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

RSA No.1755 of 2016 (O&M)
Date of Decision.12.11.2018

Bhag Singh ......Appellant

Vs.

Rakesh Kumar ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ravish Bansal, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-defendant has not been able to defend the suit for recovery of ₹7,00,000/- as principal and ₹5,04,000/- as interest, which has been decreed by the trial Court and upheld by the lower Appellate Court.

The plaintiff instituted the suit on 30.04.2011 claiming aforementioned amount on the basis of pronote and receipt dated 18.05.2008.

The defendant denied the execution of the pronote and came up with the stand that the plaintiff may have misused certain papers as there was no need to borrow such huge amount of ₹7 lakhs in cash. The amount was never reflected in the income tax returns of the plaintiff.

On preponderance of the evidence, the trial Court decreed the suit and affirmed by the lower Appellate Court.

Mr. Ravish Bansal, learned counsel appearing on behalf of the appellant-defendant submitted that though the plaintiff examined marginal witnesses PW1 Rajesh Kumar and PW2 Dev Raj but the fact of the matter is that plaintiff in examination admitted that he had not reflected entry of ₹7 lakhs either in the return of firm or individual. That itself was a clincher to non-suit the plaintiff. The onus as enshrined under Section 101 of the Indian Evidence Act, had thus, not been discharged. The Courts below have ignored the aforementioned facts. The plaintiff except examination of marginal witnesses had not been able to prove advancement of loan of ₹7 lakhs or the agreement containing the element of interest.

I am afraid aforementioned argument of Mr. Bansal would not be able to bring the case within the realm of illegality and perversity, for, despite extensive cross-examination, both the witnesses have been coherent and consistent. No circumstances have come forward as to how the signature/thumb impression of the defendant were borne on the pronote and receipt. No sane person would sit idle or at home in such eventuality, rather would run from pillar to post to make an attempt to lodge a criminal case. This is what has been import of the judgments and decrees of the Courts below. In such circumstances, non-reflection of the amount in the income tax return would not non-suit the plaintiff. At the best, the plaintiff could have faced wrath of the Income Tax Department, if it has been a case of tax evasion or otherwise. Even the element of interest cannot be reduced as the same is part and parcel of the pronote and receipt.

As an upshot of my finding, arguments of Mr. Bansal have not been able to cut ice to bring the case with the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 12, 2018
Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No