

RSA No. 1178 of 2019 (O&M)

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

RSA No. 1178 of 2019 (O&M)

Date of Decision: October 22, 2019

Sukhvinder Singh

..... Appellant(s)

Versus

Avtar Singh

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Tarunveer Vashist, Advocate
for the appellant.

LISA GILL, J.

Appellant-defendant is aggrieved of the judgment and decree dated 20.11.2018, passed by the learned Additional District Judge, Karnal as well as judgment and decree dated 23.07.2015, passed by the learned Additional Civil Judge (Sr. Division), Assandh whereby suit filed by the respondent-plaintiff has been decreed and recovery of Rs.1,00,000/- with interest @ 24% per annum (2% per month) from the date of execution of pronote dated 03.09.2010 till the date of decree and with future interest @ 6% per annum from the date of decree till its realization has been ordered.

Brief facts necessary for the adjudication of the case are that the respondent-plaintiff filed a suit for recovery of Rs.1,00,000/- with interest @ 24% per annum while pleading that the plaintiff and defendant had good relations and the above said amount with interest @ 2% per month was given to him as the defendant had approached him for the said amount for domestic purposes. A pronote and receipt dated 03.09.2010 was stated to be executed by the defendant in favour of the plaintiff. The same was scribed by Prem Chand,

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Deed Writer (PW2). The defendant was requested to repay the amount with interest after June 2013 but he did not do so, despite the legal notice dated 08.08.2013. Thereafter, the suit was filed.

Defendant-appellant resisted the suit taking various preliminary objections regarding maintainability etc. It is stated that in fact the plaintiff who was serving the Indian Army (Military) promised to procure a job for the defendant's son in the year 2010. A demand of Rs.3,00,000/- was raised by the plaintiff, out of which Rs.2,00,000/- were given to the plaintiff and Rs.1,00,000/-, it was agreed, would be given after the appointment of the defendant's son. A pronote of Rs.1,00,000/- was executed. Job was, however, not secured for the defendant's son, due to which the defendant sought the refund of Rs.2,00,000/- as well as return of the pronote. The plaintiff instead of returning the same, filed the present suit. It is denied that any legal notice was received by the defendant. Dismissal of the suit was sought.

Replication to the written statement was not filed by the plaintiff. Following issues were framed by the learned trial Court on the basis of the pleadings:-

1. Whether plaintiff is entitled to recovery of Rs.1 lakh with interest @ 24% p.a. from the defendant ? OPP.
2. Whether suit is not maintainable ? OPP
3. Whether this Court has no jurisdiction to try the present suit ? OPD.
4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
5. Relief.

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Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case concluded that the plaintiff had successfully proved the execution of the pronote and the receipt, in fact it stood admitted by the defendant. However, the defendant, it is observed, failed to prove his defence. The reason for which he allegedly executed the pronote, it is held, could not be proved and neither could he prove the handing over of Rs.2 lakhs as alleged. Accordingly, the suit was decreed.

Appeal preferred by the present appellant was dismissed by the the learned Additional District Judge, Karnal vide the impugned judgment and decree dated 20.11.2018. Aggrieved therefrom, present appeal has been filed by the appellant-defendant.

Learned counsel for the appellant-defendant vehemently argues that execution of the pronote and receipt itself is faulty. Handing over of the amount of Rs.1,00,000/- to the defendant is not proved by the said receipt and pronote. Attesting witnesses namely Satpal Singh PW3 and Tirath Singh PW4 have not stated that the amount in question was handed over in their presence. Therefore, both the learned Courts below have grossly erred on facts and in law in decreeing the suit filed by the plaintiff. It is, thus, prayed that this appeal be allowed and both the impugned judgments and decrees be set aside. Consequentially, suit filed by the plaintiff-respondent be dismissed.

I have heard learned counsel for the appellant at length and have gone through the photocopy of the record with his able assistance.

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The plaintiff – respondent, in this case, has sought recovery of a sum of ₹1 lakh alongwith interest as mentioned above on the basis of a pronote and receipt dated 03.09.2010. It is pertinent to note at this stage that the execution of the pronote and receipt have been duly admitted by the defendant. The defendant seeks to explain the execution of the same by explaining that the plaintiff had promised to secure a job for the defendant's son in the Army and for that purpose a sum of ₹3 lakhs was settled to be given to the plaintiff. A sum of ₹2 lakhs was handed over to the plaintiff and the remaining amount, it was agreed, would be given after the appointment of the appellant's son. It is in order to secure the payment of the remaining sum of ₹1 lakh that the pronote and receipt were executed by the defendant. It is further alleged by the defendant that when the job was not secured and refund of sum of ₹2 lakh was sought, the present suit was filed by the plaintiff in a malafide manner.

In such a situation, it was incumbent upon the defendant to have led cogent evidence to substantiate his plea. It is a matter of record that neither in the written statement nor in the statement of the defendant, who testified as DW1, any date or time has been specified as to when the said amount of Rs. 2 lakhs was given to the plaintiff. There is no reference to any person in whose presence the said amount may have been given to the plaintiff. It is relevant to note that DW2 in his testimony stated that two Panchayats were also convened at the residence of plaintiff – Avtar Singh in order to resolve the matter. However, it is a matter of record that neither is there any pleading to this effect nor has any such person, who was a part of

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the alleged Panchayat, examined by the defendant – appellant to substantiate his plea. DW2 has not even revealed the names of the persons who were allegedly a part of the so-called Panchayat, despite pointed question. Furthermore, DW2 Mukhtiar Singh stated in his testimony that the amount of ₹ 2 lakhs was borrowed by him from a goldsmith but the said goldsmith has not been examined. It is a matter of record that no such averment is found present in the written statement filed by the defendant. Appellant – defendant has admitted that the plaintiff - Avtar Singh had retired from the Army though he could not even reveal the date, month or year of his retirement. Perusal of the testimony of DW2 is indeed telling. The plaintiff has duly proved the execution of the pronote and receipt dated 03.09.2010. Moreover, in view of the specific admission of the execution of the pronote and receipt by the appellant – defendant, argument raised on behalf of the appellant in respect to the alleged faulty execution of the pronote and receipt is untenable, hence rejected.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 23.07.2015 passed by the learned Additional Civil Judge (Junior Division), Assandh as well as judgment and decree dated 20.11.2018 passed by the

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learned Additional District Judge, Karnal which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

October 22, 2019.
Sunil

(LISA GILL)
JUDGE

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