

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

RSA No.1974 of 2018 (O&M)
Date of Decision: July 04, 2018

Kashmir Chand

---Appellant

Versus

Harnam Chand

---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. S.K. Jain, Advocate and
Mr. Akshay Jain , Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

The defendant has filed this regular second appeal against the judgments of the Courts below, whereby, the suit filed by the respondent for recovery of Rs.2,54,000/- (Rupees two lacs principal amount and Rs.54000/- as interest) has been decreed.

The plaintiff had filed the suit with the averment that the plaintiff and defendant were residents of village Ahmedpur and were known to each other. On 13.3.2007, the defendant borrowed a sum of Rs.2 lacs from the plaintiff for urgent need. He agreed to repay the amount along with interest at the rate of 0.75 paisa per month till repayment. The defendant executed a pronote and receipt on 13.3.2007 in the presence of witnesses Satnam Chand son of Chandi Ram, Charan Dass son of Bulla Ram, Bhajan Lal son of Bhinder and Surender Kumar son of Kashmir Chand. The pronote and receipt was scribed by Deen Dayal Deed Writer. The defendant

demanding the amount, the defendant was refusing to make payment on one pretext or the other. Hence the suit.

The defendant on the other hand pleaded that he had not borrowed any amount from the plaintiff. It was his case that the defendant being a co-villager of the plaintiff and his son Des Raj had borrowed a sum of Rs.20,000/- from Des Raj. At that time, Des Raj had procured the signatures of the defendant on many blank plain papers, stamp papers and printed forms to be used as security for repayment of the borrowed amount. However, Des Raj misused those signed papers and manipulated a sale agreement in his favour. He filed a civil suit for possession of land of defendant through specific performance of agreement to sell. The said civil suit titled as Des Raj Vs. Kashmiri Lal was decided by the Addl. Civil Judge (Sr.Divn.), Sirsa vide judgment dated 26.5.2012 and alternative relief for refund of earnest money had been granted. After filing that suit, Des Raj got the present suit filed by manipulating the pronote and receipt and the blank printed forms signed by the defendant.

To prove his case, the plaintiff examined himself as PW-2, the scribe Deen Dayal was examined as PW-1 and attesting witness Satnam Chand as PW-3. The defendant appeared as DW-1. He also examined Bhajan Lal as DW2 who corroborated his version.

Learned Trial Court noted that the plaintiff had placed on record the pronote and receipt dated 13.3.2007 as Ex.P1 and Ex. P2. Deen Dayal, the scribe appearing as PW1 stated that Ex.P1 and Ex. P2 had been scribed by him and were entered at Sr. No.184 in his register on 13.3.2007.

He stated that the pronote had been scribed by him on the asking of

defendant Kashmir Chand. Interest was also agreed to be paid at the rate of 0.75 paise per month. Ex.P1 was read over and explained to the witnesses who then appended their signatures. PW3 Satnam Chand one of the attesting witnesses also stated that the pronote was scribed by Deen Dayal, it was read over and explained to defendant Kashmir Chand in his presence and the presence of other witnesses i.e. Bhajan Lal and Surender Kumar.

The Trial Court noted that witness Surender Kumar son of Kashmir Chand (defendant) had endorsed on the pronote in his hand that “Mere Sahmane mere pitaji ne 2 lak nakad vasul pai” and had also appended his signatures dated 13.3.2007. The defendant however, in his evidence, stated that he was not aware whether Surender Kumar was his son. He however stated that Bhajan Lal was his son and he identified his signatures on the receipt Ex.P2. The learned Trial Court held that the pronote and the receipt were duly proved.

The argument of the learned counsel for the defendant that the plaintiff was doing the business of money lender without having obtained licence under the Punjab Registration of Money Lenders Act, 1934, and hence the suit was barred, was rejected by holding that there was nothing on the file to indicate that he was regularly in the business of money lending. By a solitary act of lending a person does not become of money lender within the meaning section 2 of the Act.

The suit was accordingly decreed.

The learned lower appellate court affirmed the findings of the learned Trial Court.

Before the learned lower appellate court it had been argued on

behalf of the defendant that in his cross-examination PW1 Deen Dayal, had admitted that he had not signed on Ex.P2. The defendant had denied his signatures on the pronote and receipt dated 13.3.2007 and the plaintiff had failed to prove the defendant's signatures on the pronote and receipt by examining any handwriting expert. The learned lower appellate court rejected this argument by referring to para 1 of the affidavit of defendant Kashmir Chand wherein he stated that he had borrowed a sum of Rs.20,000/- from Des Raj son of the plaintiff and at that time Des Raj had procured his signatures on many blank papers, stamp papers and printed forms as security for repayment of the borrowed amount. He had pleaded that Des Raj had misused those signed papers to manipulate a sale agreement in his favour and also filed the present suit by manipulating the pronote on the blank printed forms bearing his signatures. The Court held that the defendant had thereby admitted his signatures on the pronote and receipt. His denial of his signatures in his cross-examination was an after thought and no credence could be given to it. Commenting on his conduct, the Court further held that he had even gone to the extent of denying that Surender Kumar was his son.

Accordingly, the appeal was dismissed. However the rate of interest was reduced to 6% per annum.

Learned Counsel for the appellant argued that the findings of the courts below cannot be sustained for the reasons:

- i) the scribe of the pronote and receipt Deen Dayal, PW1 had stated that the pronote and receipt do not bear his signatures.
- ii) PW2 and PW3 in their cross examination stated that the affidavits of

examination-in-chief had been prepared on 13.03.2007

There is no merit in any of these contentions.

The scribe Deen Dayal appearing as PW1 has specifically deposed that he had scribed the pronote on the asking of the defendant, it had been read over to the defendant and other attesting witnesses and explained to them and the witnesses who then appended their signatures. PW3 Satnam Chand also deposed about the execution of the pronote and receipt. The defendant himself admitted the signatures of Bhajan Lal, who he stated was his son, on the receipt. In the face of this evidence the mere fact that PW1, the scribe, did not sign the pronote and agreement would not make any difference.

PW2, the plaintiff in his cross- examination, no doubt stated that he had got the affidavit written on 13.3.2007. However, he also stated that he had got the affidavit prepared from Deen Dayal today (i.e., the date of his deposition). PW3 Satnam Chand also in his cross examination had stated that the affidavit was got prepared in the third month of 2007. However, he very clearly stated that the affidavit Ex.PW3/A had been got prepared by him today (i.e., on the date of his deposition) from Deen Dayal scribe who sits in the old court premises. However their categoric statements were that the affidavits of examination- in- chief had been got prepared today (i.e., the date when they were tendered in evidence) and in fact the affidavit PW2/A of PW2- the plaintiff bears the date 21.1.2015 and had been attested by Oath Commissioner on the same date. The affidavit Ex.PW-3/A of PW3, Satnam Chand bears the date 29.1.2015 and had been attested by the Oath Commissioner on the same date. In the face of this not

much can be made of a line in their cross examination that the affidavits were got prepared on 13.3.2007.

Thus there is merit on any of the contentions.

Other than the above arguments, learned counsel for the appellant has not been able to establish as to how the findings of fact recorded by the Courts are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

July 04, 2018

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(HARINDER SINGH SIDHU)

JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No