IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112

RSA-5188-2016 (O & M)
Date of Decision:11.10.2018

Balbir Singh ...Appellant

Versus

Rakesh Kumar ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S. Jakhal, Advocate
for the appellant.

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ANIL KSHETARPAL, J.(Oral)

CM-13456-C-2016

Deficiency in Court fee has been made good. Delay, if any, is condoned.

Application is allowed.

CM-13457-C-2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 78 days in filing the appeal is condoned.

Application is allowed.

Main Case

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below decreeing the suit for recovery filed on the basis of demand-cum-promissory note and the receipt. It has come in evidence that father of the plaintiff retired from service and the amount received at the time of retirement was paid as a friendly loan on interest to the defendant.

Both the Courts after examining the evidence have concurrently found that the plaintiff has proved his case. As per Section 118 of the Negotiable Instruments Act, 1881, a negotiable instrument carries various presumptions. It is for the defendant to rebut those presumptions. Section 118 of the Negotiable Instruments Act is extracted as under:-

> *"**118 Presumptions as to negotiable instruments.** - Until the contrary is proved, the following presumptions shall be made:-*
>
> *(a) **of consideration** - that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*
>
> *(b) **as to date** - that every negotiable instrument bearing a date was made or drawn on such date;*
>
> *(c) **as to time of acceptance** - that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*
>
> *(d) **as to time of transfer** - that every transfer of negotiable instrument was made before its maturity;*
>
> *(e) **as to order of indorsement** - that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;*
>
> *(f) **as to stamp** - that a lost promissory note, bill of exchange or cheque was duly stamped;*
>
> *(g) **that holder is a holder in due course** - that the*

holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

Defendant has failed to rebut those presumptions. Learned counsel for the appellant submitted that the source of the amount paid has not been proved. Learned counsel for the appellant has read over cross-examination of the plaintiff, who has stated that he had withdrawn the amount from the Bank quite some time back. However, thereafter the defendant did not take any step to either summon the officials from the Bank or even call upon the plaintiff to produce Bank statement.

In view thereof, there is no ground to interfere.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

11.10.2018 **(ANIL KSHETARPAL)**
sheetal **JUDGE**

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No