

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

**R.S.A No.4539 of 2018(O&M)
Date of decision :09.10.2018**

Sarban Singh

..... Appellant

Versus

Gurjant Singh

..... Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Harpreet Kaur, Advocate
for the appellant.

LISA GILL,J

Appellant-defendant is aggrieved of judgement and decree dated 09.02.2017, passed by the learned Civil Judge (Sr. Division), Faridkot, as well as judgement and decree dated 31.10.2017, passed by the learned Additional District Judge, Faridkot, whereby the suit filed by the plaintiff-respondent has been decreed.

Brief facts necessary for the adjudication of the case are that respondent-plaintiff-Gurjant Singh filed a suit for recovery of ₹61,200/-. It was pleaded that the defendant (present appellant) borrowed a sum of ₹45,000/- from him on 31.08.2013 with interest at the rate of 2% per month. A pronote and receipt were alleged to be executed by the defendant in favour of the plaintiff by way of collateral security promising to repay the amount along with interest as and when demanded. However, the defendant did not repay the amount despite demands. Hence the suit.

Defendant-appellant resisted the suit. Written statement taking various preliminary objections was filed. Averments on merits were controverted. It was stated that the defendant never executed any pronote or receipt in favour of the plaintiff or agreed to pay any interest. It was alleged that the pronote and receipt are forged, fabricated and inadmissible in evidence. At the same time, it was pleaded in the written statement that the amount borrowed by the defendant stood returned in three instalments. ₹12,000/-, it was stated was returned to the plaintiff after five months of borrowing it in the presence of Lal Singh. Another sum of ₹15,000/- and ₹12,000/- was also returned in the presence of responsible persons. The entire loan amount was cleared. Defendant demanded the pronote and receipt, but the same was not returned. A false suit was thus filed. Dismissal of the suit was prayed for.

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for recovery of suit amount from the defendants along with interest as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the pronote and receipt are forged, fabricated and inadmissible?OPD
4. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court decreed the suit filed by the plaintiff for recovery of ₹45,000/- by way of principal amount along with interest at the rate of 6% per annum.

Appeal filed by the appellant-defendant was also dismissed by the learned Additional District Judge, Faridkot, vide impugned judgement and decree dated 31.10.2017.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that the amount which was borrowed by the appellant-defendant from the plaintiff was in-fact returned in the present of responsible persons. The entire loan taken by the appellant was cleared. Therefore, both the learned Courts below have wrongly decreed the suit filed by the plaintiff-respondent. It is submitted that the evidence on record has been misread by the learned Courts below to conclude that a contradictory stand has been taken by the appellant. It is thus prayed that the present appeal be allowed and the suit filed by the plaintiff-respondent be dismissed.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

Plaintiff set up a specific case that a sum of ₹45,000/- was borrowed by the defendant from him on 31.08.2013. Plaintiff appeared before the learned trial Court as PW-1 and testified as per the pleadings in the plaint. PW-2-Gurcharan Singh @ Aala Singh and PW-3-Gurtek Singh, specifically deposed regarding the execution of the pronote and receipt by the defendant in favour of the plaintiff in their presence and in the presence of Shingara Singh, another marginal witness. Due execution of Ex.P-1 (pronote) and Ex.P-2 (receipt) were duly proved on record. Ex.P-3 (legal notice) and Ex.P-4 (postal receipt of the registered post of the legal notice) were duly proved on record as well.

Defendant appeared as DW-1. He stated that he had returned the amount of ₹45,000/- in three instalments i.e. ₹12,000/- each as well as ₹15,000/-. DW-2-Gurcharan Singh and DW-3-Baljit Singh, were examined to prove that the said amount was returned in the presence of respectables but the pronote and receipt was not returned.

It is relevant to note that the appellant-defendant has indeed taken a contradictory stand in his written statement. It is pleaded that the alleged pronote and receipt was forged, fabricated and inadmissible in evidence. It is specifically stated that the defendant never executed any pronote or receipt in favour of the plaintiff nor did he agree to pay any interest. At the same time, it is stated that the amount in question was returned by him in three instalments. The entire amount was cleared, however, the pronote and receipt were not returned to him despite various requests. It is further pleaded that a panchayat was organised after receipt of the legal notice. It is apparent that an absolute contradictory stand has been taken by the appellant. In case, he was denying the execution of the pronote and receipt and claiming them to be fraudulent, it was incumbent upon the defendant to have proved the same by leading clear and cogent evidence in this respect. There is no such evidence on record to indicate that the said pronote and receipt are fraudulent or fabricated. Paradoxically the money in question was stated to be returned in three instalments which has also not been proved on record. The appellant-defendant has failed to prove that the amount in question was returned to the plaintiff. No member of the alleged panchayat convened after issuance of legal notice has been examined to substantiate the plea raised

by the defendant. Therefore, both the learned Courts below have rightly decreed the suit filed by the plaintiff-respondent.

Learned counsel for the appellant-defendant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 09.02.2017 and 31.10.2017 passed by the learned Civil Judge (Sr. Division) Faridkot and learned Additional District Judge, Faridkot, respectively, are upheld.

There is a delay of two hundred and six days (206) days in filing and fifty two (52) days delay in re-filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing and re-filing of this appeal has been rendered academic. Applications are accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

09.10.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No