

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 3728 OF 2018(O&M)
DATE OF DECISION : 04.03.2020

Vishnu Sharma

...Appellant

versus

Parmod Kumar

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

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

ARUN MONGA, J.

1. This is defendant's second appeal assailing concurrent findings recorded by both the Courts below. Suit of the plaintiff for recovery of an amount of Rs.93,250/- has been decreed by trial Court against the defendant and his first appeal has been dismissed by the Appellate Court below.

2. The facts of the case are that the plaintiff asserted that defendant borrowed an amount of Rs. 57,550/- with a promise to repay the same with interest at the rate of Rs.2/- per month/per hundred and executed a writing in this regard. However, the defendant did not honour his promise and failed to return the amount despite request, leading to the filing of the civil suit for recovery of Rs.93,250/-(Rs.57,550/- as principal and Rs.35,700/- as interest accrued thereupon).

3. The defendant in written statement denied having borrowed an amount of Rs. 57,550/- from the plaintiff on 01.04.2011

not having executed any writing. The stand of the defendant is that plaintiff asked him to pay Rs.1,50,000 for getting him appointed in Court. Believing plaintiff's assurance, he paid Rs. 75,000/- to the plaintiff on 2.6.2010 in the presence of Budh Singh and further paid Rs. 75,000/- in the month of June 2013. The plaintiff got the signatures of defendant on blank papers on the pretext of conducting his medical, the defendant signed on the blank papers and the plaintiff fraudulently used the blank papers for procuring the writing regarding money.

4. The suit was decreed by the trial Court and the plaintiff was held entitled to recovery of Rs.93,250/- along with interest @ 6% per annum from the date of filing of suit till realization.

5. The First Appellate Court dismissed the appeal filed by the defendant vide judgment dated 15.12.2017, leading to the filing of instant regular second appeal.

6. I have heard learned counsel for the appellant and have perused the judgments passed by the Courts below vis-a-vis the grounds of appeal taken before this Court.

7. Rejecting the defence version, the trial Court, *inter alia*, relied upon the writing(Ex.PW1/A) whereupon the defendant signed on revenue stamp and acknowledged having borrowed money by the defendant, which was duly proved by the attesting witness(PW1) and scribe(PW2) thereof. The trial Court negated the plea of defendant of fraud and it was held that the defendant had executed the promissory note after having received the amount from the plaintiff and failed to

repay the same to the plaintiff.

8. First Appellate Court dismissed the defendant's appeal recording following reasons:-

“23. Keeping in view the above discussed evidence this court is of the view that the execution of the writing Ex.PW1/A and consideration thereon is proved not only from the statements of the plaintiffs witnesses but also from the statements of the defendant's witnesses because the defendant himself in his cross-examination has admitted that on the receipt Ex.PW1/A on revenue stamp bears his signatures. DW2 Babu Lal in his cross-examination has stated that at the time of transaction of Rs.57,550/- Vinod and Om Parkash were present but he was not present. This witness has also gone to the extent that he has knowledge about the said transaction.

24. The plea taken by the appellant that his signatures were obtained by the plaintiff on blank papers on the pretext of indulging him in a job has got no force because the defendant is a graduate and it cannot be expected from a graduate person that he shall put his signatures upon a revenue stamp affixed on a plain paper. The defendant in his cross-examination has also admitted that he has not filled any form for job. He has also deposed that he has not given any interview for the job till today. From the statements of the plaintiff's witnesses. Kumar son of Ramdev. He has further deposed that he put his signatures on the writing Ex.PW1/A as attesting witness.

25. The next plea taken by the defendant that from the report of the handwriting and finger print expert who appeared in the witness box as DW4 it is proved that the signatures of the defendant were put on

blank papers and later on it was converted into writing has also got no force because the own witness of the defendant i.e. DW2 Babu Lal in his cross-examination has stated that at the time of transaction of Rs.57,500/- Vinod and Om Parkash were present but he was not present. This witness has also gone to the extent that he has knowledge about the said transaction.

26. *The next plea taken by the appellant that in respect of the forgery committed by the plaintiff upon him he filed the complaint in which the plaintiff has been summoned as accused has also got no force because mere filing of complaint does not itself prove that the forgery has been committed particularly when the case of the plaintiff is otherwise proved. Further the defendant himself in his cross-examination has admitted that he has filed the complaint against the plaintiff after filing of the civil suit and this fact goes to show that the complaint is the result of counter-blast from escaping the legal liability of repayment of the borrowed amount.*

27. *In view of the above discussion, this court is of the view that the learned lower court has committed no error while passing the impugned judgment and decree dated 09.01.2017.”*

9. In my opinion, the conclusions drawn by the learned trial Court and the learned first Appellate Court are in consonance with the record and facts of the case and correct evaluation of evidence. I am inclined to agree to the same as there seems no perversity or illegality in the concurrent findings of facts returned by the Courts below on appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below. No

fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending applications stand disposed of.

13. No order as to costs.

(ARUN MONGA)
JUDGE

March 04, 2020
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |