

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

RSA No. 1382 of 2016 (O&M)

Date of decision : July 03, 2018

Maha Singh

.....Appellant

Versus

Balvir Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gaurav Sharma, Advocate
for the appellant.

LISA GILL, J.

Present appeal has been filed by the defendant-appellant challenging the judgment and decree dated 20.01.2015 passed by the learned Civil Judge (Junior Division), Barnala as well as judgment and decree dated 07.11.2015 passed by the learned District Judge, Barnala.

Brief facts necessary for adjudication of the case are that the respondent-plaintiff filed a suit for recovery of ₹2 lakhs as principal amount alongwith interest against the appellant-defendant. It was averred that the appellant took a loan of ₹2 lakhs on 11.05.2011 from the plaintiff-respondent while agreeing to return the same alongwith interest at the rate of 1.50% per month. Pronote and receipt dated 11.05.2011 were produced as (Exs. P1 and P2). Said pronote and receipt it was pleaded were admitted to be correct and then signed in Punjabi by the appellant in presence of witness Avtar Singh and Harwinder Singh (PW3). Pronote and receipt were scribed by Ram Rajeshwar Rai, Advocate (PW1). Entry (Ex. P3) was made in the register in this respect. The appellant-defendant contested the suit

while denying that any loan had been taken by him. It was stated that the pronote and receipt were the result of a fraud. It was averred that the defendant and the plaintiff were close relatives, the respondent being the maternal uncle (mama) of the appellant. They were residing together and carrying on their business. In the year 2008, the appellant and the respondent purchased a tractor from one Gokul Singh and sold the same to Jasvir Singh for sale consideration of ₹2,40,000/-, out of which ₹1,00,000/- was received by them as earnest money. Documents of the said tractor were found to be faulty due to which the appellant-defendant had to refund ₹1,00,000/- to Jasvir Singh from his own pocket. The plaintiff-respondent called the appellant to the Court complex for preparing a document with regard to payment of ₹1,00,000/- by the plaintiff to the defendant. It is on this pretext that plaintiff fraudulently got the signatures and thumb impressions of the appellant on certain papers and photographs in this respect were also taken. After execution of the said documents, the appellant-defendant asked the plaintiff to pay the amount but he did not and to the contrary threatened him with institution of a criminal case. All allegations were denied and prayer for dismissal of the suit was addressed. Replication was filed and the following issues were framed by the learned trial Court.

1. Whether the plaintiff is entitled to recover ₹2,55,200/- alongwith interest, if so on that rate? OPP
2. Whether the suit is not maintainable in present form? OPD
3. Whether this Court has no jurisdiction to entertain and try to the present suit? OPD
4. Whether the plaintiff is no cause of action or locus standi to file the present suit? OPD
5. Whether the pronote and the receipt are without

consideration? OPD

6. Relief.

Evidence was led by both the parties.

Learned trial Court on consideration of the facts and circumstances of the case as well as the evidence on record, concluded that the appellant had indeed executed the pronote and receipt dated 11.05.2011 after borrowing a sum of ₹2 lakhs from the plaintiff. The plaintiff-respondent was held entitled to recover the said principal amount alongwith interest at the rate of 12% per annum from the date of pronote and receipt till the date of filing of the suit as well as future interest at the rate of 6% per annum from the date of filing of the suit till actual realisation of the decretal amount.

Appeal preferred by the appellant against judgment and decree dated 20.01.2015 passed by the learned Civil Judge (Junior Division), Barnala was dismissed by the learned District Judge, Barnala on 07.11.2015. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have wrongly decreed the suit for recovery filed by the respondent. It is urged that the plaintiff-respondent has not even disclosed the source of ₹2 lakhs allegedly borrowed by the appellant. Moreover, it is only one of the two witnesses of the pronote, who has been examined. Non examination of the second witness is fatal to the case of the plaintiff-respondent. Learned counsel further argues that the appellant is a nephew of the respondent. They admittedly had business transactions. It is the appellant who had to recover a sum of ₹1,00,000/- from the respondent. It is in this connection that the pronote and receipt had been prepared. All

these facts have been wrongly ignored by both the learned courts below,

therefore, the present appeal be allowed and the impugned judgments and decrees passed by both the learned courts below be set aside and suit for recovery filed by the respondent-plaintiff be dismissed.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

In my considered opinion, the plaintiff-respondent has duly proved the execution of the pronote and receipt dated 11.05.2011. In fact, the appellant has admitted the execution of the said pronote and receipt, though it is sought to be explained that the pronote and receipt were executed in respect to a sum of ₹1,00,000/- which the appellant had to recover from the respondent. However, there is nothing on record to show the purchase of tractor from Gokul Singh or its sale to Jasvir Singh and thereafter refund of ₹1,00,000/- by the appellant to the said Jasvir Singh. Apart from the same, the plaintiff has duly examined PW1 Ram Rajeshwar Rai, Deed Writer, who specifically deposed that he scribed the pronote and receipt (Exs. P1 And P2), which were executed by the appellant in favour of the plaintiff after obtaining of loan of ₹2 lakhs from the plaintiff. Entry (Ex.P3) was made in his register in this respect. The parties and witnesses appended their thumb impressions/signatures on the said register. PW1 specifically deposed that the pronote and receipt were read over to the defendant in the presence of the plaintiff and witnesses. The defendant after admitting the contents thereof signed the document. Photograph of the defendant was affixed on the pronote alongwith his thumb impression. PW3 Harwinder Singh one of the witnesses of the pronote has duly supported the plaintiff's case. In his cross examination PW3 stated that he knew both the parties. Pronote and receipt (Exs. P1 and P2) were scribed on 11.05.2011 by

Ram Rajewshar Rai. The formalities were completed in about one and a half hour. PW3 specifically denied that the signatures of the appellant-defendant were obtained by the respondent-plaintiff in connivance with him or that any fraud had been committed.

It is a matter of record that the appellant stepped into the witness box as DW1. He admitted his signatures and thumb impressions on the pronote and receipt (Exs. P1 and P2) as well as pasting of his photograph on the pronote (Ex.P1). DW1 further admitted that the said documents were scribed by Ram Rajeshwar Rai and witnessed by Avtar Singh and Harwinder Singh (PW3). The appellant has further admitted the entry in respect of the pronote and receipt in the register of Ram Rajeshwar Rai as well as his signatures thereon. Learned District Judge has rightly observed that a bare denial not substantiated by any cogent or corroborative evidence on the part of the appellant does not entitle him to evade his liability. Filing of the criminal complaint (Ex.D1) also does not substantiate the stand of the defendant. It is not denied that the complaint was filed on 08.01.2014. The pronote and receipt in question were executed on 11.05.2011. The suit for recovery was filed by the respondent-plaintiff on 01.10.2013. therefore, filing of the said complaint is of no avail to the appellant. Argument on behalf of the appellant that his signatures on the pronote and receipt were obtained by fraud, thus, falls to the ground like a house of cards. Similarly, the argument that the source of ₹2 lakhs borrowed by the appellant has not been disclosed, is noticed only to the rejected. Apart from the fact that this ground was never raised at an earlier point of time, the said argument is indeed fallacious and untenable in the factual matrix of the case. The same is, accordingly, rejected. No substantial

question of law is involved in this appeal for the consideration of this Court.

No other point has been raised or argument addressed by learned counsel for the appellant.

Learned counsel for the appellant is unable to point out any illegality and infirmity in judgment and decree dated 20.01.2015 passed by the learned Civil Judge (Junior Division), Barnala as well as judgment and decree dated 07.11.2015 passed by the learned District Judge, Barnala which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

July 03, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No