

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1028 of 2002 (O&M)

Date of Decision: March 12, 2018

Kartar Singh

...Appellant

Versus

Sulakhan Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.G.L.Bajaj, Advocate,
for the appellant.

None for the respondent.

AMIT RAWAL, J.

Appellant-defendant is in Regular Second Appeal against the judgment and decree dated 8.10.2001, whereby the appeal preferred by the respondent-plaintiff against the judgment and decree dated 15.12.1997 dismissing the suit seeking recovery of ₹10,750/-, has been set-aside and the suit aforementioned had been decreed.

Respondent-plaintiff instituted the suit claiming the aforementioned amount on the basis of the pronote Ex.P1 and receipt Ex.P2 on the premise that the defendant borrowed a sum of ₹26,250/- and had agreed to pay interest @ 2% per month, on 1.7.1992. The defendant repaid the amount of ₹20,000/- and the remaining amount was promised to be paid on 20.10.1992. With the consent of the parties, an endorsement was effected on the reverse of the pronote, which was signed/thumb marked by the parties. Despite numerous requests, the defendant did not pay the

amount, necessitating the respondent-plaintiff to file the suit claiming ₹10,750/-, i.e., ₹6250/- as principal amount and ₹4,500/- as interest.

The appellant-defendant did not appear despite service through munadi and was proceeded *ex-parte*.

The trial Court, vide judgment and decree dated 15.12.1997, dismissed the suit on the ground that the plaintiff did not lead any evidence to prove endorsement dated 13.10.1992 and 20.10.1992 and, therefore, held that the suit filed on 12.10.1995 in respect of a pronote of 1.7.1992, was time barred. The appeal was preferred before the Lower Appellate Court, which was also dismissed vide judgment and decree dated 02.08.1998 and Regular Second Appeal was preferred before this Court and vide judgment dated 26.5.2000, the matter was remanded to the Lower Appellate Court to dispose of the application filed under Order 41 Rule 27 CPC. The Lower Appellate Court allowed the aforementioned application and permitted the respondent-plaintiff to prove the endorsement at the back of the pronote by examining Piara Singh as attesting witness.

Mr.G.L.Bajaj, learned counsel for the appellant-defendant submitted that the Court below had erroneously allowed the application under Order 41 Rule 27 CPC. The statement of Piara Singh could not prove the endorsement dated 13.10.1992 and 20.10.1992, therefore, the suit filed on 12.10.1995 was barred by limitation. The evidence produced by the respondent-plaintiff was contradictory to the pleadings of the plaint and contents of the legal notice Ex.P3. It was alleged that amount of ₹20,000/- was returned on 20.10.1992. Sulakhan Singh stated that he had received ₹20,000/- on 20.10.1992, but the pronote depicted a different story that it was executed in lieu of old pronote dated 10.7.1989. All these factors, if

looked into in correct perspective, would not have resulted into decretal of the suit. The Lower Appellate Court also not appreciated the fact that the alleged signatures were of Piara Singh on pronote and receipt dated 20.10.1992 or not. No evidence has been produced for comparison of the signatures, thus, urged this Court for setting-aside the findings under challenge.

The respondent-plaintiff has already been proceeded *ex-parte* vide order dated 12.12.2002, which reads as under:-

*“As per office report, respondent has refused to accept notice. It is deemed proper service. None appears for the respondent. Proceeded exparte.
Adjourned to 28.04.2003.”*

Accordingly, I proceed to decide the appeal on merits.

I have heard the learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Bajaj.

As per the amendment caused in Section 102 of the Code of Civil Procedure w.e.f. 10.7.2002, regular appeal claiming the amount less than ₹25,000/- is not maintainable. Since the present suit was instituted prior to the amendment, therefore, the said provision would not apply.

Coming to the merits of the case, I am of the view that the judgment and decree rendered by the Lower Appellate Court does not call for any interference, for, the execution of the pronote dated 1.7.1992 Ex.P1 and payment of ₹26,250/- had been proved. The question is whether there was any endorsement dated 13.10.1992 to bring the suit within the period of limitation, in other words, the endorsement as per Section 18 of the Limitation Act as the suit was filed on 12.10.1995, the answer is in favour

of the respondent-plaintiff, for, the statement of Piara Singh in proving that the endorsement was made on 13.10.1992 has gone un-rebutted. The reverse side of the pronote was witnessed by Piara Singh and thumb marked by Sulakhan Singh and Kartar Singh. Despite extensive cross-examination or suggestions, nothing contrary surfaced for bringing the suit out of the period of the limitation.

Appellant-defendant failed to lead any evidence despite the fact that application under Order 41 Rule 27 CPC was allowed or the expert could have been examined to belie his signatures, therefore, adverse inference has rightly been drawn. The pronote carried a presumption of truth as per Section 118 of the Negotiable Instrument Act.

The argument of Mr.Bajaj is not able to bring the case within the purview of warranting interference in the judgment and decree of the Lower Appellate Court, being the last Court of fact and law.

For the reasons stated above, no ground for interference is made out, much less any substantial question of law arises. Resultantly, the appeal is dismissed.

March 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No