

RSA No. 4980 of 2018 (O&M)

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

**RSA No. 4980 of 2018 (O&M)
Date of decision: 30.10.2019**

Kulwant Ram

... Appellant

Versus

Kura Ram

... Respondent

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

Present: Mr. N.K. Verma, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondent-plaintiff was decreed by the trial court, vide judgment and decree dated 09.03.2017. And, as even the appeal preferred against the said decree failed and was dismissed on 1.3.2018, the defendant 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 filed a suit for recovery of Rs. 1,08,800/-, on the basis of two pronotes and receipts dated 17.5.2009. In brief, his case was that defendant had approached him on 17.5.2009 and borrowed Rs.80,000/- in cash to meet his business requirements and executed two pronotes and receipts of even date, i.e. 17.5.2009, in favour of the plaintiff. It was agreed that defendant shall repay the borrowed amount along with interest @ 3% per month. For, the defendant failed to repay the loan as also any interest, thus the suit.

In the written statement filed by the defendant, he denied to

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have ever borrowed any amount from the plaintiff. Accordingly, the pronotes and receipts that formed basis of the claim of the plaintiff were alleged to be forged and fabricated documents. Therefore, 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 plaintiff had testified in his deposition that defendant had borrowed Rs. 80,000/- from him and executed pronotes and receipts in his favour. Plaintiff also examined Rahul Sharma (PW2), grandson of the scribe, namely Madan Gopal, who had scribed the pronotes in question, who also proved the entry made in the register in this regard. The plea that pronotes could not be read in evidence for none of the marginal witnesses thereto was examined, was rejected, for in terms of provisions of the Negotiable Instruments Act, 1881, it was not mandatory that a promisory note has to be attested by any independent witness. Although the defendant alleged that pronotes and receipts were forged and fabricated documents, but he failed to lead any evidence to substantiate the said plea. Thus, in the given situation and in the absence of any evidence to the contrary, the presumption accorded to the promisory note envisaged under Section 118 of the Act, prevailed. Undoubtedly, the said presumption was rebuttable, but the defendant failed to lead any evidence and rebut the said presumption. Further, the report (Ex.P7) submitted by Chinki Dhawan (PW4), proved that signatures upon the examination-in-chief of the witness (Balwinder Ram-PW3) and the signatures that appeared on Ex.P2 and Ex.P4, i.e. pronotes and receipts, were of the same person, i.e. Balwinder Ram. That being so, the only and the inevitable conclusion that could be reached: plaintiff had duly substantiated

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his claim. 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 30, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO