

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

RSA No.2747 of 2015(O&M)

Date of decision: 12.3.2019

Darshan SinghAppellant

VERSUS

Gursewak SinghRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishal Goel, Advocate for the appellant.

Mr. S.S. Sidhu, Advocate for the respondent.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against the judgment and decree dated 06.04.2015 passed by the Additional District Judge (Fast Track Court), Bathinda whereby appeal against judgment and decree dated 14.11.2013 passed by the trial Court was allowed and suit for recovery filed by the appellant/plaintiff was dismissed.

The appellant/plaintiff filed suit for recovery of Rs.1,84,960/- i.e. principal amount Rs.1,36,000/- on the basis of pronote and receipt dated 19.11.2008. It is pleaded that defendant/respondent borrowed an amount of Rs.1,36,000/- from the plaintiff on 19.11.2008. He executed the pronote and receipt on the same day, scribed by Raj Kumar, Deed Writer and receipt was attested by Hardev Singh and Puran Singh. The defendant put his signatures on the pronote and receipt in the presence of witnesses. Defendant failed to return the amount despite repeated requests. Hence, the suit.

The respondent/defendant filed written statement and raised preliminary objections relating to cause of action, maintainability of the suit, suit being barred by limitation, plaintiff being estopped by his act and conduct from filing the suit, pronote and receipt bear additions and alterations, plaintiff is engaged in business of money lending without holding any statutory licence and the suit is not valued properly for the purpose of Court fee and jurisdiction. On merits, he denied obtaining any loan or execution of pronote and receipt with the averments that pronote and receipt are forged documents prepared in connivance with witnesses. It has been further alleged that on 22.11.2005, the defendant had taken Rs.1,00,000/- from the plaintiff and executed a pronote and receipt on the said date. He paid entire amount to the plaintiff. At the time of executing the said pronote dated 22.11.2005, the plaintiff obtained his signatures on many blank and printed papers and the plaintiff might have obtained his signatures on the pronote and receipt in question which are the result of fraud. All other material averments of the plaint were denied with a prayer for dismissal of suit.

The plaintiff filed replication and re-asserted his stand taken in the plaint and denied the submissions made by the defendant.

The trial Court framed issues reproduced in para 5 of judgment of said Court.

To prove his case, the plaintiff appeared in the witness box and examined Hardev Singh, attesting witness of receipt PW-2, Raj Kumar, Deed Writer PW-3. To counter case of the plaintiff, defendant examined himself as a witness.

Having heard counsel for the parties in the light of materials on record, the trial Court decreed the suit for recovery of Rs.1,36,000/- on

the basis of pronote and receipt including interest at the rate of 1% per month with costs. As has been noticed hereinbefore, appeal preferred by the defendant/respondent was allowed by the first Appellate Court.

Counsel for the appellant would argue that the reasons that weighed in the mind of Appellate Court to set aside the well reasoned judgment and decree passed by the trial Court are the result of failure to appreciate materials on record in right perspective. It is vehemently argued that as the defendant has raised a plea that he had obtained loan of Rs.1,00,000/- on the basis of pronote and receipt dated 22.11.2005 that contains a clause of payment of interest at the rate of 3% per month, the same is sufficient to set aside findings of the Appellate Court that since the appellant did not have the capacity to lend an amount of Rs.1,36,000/-, that creates a doubt in his version of giving a loan to the defendant/respondent. It is further argued that story propounded by the respondent/defendant with regard to execution of pronote and receipt Ex.D1 and D1/A gets falsified and belied from his testimony as he had categorically stated that documents Ex.D1 and D1/A did not bear his signatures. Another submission made by counsel is that the pronote and receipt dated 19.11.2008 was scribed by a regular deed writer namely Raj Kumar and the same was duly entered at Sr. No.520 of the register maintained by said Raj Kumar and the said entry has been proved by Raj Kumar as Ex.PW3/B. It is vehemently argued that evidence adduced by the appellant is more than sufficient to prove his case with regard to liability of the respondent/defendant to repay the amount along with interest. In support of his contention, he has relied upon judgment of this Court **Paramjit Vs. Jaswant Singh, 2014(5) Law Herald 4299** wherein it has been held that there is a presumption that the person who had signed the

pronote and receipt had read the pronote and receipt and signed it after admitting its contents. Reference has been made to the observations of Hon'ble the Supreme Court in **M/s Grasim Industries Ltd. and another Vs. M/s Agarwal Steel, 2010 (1) RCR (Civil) 932**, reads as follows:-

"In our opinion, when a person signs a document, there is a presumption, unless there is proof of force of fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted."

Counsel representing the respondent, on the contrary, has supported the judgment passed by the Appellate Court with the submission that plea of the respondent with regard to taking loan of Rs.1,00,000/- and execution of pronote and receipt dated 22.11.2005 finds corroboration from the testimony of Hardev Singh, a witness examined by the appellant/plaintiff to prove the pronote and receipt being one of the attesting witnesses of the receipt Ex.P2. It is further argued that the appellant denied execution of pronote and receipt dated 22.11.2005 with a clear intent to counter plea of the defendant that his signatures were obtained on blank papers and printed forms at the time of taking loan of Rs.1,00,000/- on 22.11.2005 and execution of pronote and receipt on that day in respect of loan of Rs.1,00,000/-.

I have heard counsel for the parties, perused the paper-book and records.

The Appellate Court set aside the judgment and decree passed by the trial Court by relying upon testimony of Hardev Singh PW-2 as he admitted the pronote and receipt Ex.D1 and D1/A dated 22.11.2005 having been executed by Gursewak Singh for taking loan of Rs.1,00,000/-, to hold

that the plaintiff has concealed a material fact from the Court and has deposed against true facts. The second reason assigned by the Court is that the plaintiff has failed to prove his capacity to lend money as he owns only two killas of land and did not prove any other source of income and it may be difficult for the plaintiff to make both ends meet with income of two killas of land and as such it was difficult for him to manage giving loan of Rs.1,36,000/-. It has also been held that giving loan of Rs.1,36,000/- is somewhat unprecedented as ordinarily the amount is given in round figure. The Court in para 17 of the judgment has commented adversely against conduct of the plaintiff as he tried to give an impression that he is not on visiting terms with Puran Singh and Hardev Singh, attesting witnesses of the receipt but later admitted that sometimes he had been taking ration from the shop of Hardev Singh but in his cross examination, he has admitted that he himself has brought Hardev Singh for deposing in the Court. Further, the Court has also noticed conduct of the plaintiff in respect of his relations with Hem Raj son of Harbans Lal an attesting witness of receipt Ex.D1/A dated 22.11.2005. Another fact taken note of by the Appellate Court is that pronote and receipt in question are dated 19.11.2008 which is 3 days prior to expiry of limitation for filing a suit for recovery on the basis of pronote Ex.D1 and the same leads to an inference that the pronote might have been got executed by the plaintiff regarding some balance amount of prior transaction and if it is so, the consideration of the pronote in question cannot be said to be proved.

Findings of the Appellate Court with regard to capacity of the plaintiff to give a loan of Rs.1,36,000/- are the result of its failure to appreciate that as per plea of the defendant, he had taken a loan of Rs.1,00,000/- from the plaintiff in November 2005 and executed a pronote

and receipt dated 22.11.2005 Ex.D1 and D1/A, respectively. The defendant has also averred that the amount borrowed by him has already been repaid to the plaintiff. Perusal of the document Ex.D1 and D1/A reveals that rate of interest is 3% per month. Firstly, if the plaintiff could give a loan of Rs.1,00,000/- in November 2005 despite his holding of two kills of land, his capacity to give a loan of Rs.1,36,000/- in November 2008 cannot be doubted. Secondly, if the plea of defendant is to be accepted that he had taken a loan of Rs.1,00,000/- and repaid the said amount with interest at the rate of 3% per month that also goes a long way to prove capacity of the plaintiff to give a loan of Rs.1,36,000/- in November 2008. In this view of the matter, findings of the Appellate Court doubting the capacity of the plaintiff to give loan of Rs.1,36,000/- are the result of non-application of mind and suffer from perversity.

The Appellate Court has taken into consideration admission by Hardev Singh PW-2 in respect of pronote and receipt dated 22.11.2005 to say that the plaintiff has concealed a material fact from the Court. Indeed, the respondent raised a plea in the written statement with regard to taking a loan of Rs.1,00,000/- on 19.11.2005 and execution of pronote and receipt in favour of the plaintiff qua the said transaction. The plaintiff in the replication has denied these allegations. The plaintiff was the first witness examined in the case. Perusal of cross examination of plaintiff would reveal that no such pronote and receipt was put to the witness nor the factum of giving of loan of Rs.1,00,000/- in November 2005 and execution of pronote and receipt at that time was put to him. Even it was not suggested to the plaintiff that pronote and receipt dated 19.11.2008 did not bear signatures of the defendant/respondent. On the contrary, it was suggested to him that pronote dated 19.11.2008 has been prepared by him

in connivance with witnesses Hardev Singh and Puran Singh and the scribe without giving any money. Meaning thereby that the respondent/defendant only raised the plea that the pronote is without consideration. Hardev Singh, an attesting witness of the receipt, was examined and he tendered into evidence his affidavit Ex.PW2/A by way of examination in chief. In cross examination, he would depose that he identifies his signatures on pronote Ex.D1 and receipt Ex.D1/A, he has also stated that Gursewak Singh cleared the accounts after payment of money to Darshan Singh in respect of pronote Ex.D1 dated 22.11.2005 and voluntarily stated that on account of giving money of first pronote the money in respect of the second pronote was given to Gursewak Singh. He denied the suggestion that no money was paid in respect of pronote Ex.P1 and receipt Ex.P2. The Appellate Court has taken into consideration testimony of Gursewak Singh with regard to his having admitted the pronote and receipt Ex.D1 and D1/A but did not rely upon his testimony with regard to pronote and receipt Ex.P1 and P2 having been executed by the defendant on payment of loan/consideration. Though, Gursewak Singh had admitted execution of pronote and receipt Ex.D1 and D1/A but the defendant himself demolishes his plea in this regard as he denied his signatures both on Ex.D1 and D1/A. He further denied his signatures even on Ex.P1 and P2 despite no such case being set up in the written statement or during cross examination of the material witnesses namely the plaintiff PW-1 and Hardev Singh PW-2. The very fact that defendant had denied his signatures on pronote and receipt Ex.D1 and D1/A goes a long way to say that testimony of Gursewak Singh alone is not sufficient to establish or to ransack the proceedings that any such document was executed by the defendant in favour of the plaintiff in November 2005 and since the plaintiff had denied

such transaction between the parties, he is to be held guilty of concealing the material fact or deposing against true facts. At the cost of repetition, it is mentioned that the plaintiff was never confronted with the documents Ex.D1 and D1/A nor that of giving loan of Rs.1,00,000/- in November 2005 or repayment of the said amount by the defendant to plaintiff at any point of time. The Appellate Court, for the reasons best known, did not bother to advert to cross examination of the defendant whereby he denied his signatures not only on Ex.P1 and P2, pronote and receipt in question but also on pronote and receipt Ex.D1 and D1/A pleaded/set up by him. In this view of the matter, findings of the Appellate Court by relying upon a part of testimony of Gursewak Singh in respect of the previous transaction are the result of its failure to consider other evidence on record and omission to put this plea to the appellant/plaintiff. I would hasten to add that even the defendant is silent as to the date, month and year when he allegedly returned the amount/loan raised on the basis of documents Ex.D1 and D1/A.

The Appellate Court is right in its observations that ordinarily the loan is advanced in rounded off figures and the factum of giving loan of Rs.1,36,000/- is somewhat unnatural but this fact alone is not sufficient to discard case of the plaintiff and set aside the judgment and decree passed by the trial Court. The Appellate Court has also sought to raise an inference that pronote and receipt might have been executed due to some outstanding liability qua the previous transaction. This inference drawn by the trial Court is not based upon any facts proved on record. As has been noticed hereinbefore, the factum of previous transaction was not put to the plaintiff. The defendant has raised a categorical plea that he had already returned the entire amount taken on the basis of documents Ex.D1 and

D1/A dated 22.11.2005. Even Hardev Singh PW2 whose testimony has been sought to be used in favour of the defendant had stated that the entire money in respect of pronote and receipt Ex.D1 and D1/A had already been paid by the defendant. In the given circumstances, the aforesaid inference drawn by the Appellate Court is imaginary and result of surmises and conjectures.

The Appellate Court has made certain observations to condemn conduct of the plaintiff/appellant. There is no contradiction in the statement of plaintiff that he is not on visiting terms with Hardev Singh and Puran Singh, attesting witnesses of the receipt even if he had purchased ration from his shop on occasions. The statement of plaintiff in respect of his relationship with Hem Raj son of Harbans Lal, an attesting witness of the receipt Ex.D1/A does not assume significance in view of the discussion made hereinbefore that the defendant himself has denied his signatures on Ex.D1 and D1/A. The Appellate Court has not taken into consideration conduct of the defendant who had the cheek to deny his signatures on Ex.D1 and D1/A despite these documents having been pleaded by him only. He has also denied his signatures on Ex.P1 and P2 without raising any such plea that the same do not bear his signatures in the face of his plea that his signatures were obtained on blank papers and printed forms at the time of taking loan in November 2005. In this view of the matter, I have no hesitation to hold that the reasons that weighed in the mind of Appellate Court to set aside the judgment and decree passed by the trial Court are not based upon correct appreciation of the materials on record in its entirety coupled with settled position in law that civil disputes are decided on the basis of balance of probabilities. Moreover, the factum of execution of pronote and receipt on 19.11.2008 gets support from the

testimony of an independent witness namely Raj Kumar, Deed Writer, who has proved the pronote and receipt being scribed by him and entered in his register at Sr. No.520. Taking a cumulative view of the aforesaid discussion, it can safely be held that intervention in judgment passed by the trial Court is not well founded and as such the judgment and decree passed by the Appellate Court by accepting the appeal and setting aside the judgment and decree passed by the trial Court cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeal is allowed. The judgment and decree passed by the Appellate Court is set aside and that of the trial Court is restored leaving the parties to bear their own costs.

MARCH 12, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no