

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

**RSA NO. 5535 OF 2018 (O&M)
DATE OF DECISION : 03.03.2020**

Chanan Singh

...Appellant

versus

Gurdev Singh (now deceased) through his Lrs

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. K. S. Dadwal, Advocate and
Ms. Neha Jain, Advocate,
for the appellant.

ARUN MONGA, J. (ORAL)

Having suffered concurrent adverse findings by the two Courts below, the plaintiff/appellant herein is before this Court in Regular Second Appeal assailing the trial Court judgment and decree dated 18.12.2015 as upheld by the First Appellate Court vide its judgment and decree dated 19.03.2018.

2. The plaintiff filed a suit for recovery of ₹50,000/- alleging that defendant raised loan for domestic need for a sum of ₹50,000/- vide receipt dated 15.03.2004 and agreed to return the same with interest at the rate of 3% per month. Plaintiff started demanding principal as well as interest amount from the defendant but in vain. Plaintiff served legal notice dated 07.11.2006. He also made written complaint to the Senior Superintendent of Police, Hoshiarpur for directing the defendant

to pay ₹50,000/- taken as loan against receipt dated 15.03.2004 and also pay ₹30,000/- which were given by the plaintiff for sending his son abroad. The trial Court dismissed the suit with no order as to costs.

3. The defendant denied the loan and liability to pay.

4. Based on the pleading, following issues were framed :-

1) Whether defendant has raised loan of ₹50,000/- from the plaintiff on 15.03.2004 vide written receipt ?

OPP

2) To what rate of interest, plaintiff is entitled to ?

OPP

3) Relief.

5. In order to prove their case and to discharge their onus as per the issues framed *ibid*, the parties to suit adduced their respective oral as well as documentary evidence.

6. Based on the collective evidence adduced by both the parties and upon appreciation thereof, the trial Court dismissed the suit of plaintiff.

7. Feeling aggrieved with the above said judgment and decree dated 18.12.2015, the plaintiff preferred an appeal.

8. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto.

9. I have heard learned counsels for the parties and have perused the judgments and decrees of both the Courts below.

10. For holding against the plaintiff, the reasons recorded by First Appellate Court are hereunder :

"13. Now, contents of this receipt are to be seen wherein it has been mentioned that this receipt was in token of receiving the amount for executing of one pronote. Pronote has not seen the light of the day. In this receipt itself there is no promise on the part of respondent nor any acceptance is there by appellant. So, there is no contract between both the parties to which it can be termed as pronote under the Negotiable Instrument Act. Merely producing and proving the receipt that some amount was received by respondent is not sufficient to come to the conclusion that any loan amount was advanced by appellant with promise by respondent to return it back with interest. So, the basic ingredients are missing in the pleadings as well as in evidence."

11. To my mind, the concurrent findings against the appellant recorded by the two Courts below are in consonance with the record and have been correctly recorded after due appreciation of evidence. The same do not warrant any interference.

12. In view of the reasons contained aforesaid and having perused the grounds of appeal filed herein, I am of the view that no fresh grounds have been raised warranting interference of this

Court in present second appeal.

13. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

14. 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.

15. In the light of my discussion above and the reasons recorded therein, the instant second appeal is bereft of merit and is accordingly dismissed.

16. Pending application, if any, also stand disposed of.

17. No order as to costs.

(ARUN MONGA)
JUDGE

MARCH 03, 2020
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |