

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 489 of 2018(O&M)

Date of Decision:1.2.2018

Gurbachan Singh

---Appellant

vs.

Tarsem Lal

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. G.S.Punia, Senior Advocate
with Ms. Harveen Kaur, Advocate
for the appellant

Rekha Mittal, J.

CM No. 1464-C of 2018

Prayer in this application is for placing on record Annexure
A-2.

Heard.

Allowed as prayed for. Annexure A-2 is taken on record
subject to just exceptions.

Disposed of accordingly.

RSA No. 489 of 2018

Challenge in the present appeal has been directed against
concurrent findings recorded by the courts below whereby suit filed by the

respondent/plaintiff for recovery on the basis of pronote and receipt dated 22.8.2005 was decreed by the trial court on 3.9.2013 and the judgment and decree passed by the trial court were affirmed in appeal preferred by the unsuccessful appellant/defendant.

Counsel for the appellant has submitted that a criminal case FIR No. 129 dated 2.6.2005 under Sections 406, 420 and 120-B of the Indian Penal Code was registered against the respondent and in the said case, the respondent surrendered before the police on 29.8.2005. It is argued that as during the intervening period from the date of registration of FIR and surrender, the respondent was on the run, plea of the respondent/plaintiff that he lent an amount of Rs. 4,00,000/- on the basis of pronote and receipt executed on 22.8.2005 becomes highly doubtful.

Another submission made by counsel that the courts below failed to appreciate report and testimony of handwriting and finger prints expert Sh. Navdeep Gupta in right perspective, thus, committed a serious error rather perversity by discarding his testimony and upholding plea of the respondent/plaintiff that pronote and receipt were executed by the appellant. To bring home his contention, it is argued that the courts have wrongly held that standard thumb impressions used for the purpose of comparison were obtained outside the court, therefore, were not authenticated to be used for the purpose of comparison and this finding is the result of failure to take into consideration answer to the first question (unnumbered) in his cross examination given by Navdeep Gupta.

During the course of hearing, counsel for the appellant made available copies of testimonies of Tarsem Lal PW1, Ashok Kumar PW2,

pronote and receipt Exs. P1 and P2 whereas testimony of Gurbachan Singh Annexure A-2 have been placed on record by filing CM No. 1464-C of 2018.

As per the settled position in law, in the regular second appeal, the court is not to re-appreciate the evidence and set aside the concurrent findings recorded by the courts below merely because a view different from what has been held by the courts is possible. Counsel for the appellant has not pointed out any material elicited in cross examination of Tarsem Lal plaintiff and Ashok Kumar, scribe of pronote and receipt to prove that the courts below have mis-appreciated their evidence or failed to take into consideration certain facts on record which have material bearing on determination of issues raised in the case much less to constitute that the judgments are perverse.

Perusal of cross examination of Tarsem Lal and Ashok Kumar leaves no manner of doubt that there is not even a suggestion to the witnesses that the pronote and receipt do not bear thumb impressions of Gurbachan Singh. It was suggested to Ashok Kumar that Gurbachan Singh did not sign in his presence. Tarsem Lal was suggested that he had prepared a false pronote by exerting influence upon Gurbachan Singh. As the appellant did not specifically deny his thumb impressions on the pronote and receipt during the course of cross examination of the plaintiff as well as scribe of the documents, it is difficult to accept contention of the appellant that either pronote and receipt do not bear his thumb impressions or there was no possibility for the respondent/plaintiff to lend money on 22.8.2005 as criminal case registered against him on 2.6.2005 was pending

investigation or the respondent-plaintiff was keeping himself away in order to avoid his arrest in the said case. Not only this, Gurbachan Singh tendered into evidence his affidavit (Annexure A-2) by way of examination in chief. In his affidavit, he has reiterated his version that the pronote and receipt dated 22.8.2005 is false, forged, fabricated, self created and manipulated being the result of fraud and misrepresentation to extort money. Perusal of his cross examination makes an interesting reading and establishes that he tried to avoid giving correct answers. He had even gone to the extent of saying that he did know the panch and sarpanch of his village. He denied that Tarsem Lal had been a panch of their village for 15 years. He refused to divulge number of houses of pandit community in his village or Tarsem Lal is a pandit or not. He had gone a step further by saying that he never filed any written statement in the present suit. He never submitted any affidavit in the present suit. He never told to the Court that he did not know Tarsem Lal. In the later part of his cross examination, he has stated that he cannot tell the number of persons he knows in the village nor he knows number of houses or population of the village. He did not know since how many years he was residing in the village.

As the appellant had denied filing of written statement and also his affidavit, he cannot take advantage of any plea raised in the written statement or his affidavit. It further appears that testimony of Gurbachan Singh is not truthful and worthy of credence and reliance, therefore, not at all sufficient to counter and rebut case of the respondent and testimonies of the witnesses examined by him. This apart, it defies logic that a person would prepare a pronote and receipt against a stranger and thereafter initiate

proceedings in a Court of Law at the risk and cost of being held liable for committing fraud/forgery. There is nothing on record suggestive of the fact that the respondent had any animosity against the appellant to prepare false documents to stake his claim for recovery of Rs,. 4,00,000/- alongwith interest.

This brings the Court to evidence of Sh. Navdeep Gupta, examined by the appellant. Firstly, testimony of Navdeep Gupta is based upon opinion evidence. Counsel for the appellant has argued that thumb impressions on the pronote and receipt are not clearly legible that otherwise makes the comparison by an expert difficult as well as not free from doubt. The courts below have noticed that the expert used standard thumb impressions from the documents which were thumb marked outside the court, therefore authenticity of standard thumb impressions cannot be vouched. Admittedly, the appellant did not file an application for obtaining his sample thumb impressions in the Court. None of the documents used by the expert for comparison (standard thumb impressions) were thumb marked by Gurbachan Singh in presence of the court or of the respondent/plaintiff.

To be fair, counsel has pointed out the answer given by expert to question No. 1. A relevant extract from cross examination of Navdeep Gupta, reads as follows:-

“No body gave me instructions to compare the disputed and standard thumb impression. Volunteered. The same have been examined and compared as per the application moved by the counsel for the defendant in the presence of counsel for the plaintiff as per the order of this Hon'ble

Court. I am not summoned witness in this case.

Q. Who pointed out to you which thumb impression is disputed and standard thumb impression?

Ans. I have already stated above that disputed and standard thumb impression were pointed out to me by the counsel for the defendant in the presence of counsel for the plaintiff as per the application dt. 20.3.12 on which counsel for the plaintiff also got put the thumb impression of the defendant in his presence for getting compared with the disputed thumb impressions are the said thumb impression has been marked as S4.”

Though the witness had stated in the concluding lines of answer that counsel for the plaintiff also got put the thumb impression of the defendant in his presence for getting compared with the disputed thumb impression and the said thumb impression has been marked as S4, however, it is not clear if the application dated 20.3.2012 bears two thumb impressions of Gurbachan Singh. It is also not clear if the application dated 20.3.2012 was filed without thumb impressions of Gurbachan Singh. Nevertheless, it remains a fact that none of the documents purportedly contained standard thumb impressions were thumb marked by the appellant in the presence of court or the plaintiff. In this view of the matter coupled with the discussion made hereinbefore, I find it difficult to accept contention of the appellant that the present appeal gives rise to a legal issue that requires to be adjudicated upon in regular second appeal.

For the foregoing reasons, the appeal fails and is accordingly

dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

1.2.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No