

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

**RSA No.1057 of 1992 (O&M)
Date of Decision.06.12.2018**

Prem Kumar (since deceased) through LRs and another
....Appellants

Vs

Nanu Ram (since deceased) through LRs and others
...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chanderdeep Singh, Advocate for
Mr. H.R. Nohria, Advocate
for the appellants.

None for the respondents.

-.-

AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court whereby suit of the respondent-plaintiff claiming recovery of ₹19,500/-, which was dismissed by the trial Court, has been decreed.

The respondent-plaintiff claimed the aforementioned amount by bifurcating as ₹15,000/- towards principal and ₹4500/- as arrears of interest on the basis of memorandum/writing dated 01.01.1983 executed by the defendant on behalf of M/s Prem and Company, Commission Agents, Jagraon Mandi while receiving a loan of ₹15,000/-. The defendants agreed to repay the loan within specific period along with interest @2% per month. However, on request amount was not paid. The aforementioned amount was advanced by way of cheque drawn on Oriental Bank of Commerce.

The defendants opposed the suit and termed the

memorandum a waste paper and inadmissible in the eyes of law and also asserted for stay of the suit, owing to the pendency of other suit before the Insolvency Court.

The plaintiff in support of aforementioned averments examined Satpal as PW1, Moti Saggar as PW2 and himself as PW3 whereas the defendant Prem Kumar stepped into the witness box as DW1.

By noticing the provisions of Negotiable Instrument Act and Stamp Act, the trial Court dismissed the suit. However, the lower Appellate Court, as noticed above, decreed the same.

Learned counsel appearing on behalf of the appellant-defendants submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law, as the document was not stamped as per the provisions of Section 35 of the Indian Stamp Act. It is settled law that where loan is advanced along with execution of the promissory note, the plaintiff can swear a pronote but not a unduly stamped paper. As per the provisions of Section 4 of the Negotiable Instruments Act, the document has to be in writing and signed by the parties. There is no compliance of the same, therefore, judgment and decree of the lower Appellate Court is liable to be set aside.

There is no representation on behalf of respondent No.1 despite being served. The appeal is of the year 1992, therefore, I proceeded to dispose of the same.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the

submissions of learned counsel appearing for the appellant. Concededly, amount of ₹15,000/- was extended to the defendants by way of cheque. The defendants have not been able to prove on record as to how and in what circumstances, the aforementioned amount was received, as no independent and other evidence brought on record terming it to be discharge of some liability. In these circumstances, non-admissibility of the pronote and writing cannot be pressed into service. Defendant also did not make out a case of an open account where the parties may have been supplying some goods on credit. The cheque of ₹15,000/- was handed over by the plaintiff to Prem Kumar partner of Prem Kumar and Company, who executed the memorandum. The cheque bearing No.004806 was encashed. All these factors weighed in the mind of the lower Appellate Court in decreeing the suit.

While admitting the appeal vide order dated 15.07.1992, this Court did not grant any interim stay. Perhaps now the judgment and decree may have been executed.

In view of the aforementioned observations, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 06, 2018
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No