

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

RSA No.5979 of 2018(O&M)

Date of decision: 21.5.2019

Amar Singh

.....Appellant

VERSUS

Buta Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sardavinder Goyal, Advocate for the appellant.

REKHA MITTAL, J.

CM No.16688-C of 2018

Prayer in this application is for condoning delay of 24 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Amar Singh, the appellant, the application is allowed. Delay of 24 days in re-filing the appeal stands condoned.

Disposed of accordingly.

CM No.16689-C of 2018

Prayer in this application is for condoning delay of 8 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Amar Singh, the appellant, the application is allowed. Delay of 8 days in filing the appeal stands condoned.

Disposed of accordingly.

RSA No.5979 of 2018

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery filed by the respondents/plaintiffs was decreed by the trial Court to the following effect:-

"14..... the plaintiffs are entitled to recover the amount Rs.2,00,000/- alongwith interest at the rate of 12% per annum on the principal amount i.e. Rs.2,00,000/- till the filing of suit from the date of execution of impugned pronotes and receipts and pendente-lite and future interest at the rate of 9% per annum on the principal sum of Rs.2,00,000/- from the date of suit till actual realization...."

The appeal preferred by unsuccessful defendant/appellant was dismissed by the Additional District Judge, Ludhiana. The first contention raised by counsel for the appellant was noticed by this Court in its order dated 13.02.2019, reads as follows:-

"Counsel for the appellant would state that initially the suit was filed by Boota Singh for recovery of Rs.2,99,000/- but later he filed an application under Order 6 Rule 17 along with Order 1 Rule 10 CPC for impleading Jasvir Kaur as a party on the array of plaintiffs but Jasvir Kaur has not signed pleadings asserting her claim for recovery on the basis of pronote purported to be executed in her favour.

Let original records of the trial Court be sent for.

Adjourned to 14.05.2019."

After going through the original records of the trial Court, counsel for the appellant would concede that he raised the aforesaid contention under a bona fide mistaken impression. As such, contention of the appellant in this regard merits rejection.

Another submission made by counsel is that Jasvir Kaur was joined as a co-plaintiff by way of amendment but she did not appear in the witness box to prove the pronote and receipt of Rs.1,00,000/- purported to be executed in her favour, therefore, an adverse inference is liable to be drawn against the respondents/plaintiffs.

Counsel for the appellant has also made a vain attempt to argue that alterations were made in the pronote and receipt by changing the date from 4.02.2009 to 04.03.2009 in order to bring the suit within limitation as the suit was filed on 22.02.2012.

Counsel for the appellant has not disputed that Buta Singh, in whose favour the pronote and receipt Ex.P3 and P4, respectively were executed, appeared in the witness box and attesting witness of the receipts namely Dalip Singh PW-2 was also examined. Buta Singh made a statement in respect of both the pronotes and receipts stated to be executed on 04.03.2009 whereby the appellant borrowed a loan of Rs.1,00,000/- each from Buta Singh and his wife Jasvir Kaur. Dalip Singh, an attesting witness of receipts Ex.P2 and P4 was examined. Counsel for the appellant has not pointed out any flaw in the testimony of Buta Singh and Dalip Singh. No sooner the pronote and receipts are proved, there is a presumption in favour of the respondents under Section 118 of the Negotiable Instruments Act, 1881 that the pronotes were executed for

consideration. In the given circumstances, the appellant cannot derive any advantage to his contention from non-examination of Smt. Jasvir Kaur.

The contention of the appellant that there was addition/alteration in the date of pronote and receipt Ex.P3 and P4, respectively, propounded in favour of Buta Singh, is patently misconceived and liable to be rejected. Once the appellant has denied execution of pronote and receipt, it is not open for him to say that some alteration has been made at a later point of time. Even otherwise, plea of the appellant is liable to be rejected because in the receipt Ex.P4, the date has clearly been mentioned as 4 March 2009, written in the same ink and by the same person who has scribed the pronote and receipt. In this view of the matter, the appellant cannot derive any advantage to his contention that the date has been changed from 04.02.2009 to 04.03.2009 to bring the suit within limitation. This apart, there is no overwriting in the pronote and receipt Ex.P1 and P2, respectively when otherwise it is the consistent case of the respondents/plaintiffs that the pronotes and receipts in favour of Smt. Jasvir Kaur and Buta Singh were executed on the same day. In view of above, I do not find any reason to interfere in the well-founded consistent findings recorded by the Courts.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. The original records of the trial Court be sent back.

MAY 21, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no