

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

RSA No.1071 of 2001 (O&M)

Date of decision : 21.01.2019

Harbans Singh

...Appellant

Versus

Ajaib Singh (deceased) through his LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate for the appellant.

Ms. Kamalpreet Kaur, Advocate for respondent Nos.1 to 3.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below dismissing the suit for recovery of amount of ₹94,600/- out of which the principal amount is ₹55,000/-.

Both the Courts after appreciation of the evidence, have recorded a finding that the plaintiff has failed to satisfy the conscious of the Court that there was any transaction of loan. The findings arrived at by the learned First Appellate Court while affirming the judgment of the trial Court, records as under:-

“16. The appellant is admittedly the resident of village Ganda, Tehsil Fatehbad, whereas the respondent is the resident of far away place. They had no prior dealings at all. The appellant had admitted in his cross-examination

that he has never visited the house of the respondent. The respondent has also stated that he does not know the plaintiff and has never gone to his house. The appellant himself has admitted that he knew that the respondent was having dealing in the shop M/s Som Nath-Amar Nath. Under these circumstances it is un-natural that the appellant would advance a huge amount of Rs.50,000/- to the respondent for no reason or rhyme and that by obtaining his signatures on the pronote which have not been scribed by a regular petition-writer and the same have been scribed by adjoining commission agent of Amar Nath Kalra. According to the Scribe Veepin, respondent himself has told his name to him that respondent was not earlier known to him. In that eventuality it is improbable that the respondent would have called Vipin Kumar to scribe the pronote on his behalf. Admissions of the appellant and his witnesses that pronote and receipts were executed at the shop of M/s Som Nath-Amar Nath clearly shows that the signatures of the respondent were obtained by the said firm as security. The consideration is absolutely not proved to have been passed. The appellant has failed to prove the burden of passing of consideration. The motive behind the litigation is established. The appellant has failed to establish the relationship of a loaner and loanee and accordingly the execution of the document is not proved. The conduct of the appellant, his family members is also to be taken into account as they have been filing suits for recovery at the behest of one commission agent firm Amar Nath-Som Nath who was in the habit of obtaining signatures of the agriculturists on the pronote and receipts and other documents. Accordingly the appellant is not entitled to recover any amount from the respondent. The findings of the trial Court given under all the issues are correct and are in

accordance with law. There is no infirmity in the impugned order and the findings given under all the issues are affirmed.”

Learned counsel for the appellant made sincere attempt to persuade this Court to take a different view by submitting that the plaintiff was also customer of the firm M/s Som Nath-Amar Nath and that is how the plaintiff gave loan against pronote to the defendant, however, could not justify or establish that findings arrived at by the Court are erroneous. The reasons given by the Courts below are cogent on appreciation of the evidence which are not shown to be in any way perverse or erroneous.

Hence, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

21.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No