appeal and reversed the judgment of the learned trial Court.

I have heard the learned counsel for the appellant at length and with his able assistance gone through the judgments passed by both the Courts below as well as the records.

Although, the learned counsel for the appellant has made sincere efforts to challenge the reasoning given by the learned First Appellate Court, however, this Court do not find any substance therein. Learned counsel for the appellant has argued that the pronote and receipt were executed on 18.11.1982 and at that time, the firm was sole proprietorship of the appellant. He submitted that later on, the firm was registered as a partnership firm w.e.f. 01.04.1984. He submitted that since the loan was prior in point of time before the sole proprietorship firm became a partnership firm, therefore, the suit filed by the plaintiff in his individual capacity was maintainable. He has further submitted that as per Section 118 of the Negotiable Instruments Act, a negotiable instrument

carries a statutory presumption and since the defendant has failed to rebut the same, therefore, the judgment passed by the First Appellate Court is liable to be set aside. He has further submitted that the First Appellate Court has tried to pick holes in the case of the plaintiff without any substantive evidence brought on record by the defendant. He submitted that the First Appellate Court has erred in doubting the correctness of the pronote as the signatures of the attesting witnesses are with different pens having different shades of black ink.

As regards the first submission of the learned counsel for the appellant that originally when the loan was advanced, the firm was sole proprietorship firm and partnership firm came into existence only w.e.f. 01.04.1984 and hence, the suit was maintainable at the behest of the appellant in his individual capacity, has no substance. It is the case of the plaintiff himself that on constitution of the partnership firm, all the assets and liabilities of the sole proprietorship firm has been taken over by the partnership firm. Although, the plaintiff tried to wriggle out of this position by subsequently stating that later on, the loan under the pronote and receipt were transferred in the account of the plaintiff individually, however, the plaintiff-appellant failed to prove the aforesaid fact. The plaintiff has been changing stand to cover up the defects in the evidence of the plaintiff. From the examination of the evidence, it is proved that the defendant use to bring his agricultural produce for sale at the shop being run by the plaintiff. Although, it was argued that the amount of the pronote has no concern with the sale of the agricultural produce but still the amount of the pronote was entered into the books of account in the name of the defendant being

maintained by the plaintiff-firm. The plaintiff was directed to produce the books of account of the firms which were produced and the plaintiff tried to project that the defendant did not sell any produce in his shop in Rabi, 1982 which is contrary to what the plaintiff has stated in the evidence on the previous date of hearing. The plaintiff further stated that on 01.04.1982, a sum of ₹26,008.27 paise was outstanding against the defendant according to the account of books of the firm. The First Appellate Court further found that certain entries have been made twice over.

The First Appellate Court has also found that one of the attesting witnesses of the pronote i.e. Budh Ram who appeared as PW2, was in fact the driver of the brother of the plaintiff.

As far as the argument of the learned counsel that the statutory presumption available to a pronote under Section 118 of the Negotiable Instruments Act, has not been rebutted, is also without any substance. In the present case, the evidence produced by the plaintiff itself is not reliable. The First Appellate Court has given more than five reasons to return a finding that the appellant has failed to prove his case. In these situation, the suit cannot be decreed merely on the basis of the presumption.

Although, learned counsel for the appellant has pointed out one or two minor errors in the judgment passed by the First Appellate Court, however, on re-appreciation of the evidence produced on the file and after carefully examining the judgment passed by the First Appellate Court, this Court does not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

In view thereof, there is no ground to interfere with the finding

of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

**06.02.2018**  
*Pawan*

**(ANIL KSHETARPAL)**  
**JUDGE**

**Whether speaking/reasoned:-**                      **Yes/No**

**Whether reportable:-**                                      **Yes/No**