

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

RSA No.6516 of 2018 (O&M)

Date of Decision: 19.12.2018

Paramjit Singh

.....Appellant

Vs.

Darshan Singh and Another

.....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.L.C.Aggarwal, Advocate, for the appellant.

DR. RAVI RANJAN, J.

This appeal is directed against the judgment and decree dated 14.11.2018 passed by the District Judge, Jalandhar in CIS No.CA-1410-2018 by which he has dismissed the appeal filed by the present appellant-Paramjit Singh and upheld the judgment and decree dated 14.05.2018 passed by Additional Civil Judge (Sr.Divn.), Nakodar, decreeing the suit filed by the plaintiff-respondents with the findings that plaintiffs are entitled for recovery of Rs.9,50,000/- as principal amount along with interest.

The appellant also seeks setting aside of the judgment and decree dated 14.05.2018 passed, as stated above, by the Civil Judge (Jr.Divn.), Nakodar, in CIS Case No.CS 344/2015 dated 25.08.2015.

According to the plaintiffs, the parties of the suit are of the same village. The defendants took a loan of Rs.1,50,000/- from the plaintiffs on 02.02.2012 and executed pronote and receipt in favour of plaintiff-respondent No.1 on the same day. After about 6 months, the defendant repaid the amount with interest and the original pronote and receipt were

returned to him with endorsement regarding payment of loan amount. However, soon thereafter the defendant approached the plaintiffs once again for borrowing a sum of Rs.2,50,000/- which, in view of the friendly relations, was given by the plaintiff No.1 as loan. On 30.08.2012 in lieu thereof, the defendant executed pronote and receipt on the same day. As per the plaintiffs, the loan amount was paid in the presence of Kartar Singh Lambardar and Sukhwinder Singh. Interest agreed under this pronote was 2% per month. Defendant kept paying the interest amount every month up to 30.06.2013, however, the principal amount remained outstanding. The defendant again approached the plaintiff for loan of Rs.7 Lacs which was again arranged and on 01.07.2013, since the plaintiff No.1 was busy in some other work, sent his wife Piar Kaur-plaintiff No.2 to advance loan of Rs.3,50,000/- to the defendant against pronote and receipt at the place of Mukhtiar Singh -document writer. Defendant-appellant Paramjit Singh granted a pronote and receipt for Rs,3,50,000/- in favour of Piar Kaur-plaintiff No.2 in the presence of Sukhwinder Singh and Santokh Singh Lambardar. On 02.07.2013, the plaintiff No.1 again advanced him loan of Rs.3,50,000/- and got executed pronote and receipt in lieu of this amount from the defendant in the presence of aforesaid witnesses. Interest agreed to be paid under both the pronotes was 1 ½% per month. Defendant had agreed to return the amount as and when demanded by the plaintiffs along with the interest. On 30.08.2015, a total sum of Rs.13,20,500/- became due towards defendant who did not repay any amount either towards principal or interest despite repeated demands. Hence, the suit was filed for recovery of the same.

statement alleging that he is an agriculturists and plaintiffs are doing the business of money lending. His father has borrowed Rs.1,50,000/- from plaintiff No.1 about 2 ½ years ago which was repaid by the defendant along with interest. It is alleged in the written statement that at the time of lending aforesaid amount, plaintiff No.1 had obtained his and his father's signatures and thumb impression on blank stamp papers. Pronotes and receipts for security purposes but, even though the amount was repaid by the defendant, plaintiff did not return the aforesaid signed stamp papers, pronote and receipt forms. Those documents, according to the defendant-appellant, could have been used for creating valuable security on the basis of which the suit was filed. It has further been alleged that, even if such pronotes and receipts are proved to have been executed, those are result of fraud, misrepresentation and concealment of facts and without consideration as he never borrowed any amount from plaintiff nor had agreed to pay any interest.

Upon consideration of rival pleadings, the trial Court framed the following issues:

- (1) Whether defendant executed pronotes and receipts dated 30.08.2012, 01.07.2013 and 02.07.2013 in favour of plaintiffs? (OPP).
- (2) Whether the plaintiffs are entitled to recover any amount from the defendant and if yet, what amount?(OPP).
- (3) Whether plaintiffs are also entitled to recover any interest on the principal amount and if yes, at what rate? (OPP)
- (4) Whether the present suit is not maintainable?(OPD).
- (5) Whether plaintiffs have no cause of action and locus standi to file the present suit?(OPD).

- (6) Whether plaintiffs are estopped to file the present suit by their own act and conduct?(OPD).
- (7) Whether the present suit is not properly valued for the purpose of court fee and jurisdiction?(OPD).
- (8) Whether the alleged pronotes and receipts are not properly stamped and cancelled and whether same are fake and forged documents? (OPD).
- (9) Whether plaintiffs have suppressed the material facts from this Court” (OPD).
- (10) Whether plaintiffs are money lenders and as such are not competent to file the present suit without proper license? (OPD).
- (11) Whether the suit is barred under Order 7 Rule 1 (J) CPC?.
- (12) Relief.

The trial Court, upon consideration of materials on record including the evidence led and upon hearing the parties, decreed the suit with costs for recovery of Rs.9,40,000/- as principal amount along with interest @ 6% per annum from the date of filing the suit till the date of decision and future interest @ 6% per annum on the decretal amount till realization of the decretal amount.

The defendant/appellant preferred the appeal before the first appellate Court and respondents appeared upon service of notice. The First appellate Court also, upon consideration of materials on record, has dismissed the appeal. Hence, present regular second appeal has been preferred by the defendant/appellant.

Learned counsel for the appellant has raised diverse issues to impress upon this Court that the concurrent findings recorded by the Courts below suffer from various errors and the appeal is fit to be allowed.

It is first contended that the decision of the Courts below are in teeth of the decision of a Single Bench of this Court rendered in **Vijay Kumari Vs. Jaggar Singh (2017) 2 RCR (Civil) 28**. It is contended that only on the basis of presumption which is available under Section 118(a) of the Negotiable Instruments Act, 1881, the suit cannot be decreed in favour of the plaintiff as defendant has been able to raise a serious question regarding such instrument being a result of fraud and deceit. Such presumption is always rebuttable and since it in itself is not a piece of evidence, it cannot be relied by the plaintiff for deriving benefit. It, at best, makes out a *prima facie* case only. The defendant since has been able to dispel the presumption attached to a document, thus, the plaintiff's suit was bound to nose dive.

It is next contended that the plaintiffs did not have any capacity to advance such a huge amount. Since they have failed to prove source of amount alleged to have been given to the appellant, judgments and decrees can well be termed as result of miscarriage of justice.

The appellants have also placed reliance upon a decision of Hon'ble Supreme Court in **Vijay Vs. Laxman and another 2013 (3) SCC 86**, to impress upon this Court that in case, the document was issued by way of security only or if a person has taken loan and issued a cheque to repay but the loan transaction could not be proved, there can not be conviction under the provisions of Negotiable Instrument Act.

Before coming to any conclusion it would be apt to go through the evidence which has been led by the plaintiffs and the defendant to prove their respective cases. The plaintiffs, apart from examining them as a witness in support of the allegation made in the plaint, also placed on record

all the three pronotes and receipts as Ex.P-1 to Ex.P-6. The attesting witness Sukhwinder Singh has been examined as PW-3 who also corroborated execution of the aforesaid documents. The scribe of the aforesaid documents Mukhtiar Singh also stepped into the witness box as PW-4 in support of execution of the pronotes and receipts and also proved on record the entry in that regard made in his register i.e. Ex.P-7 to Ex.P-9. The trial Court has noted that they were cross-examined at length but their testimony could not be shaken and withstood the test.

On the other hand, there is no evidence led on behalf of defendant/appellant regarding any fraud and forgery committed in the execution of the pronotes and receipts. Apart from the above, there is variation regarding in the stand of the defendants as in his pleading he has stated that his father borrowed a sum of Rs.1,50,000/- from the plaintiffs but in the cross-examination he deposed otherwise admitting that actually he had borrowed the sum and has further admitted that he did not disclose this fact to his counsel on any earlier occasion. He has also admitted that plaintiff had purchased land from his nephew which further strengthened the case of the plaintiff that parties were known to each other. The aforesaid fact stands noted in paragraph-10 of the trial Court judgment. The Appellate Court considered this aspect also and held that alleging fraud must set forth full particulars of it and would be required to be proved accordingly. General allegations qua fraud would not be sufficient. The case of the defendant/appellant is that in the presence of his father, at the time of borrowing the earlier loan amount of Rs.1,50,000/-, the thumb impression and signatures were obtained by the plaintiff-respondents on blank papers,

defendant/appellant by examining his father as a witness but the same was not been done which would be fatal for the case of the appellant. On the other hand, if the execution of the promissory note and receipts stand proved and passing of the consideration amount also stands proved in view of the presumption arising out of Section 118(a) of the Negotiable Instruments Act. In view of the strong evidence led by the plaintiff, as discussed above, the same of course stands proved. Thus, defendant/appellant cannot derive any benefit from the decision rendered by a Single Bench of this Court in **Vijay Kumari (Supra)**. Learned single judge has held that presumption drawn from the aforesaid statute would be rebuttable in nature. However, defendant would be required to lead evidence to dispel the such presumption attached to the document execution of which is otherwise proved. In the present case, there is concurrent finding of the courts below that execution of documents stand proved as no cogent evidence could be led by the defendant. The defendant would not be benefited from the decision of the Hon'ble Supreme Court rendered in **Vijay Vs. Laxman (Supra)** either the reason that the Apex Court has held that so long the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged as the presumption would be rebuttable even on a preponderance of probabilities also. However, the aforesaid case having arisen out of a criminal trial in which acquittal of the accused was the issue, the defendants have not been able to make out a reasonably probable version also for rebutting the presumption under Section 118 of the Act. In fact, it was a golden opportunity for the defendant to produce his father to prove that signatures and thumb impressions were taken on blank papers, as

earlier loan was taken by his father or by him as in his pleading, he has said that the loan was taken by his father but in evidence he has said that the loan in fact was taken by him and this was even not disclosed by him to his counsel.

Now coming to the another issue raised by the defendant regarding the capacity of the plaintiff to advance such huge amount as loan is concerned, it has been urged on behalf of appellant that plaintiff has admitted that he is not income tax assessee and the plaintiff No.2 is household lady and since no source has been disclosed as to how they could have arranged more than Rs.13 lacs to lend to defendant, plaintiff's claim should have been discarded. However, this limb of arguments advanced on behalf of defendant can be noted only to be rejected as in paragraph-9 of the written statement, the defendant has stated that the plaintiffs are money lenders and as such, they cannot file a suit of recovery without obtaining money lending licence from the concerned department. If, the defendant considers that plaintiffs are money lender then they are admitting that plaintiffs have that capacity and source to lend such amount, also.

However, in support of the claim that plaintiffs are money lenders, no cogent evidence has been led by the defendants and as such, the trial Court has held that since no evidence was led on the said issue and learned counsel for the defendant even did not press the same during course of hearing, the issue stood decided in favour of the plaintiffs.

As a sequel of the aforesaid discussion and in the facts and circumstances of this case, in my considered view, no ground or substantial question of law could be raised by the appellant warranting interference of

In the result, this appeal fails and is, accordingly, dismissed.

However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

19.12.2018

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No