

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5059 of 2018 (O&M)

Date of Decision : 13.11.2019

Som Pal

.....Appellant

Versus

Ranjit Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Liaqat Ali, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was dismissed by the trial Court vide judgment and decree dated 13.07.2016 but as the appeal preferred against the said decree was accepted vide impugned judgment dated 09.10.2017 and the suit was decreed, the appellant-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.

Plaintiff filed a suit for recovery of Rs.40,800/-.

In brief, the case set out by her was that defendant approached the plaintiff on 24.05.2010 and borrowed Rs.30,000/- in cash to meet his business requirements. He executed a pronote and receipt dated 24.05.2010 in favour of the plaintiff. It was agreed that he would repay the borrowed amount along with interest @ 3% per month. However, for, the defendant failed to re-pay the loan, thus the suit.

In the written statement filed by the defendant he denied to have borrowed any amount from the plaintiff. Accordingly, execution of

the pronote as also the receipt in favour of the plaintiff was also denied and both these documents were alleged to be forged and fabricated.

After considering the rival claims of the parties the trial Court, vide judgment and decree dated 13.07.2016, held although plaintiff examined Rashpal Chand (PW1), who scribed the pronote Ex.P1 and Ex.P2 but he never deposed that he saw defendant taking Rs.30,000/- from the plaintiff as loan. Further, one of the attesting witnesses i.e. Nirmal (DW2) maintained that his signatures were obtained on Ex.P1 and Ex.P2 by fraud. Thus, execution of the pronote was without consideration, the plaintiff was not entitled to recover any amount from the defendant. Accordingly, the suit was dismissed.

However, upon comprehensive analysis of the matter in issue and the evidence on record the Appellate Court concluded that pronote Ex.P1 and receipt Ex.P2 dated 24.05.2010 revealed that it bears the thumb impressions as also the signatures of the defendant. It was witnessed by Harmesh Lal son of Sadhu Ram and Nirmal son of Meelo Ram, resident of village Talwan. It also bears the signatures and registration number of scribe Rashpal Chand. Plaintiff appeared as her own witness and testified in her deposition the execution of the pronote and receipt as also that defendant had received Rs.30,000/- as loan for running his shop. Rashpal Chand (PW1), scribe of the pronote and receipt deposed that defendant had thumb marked both these documents after the contents thereof were read over and explained to him. Further, Rs.30,000/- were paid to the defendant in his presence as also in the presence of the witnesses. He also produced a copy of his register Ex.P3 which revealed that entry qua execution of

pronote was duly incorporated in his register at Serial No.870 and was signed by the witnesses. No doubt Harmesh Lal (PW3) failed to present himself for cross-examination hence his statement could not be read in evidence. Whereas Nirmal the other attesting witness, who happened to be the member of the village panchayat deposed in favour of the defendant, but he conceded in his cross examination that receipt Ex.P2 bears his signatures. For, he deposed that his signatures were obtained by the plaintiff on blank papers and he was habitually signing blank papers at the asking of other villagers, it was observed that a member of the village panchayat who could sign the blank documents merely on the asking of any person, his testimony could not be relied upon or believed. Not just that nothing was brought on record to explain as to how his signatures appeared not only on the receipt Ex.P2 as also in the register of the scribe particularly, for, he submitted that he did not know Rashpal Chand, scribe of the pronote and the receipt. Further, the defendant failed to rebut the evidence led by the plaintiff by getting his thumb impressions compared with his standard thumb impressions to substantiate his defense. Not only that he rather refused to get his signatures and thumb impressions which appeared on pronote as also the receipt compared with his standard thumb impressions/signatures in response to the suggestion put to him in the cross-examination, he even refused to identify his signatures on the written statement and maintained that it did not bear his signatures, therefore, his version was not worthy of any credence. In the matter at hands, the defendant had merely denied the execution of pronote and the receipt which was not sufficient to rebut the presumption envisaged under Section 118 of

the Negotiable Instrument Act. Not only that no suggestion was put to the plaintiff that defendant had not received Rs.30,000/- from the plaintiff pursuant to the pronote and the receipt. That being so, the only and the inevitable conclusion that could be reached: plaintiff, duly substantiated her claim.

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. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

13.11.2019

*Manoj Bhutani***(ARUN PALLI)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No