

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

126

RSA No.3169 of 2017 (O&M)

Date of decision: 28.08.2018

Jarnail Singh

..... Appellant

Versus

Mohinderjit Singh through his LRs

..... Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Ms. Amanpreet Kaur, Advocate, for  
Mr. Har Naresh Singh Gill, Advocate  
for the appellant.

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**ANIL KSHETARPAL, J. (ORAL)**

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by both the Courts below while decreeing a suit for recovery of Rs.3,00,000/- with interest @ 9% during the pendency of the suit and 6% future interest.

The suit was filed on the basis of pronote and receipt executed by the defendant-appellant on 20.11.2007. In the written statement, it was pleaded that Harpal Singh has also filed a similar suit on the basis of pronote and receipt dated 16.11.2007. The marginal witness Sadhu Singh was examined as PW-1 whereas scribe Swaranjit Singh, Advocate has been examined as PW-3 apart from a handwriting and fingerprint expert Navdeep Gupta. Both the Courts on appreciation of evidence as noticed above have decreed the suit filed by the plaintiff.

Learned counsel for the appellant while referring to the provisions of the Punjab Registration of Money Lenders Act, 1938,

contended that such suit was not maintainable as per Section 3 of the Act. However, learned counsel for the appellant could not draw attention of the Court to any such defence taken by the defendant in either of the Courts below. Whether the plaintiff had a license or the plaintiff is a professional money lender is subject to evidence to be led by the parties. The defendant cannot be taken by surprise for the first time in the second appeal. The defendant cannot be permitted to raise an argument which was neither part of the pleadings nor evidence nor any such contention was raised before the Courts below.

Still further, pronote is a negotiable instrument and as per Section 118 of the Negotiable Instruments Act, various statutory presumptions arise in favour of a negotiable instrument holder. The defendant has failed to rebut those statutory presumptions.

In view thereof, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

**28.08.2018**

Dinesh Bansal

**( ANIL KSHETARPAL )  
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No