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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2449 of 2017 (O/M)
Date of decision : 24.5.2018

Amar Singh .... Appellant

Versus

Bhupinder Singh .... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. N.S. Sodhi and Ms. Harshita, Advocates,
for applicant-appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in present regular second appeal is the judgment dated 7.12.2016, passed by learned Additional District Judge, Moga, affirming judgment and decree dated 14.7.2015, passed by learned Civil Judge (Junior Division), Moga, vide which suit was decreed.

Facts of case are that plaintiff advanced a loan of Rs.6,00,000/- to defendant on 16.11.2011 at Dharamkot, District Moga, in lieu of pronote and receipt dated 16.11.2011. Plaintiff claims Rs. 6,00,000/- as principal amount and Rs. 1,80,000/- as interest on the basis of pronote and receipt dated 16.11.2011.

In written statement, defendant denied to have obtained loan. It was claimed that he used to thumb mark the documents. He never signed any document. Pronote and receipt are forged and fabricated. It was further stated that earlier also, plaintiff had issued notice to defendant for recovery of Rs. 4,00,000/- on the basis of pronote and receipt dated 20.2.2011. All the accounts were settled and defendant paid Rs. 3,70,000/- to plaintiff. Therefore, nothing was due.

From pleadings, following issues were framed :-

1. Whether the defendant has taken loan of Rs. 1,80,000/- and executed pronote and receipt dated 16.11.2011 ? OPP

2. Whether the plaintiff is entitled to decree for recovery of Rs. 1,80,000/- alongwith interest ? OPP

3. Whether the pronote and receipt dated 16.11.2011 are forged and fabricated ? OPD

4. Relief.

To support his case, plaintiff himself stepped into witness box as PW1 and also examined Jaspal Singh, attesting witness (PW2) and Hardeep Singh, document writer (PW3). To rebut same, defendant appeared himself as DW1 and denied the case of plaintiff. Trial Court believed the evidence of plaintiff and held that defendant duly executed pronote and receipt. Accordingly, trial Court decreed the suit for Rs. 6,00,000/-. 1 per cent per month interest on said amount was also allowed from the date of advancement of loan till date of decree. 6 per cent per annum future interest from the date of decree till final realization of amount was also allowed. Findings were upheld in appeal.

I have heard the learned counsel for appellant and have also carefully gone through file.

The learned counsel for appellant has vehemently contended that plaintiff-respondent is a Commission Agent and that defendant-appellant was dealings with him. However, he has failed to point out that he has taken such stand in written statement. Any evidence beyond pleadings is liable to be ignored. In evidence, plaintiff-respondent has stated that he is an agriculturist and owns 30 killas of agriculture land. He had paid Rs. 6,00,000/- to defendant and it was a personal transaction.

The learned counsel for appellant has further contended that in issue No. 1, issue was framed as to whether loan of Rs. 1,80,000/- was advanced to defendant or not, however, decree for Rs. 6,00,000/- has been passed.

I am of the view that there appears to be a clerical error in framing the issue. The case of plaintiff is that he had advanced loan of Rs. 6,00,000/- and Rs. 1,80,000/- was claimed as interest. The Court can decide the real controversy by ignoring the clerical error in framing of issues.

The learned counsel for appellant has further contended that consideration is not proved. The scribe is a typist at Dharamkot Court Complex. Attesting witness is a friend of plaintiff. No income tax returns were produced.

I am of the view that evidence of plaintiff as well as scribe and attesting witness shows that a loan was advanced. Money was paid in their presence. Defendant merely appeared as a witness and denied loan. His statement cannot be taken as gospel truth. There is no reason why he went to Tehsil Office of Dharamkot. Plaintiff has stated that he advanced loan from his personal transaction. Therefore, he was not required to show that entry was made in his account books. Normally, when a valuable security is executed, party advancing the loan prefer to have a witness who is his friend as no stranger will come forward to witness in such document.

The learned counsel for appellant has further contended that relations between parties were not cordial, therefore, plaintiff will not advance loan to defendant. The plea of defendant is that earlier he had taken loan. On account of notice issued by plaintiff, he paid Rs. 3,70,000/- and accounts were settled.

I am of the view that it goes to show that defendant had won trust of plaintiff by repaying the earlier amount of loan. It was for this reason that on account of such trust, plaintiff took risk and advanced loan of Rs. 6,00,000/-. There are concurrent findings of two Courts below. No law point arises. Therefore, there are no merits in present regular second appeal. Consequently regular second appeal is dismissed.

Since main case has been dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

24.5.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No