

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

RSA No.5131 of 2018(O&M)
Date of decision: 28.11.2019

Rajpal

... Appellant

Versus

Jagdish

... Respondent

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

Present: Mr. Sandeep Goyat, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant/plaintiff was dismissed by the trial Court vide judgment and decree dated 08.11.2016, and as even the appeal preferred against the said decree failed and was dismissed on 22.12.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff filed a suit for recovery of Rs.5,67,600/- i.e. Rs.4,30,000/- as principal and Rs.1,37,600/- towards interest, on the basis of pronote and receipt dated 30.12.2012. In brief, the case set out by him was that parties to the dispute had cordial relations with each other since long. Defendant approached the plaintiff at village Budhshelli on 30.12.2012 and requested to loan a sum of Rs.4,30,000/- which he urgently required to meet his domestic requirement. It was agreed that he would pay interest @ Rs.2/- per hundred per month. For the amount was readily available with the plaintiff, parties arrived at the Court Complex, Siwani for executing the

pronote and receipt. The printed proforma of pronote and receipt were purchased and on the instructions of the parties, Janak Raj scribed the documents. And plaintiff paid Rs.4,30,000/- in cash to the defendant in the presence of the attesting witnesses. For, despite repeated requests neither the defendant returned the loan nor agreed interest, thus, the suit.

The defendant in the written statement filed by him denied the claim of the plaintiff and clarified that in fact he had borrowed Rs.2,00,000/- from one Dalel Singh @ Dalle Singh in the year 2010, and to secure his interest had obtained the signatures of the defendant on a blank pronote. Subsequently, Dalle Singh served him with a notice dated 19.02.2013 through his counsel and demanded Rs.3,00,000/- allegedly lent to the defendant. The defendant took up the matter with Dalel Singh that in fact he had only borrowed Rs.2,00,000/-, whereupon he agreed to withdraw the notice on repayment of the borrowed amount. Defendant returned Rs.2,00,000/- to Dalel Singh, however, he did not return the blank signed pronote for the same was allegedly with his counsel Shri Maichand Gothdiwal. But he assured the defendant that he would destroy the said document. However, plaintiff in connivance with Dalel Singh misused and fabricated the blank pronote, which bears signatures of the defendant, and filed the present suit.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that claim of the plaintiff was that he lent Rs.4,30,000/- to the defendant on 30.12.2012 vide pronote (Ex.P1) and receipt (Ex.P2). However, calendar of the year 2012 was produced by the defendant to show that 30.12.2012 was Sunday and hence it was highly improbable that plaintiff purchased the proforma of the pronote

and other necessary documents from Tehsil Complex, Siwani. Significantly, this was the case of the plaintiff himself that alleged transaction took place on 30.12.2012 which happened to be Sunday. Further, Suresh (PW3), one of the attesting witnesses, deposed that he along with Radhey Shyam, Janak Raj and Jagdish had signed the pronote as also the receipt at two places, which was contrary to the record as their signatures were appended only at one place on the disputed documents. Not just that, report of the handwriting expert proved by the defendant revealed that even the handwriting of the Scribe Janak Raj (PW1) did not match with his signatures. Still further, plaintiff failed to examine any handwriting expert to rebut the said evidence. Nothing was brought on record either to show if in the usual course and practice even on Sundays the Tehsil was functional and as on any other day the deed writers, stamp vendors etc. were available. Likewise, Suresh son of Mahabir and Radhey Shyam son of Shish Ram, who were the witnesses to the disputed documents, were also alleged to be present at the spot, for, they too had come for some work in Tehsil. Again, it remained unexplained as to for what purpose and work they visited Tehsil on Sunday. Janak Raj (PW1), Scribe, claimed to have known both the parties, however, in his cross-examination he conceded that he was not personally known to the defendant. On the contrary, even if the defendant had not examined Dalel Singh from whom he alleged to have obtained Rs.2,00,000/- as loan, would not enure to the benefit of the plaintiff or advance his case a bit, for, onus was upon the plaintiff to prove his claim and execution of the pronote and receipt by the defendant. That being so, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed for lack of cogent evidence.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. Thus, 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

28.11.2019
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO