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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 3458 of 2012 (O/M)
Date of decision : 30.1.2018

Nirmal Singh

..... Appellant

Versus

Tarun Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ankush Singla, Advocate, for,
Mr. Ashok Singla, Advocate, for appellant.

Mr. Gaurav Sharma, Advocate,
for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in present Regular Second Appeal is the judgment dated 14.2.2012, passed by learned Additional District Judge, Barnala, affirming the judgment and decree dated 11.11.2011, passed by learned Civil Judge (Senior Division), Barnala, vide which suit of plaintiff-respondent was decreed with costs for rupees one lakh as principal amount. Plaintiff-respondent was also allowed one per cent per month interest from 4.3.2005 till the date of decree and six per cent per annum interest on principal amount from the date of decree till realization.

The short facts of the case which are required to be noticed for the purpose of disposal of appeal, are that Roshan Lal, grandfather of plaintiff-respondent advanced a loan of rupees of one lakh on 4.3.2005. Defendant-appellant agreed to repay the same alongwith interest at the rate of 1.5% per month. In lieu of loan, defendant-appellant executed a pronote

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and receipt in favour of Roshan Lal. Defendant-appellant signed the pronote as well as receipt. The pronote and receipt was witnessed by Harpal Singh son of Jhagar Singh, resident of village Bihla Khurd and Ramesh Kumar son of Girdhari Lal, resident of village Bihla. The pronote and receipt was scribed by Pardeep Singh son of Gurmel Singh, resident of village Bihla. Roshan Lal demanded back the loan, but it was not repaid. Roshan Lal died on 1.9.2006, leaving behind a Will dated 15.6.2006, in favour of his grandson Tarun Kumar (plaintiff-respondent)

Defendant-appellant in written statement has taken the stand that plaintiff-respondent has not obtained any succession certificate regarding estate of Roshan Lal. It was claimed that there was material alterations in pronote and receipt. Plaintiff-respondent has forged and fabricated the pronote and receipt in connivance with witnesses.

From the pleadings, following issues were framed.

- '1. Whether defendant borrowed an amount of Rs. 100000/- from the Roshan Lal, grand-father of plaintiff and executed pronote and receipt dated 4.3.05 in favour of said Roshan Lal ? OPP
2. Whether plaintiff is entitled for recovery of suit amount as prayed for ? OPP
3. Whether plaintiff is entitled for interest ? If so, at what rate ? OPP
4. Whether suit is not maintainable in the present form ? OPD
5. Whether plaintiff has got no locus-standi or cause of action to file present suit ? OPD
6. Whether the alleged pronote and receipt are bearing material alterations ? OPD

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7. Relief.'

In order to prove his case, plaintiff-respondent besides his testimony examined Ramesh Kumar (PW1), attesting witness, Pardeep Singh (PW3), scribe of pronote and receipt and also produced the succession certificate (Ex.P3). Defendant-appellant besides his testimony examined Randhir Singh (DW2). Both the Courts below believed the statement of plaintiff-respondent.

I have heard learned counsels for both the parties and have also carefully gone through the file and lower Courts file as well.

The learned counsel for defendant-appellant has argued that Will set up by plaintiff-respondent has not been proved.

I am of the view that plaintiff-respondent at the time of leading of evidence, produced succession certificate (Ex.P3) also, which entitles him to sue regarding present pronote and receipt. Therefore, his right to file the suit on the basis of Will is established. So far as pronote and receipt are concerned, the signatures of defendant-appellant appear across the revenue stamps on the pronote as well as on the receipt. Ordinarily, a person will not sign on pronote and receipt and that too across revenue stamps. It also comes out that during evidence, defendant-appellant not only denied his signatures on pronote and receipt, but also denied his signatures on power of attorney, executed in favour of his counsel and his affidavit tendered in evidence. Therefore, testimony of defendant-appellant that pronote and receipt do not bear his signatures cannot be relied upon.

The learned counsel for defendant-appellant has argued that in this case, it is not proved that money on the basis of pronote and receipt was transferred to defendant-appellant.

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It is stated that said Roshan Lal was a Commission Agent and that in the appellate Court, he has produced the photocopy of income tax return (Ex.P6) to show that amount of loan is not reflected in the accounts of firm.

The learned counsel for defendant-appellant has produced Single Bench authority of this Court in *Balbir Singh Versus Harbans Singh*, 2009 (3) RCR (Civil) 127 and has pressed that once advancement of loan is not proved by plaintiff and it is not shown in income tax return, suit should have been dismissed.

I am of the view that said judgment was passed on the basis of cumulative discussion, which included some other points and is confined to the facts of said case. In the said case, suit was based on bahi entries. Therefore, the said authority is distinguishable from instant case. The other authority of Apex Court *Krishna Janardhan Bhat Versus Dattatraya G. Hegde*, 2008 (1) RCR (Civil) 498 and authority of Bombay High Court in *Sanjay Mishra Versus Ms. Kanishka Kapoor alias Nikki and another*, 2009 (4) AUCKR 33 are under Section 138 of Negotiable Instruments Act, 1881, and related to criminal matters. The criminal cases stand at different footing than the civil cases. The criminal matters require higher degree of proof.

I am of the view that if some loan is concealed in the income tax return, that is no ground to dismiss the suit. Further, defendant-appellant has not taken stand in written statement that he has not received the consideration. He simply stated that pronote and receipt are forged and fabricated. The position would have been different had he admitted the execution of pronote and receipt and stated that he did not receive the consideration, so that plaintiff-respondent gets the opportunity to prove as to

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how the money was paid to defendant-appellant. There are concurrent finding of facts by two Courts below. No law point arises. Therefore, instant appeal is dismissed.

(KULDIP SINGH)
JUDGE

30.1.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No