

In the High Court of Punjab and Haryana at Chandigarh

RSA-5900 of 2016(O&M)

Date of Decision: 30.8.2018

Madan Lal

---Appellant

versus

Smt. Kamlesh Kumari

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Mandeep Singh Khillan, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the respondent -plaintiff was decreed partly to the effect that respondent is entitled to a decree of recovery of Rs. 2,00,000/- along with interest @ 6% per annum with proportionate costs from the date of filing of the suit till realization. The appeal preferred by the respondent-plaintiff was allowed, judgment and decree passed by the trial court were modified and the respondent-plaintiff was held entitled to recover a sum of Rs. 5,10,000/- i.e. Rs. 3,50,000/- as principal amount and Rs. 2,33,000/- as interest but pendente lite and future interest has been allowed @ 6% per annum on the principal sum of Rs. 3,50,000/- from the date of suit till realization.

Counsel for the appellant has assailed consistent findings recorded by the Courts accepting plea of the respondent-plaintiff with

regard to execution of pronote and receipt and entitlement of the respondent for recovery of the amount allowed by the Court in Appeal primarily on three counts. The first submission made by counsel is that pronote and receipt are purported to be executed in favour of Smt. Kamlesh Kumari and Ashok Kumar Sharma, her husband (since deceased) but suit for recovery has been filed by Smt. Kamlesh Kumari without joining other legal heirs of Sh. Ashok Kumar Sharma, therefore, the suit is bad for non-joinder of necessary parties.

Another submission made by counsel is that the Court in Appeal has accepted claim of the respondent with regard to payment of interest @ 2% per month on the amount of Rs. 3,50,000/- from the date of pronote and receipt till filing of the suit making a total sum of Rs. 5,10,000/-. It is argued that as the interest @ 24% per annum is exorbitant, the same is liable to be reduced. In this context, reference has been made to judgment of Hon'ble the Supreme Court **Rajni Kumar vs. Suresh Kumar Malhotra 2003(2) RCR (Civil) 776**. In addition, it is argued that the respondent-plaintiff is doing money lending business but does not hold money lender's licence, therefore, suit filed by the respondent is liable to be dismissed for want of necessary registration under the Punjab Registration of Money Lenders Act, 1938.

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

Before advertng to the submissions made by counsel for the appellant, it is pertinent to note that the trial court decreed the suit for recovery of Rs. 2,00,000/- alongwith interest @ 6% per annum with proportionate costs. No appeal was preferred by the appellant against the

judgment and decree passed by the trial court nor he filed cross objections in the appeal preferred by the respondent-plaintiff in respect of rejecting part of the claim meaning thereby that the appellant has not challenged findings of the trial court with regard to correctness of the document namely pronote dated 9.1.2007 Ex. P1 and receipt Ex. P2.

The contention raised by the appellant with regard to the suit being not maintainable for want of joining other legal heirs of Ashok Kumar Sharma has been dealt with by the trial court in para 20 of the judgment wherein it has been held that legal representatives of Ashok Kumar Sharma have deposed in the Court that they do not want to claim any share in the amount sought to be recovered in the present suit. The respondent is none else but widow of said Ashok Kumar Sharma. In the given scenario, contention raised by counsel that suit is bad for non-joinder of other legal heirs of Ashok Kumar Sharma is not tenable and liable to be rejected.

So far as the plea that the appellant is entitled to concession qua rate of interest incorporated in the pronote and receipt being at a higher rate, the appellate court has allowed interest at the agreed rate only till filing of the suit but pendente lite and future interest has been allowed @ 6% per annum though there is no legal bar in allowing pendente lite interest at contractual rate. The Court in Appeal has taken a sympathetic view while allowing pendente lite interest @ 6% viz-a-viz the agreed rate of interest at 24% per annum. Under these circumstances, the appellant is not entitled to seek further concession of interest. In this view of the matter, the appellant cannot derive advantage to his contention from the judgment in **Rajni Kumar's case (supra)**.

Another contention that suit is liable to fail for want of money

lender's licence is untenable as no such plea was raised in the written statement which requires to be decided on the basis of evidence to be adduced by the parties. The appellant cannot be permitted to raise a factual plea for the first time in regular second appeal.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

30.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No