

In the High Court of Punjab and Haryana at Chandigarh

RSA- 3844 of 2013(O&M)

Date of Decision:3.4.2018

Ramkesh and others

---Appellants

vs.

Upender Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sourabh Gooel, Advocate
for the appellants
Mr. Ajay Pal Singh, Advocate
for the respondent

Rekha Mittal, J.

CM Nos.10405 and 10406 -C of 2013

Prayer in these applications is for condoning delay of 418 days
in refiling and 486 days in filing the appeal

In view of averments made in the applications and arguments
advanced, applications are allowed and delay of 486 days in filing and 418
days in refiling the appeal stands condoned.

Disposed of accordingly.

RSA No. 3844 of 2013

The present appeal directs challenge against concurrent
findings recorded by the courts whereby suit filed by the
respondent/plaintiff for recovery of Rs. 4,93,000/- was decreed by the trial

court with interest @ 6% per annum from the date of filing the suit till realization but the judgment and decree passed by the trial court was modified in appeal filed by Smt. Bedo Devi defendant now represented by the appellants to the effect that the respondent is entitled to recover Rs. 2,90,000/- alongwith interest 8% per annum since 5.6.2004 till 21.2.2009 and 6% future interest on decretal amount till its actual realization leaving the parties to bear their own costs.

In brief, case of the respondent/plaintiff is that respondent is a Manager in Bala Lal Dass High School, Narnaund. Ramkesh son of Bedo Devi defendant was working as clerk in Government Girls School, Narnaund. The respondent and Ramkesh had family relations and there were also money transactions between them. Bedo Devi demanded an amount of Rs. 3,00,000/- for raising construction of residential house in the first week of June 2004. The respondent was having an amount of Rs.2,90,000/- and gave the said amount as a loan to Bedo Devi (hereinafter to be referred as “the defendant”) with interest @ 2% per month. The defendant executed a pronote and receipt in favour of the respondent/plaintiff and affixed her thumb impressions on the documents. After expiry of two years, the respondent asked for return of money but the defendant put off the matter on one pretext or the other. He issued legal notice dated 23.3.2007 through his counsel but the defendant did not respond to the notice. Hence, the suit.

The defendant filed the written statement and raised preliminary objections inter alia that the suit is not maintainable in the present form; the respondent has no cause of action and locus standi to file the suit; the respondent has concealed material facts from the Court and the suit being barred by the limitation. On merits, she denied all the averments of the plaint with regard to approaching the respondent for giving loan,

receipt of loan, execution of pronote and receipt dated 5.6.2004. It is averred that husband of the defendant was a teacher in a Government school. After his death, she has been receiving pension. Her husband had agricultural land also. The daughter-in-law of the defendant is also owning a bus which runs at Narnaund Julana road. It is further averred that there was no occasion for the defendant to take loan of Rs. 2,90,000/- from the plaintiff. The pronote and receipt are the forged and fabricated documents prepared by the respondent in connivance with the attesting witnesses. The defendant is a Parda Nashin lady and only knows how to sign and as such the alleged pronote and receipt are not binding against her.

The trial court framed issues, permitted the parties to adduce evidence in support of their respective contentions. After having heard counsel for the parties in the light of materials on record, suit filed by the respondent/plaintiff was decreed, as has been noticed hereinbefore. The appeal preferred by defendant Bedo Devi was partly allowed and the judgment and decree passed by the trial court were modified in the aforesaid terms.

Still feeling dissatisfied, the present appeal has been filed by the defendant now represented by her legal representatives.

The sole submission made by counsel for the appellant is that as the defendant had categorically denied of having executed the pronote and receipt or taking loan of Rs. 2,90,000/-, it was obligatory for the respondent/plaintiff to prove his case by leading cogent and convincing evidence. It is argued with vehemence that the respondent/plaintiff did not examine an expert to prove, on the basis of comparison, that the pronote and receipt bear signatures of the defendant.

Counsel has also made an attempt to argue that in case the defendant is held liable to pay the principal amount of Rs. 2,90,000/- with

interest, interest since 5.6.2004 till passing of the decree by the trial court, may be reduced to 6% in place of 8% per annum.

Counsel representing the respondent/plaintiff has supported the judgments passed by the courts with the submission that civil dispute is required to be decided on the basis of balance of probabilities. The respondent/plaintiff examined himself and both the attesting witness of the receipt namely Naresh Kumar PW1 and Ashok Kumar PW2. It is further argued that as the respondent–plaintiff has successfully proved his case by adducing direct evidence, there was no reason for the respondent/plaintiff to examine a handwriting expert when otherwise, evidence of an expert is of fragile nature and science of handwriting comparison is not perfect. He has further argued that counsel for the appellants has failed to point out any facts elicited in cross examination of the respondent and witnesses examined by him to create slightest doubt in the version brought forth by the respondent/plaintiff. In addition, it is argued that the very fact that the defendant did not initiate any criminal proceedings against the respondent–plaintiff with regard to his allegedly having forged/fabricated the pronote and receipt is a circumstance that goes against the defendant.

I have heard counsel for the parties, perused the paper book particularly the judgments passed by the courts.

Before advertng to the submissions made by counsel for the parties, it is appropriate to note that in the second appeal, the Court cannot appreciate and re-appreciate the evidence to hold something different from what has been held by the courts. Equally settled is that second appeal is to be admitted for hearing if it gives rise to a question of law that needs determination after hearing the parties.

Reverting to the case at hand, counsel for the appellants has failed to point out any materials on record sufficient to prove that findings

recorded by the courts suffer from perversity or is the result of ignoring material evidence available on record. Merely because the respondent/plaintiff did not examine a handwriting expert on the basis of comparison of disputed signatures with the standard/sample signatures of the defendant is not at all sufficient to interfere in the concurrent findings recorded by the courts. If the defendant was so sure that the pronote and receipt do not bear her signatures, she could well examine a handwriting expert to counter evidence led by the respondent-plaintiff. The defendant, for the reasons best known did not adopt that course, may be knowing fully well that the documents were signed by her, therefore, plea in defence raised to counter case of the respondent/plaintiff has no legs to stand. In this view of the matter, contention raised by counsel for the appellants is not meritorious and liable to be rejected.

So far as contention with regard to reducing rate of interest, the same is highly misconceived and liable to be rejected. As per contractual rate of interest agreed between the parties, the defendant was liable to pay interest @ 2% per month but the Court in Appeal has allowed interest @ 8% per annum till the date of decree. The future interest has been allowed @ 6% per annum in compliance with the provisions of Section 34 of the Code of Civil Procedure.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

3.4.2018
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Whether speaking/reasoned: Yes

Whether reportable : Yes/No