

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

RSA-4677-2013(O&M)

Date of decision:-6.12.2018

Ashok Kumar

...Appellant

Versus

Raj Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vikrant Rana, Advocate
for the petitioner.

Mr.Mani Ram Verma, Advocate
for the respondent.

H.S. MADAAN, J.

Plaintiff Raj Kumar had brought a suit for recovery of Rs.1,47,500/- i.e. Rs.1,25,000 as principal amount and Rs.22,500/- as interest thereon against defendant Ashok Kumar on the averments that the latter had borrowed a sum of Rs.1,25,000/- from the former, executing a pronote and receipt in his favour undertaking to return the loan amount with interest at agreed rate but he did not pay any amount to the plaintiff despite several requests and demands and service of legal notice dated 8.9.2007 by the plaintiff upon the defendant, giving rise to a cause of action to the plaintiff to bring the present suit.

On notice, the defendant appeared and filed written statement contesting the suit raising preliminary objections challenging maintainability of the suit in the present form, further contending that no

cause of action arose to the plaintiff to file the present suit; that the suit was false and frivolous and had been filed by concealing true facts. On merits, it was contended that defendant had not borrowed any amount from the plaintiff on 20.9.2004. As a matter of fact, the defendant had purchased a Bolero jeep from the plaintiff having Engine No.AC44E-60863 and chassis No.42E-35338 of 2004 model; that both the parties had furnished affidavits duly sworn by them to each other; the defendant had paid a sum of Rs.12,400/- to the plaintiff on 20.9.2004 itself while executing a pronote for the remaining balance amount of Rs.1,25,000/- on account of purchase of Bolero jeep; that it was agreed between the parties that the defendant would pay the installments of this vehicle after 20.9.2004 and on completion of payment of installments, the plaintiff would get the said vehicle transferred in the name of the defendant; it was also agreed that defendant would pay balance amount of Rs.1,25,000/- to the plaintiff only at the time of transferring the vehicle in the name of defendant and the plaintiff would get the pronote cancelled, however, subsequently, the plaintiff colluded with one Subhash and the vehicle was got stolen, which was later on recovered by the police; the police did not take any action against the culprits, though the complaint had been filed by the defendant; subsequently civil suit preferred by Subhash was dismissed in default on 7.8.2004; another suit is also pending between the parties titled as 'Ashok Versus Subhash etc.'. Refuting the remaining allegations in the plaint, in the end, the defendant craved for dismissal of the suit.

The plaintiff had filed replication controverting the

allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed vide order dated 18.12.2008:

1. Whether plaintiff is entitled to recover suit amount alongwith interest if so to what rate? OPP.
2. Whether plaintiff has no locus standi to file the present suit? OPD.
3. Whether present suit is not maintainable in the present form? OPD.
4. Whether plaintiff has not come to the Court with clean hand and has concealed true and material facts from the Court? OPD.
5. Relief.

In order to prove his case, the plaintiff had appeared as PW2 besides examining Udey Singh, Deed Writer as PW1 and Sher Singh as PW3. He also tendered in evidence documents Ex.P1 to Ex.P5 in support of his case.

On the other hand, the defendant had appeared as DW3(wrongly numbered as DW1) besides examining Ajmer Singh as DW1 and Fateh Singh, Advocate as DW2. He also tendered in evidence documents Ex.D1, Mark-DA and Ex.DB in support of his case.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff, issues No.2 to 4 in favour of the defendant, as a result suit of the plaintiff was dismissed. However, the parties to the suit were left to bear their own costs.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Bhiwani, which

was assigned to Additional District Judge, Bhiwani, who vide judgment dated 5.8.2013 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit finding the appellant plaintiff to be entitled to recover Rs.1,47,500/- from the respondent defendant Ashok Kumar along with agreed rate of interest @ Rs.0.50 per hundred per month from the date of filing of the suit till its realisation. It was ordered that cost of appeal to the tune of Rs.8452/- shall be paid by the respondents.

The defendant is feeling dissatisfied with the said judgment recorded by Additional District Judge, Bhiwani and has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree passed by Additional District Judge, Bhiwani be set aside and the suit filed by the plaintiff against him be dismissed.

On getting notice of regular second appeal, the plaintiff Raj Kumar had appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record.

I find that the impugned judgment and decree passed by Additional District Judge, Bhiwani on 5.8.2013 does not suffer from any illegality or infirmity, rather the same is based upon proper appraisal of evidence and correct interpretation of law and there is no reason to upset the said judgment and decree. The Court of Additional District Judge, Bhiwani on appreciation of the evidence in light of the law on the subject had returned the finding that defendant had borrowed a sum of

Rs.1,25,000/- from the plaintiff, and had executed a pronote and receipt in favour of the plaintiff promising to return the principal amount with interest but he had failed to do so. As such, the plaintiff was justified in filing the suit for recovery of principal amount of Rs.1,25,000/- and interest @ Rs.0.50 per hundred per month, amounting to Rs.22,500/-. While coming to this conclusion, the Additional District Judge, Bhiwani has taken into consideration the deposition of Deed Writer Udey Singh appearing as PW1, who had stated that defendant had borrowed a sum of Rs.1,25,000/- from the plaintiff on payment of interest @ 1/2 per cent per annum, the amount so received by the defendant was in cash. According to this witness, he had made an entry regarding this transaction in his register obtaining signatures of the defendant therein. He has categorically stated that the amount had been received by the defendant from the plaintiff in cash. It is so mentioned in pronote Ex.P1 and receipt Ex.P2.

PW2 plaintiff - Raj Kumar in his affidavit Ex.PW2/A has also reiterated his version as given in the plaint regarding advancing of a sum of Rs.1,25,000/- by him to the defendant on defendant executing pronote and receipt in his favour undertaking to return the amount @ Rs. 0.50 per hundred per annum. Again there is testimony of PW3 Sher Singh, who had proved his affidavit Ex.PW3/A supporting the case of the plaintiff.

The version set up by the defendant that as a matter of fact the transaction related to transfer of Bolero vehicle by the plaintiff in his favour, his paying some amount in cash and regarding the same executing pronote and receipt or that the Bolero vehicle was got stolen by the

plaintiff from the place of the defendant and pronote and receipt were in that regard, but the same did not find favour with Additional District Judge, Bhiwani and that the story of defendant was not accepted on appreciation of evidence. The case of the plaintiff is much more convincing and plausible by preponderance of probabilities than case of the defendant, which is hit by various contradictions uncommon human behaviour and against law.

Learned Additional District Judge, Bhiwani was justified in decreeing the suit filed by the plaintiff against the defendant by setting aside the judgment of dismissal of the suit of plaintiff by the trial Court. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Bhiwani.

The appeal stands dismissed accordingly.

6.12.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No