

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

RSA-5927-2014(O&M)

Date of decision:-9.4.2019

Mohinder Pal @ Mahinder Pal

...Appellant

Versus

Gurcharan Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ashish Gupta, Advocate
for the appellant.

None for respondent No.1.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Mahinder Pal had brought a suit for recovery of Rs.3 lacs against Gurcharan Singh and Avtar Singh under Order 37 CPC on the basis of pronote and receipt dated 18.1.2006.

As per the case of the plaintiff, on 18.1.2006 defendant No.1 Gurcharan Singh had raised a loan of Rs.2,50,000/- from defendant No.2 Avtar Singh and in lieu thereof had executed a pronote and receipt of the even date in favour of the latter, agreeing to repay the amount with interest @ 2% per month; that the purpose of raising of loan was purchase

of house and a receipt for the same was scribed by defendant No.1 himself; that vide writing dated 2.1.2009 made on the back of original pronote and receipt, defendant No.1 had paid a sum of Rs.68,000/- to defendant No.2, thereby acknowledging payment of principal amount and remaining interest; that vide endorsement dated 2.3.2010, the defendant No.2 sold the said pronote and receipt along with its acknowledgement dated 2.1.2009 to the plaintiff authorizing him to collect the principal amount of Rs.2,50,000/- along with remaining interest from defendant No.2; that after adjusting an amount of Rs.68,000/- towards total interest of Rs.1,25,000/- @ 2% per month, the balance interest amount comes to Rs.57,000/- but he relinquished Rs.7,000/- from the remaining interest amount of Rs.57,000/- and sought recovery of Rs.50,000/- only on account of interest. According to the plaintiff, defendant No.2 had presented the pronote and receipt to defendant No.1 requesting him to make the payment, however after making payment of Rs.68,000/- out of interest, defendant No.1 refused to pay the balance interest as well as principal amount; thereafter the plaintiff requested defendant No.1 after presenting the original pronote and receipt to make the payment of principal amount of Rs.2,50,000/- as well as interest of Rs.50,000/- but he refused to do so, giving rise to a cause of action to the plaintiff to bring the suit.

On notice both the defendants were served. However, defendant No.2 did not appear despite service, as such was proceeded against ex parte.

Defendant No.1 filed written statement wherein he took up

various legal objections that the suit was time barred; that the plaintiff had no locus standi to file the suit since no transaction had ever taken place as asserted; that the plaintiff had filed the suit against him on the basis of false, forged and fabricated pronote and receipt and had not come to the Court with clean hands; that as a matter of fact, the answering defendant had not raised any loan from the defendant No.2 and had not executed any pronote and receipt in his favour, therefore the question of agreeing to pay any interest on the principal amount did not arise at all. Refuting the remaining allegations, the defendant No.1 prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether defendant No.1 took cash of Rs.2,50,000/- from the defendant No.2 and executed pronote and receipt dated 18.1.2006 in favour of defendant NO.1 in lieu thereof? OPP.
2. Whether defendant No.2 vide endorsement dated 2.3.2010 sold said pronote and receipt dated 18.1.2006 along with its endorsement dated 20.1.2009 to plaintiff? OPP.
3. Whether plaintiff is entitled for recovery of suit amount from the defendant No.1 on the basis of said endorsement dated 2.3.2010? OPP.
4. Whether plaintiff is entitled for interest, if so, at what rate? OPP.
5. Whether suit is not maintainable in the present form? OPD.

6. Whether plaintiff has no locus standi to file present suit? OPD.
7. Whether suit is barred by limitation? OPD.
8. Relief.

In order to prove his case, the plaintiff had examined as many as five witnesses, whereas defendant No.1 got his statement recorded as DW1.

After hearing learned counsel for the parties, the trial Court decided issues No.1 to 4 in favour of the plaintiff and against the defendants, issue No.5 against the defendants and in four of the plaintiff, issue No.6 against the defendants and in favour of the plaintiff, issue No.7 against the defendants and in favour of the plaintiff. Resultantly, suit was decreed in favour of the plaintiff for recovery of Rs.2,50,000/- along with costs and interest @ 12% per annum from the date of execution of endorsement dated 2.1.2009 Ex.P4 till date and with future interest @ 6% per annum from the date of judgment i.e. date of decree till actual realization of the decretal amount.

Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal in the Court of District Judge, Faridkot, who vide judgment and decree dated 24.7.2014 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiff.

Now it was the turn of the plaintiff to feel dissatisfied with the judgment and decree passed by District Judge, Faridkot and he has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree

passed by District Judge, Faridkot be set aside.

On getting notice of regular second appeal, initially contesting respondent No.1 appeared through counsel but later on there was no representation on his behalf.

I have heard learned counsel for the appellant besides going through the record.

The judgment passed by the trial Court shows due application of mind, proper appraisal of evidence and correct interpretation of law. The trial Court has observed that the plaintiff had successfully proved his case, whereas it was not so with regard to defendant No.1, who could not show that the pronote and receipt in question were result of fraud or misrepresentation or were forged and fabricated documents or that those were without consideration.

Whereas the judgment passed by District Judge, Faridkot is not based upon correct interpretation of factual and legal position. The First Appellate Court wrongly upset the findings recorded by the trial Court. The pronote and receipt are dated 18.1.2006. It being so normally the suit could have been filed within three years of execution of the pronote and receipt. However, the suit was filed beyond a period of three years on 2.4.2010. The question that arises is whether the suit is time barred? The explanation rendered by learned counsel for the appellant/plaintiff is that vide endorsement dated 2.1.2009 on the back of pronote itself a sum of Rs.68,000/- had been paid to defendant No.2, the original loanee, in that way the period of limitation stood extended. In view of Section 18 of the Limitation Act, 1963, which provides that where

before the expiration of the prescribed period for a suit or application in respect or any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derived his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

In this case the endorsement dated 2.1.2009 bears signatures of defendant No.1. Though defendant No.1 denies his such signatures but those are proved on record from the cogent and convincing evidence brought on file by the plaintiff. This acknowledgement is within three years of date of advancement of loan of Rs.2,50,000/- on 18.1.2006, therefore a fresh period of three years is to be counted from 2.1.2009. The suit was filed on 2.4.2010, within three years of 2.1.2009, as such is within limitation in terms of Section 18 of the Limitation Act. The First Appellate Court lost sight of that fact and came to the conclusion that endorsement dated 2.3.2010 had been made after expiry of prescribed period of limitation when in fact the endorsement is there which is dated 2.1.2009 when a sum of Rs.68,000/- was paid by defendant No.1 to defendant No.2, the original loanee. His signatures being there on the revenue stamp and he had acknowledged his liability to pay the remaining amount with interest. The endorsement dated 2.3.2010 is with respect to transfer of the pronote and receipt by defendant No.2 in favour of the plaintiff. Thus the crucial date in this case is 2.1.2009 and not 2.3.2010.

The appeal has merit. The same is allowed with costs.

Resultantly, the judgement and decree passed by District Judge, Faridkot

are set aside, whereas the judgment and decree passed by the trial Court are restored.

9.4.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No