IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1439 of 2018 (O&M)
Date of decision: 16.10.2018

Angrej Singh ... Appellant

Versus

Vijay Kumar ... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. S.C. Arora, Advocate
for the appellant.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against the judgment and decree dated 05.09.2017 passed by the District Judge, Sri Muktsar Sahib whereby appeal against the judgment and decree dated 06.09.2016 passed by the trial Court, dismissing suit for recovery was accepted, judgment and decree dated 06.09.2016 were set aside and suit filed by the respondent/plaintiff is decreed for recovery of Rs.2,90,000/- with interest @ 12% per annum from the date of pronote and receipt i.e. 18.03.2015 till filing of the suit and @ 6% per annum pendente lite as well as future till realisation of the decretal amount.

The facts relevant for disposal of present appeal are that respondent/plaintiff Vijay Kumar filed suit for recovery of Rs.3,22,000/- i.e. principal amount Rs.2,90,000/- and interest Rs.32,000/- @ 2% per month on the basis of pronote and receipt dated 18.03.2015. It is averred that the appellant/defendant availed loan of Rs.2,90,000/- from the plaintiff and executed pronote and receipt in lieu thereof after admitting its contents to be correct in the presence of marginal witnesses. The appellant promised to repay the principal amount with interest @ 2% per month on demand. He got the pronote and receipt typed from Nachhattar Singh Sandhu, document writer. However, despite repeated requests made by the respondent, the appellant failed to repay the amount with interest.

The appellant/defendant filed the written statement and raised preliminary objections inter alia non-maintainability of the suit; locus standi and cause of action and the suit is liable to be dismissed as the respondent is doing the business of money lending without any licence. On merits, he has denied correctness of allegations with regard to taking of loan and execution of pronote-cum-receipt with the plea that same are result of fraud and fabrication. The respondent is running a general store wherefrom he used to purchase articles of daily use and sometimes had taken material on credit. The answering defendant paid a sum of Rs.30,000/- in this regard to plaintiff in the presence of Gurnam Singh. The plaintiff obtained his signatures on blank pronote and receipt which were later misused by him. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

Counsel for the appellant would argue that the trial Court has rightly dismissed suit of the respondent/plaintiff on the grounds that he is involved in money lending business and does not possess a money lenders licence, therefore, cannot maintain the suit. The Court has also held that the respondent/plaintiff did not have the capacity to lend huge amount of Rs.2,90,000/- as he is earning Rs.30,000/- per month from Atta Chakki. It is argued that the Appellate Court has wrongly set aside findings of the trial Court without correctly appreciating the legal and factual aspects involved for adjudication. He would argue that suit of the respondent/plaintiff is liable to be dismissed on the sole ground that he did not possess money lenders licence.

I have heard counsel for the appellant, perused the paper book and records.

Before adverting to the submissions made by counsel for the appellant, it is appropriate to note that promissory note is a negotiable instrument under Section 13 of the Negotiable Instruments Act, 1881 (in short 'the Act'). Section 118 of the Act deals with presumptions as to negotiable instruments. The first presumption under Section 118 of the Act is in respect of consideration. A relevant extract from Section 118 of the Act reads as follows:-

> "118. Presumptions as to negotiable instruments until the contrary is proved, the following presumption shall be made:-
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> (a) of consideration-that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration."

Counsel for the appellant has failed to point out any materials on record that presumption available to promissory note for consideration has been rebutted by leading sufficient evidence by the appellant/defendant. In cross examination of plaintiff Vijay Kumar, he was asked about his income from business of Atta Chakki which is stated to be Rs.30,000/- per month. However, it is the plea of appellant himself that the respondent is doing the business of Karyana. Perusal of cross examination of Vijay Kumar would reveal that no such fact has been elicited that except income from Atta Chakki, he has no other source of income in order to contend as has been held by the trial Court that Vijay Kumar did not have capacity to lend an amount of Rs.2,90,000/- to the appellant/defendant. This apart, this contention of the appellant gets demolished from his clear and categoric stand that Vijay Kumar is doing money lending business because money lending cannot be done without having financial capacity to lend money. In this view of the matter, contention raised by counsel for the appellant with regard to incapacity of Vijay Kumar to lend a sum of Rs.2,90,000/- is not meritorious and has rightly been rejected by the Court in appeal.

This brings the Court to the question of Vijay Kumar doing the business of money lending and not possessing money lenders licence, thus incurring disability to maintain a suit for recovery. Vijay Kumar, in his cross examination has deposed that he had given money on 1-2 occasions and decree has been passed in his favour. He would further depose that he had given money to Harpal Singh son of Gurdial Singh, resident of Bariwala and Kikkar Singh son of Jarnail Singh. He has admitted that he filed a suit for recovery of Rs.1,12,467/- against Banta Singh son of Kehar Singh and he received the said amount. He filed a suit against Kikkar Singh son of Jarnail Singh for recovery of Rs.34,300/-. He filed another suit against Darshan Singh son of Karnail Singh for Rs.1,20,000/- and the matter was compromised. He filed a suit against Ram Rakha son of Krishan Chand, resident of Bariwala for recovery of Rs.1,59,282/- but the said suit pertains to recovery towards sale of wheat. The facts elicited in cross examination of Vijay Kumar would reveal that Vijay Kumar had given money to 3-4 persons and he litigated with them for recovery of amount. The mere fact that Vijay Kumar had given money to 3-4 persons but without proving terms and conditions of said transactions, it is difficult to accept contention of the appellant that Vijay Kumar is doing the business of money lending, thus, has incurred disability to maintain a suit for recovery without possessing money lenders licence. In this view of the matter, contention of the appellant that suit for recovery filed by Vijay Kumar is liable to be dismissed for want of money lenders licence, is not tenable.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

16.10.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No