

In the High Court of Punjab and Haryana at Chandigarh

RSA- 5790 of 2017(O&M)

Date of Decision:23.2.2018

Nirbhai Singh

---Appellant

vs.

Harpreet Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ivan Singh Khosa, Advocate
for the appellant

Rekha Mittal, J.

CM No. 2445-C of 2018

Heard.

Allowed as prayed for. Annexures P-1 and P-2 are taken on
record subject to just exceptions.

Disposed of accordingly.

RSA No. 5790 of 2017

Challenge in the present appeal has been directed against
concurrent findings recorded by the courts below whereby suit for recovery
of Rs. 1,00,000/- (principal amount) alongwith interest of Rs. 25,833/- on
the basis of pronote and receipt dated 23.9.2009 was decreed by the Civil
Judge (Junior Division), Rajpura in favour of the respondent/plaintiff vide

judgment and decree dated 8.1.2015 and findings recorded by the trial court came to be affirmed by the District Judge, Patiala vide judgment and decree dated 5.8.2016.

Apart from the fact that the appeal is barred by limitation of 394 days and the applicant-appellant has failed to make out sufficient cause for condoning delay of more than one year, appeal filed by the appellant/defendant is devoid of merit and liable to be dismissed.

The sole submission made by counsel for the appellant is that as per case of the respondent/plaintiff, pronote and receipt were executed by the appellant on 23.9.2009 but the appellant in his cross examination would depose that Manpreet Singh has written pronote on 30.9.2009 at 2-00.

Before adverting to the submission made by counsel for the appellant, it is pertinent to note that in the regular second appeal, the court cannot set aside the judgments and decrees passed by the courts below by re-appreciating evidence on the premise that a view different from what has been held by the courts below is possible. Equally settled is that the second appeal is required to be admitted for hearing if it raises a substantial question of law.

There cannot be dispute about the settled position in law that testimony of a witness is to be read as a whole and the same cannot be appreciated by picking sentences from here and there divorced from the remaining part of testimony that would lead to miscarriage of justice. Indisputably, in the case at hand, case of the respondent/plaintiff is based upon pronote and receipt dated 23.9.2009. The documents have been

marked as exhibits in the testimony of Darshan Dass, an attesting witness of the receipt. The mere fact that at one place, Harpreet Singh has stated that pronote was scribed by Manpreet Singh on 30.9.2009 at 2-00, is not sufficient to discard and disbelieve the remaining evidence adduced by the respondent/plaintiff. This mistake in his testimony can be the result of error committed by an official of the court who scribed evidence in the presence of Presiding Officer of the court. This error can also be the result of slip of tongue on the part of respondent/plaintiff. However, the error pointed out by counsel for the appellant is not at all sufficient to record that there is a substantial question of law which needs adjudication in regular second appeal.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

23.2.2018
paramjit

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