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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-465-2021 (O&M)

Date of Decision: 04.03.2021

Kulwinder Singh

…Petitioner

Versus

Jagtar Singh

…Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Krishan Sharma, Advocate,
For the petitioner.

(Presence marked through video conference)

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ARUN MONGA, J. (ORAL)

Petition herein, inter alia, is for quashing of an order dated 04.02.2021 (Annexure P-4) passed by Additional Civil Judge (Senior Division) vide which the application of the petitioner for reopening the evidence of the petitioner/defendant was dismissed.

2. Learned counsel for the petitioner submits that the suit was filed by the respondent-plaintiff for recovery of an alleged loan of Rs.5,00,000/-. Plaintiff's case before the learned lower Court is that he had given a loan of Rs.5,00,000/- to defendant/ petitioner on 04.01.2016, on executing a pronote. Loan amount was/ is stated to have been arranged from a commission agent. The petitioner categorically refuted the said contentions and submitted that pronote in question is forged and fabricated and no money was given. He further submits that after the closure of

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evidence, the petitioner filed an application to reopen the evidence for summoning the commission agent but the same was dismissed by the learned lower Court vide impugned order dated 04.02.202, with the remarks that there is presumption of passing of consideration under Section 118(a) of N.I. Act if execution pronote and receipt is duly proved.

3. I have heard learned counsel for the petitioner and gone through the case file.

4. No grounds are made out to interfere. No material irregularity has been either pleaded or otherwise pointed out so as to warrant interference of this Court to set aside the order impugned herein.

5. Having perused the order passed by the learned Civil Judge, it is borne out that before plaintiff closed his evidence in affirmative on 09.09.2019, learned counsel for the defendant had at length cross-examined all the plaintiff's witnesses. And thereafter, defendant availed as many as 8 opportunities to conclude his evidence and yet when he finally led his evidence, he chose to appear himself as the only witness in support of his defence. After defendant evidence was closed and the case was fixed for rebuttal evidence/ final arguments, at that stage, the defendant/ petitioner herein moved the application to seek permission of the Court to summon additional defence witness by reopening the evidence. In the premise, conduct of the petitioner(defendant) does not inspire any confidence to grant any discretion to him to reopen the evidence, once it had been closed after giving him ample opportunity. The application filed by him before the trial Court seems to be another of dilatory tactics to further delay the proceedings.

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6. In any case, it was open to the petitioner-defendant to give his list of witnesses at the relevant time when he kept on seeking opportunities to adduce evidence despite matter having been kept as many as 8 times for his evidence. He neither deposited any diet money of the witnesses nor gave any list thereof and finally he merely chose to appear himself as the solitary defence witness.

7. Even otherwise, nature of additional evidence sought to be adduced by him is purported to bring on record the source of money, from where plaintiff had arranged the same before lending it to the defendant, qua which the plaintiff has now filed suit for recovery as the defendant failed to pay back the loan taken from the plaintiff.

8. *Prima facie,* it is irrelevant as to where the plaintiff had sourced his money from, to lend the same to the defendant, as long as otherwise plaintiff has discharged his onus qua execution of the pronote and the receipt etc to advance the loan to the defendant. Plaintiff is not required to prove his capacity to make the said payment at the time of execution of the pronote and receipt and any deposition made by him qua the same in his cross-examination is of no consequence. Reference may be had to Section 118(a) of the Negotiable Instruments Act, which is as under:-

> *"118. Presumptions as to negotiable instruments —Until the contrary is proved, the following presumptions shall be made:—*
>
> *(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration."*

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It is apparent that legal presumption for passing the consideration vests in favour of the loaner once he has discharged his initial onus of proving the transaction/ remittance of loan, subject of course to the right of the defendant to rebut the same. The defendant failed to do so despite grant of ample opportunity.

9. In the premise, no fault can be find in the order impugned order. Revision petition is dismissed.

10. Pending application, if any, shall also stand disposed of.

March 04, 2021 **(ARUN MONGA)**
Vandana/ Jiten **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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