

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

**RSA No. 1571 of 2018 (O&M)
Date of decision: 24.10.2019**

Sandeep

... Appellant

Versus

Jitender

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Ramender Chauhan, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 27.2.2015, and as even the appeal preferred against the said decree failed and was dismissed on 2.3.2017, the plaintiff is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for recovery of Rs.7,95,000/- from the defendant, along with future interest and costs. In brief, the case set out by him was that on 7.1.2013, defendant took a loan of Rs.7,50,000/-, in cash, from the plaintiff to meet his domestic needs. It was agreed between the parties that loan amount was to be repaid with interest @ 2% per month. Defendant had even executed a pronote and receipt in favour of the plaintiff to secure the loan amount. However, neither did the defendant pay the interest as agreed between the parties, nor returned the loan amount. Thus, the suit.

In the written statement filed by the defendant, he denied having borrowed an amount of Rs.7,50,000/-, as also execution of pronote and receipt. It was maintained that, in fact, plaintiff, one Deepak and defendant (Jitender)

were partners of a firm, M/s Ashok Bricks Company, tehsil and district Mahendergarh. In terms of the partnership deed dated 3.7.2012, plaintiff was partner with 60% share, whereas Deepak had 10% share and the defendant had 30% share in the firm. All the affairs of the firm were managed and looked after by the plaintiff. For all the bricks were sold by the plaintiff, defendant Jitender along with Deepak filed a suit against the plaintiff, titled as Deepak Kumar etc. Vs. Sandeep Kumar, which was pending adjudication. And, after the plaintiffs filed the written statement, the said matter was compromised between the parties on 7.1.2013. On the same day, plaintiff obtained signatures of the defendant on the pretext of procuring loan, and he in good faith signed those papers. However, the plaintiff misused those documents and fabricated the pronote as also receipt. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that evidence on record showed that parties had a dispute as regards financial affairs of the firm engaged in the business of brick Kiln, in which they were partners. Plaintiff had been handling all the affairs of the business and the suit filed by the defendant and other partner, namely Deepak Kumar, was compromised on 7.1.2013, vide affidavit (Ex.D-1) of the plaintiff. Thus, it defied logic that once all money disputes between the parties ended, pursuant to an amicable settlement on 7.1.2013, on the same day defendant borrowed Rs. 7,50,000/- from the plaintiff. Even though the amount in question was substantial, yet the pleadings set out in the plaint were deficient as regards source of the said amount. On the contrary, specific case set out by the defendant was that one Raj Kapoor was an attesting witness to the compromise that took place on 7.1.2013, which formed basis for withdrawal of the earlier suit, and incidentally, said Raj Kapoor was also an

attesting witness to the pronote and receipt, and was fully aware of the true position but the plaintiff never chose to examine Raj Kapoor. For, he knew the true and actual position. However, Raj Kapoor was examined by the defendant as DW1, who categorically denied in his deposition that Rs.7,50,000/- exchanged hands in his presence. Undoubtedly, defendant as also the said attesting witness, namely Raj Kapoor, admitted their signatures on the pronote and receipt, but that alone was insufficient to prove the execution of the pronote and receipt. Apparently, the plaintiff failed to lead any evidence to prove passing of consideration to the defendant. That being so, the only and the inevitable conclusion that could be reached: plaintiff failed to substantiate his claim for lack of evidence.

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

October 24, 2019

AK Sharma

Whether speaking / reasoned:
Whether Reportable:

YES
YES/NO