

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

**RSA No.5312 of 2018 (O&M)
Date of Decision: 21.02.2019**

Vijay Kumar

.....Appellant

Vs

Jatinder Gupta

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Bipan Sharma Advocate
for the appellant.

Mr. Vivek Suri, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Defendant is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for recovery.

[2]. Brief facts are that the plaintiff filed a suit for recovery of Rs.12,10,000/- i.e. Rs.11,00,000/- as principle amount and Rs.1,10,000/- as interest @ 6% per annum from 21.02.2013 to 21.10.2014 along with future interest @ 12% per annum from 22.10.2014 till the date of actual realization of the amount. The suit was filed on the basis of *pronote* and receipt. Plaintiff asserted that on 21.02.2013 the defendant borrowed a sum of

Rs.11 lakhs from the plaintiff for his personal needs and after receiving the said amount in cash, he executed promissory note and receipt in favour of the plaintiff in the presence of the witnesses. Defendant agreed and promised to return the aforesaid amount along with interest till 30.06.2013 and the endorsement was made on the receipt itself in the handwriting of the defendant. Defendant executed the *pronote* and receipt in the presence of witnesses and agreed to pay interest @ 6% per annum on the loan amount. The defendant defaulted in paying the loan even after issuance of legal notice by the plaintiff on 29.10.2014.

[3]. Defendant contested the suit and took the plea that in fact he borrowed a sum of Rs.1 lakh from the plaintiff in the month of March/April 2014 and had already repaid the same in the month of June 2014. Pronote and receipt were claimed to be fabricated documents. Factum of borrowing Rs.11 lakhs was denied altogether. No pronote and receipt were executed by the defendant as alleged. At the time of availing loan of Rs.1 lakh, plaintiff allegedly got signed some blank documents from the defendant and also got signatures of the defendant on those documents having revenue stamp on it. Defendant signed the same in good faith as he was not in a position to dictate his terms.

[4]. Both the parties went to trial on the following issues:-

- I. Whether the plaintiff is entitled to the recovery of Rs.12,00,000/- i.e. Rs.11,00,000/- as principle amount, Rs.1,10,000/- as interest @ 6% per annum w.e.f. 21.02.2013 to 21.10.2014 along with future interest @ 13% from 12.10.2014 till the actual realization? OPP.*
- II. Whether the plaintiff has not come to the court with clean hands? OPD.*
- III. Whether the suit is not maintainable? OPD.*
- IV. Relief.”*

[5]. Plaintiff got himself examined as PW-2, besides examining Anil Kumar and Navneet Singh witnesses of promissory note and receipt as PW-1 and PW-3 respectively. Defendant got himself examined as DW-1 and thereafter closed his evidence by tendering bank statement for the period 01.06.2014 to 30.06.2014 as Ex.D-2.

[6]. Trial Court decreed the suit of the plaintiff on the premise that the witnesses to the pronote and receipt have proved the execution of documents. Anil Kumar PW-1 has deposed that the defendant obtained a loan of Rs.11 lakhs on 21.02.2013 from the plaintiff in his presence and executed pronote and receipt in favour of the plaintiff. He identified his signature as witness on the aforesaid pronote and receipt which

have been produced on record as Ex.P-1 and Ex.P-2. The witness further stated that the defendant signed the promissory note and receipt in his presence after receiving the amount. The witness promised to return the amount upto 30.06.2013. Navneet Singh PW-3 was the second witness of pronote and receipt. He also deposed in line with PW-1 Anil Kumar.

[7]. Defendant did not deny his signatures on the pronote and receipt, but he claimed that the same was got signed by the plaintiff in good faith as he was not in a position to dictate his terms. He stated that in fact a loan of Rs.1 lakh was obtained and the same was repaid to the plaintiff in June 2014, but the documents were not returned to the defendant and he did not demand in good faith. The execution of pronote and receipt was duly proved with reference to attesting witnesses and as per Section 118 of the Negotiable Instruments Act, 1881 (for short 'the Act') presumption of passing of consideration under Bill of exchange can be relied. Though the presumption is rebuttal in nature, but the evidence led by the defendant was not sufficient to rebut the presumption and the trial Court decreed the suit and the same was upheld by the lower Appellate Court.

[8]. Learned counsel for the appellant submitted that in view of cross-examination of plaintiff (PW-2), plaintiff has not shown the amount of Rs.11 lakhs in his income tax returns and

the source of aforesaid amount has not come forth as no such sale deed of the property sold by the plaintiff has come forth on record. Learned counsel has also referred to the statement of PW-3 wherein the witness has stated that his affidavit was prepared on the last date of hearing at the Court complex, Kharar and he was present when his affidavit was typed. The witness knew PW-1 Anil Kumar, but he did not know his father's name. PW-3 is the relative of the plaintiff.

[9]. Learned counsel further submitted that PW-1 was never cross-examined as he did not make available himself for cross-examination, therefore, testimony of PW-1 is not sufficient to corroborate the pronote and receipt.

[10]. Learned counsel by referring to **Kundan Lal Rallaram vs. Custodian, Evacuee Property, Bombay, 1961 AIR (SC) 1316** submitted that withholding of relevant information by the plaintiff would rebut the presumption under Section 118 of the Act. Presumption regarding consideration in view of withholding of income tax return and the source of income by the plaintiff would stand rebutted. Learned counsel submitted that in view of Section 118 of the Act, different methods are available to the defendant to rebut the presumption. The Rule being special rule of evidence applicable to negotiable instruments, throws the burden of proof of failure of consideration on the maker of the

note or the endorser, as the case may be. Burden of proof has two meanings. The first is burden of proof as the matter of law and pleading and the other is the burden establishing a case. The first burden is fixed as question of law on the basis of pleadings and is unchanged during the entire trial, whereas the second one is not constant, but shifts as soon as the party adduced evidence to raise a presumption in his favour.

[11]. I have considered the submissions made by learned counsel for the parties.

[12]. Though there is no dispute with regard to the aforesaid proposition of law, but once execution of Ex.P-1 and Ex.P-2 is proved with reference to the witnesses, then under second principle onus shifts upon the plaintiff to rebut the presumption under Section 118 of the Act. The law raises a clear presumption that every negotiable instrument is drawn for consideration, but does not *ipso facto* from every presumption so raises, an inference has to be drawn against the person whose liability is reflected in the instrument. The presumption is rebuttable in nature, but the same has to be rebutted by way of cogent evidence by the defendant.

[13]. The factum of not showing an amount of Rs.11 lakhs in the income tax return by the plaintiff at the most is a violation of tax laws for which the plaintiff can be liable, but it does give any

handle to the defendant to say that presumption is not attracted. Once signatures of the defendant are admitted on the pronote and receipt, the same raises a presumption regarding consideration. Perusal of the pronote and receipt would show that the amount of Rs.11 lakhs in figure have also been recited in words. Perusal of the examination of the witnesses would show that no such question was put to the plaintiff witnesses that the amount recorded in figure was not recited in words. Affidavit of the defendant viz.-a-viz. the words are silent about the words "*jisde adhe 5 lakh 50 hazar hunde han*" are missing. The signing of document at two places on each document, if found to be in contradiction with the statement is not sufficient to rebut the presumption as the signatures have been admitted by the defendant. Rebuttal has to be presumption qua document and not receipt of any violation of tax law by the plaintiff.

[14]. Plaintiff has not signed the pronote and receipt. No suggestion was given to the plaintiff that the writing of words Rs.11 lakhs instead of Rs.1 lakh was given to the plaintiff. Defendant has tried to rely upon the bank statement Ex.D-2 in the context of withdrawal of an amount of Rs.1 lakh for the purposes of repayment to the plaintiff. The computation made in respect of different withdrawals would show that the only an amount of Rs.80,000/- was withdrawn on four occasions and the

amount was not to the tune of Rs.1 lakh. Even the story of Rs.1 lakh was not put to PW-3 Navneet Singh, when the witness was recalled for cross-examination by the learned counsel for the defendant. The defendant has not examined any witness except himself and by tendering the bank statement as Ex.D-2. No further evidence was led by the defendant. Defendant while appearing as DW-1 in his cross-examination has clearly admitted his signatures on the blank papers. The witness has clearly admitted that at the time of obtaining a loan of Rs.1 lakh from the plaintiff obtained his signatures on 3/4 blank documents out of those documents one was printed and others were plain papers. The plain papers were not stamp papers. The printed paper was promissory note and was having affixed revenue stamp. Once a catagoric admission has been made in respect of signature by the defendant on the pronote, the presumption under Section 118 of the Act arises for which no evidence to rebut the said presumption has come forth.

[15]. The ratio of judgment relied upon by learned counsel for the appellant i.e. **Balbir Singh vs. Harbans Singh, 2009(3) R.C.R (Criminal) 81** and **Tarsem Singh vs. Teja Singh, 2016 (2) R.C.R (Civil) 793** would not come to aid of the appellant as no evidence was led by the defendant/appellant except the bank statement which was also a feeble attempt to connect

withdrawal of Rs.80,000/- as against Rs.1 lakh. The evidence of the plaintiff is not sufficient to rebut his own presumption arising out of Section 118 of the Act for passing of consideration. Once the execution of pronote is proved and no contrary evidence has come forth, then the presumption was to be made that the instrument was made for consideration. The plaintiff has pleaded the same consideration as shown in the negotiable instrument, therefore, statutory presumption arises in the case and the view expressed by the Hon'ble Apex Court in **K.P.O. Moideenkutty Hajee vs. Pappu Manjooran, 1996(2) R.C.R. (Criminal) 9** would be squarely fortified.

[16]. Since the defendant has not brought any evidence to prove non-existence of consideration, therefore, it would lead the Court to believe that there is a presumption. There cannot be any preponderance of probability showing that the existence of consideration was improbable, doubtful or illegal. Plaintiff has not proved execution of pronote and receipt, but has also proved that defendant has executed these documents after receiving the amount. Thereafter, plaintiff is not required to prove his capacity to make the said payment at the time of execution of pronote and receipt. Presumption under Section 118(a) of the Act arises and the defendant could have rebutted the said presumption by leading cogent evidence. Reference

can be made to **Jit Singh vs. Nachhatar Singh and others,**
2007(4) R.C.R. (Civil) 137.

[17]. Defendant has made categoric admission as regards his signing the pronote and receipt. Signing the promissory note having revenue stamp was categoric admission of the defendant and thereafter, he did not lead any evidence except the bank statement Ex.D-2. Defendant cannot rely upon any such violation of tax laws by the plaintiff because document stands admitted in terms of its execution.

[18]. Both the Courts below have appreciated the evidence on record. This Court cannot re-appreciate the evidence for arriving at different conclusion than the one arrived at by the Courts below which are not the result of misreading of evidence or suffered with any perversity. No question of law worth consideration is involved in this appeal. The appeal is accordingly dismissed.

February 21, 2019

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No