

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

RSA No.5998 of 2015 (O&M)
Date of Decision: July 03, 2018

Arjan Singh

---Appellant

Versus

Virsa Singh

---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Amit Arora, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this regular second appeal against the judgments of the Courts below, whereby, his suit for recovery of Rs.2,09,000/- (Rs.1,10,000/- as pronote amount and Rs.99,000/- as interest) has been dismissed.

The case of the plaintiff was that the defendant took a loan of Rs.1,10,000/- from the plaintiff and executed a pronote and receipt dated 24.10.2006 in regard thereto in the presence of the witnesses and scribe. Interest @ 2.5% per month was agreed to be paid on the loan amount. At the time of institution of the suit, a sum of Rs.2,09,000/- was due from the defendant.

The defendant raised preliminary objections that the plaintiff had not come to the court with clean hands. He had not disclosed that he was a commission agent. The defendant contested the suit alleging that the plaintiff, in connivance with the deed writer and the witness, had forged the alleged pronote and receipt. It was alleged that the wording of the pronote had been fabricated. In

plaintiff on 24.10.2006 which was also clear from a statement prepared and given to the defendant by the plaintiff himself. In the pronote the amount had been enhanced from Rs.10,000/- to Rs.1,10,000/- by inserting '1'. The defendant never went to Tehsil Complex for execution the alleged pronote.

In order to prove the case, the plaintiff himself appeared as PW1 and proved the pronote and receipt as Ex.P1 and Ex. P2. He further examined PW2 Sukhraj Singh, marginal witness who corroborated the statement of PW1 and deposed that the pronote and receipt had been executed by the defendant in favour of the plaintiff by taking a loan of Rs.1,10,000/- on 24.10.2006. Deed Writer Harjinder Singh appeared as PW3 and supported the case of the plaintiff.

Defendant appearing as DW1 deposed that the plaintiff was a commission agent and had deliberately not disclosed this fact. He stated that the defendant used to sell his crops at the shop of the plaintiff's firm and the pronote and receipt had been forged by the plaintiff in connivance with the deed writer and the witnesses. His statement was corroborated by Nishan Singh, DW2 who stated that he also used to sell his crops to M/s Arjan Singh Sarabjeet Singh and used to meet the defendant at the shop. He deposed that on 24.10.2006 when he was present at the shop of the plaintiff, the defendant had come there and requested the plaintiff to lend a sum of Rs.10,000/- for his domestic needs. The accountant of the plaintiff firm gave a sum of Rs.10,000/- to the defendant and got his signatures on some blank papers.

The learned Trial Court noted that the plaintiff had neither disclosed nor proved as to what was the relationship between the plaintiff and the defendant because of which he lent a sum of Rs.1,10,000/- to him. Source of the payment

was also not disclosed. It was further noted that a perusal of the pronote and

receipt showed that there was some interpolation at the time of preparing the pronote and receipt. Digit '1' seems to have been added later on. At the time of writing the half amount digit '5' seems to have been added before the figure 5000/- The shape of both '5' digits were different. Even at the time of writing the half amount in words instead of writing '**Pachvinja**', '**panjvinja**' had been written. All this raised doubt on the execution of the pronote. Even in the receipt Ex.P2 there was over writing at the time of writing half amount in figures which can be read as 5500/-. This fact was also admitted by PW3 Deed Writer who had scribed the pronote and receipt in question. It was also noted that the register of the deed writer had not been produced. Even in the affidavit Ex.PW3/A of the deed writer the serial number in the register where the pronote and receipt had been entered was left blank.

Further, though the plaintiff denied that he was a commission agent and stated that he was a Kiryana Merchant, however, PW2 Avtar Singh admitted that the plaintiff was a Commission Agent and that even he used to sell his crops to the plaintiff. The Trial Court thus concluded that the plaintiff had been guilty of concealing material facts that he was a Commission Agent. The defendant had proved on file documents Ex.D3 to D9 indicating that the plaintiff had been issuing receipts to the defendant for sale of his crops from time to time and in this regard statement of account was also prepared by the plaintiff. In the said statement Ex.P9, a sum of Rs.10,000/- had been shown to be paid by the plaintiff to the defendant on 24.10.2006.

From all this, Trial Court concluded that payment of Rs.1,10,000/- by the plaintiff to the defendant on 24.10.2006 was not proved. To the contrary the

defendant had been able to establish that the plaintiff was a Commission Agent and

that the defendant used to sell crops to him and that only a sum of Rs.10,000/- had been paid by the plaintiff to the defendant on 24.10.2006. The overwriting on the pronote and receipt had not been explained. Accordingly, the suit was dismissed.

The learned lower Appellate Court affirmed the findings of learned lower Court.

Findings of fact have been recorded by the courts below. Learned counsel for the appellant has not been able to establish as to how these findings are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

July 03, 2018
gian

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No