

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

RSA No.85 of 2017 (O & M)

Date of Decision:-05.10.2018

Darshan Singh

...Appellant

Versus

Ranjit Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE AJAY TEWARI

Present:- Mr. J.P.S. Sidhu, Advocate
for the appellant.

Mr. Surinder Garg, Advocate
for the respondent.

AJAY TEWARI J.(Oral)

This appeal has been filed against the judgment of the lower Appellate Court reversing that of the trial Court and thereby decreeing a suit filed by the respondent for recovery of Rs.4,00,000/- plus interest on the basis of pronote and receipt dated 20.07.2011 executed by the appellant in his favour.

The case of the respondent was that the appellant borrowed a sum from him and executed a pronote but he did not return the money. A legal notice was issued but the same having not yielded the desired result, the instant suit was filed.

The case of the appellant on the other hand was of complete

denial stating that he had never taken any loan or executed any pronote.

The respondent examined himself, the scribe and one of the witnesses, who testified about the due execution of the pronote. The appellant did not lead any evidence in support of his claim that the pronote was a forgery. The trial Court dismissed the suit holding that all the three plaintiff's witnesses had stated that the plaintiff had also signed the pronote whereas in fact the signatures of the plaintiff did not appear on the pronote. The trial Court also held that there was discrepancy in the statements of the witnesses regarding handing over the money to the appellant. The trial Court also held that the respondent-plaintiff did not have the capacity to make the payment. In appeal, the lower Appellate Court-and in my opinion rightly-gave greater weight to the document rather than to the oral testimony. The lower Appellate Court noticed that the appellant had not led any evidence in proof of the assertion that the pronote was a forgery. The lower Appellate Court held that the mistaken statements to the effect that the respondent had also signed the pronote would not erode the credibility of the case completely. As regards the conclusion of the trial Court that the respondent did not have the capacity to advance the money, the lower Appellate Court held that once it was the case of the respondent that he had kept the money in his own custody, the low balance in his bank accounts would not determine the issue. Learned counsel for the appellant has defended the judgment of the trial Court while the counsel for the respondent has defended the judgment of the lower Appellate Court.

In my considered opinion the approach of the lower Appellate

Court is correct. No doubt where a loan transaction is oral, the testimony of the witnesses (being the only evidence) assumes great importance and it is only on the basis of the oral testimony that Courts have to decide the case. But where a loan has been evidenced by a writing, oral testimony becomes marginal, or at the best, secondary. The fact that the appellant did not lead any evidence to prove the allegations of forgery; and the fact that he did not even rely to the legal notice are telling circumstances. Moreover I have seen a photocopy of the pronote in juxtaposition with the signature of the appellant on the vakalatnama and a glance reveals that the hand writing is of the same person.

In the totality of circumstances it is not possible to hold that the findings of facts recorded by the lower Appellate Court are either based on no evidence or such a perverse misreading of the evidence so as to justify interference in second appeal.

Dismissed.

October 05, 2018
Vijay Asija

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No