

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSANo.4055 of 2018 (O&M)

Date of Decision: 03.12.2018.

Swaran Kaur

... Appellant

Versus

Bachan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S. Punia, Advocate
for the appellant.

ANIL KSHETARPAL J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed the learned Additional District and Sessions Judge, Ludhiana, reversing the judgment of the learned trial Court resulting in dismissal of the suit for recovery of the amount of Rs.13,13,400/- filed on the basis of pronote and receipt.

Learned First Appellate Court has recorded following findings of facts:-

“15. Now pleadings of the parties and evidence on record is to be scrutinized carefully. As per the plaint, the plaintiff is shown herself to be the daughter of Bhajan Singh resident of Village Barmalipur and has given her present address as Village Barmalipur, whereas she is residing with her husband at Village Saharan Majra, who is working as Typist Mini Secretariat, Ludhiana and his brother Darabara Singh is working as Deed Writer at Village Malaud. Swaran Kaur has nowhere disclosed in the plaint to be the wife of Bhajan Singh or resident of Saharan Majra and when Darbara Singh PW1 stepped into the witness box, he has tried to paint a picture that Smt. Swaran Kaur was not having cordial relation with her husband and was residing with her parents. The relevant portion of his cross-examination reads as under:-

“Plaintiff was married with my brother Bhajan Singh in the year 1974-1975. There was matrimonial dispute between them and she has lived with her parents for 10-12 years. I do not know since when they are now residing together. Now they are living together for the last 1 ½ years.”

16. *His testimony was recorded on 19.11.2011, whereas, the suit was filed on 22.4.2006. So, as per the testimony of Darbara Singh PW1, the plaintiff was having matrimonial dispute with her parents for the last 5-6 years as at the time of testimony he has stated that they are residing together for about 2 years and before that she resided with her parents for 10-12 years. That means she was residing with her parents for 6-7 years. The pronote and receipt pronote is of 13.12.2004. So, if the testimony of Darbara Singh is taken to be true, then Swaran Kaur was residing with her parents for the last 3-4 years prior to execution of pronote and receipt pronote due to matrimonial dispute with her husband. If that was the position, then why she will come to Darbara Singh brother of her husband for execution of pronote and receipt pronote when here relations with her husband were not cordial for the last 3-4 years and she was residing separate. But, the version of Darbara Singh has not been supported by Swaran Kaur, Swaran Kaur has not stated that she has any matrimonial dispute with her husband or that she was residing separate for the last 10-12 years. Swaran Kaur is a rustic villager and she has not scribed to the theory of giving address of her parental village, as her residential address as put forward by PW Darbara Singh and in cross-examination, Swaran Kaur has deposed that Bachan Singh defendant was known to their family for the last 10-12 years as he used to come to their house to get his writing work done from her husband Bhajan Singh. If Swaran Kaur was not having cordial relations with her husband, then there is no question of Swaran Kaur parting with such a huge amount of Rs.9,95,000/- in favour of Bachan Singh, when Bachan Singh was only known to her husband Bhajan Singh and there was no other acquaintance with Bachan Singh.*

17. *As regards the source of income is concerned, Swaran kaur*

has deposed in her cross-examination that she was having a sum of Rs.15 lacs in both her accounts since 2002 to 2004. Rs.10 lacs may be there in the account in the bank at Malaud and Rs.5 lacs in the bank at Payal and she has specifically deposed that in routine they used to keep Rs.5,000/- to Rs.6,000/- in cash in their house and rest of the amount was deposited in the bank and that Bachan Singh talked to her husband for borrowing the amount 15/20 days prior to taking of the same. She further deposed that Rs.5 lacs were given to her by her parents and rest was given to her by her husband. She has specifically deposed that her parents have given the amount, which she deposited in her account at Payal and the amount was withdrawn for the first time when it was given to Bachan Singha and the rest amount was withdrawn from the account at Malaud and the amount from both the accounts was withdrawn 4/5 days prior to payment to defendant Bachan Singh. Thereafter, she was asked to come out with the bank account pass-book of both these accounts to show that the amount was withdrawn from the banks and her cross-examination was adjourned for that specific purpose and on the next date, she specifically deposed that she has not brought the bank record i.e. passbook and other documents relating to her accounts with the banks at Payal and Malaud and those documents have been kept by her son Nirdeep Singh. She has specifically admitted that she had been directed by the court to bring the record. The relevant portion of her cross-examination reads as under:-

“On the last date of hearing, I was directed by court to bring record. Today, I have not brought the record. Since last date of hearing, I had no talk with my husband regarding name of bank, where I was having account as well as account nos. My husband resides with me and he is present in court even today.”

18. It is admitted fact that Bachan Singh appellant is an illiterate villager. Pronote and receipt pronote is shown to have been thumb marked by the appellant. It is admitted fact that Bachan Singh used to scribe the documents from Darbara Singh as well as from Bhajan Singh husband of the respondent. Then in

such circumstances, it was quite easy for Darbara Singh and Bhajan Singh to get the thumb impression on pronote and receipt pronote form. Learned lower court has given its findings on the basis of surmises and conjectures that no agriculturist in the village would sign a pronote form and that every agriculturist is aware of promissory note. The relevant portion has already been reproduced above in this judgment and is not repeated here.

19. *Now, in order to rebut the presumption u/S 118 of the Negotiable Instruments Act, the defendant/appellant could have created dent in the evidence of the plaintiff. When the plaintiff has specifically deposed that she has withdrawn the amount from her bank accounts and that amount was withdrawn 4-5 days prior to the day when it was advanced to the appellant and the plaintiff Swaran Kaur was specifically directed by the court to come out with her bank account pass-books and other particulars and she was given adjournment for specifically that purpose, but she intentionally and deliberately did not produce the record regarding her bank accounts, so certainly an adverse inference has to be drawn against the respondent/plaintiff as she is alleged to have in her possession documentary evidence showing withdrawal of amount of Rs.9,95,000/- advanced to the appellant on the basis of pronote and receipt pronote, but she intentionally withheld that best evidence from the perusal of the court. In such circumstances, presumption attached u/S 118 of the Negotiable Instruments Act stands rebutted and the plaintiff/respondent has failed to prove on record that she advanced a sum of Rs.9,95,000/- to the defendant/appellant. My views are forfeited by the law laid down by Hon'ble Punjab & Haryana High Court in **Sohan Singh Vs. Amritpal Singh, 2012(1) Civil Court Cases 299**, where it was held as under:-*

“If passing of the consideration amount is not duly proved even if the execution of pronote and receipt is proved, then it remained just a paper transaction, which cannot be enforced against the executant in the court of law.”

20. *In the present case, passing of the consideration has not*

been proved by the plaintiff and presumption u/S 118 of the Negotiable Instruments Act stands rebutted and there are chances of the appellant/defendant having been asked to put thumb impression on pronote and receipt pronote by Darbara Singh from whom he was getting the documents scribed as the appellant is an illiterate person and used to thumb mark the documents and it is admitted fact that Darbara Singh used to scribe the documents of appellant Bachan Singh. As such, the findings recorded by the learned lower court are not sustainable, which are hereby set aside.”

Learned Senior counsel appearing for the plaintiff-appellant has been heard at length.

Learned senior counsel has submitted that before filing of the suit two notices were got sent to the defendant dated 09.02.2006 and 27.02.2006 and since these have not been replied, therefore, it must be assumed that the stand taken by the defendant was incorrect. He further submitted that execution of the pronote and receipt have not been denied and therefore the learned first appellate court has committed an error in dismissing the suit. He has further submitted that the other documents, which the defendant claim that he has been getting scribed from the brother of the appellant, have not been produced. He has further submitted that Darbara Singh, brother of husband of the appellant, has appeared, where he has stated that defendant had taken a loan from another person on 04.01.2005 and there was an entry to that effect.

In the present case, as extracted above, plaintiff-appellant had taken a positive stand while appearing in evidence that the amount was given to the defendant after withdrawing the same from bank accounts maintained by her. However, it is not in dispute that the plaintiff even after having been given an opportunity, did not produce before the Court those pass-books or statements of accounts from the banks. It is well-settled that the plaintiff has to stand on her

own legs. The lacuna in the evidence of the defendant cannot be made the basis to decree the suit filed by the plaintiff.

Now let us deal with the argument of the learned Senior counsel. As regards first argument, it may be noted that no doubt if a notice got served is not replied the Court may in the facts and circumstances of the case assume that the defendant has no defence. However, in case of an illiterate farmer, this assumption cannot be drawn particularly when it has been pleaded by the defendant that his thumb impression may have taken because he was getting various documents scribed regularly from husband of the plaintiff who is working as a typist as well as brother of the plaintiff who is working as a professional Deed Writer. This discussion even answers the second argument as noticed above. As regards the other documents Darbara Singh appeared in evidence. Plaintiff has admitted himself that there is subsequent entry in his register dated 04.01.2005 with respect to a loan allegedly taken by the defendant from somebody else. Even the plaintiff has not produced any evidence so as to what happen to the aforesaid loan whether it has been paid or not or there is any suit filed by the aforesaid person. While deciding the regular second appeal, the jurisdiction of the court is limited. In the present case, first appellate court on appreciation of evidence has given good and cogent reasons to arrive at a conclusion which does not require any interference.

In view of the above, there is no ground to interfere with the concurrent findings of fact arrived at by both the courts below. The present regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

(ANIL KSHETARPAL)
JUDGE

03.12.2018

rekha sharma

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No