

RSA No.1599 of 2014 (O&M)

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

214

RSA No.1599 of 2014 (O&M)

Date of Decision : 08.01.2019

ISHWAR

....APPELLANT

V/S

CHANDER SINGH

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Deepak Sonak, Advocate,
for the appellant.

Mr. Abhinav Sood, Advocate,
for the respondent.

AMOL RATTAN SINGH J. (ORAL)

This is the second appeal filed by the defendant in a suit instituted by the respondent, seeking recovery of a sum of Rs.3 lacs which the respondent-plaintiff claimed had been borrowed by the appellant-defendant on 05.05.2007, with a promissory note having been duly executed by the appellant to that effect, and a receipt of the aforesaid amount also having been acknowledged by the appellant, both the pronote and the receipt having been exhibited in evidence as Exhibits P-1 and P-2 respectively.

2. To prove the execution of the aforesaid pronote and receipt of the sum borrowed by the appellant pursuant thereto, the respondent-plaintiff examined the marginal witness to the receipt, i.e. Rakesh Kumar, as PW-2, as also the Deed Writer of the pronote, i.e. one Rajinder Singh, as PW-1. The

plaintiff also examined himself as PW-3 and one Yashpal Chand Jain, handwriting & finger print expert, as PW-4.

3. The appellant in his written statement, other than taking the usual preliminary objections on non maintainability of the suit, lack of cause of action, *locus standi* etc., on merits had completely denied ever borrowing the aforesaid amount from the respondent-plaintiff or having ever executed any pronote and receipt, which he claimed had been prepared by the plaintiff by playing a fraud upon him.

It was further contended in the written statement that the plaintiff and his brother Gulab Singh are commission agents, carrying on the said business through several firms, with the appellant-defendant being an agriculturist, who had sufficient agricultural land and income there from, on account of which he was in no need of any loan.

Still further, it was contended that the appellant-defendant used to sell agricultural produce at the shop of the plaintiff and it was during the course of one of such sales that the plaintiff prepared the pronote and receipt by playing a fraud and by misrepresentation.

4. A replication having been filed to the written statement, the following issues were framed by the learned trial Court:-

- ‘1. *Whether the plaintiff is entitled to the recover Rs.3,00,000/- from the defendant with interest @ 2 ½% per month from the date filing of the suit till the date of actual realization? OPP*
2. *Whether suit of the plaintiff is bad for want of legal notice? OPD*
3. *Whether the plaintiff has not cause of action against the defendant? OPD*
4. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

RSA No.1599 of 2014 (O&M)

5. *Whether the plaintiff has not come in the Court with clean hands and has suppressed true and material facts from the Court? OPD*
6. *Whether plaintiff has no money lending licence under law? OPD*
7. *Whether plaintiff has no locus standi to file the present suit? OPD*
8. *Relief. '*

5. The appellant-defendant examined himself as DW-1, one Mahavir Singh as DW-2 and Rameshwar Parshad, Mandi Supervisor in the Municipal Committee, Safidon as DW-3.

As regards DW-3, he is shown to have brought record pertaining to one M/s Saini Trading Company, Safidon, on the basis of which he testified that it was a partnership firm run by Inder Singh, Chander Singh and Gulab Singh, Chander Singh being the respondent-plaintiff, in support of which testimony he tendered a certified copy of the register brought by him, as Ex. DW-3/A.

He also tendered a copy of a register pertaining to a firm known as M/s Musadi Lal Gulab Singh as Ex. DW-3/B, stated to be a proprietorship firm run by the aforementioned Gulab Singh.

Other documentary evidence was also tendered by the appellant-defendant.

6. Upon appraising the evidence before it, the learned trial Court recorded a finding that Rajender Singh, Deed Writer (PW-1) had testified to having scribed the pronote Ex.P1 on the asking of the appellant-defendant, Ishwar, with the appellant having received Rs.3 lacs in his presence and having appended his signatures both, on the pronote as also the receipts (Exhibits P-1 & P-2 respectively), in the presence of the said witness.

Similarly, PW-2-Rakesh Kumar also testified to the same effect.

7. Thereafter that Court went on to examine the contention of the appellant-defendant that he used to sell his agricultural produce to the plaintiff who took his signatures on blank papers and thereafter used them to create a pronote and a receipt.

The trial Court came to the conclusion that the appellant-defendant could not prove in any manner that he was actually selling any agricultural produce to the respondent-plaintiff, either by producing any 'J-forms' in proof of such sale, nor even any *kacha* slip as contended by him was issued by the respondent-plaintiff (with no 'J-forms' given to him).

The testimony of DW-2 Mahavir to the effect that the plaintiff was habitual of obtaining forged documents from customers, was also disbelieved, as the said witness also could not prove that he was actually selling any produce at the shop of the respondent-plaintiff.

Documents marked as Marks DA to DSS (not duly exhibited) have also been referred to in the judgment, to hold that they too did not prove any relationship of buyer and seller between the appellant and the respondent herein, though two or three transactions (without the judgment specifying what transactions) did pertain "to the plaintiff-Chander Singh".

8. Consequently, after also recording a finding that in his cross-examination as DW-1 the appellant-defendant had admitted his signatures upon both, the pronote and the receipt, the documents were not proved to have been forged or fabricated after such signatures were appended, the suit of the plaintiff was decreed in his favour, holding him entitled to recover Rs.3 lacs from the appellant-defendant, alongwith interest awarded upon that principal

sum, @ 10% per annum, running from the date of the advancement of the loan till actual realization thereof.

9. The appellant having preferred an appeal, the learned first appellate court dismissed the same, essentially on the same findings.

10. Before this Court, learned counsel for the appellant firstly reiterates that the signatures upon Exhibits P-1 & P-2 were obtained from the appellant on blank papers, with the pronotes and the receipts created only thereafter and further, that once it had been proved that the respondent-plaintiff was actually a partner in a firm of commission agents, even as per the record with the Market Committee, which fact he actually denied in his cross-examination, (to the effect that his brother Gulab Singh was not a partner with him), makes his entire testimony unbelievable, it being wholly against that record.

He further submits that actually an agreement of sale had been entered into by the appellant with the aforementioned Gulab Singh (brother of the respondent-plaintiff) on 03.05.2005, with the sale deed to be executed on 23.05.2006, which date was thereafter extended to 22.04.2007. However, since the appellant admittedly did not turn up before the Sub Registrar to get the sale deed executed, the forged pronote and receipt were executed, to try and recover the earnest money/part of it, as was alleged by Gulab Singh to have been advanced to the appellant in the present *lis*.

He further submits that the suit instituted by Gulab Singh, seeking specific performance of the agreement reached between the parties, was dismissed in the year 2013, which judgment and decree was duly exhibited before the learned trial Court in the present *lis* as Exhibit D-7.

On query, he submits that the suit filed by Gulab Singh was dismissed as it was found that he could not prove his willingness to actually execute his part of the contract.

11. Last, he submits that the aforementioned Rajender Singh and Rakesh Kumar, i.e. PWs-1 & 2, were wholly tutored witnesses, they having admitted that they had old family relations with the respondent-plaintiff.

Consequently, he submits that the finding of the learned Courts below are wholly perverse and deserve to be set aside.

12. Learned counsel for the respondent-plaintiff on the other hand submits that the arguments being raised before this Court are contrary to the pleadings, i.e. the written statement filed by the appellant-defendant, because in the said written statement he even denied his signatures on the pronote and the receipt.

He further submits that in terms of what is contained in Rule 4 of Order 6 of the Code of Civil Procedure, the details of how the fraud was committed, was required to be given by the appellant-defendant in his written statement, which is not the case at all, with him simply having stated that the receipt and the pronote had been got prepared by playing a fraud upon him by a mis-representation made by the respondent-plaintiff.

13. Having considered the arguments of learned counsel as also the judgments of the learned Courts below, what is first to be noticed by this Court is that the appellant, though having denied his signatures on Exhibits P-1 & P-2 in his written statement, had admitted to his signatures thereafter in his cross-examination, though he contended that they were obtained on blank papers.

Secondly, it is to be noticed that the pronote and the receipt executed, are shown to be issued by the respondent-plaintiff in his individual name, i.e. Chander Singh, and not in the name of any firm or company. Hence, though learned counsel for the appellant would have a point in stating that the testimony of the respondent would be liable to be discarded, he having incorrectly testified that his brother Gulab Singh was not a partner in the firm of commission agents being run by him, with the documentary evidence proved by the Mandi Supervisor (DW-3) showing to the contrary, however, in the opinion of this Court, that cannot affect the outcome of the case as regards the loan proved to have been advanced by the respondent-plaintiff to the appellant-defendant, in his individual capacity.

14. An adverse inference would also need to be taken by this Court on account of the fact that the appellant had even wholly denied his signatures on the two documents in the written statement, but in cross-examination eventuality had admitted to the signatures being his, though on what was contended to be blank papers.

The respondent also having examined a handwriting and finger print expert as PW-4 who, as was not refuted by learned counsel for the appellant, had testified to the signatures being that of the appellant-defendant, it has to be held by this Court, further looking at the fact that the scribe and the attesting witness to the pronote also testified in favour of the plaintiff and wholly against the appellant-defendant, that the pronote and the receipt cannot be stated to have been disproved simply because the said witnesses admitted to having an old family relationship with the respondent-plaintiff.

15. As regards the agreement of sale stated to have been entered into

been instituted in 2008 and having been dismissed in the year 2013, in the opinion of this Court that cannot be taken as an adverse inference against the appellant-defendant.

Moreover, both the learned Courts below having come to a concurrent finding of fact as regards the execution of the documents Exhibits P-1 & P-2 (i.e. the pronote and receipt), in respect of Rs.3 lacs having been advanced by the respondent-plaintiff to the appellant, this Court in second appeal would not interfere with such finding, it not having been found to be perverse.

16. At this stage, upon the aforesaid part of this order having been recorded, learned counsel for the appellant submits that interest @ 10% per annum awarded by the learned Courts below is excessive, in view of the fact that it has been also found by this Court that it was a personal loan advanced and not a business transaction.

Though learned counsel for the respondent-plaintiff has opposed the aforesaid prayer, in my opinion the appeal can be allowed to that limited extent, that interest @ 10% per annum would be excessive and consequently, the judgments and decrees of the learned Courts below are modified to the extent that interest on the amount of Rs.3 lacs found to have been borrowed by the appellant from the respondent, would carry an interest @ 6.5% per annum, running from the date of the advancement of the loan, till the date of realization thereof.

17. Consequently, while dismissing the appeal on the merits of the grounds raised therein, it is allowed to the extent of the interest being reduced as aforesaid.

RSA No.1599 of 2014 (O&M)

The judgments and decrees of the learned Courts below are modified to that extent, with a decree-sheet to be issued accordingly.

(AMOL RATTAN SINGH)
JUDGE

January 08, 2019
Rajneesh/Dinesh

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