

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

RSA No.5583 of 2018 (O&M)

Date of Decision:12.07.2019

Swaran Singh

.....Appellant

Versus

Kuldeep Singh

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Munish Gulati, Advocate
for the appellant.

LISA GILL, J.

Appellant, arrayed as defendant before the learned trial Court has filed this appeal, being aggrieved of judgment and decree dated 04.12.2015, passed by the learned Civil Judge (Jr. Division), Moga, as well as judgment and decree dated 24.05.2017, passed by the learned District Judge, Moga, whereby suit for recovery filed by the plaintiff-respondent, has been decreed.

Brief facts necessary for the adjudication of the case are that plaintiff-respondent filed a suit for recovery of ₹5,71,500/- i.e., ₹4,50,000/- as principal amount and ₹1,21,500/- as interest, along with future interest at the rate of 12% per annum from the date of filing the suit till its realization. It is pleaded that the defendant borrowed a sum of ₹4,50,000/- in cash from the plaintiff and in lieu thereof executed a pronote and receipt in favour of the plaintiff in presence of witnesses including the scribe, Joginder Singh son of Malook Singh. It is pleaded that the defendant agreed to repay the loan amount along with interest at the rate of 2% per month on demand. However, despite request, the defendant did not return the amount. Hence

the suit was filed.

Defendant resisted the suit. Various preliminary objections were raised in the written statement. It is stated that the alleged pronote and receipt are forged and fabricated documents. No amount was ever borrowed by the defendant from the plaintiff and the defendant never signed upon any documents. It is stated that the defendant was a bed ridden person. His hands were not in a working condition, therefore he could not append his signatures. The alleged pronote and receipt are claimed to be forged and fabricated documents, Dismissal of the suit was prayed for.

Replication filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled for the recovery of ₹5,71,500/- as prayed for?OPP
2. Whether suit of plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff has no locus standi for file the present suit?OPD
4. Whether there are material alterations in the alleged pronote and receipt?OPD
5. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, concluded that the plaintiff had successfully proved the execution of the pronote, Ex.P-1 and receipt, Ex.P-2. Suit was accordingly decreed.

Appeal preferred by the defendant was dismissed by the learned District Judge, Moga, vide impugned judgement and decree dated 24.05.2017.

Aggrieved therefrom, present appeal has been filed by the

appellant-defendant.

Learned counsel for the appellant-defendant vehemently argues that both the learned Courts below have ignored the relevant evidence on record and there is misreading of evidence on record and both the learned Courts below have grossly erred on facts and in law while decreeing the suit for recovery filed by the plaintiff-respondent. It is submitted that the handwriting expert, DW-2-Sanjeev Sharma, has specifically opined that there is a variation in the signatures of the appellant-defendant on the pronote, Ex.P-1, receipt, Ex.P-2 and his standard signatures. Moreover, it is proved on record that the appellant was bed ridden due to an injury of his backbone. Both his hands were not working. The appellant, it is stated could not walk and was not using his hands for daily routine work, therefore he could not have borrowed the amount and executed a pronote and receipt as claimed by the plaintiff. The scribe of the pronote and receipt was not examined, therefore the same are not proved in accordance with law. It is thus prayed that the present appeal be allowed and the impugned judgements and decrees passed by the learned Courts below be set aside. Consequently suit filed by the plaintiff-respodnent be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

A perusal thereof, reveals that there is no merit in the present appeal. Execution of the pronote, Ex.P-1 and the receipt, Ex.P-2, is duly proved on record. PW-2-Kartar Singh and PW-3-Paramjit Singh, the marginal witnesses have proved its execution. PW-2, has specifically testified that it is the lower portion of the defendant's body, which was

affected. Reference to the evidence of the plaintiff-Kuldeep Singh by learned counsel for the appellant to urge that there is an admission about both hands of the defendant not working, is of no avail to the appellant. It is rightly observed by the learned District Judge, Moga, that the appellant has duly appeared in the Court, faced detailed cross-examination. He got attested his affidavit from the notary public, Moga and in his cross-examination, the appellant-defendant has specifically stated that he has been visiting the police post for filing a complaint against the respondent. In this view of the matter, it is apparent that the appellant is mobile, may be with the help of others. Admittedly, there is no medical evidence on record to show that the hands of the appellant are not working to the extent that he cannot even append his signatures. DW-2, Sanjeev Sharma, the handwriting and finger print expert, has admitted that in the standard signatures itself, there are *inter se* natural variations. Signatures on the pronote and receipt were appended prior to the accident. The comparison has been made by the expert between the signatures appended by the appellant-defendant prior to the accident with those appended subsequently. The pronote and receipt were executed after the accident.

In view of the positive and credible evidence in the shape of both the marginal witnesses, evidence of the expert, in the factual matrix of the present case has been rightly ignored. Both the marginal witnesses have specifically and categorically stated that loan was taken by the appellant in their presence and that the appellant signed the pronote and receipt at that time in favour of the respondent in their presence. In the given factual matrix of the case, non-examination of the scribe-Joginder Singh, does not cast a

cloud of suspicion over the said pronote and receipt. Learned trial Court has thus rightly ordered recovery of ₹4,50,000/- along with interest at the rate of 9% from 10.02.2012 i.e., the date of transaction till the decision of the suit and future interest at the rate of 6% per annum from the date of decision of the suit till actual realisation.

Learned counsel for the appellant, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings, vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 04.12.2015 and 24.05.2017 passed by the learned Civil Judge (Jr. Division) Moga and learned District Judge, Moga, respectively, are upheld.

There is delay of 399 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

12.07.2019
s.khan

[LISA GILL]
Judge

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