

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

RSA No. 563 of 2021 (O&M)

Date of Decision: September 01, 2021

Peerdan Appellant(s)

Versus

Om Parkash Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajesh K. Sheoran, Advocate
for the appellant.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

This appeal has been filed by the appellant/defendant, challenging judgment and decree dated 20.04.2018, passed by learned Additional Civil Judge (Sr. Division), Charkhi Dadri as well as judgment and decree dated 07.01.2020, passed by learned Additional District Judge, Charkhi Dadri, whereby suit for recovery filed by the respondent-plaintiff for a sum of Rs.2,25,000/- i.e. Rs.2,10,000/- as principal amount and Rs.15,000/- as interest, has been decreed.

Plaintiff/respondent filed a suit for recovery of Rs.2,25,000/- i.e. Rs.2,10,000/- as principal amount and Rs.15,000/- as interest from defendant/appellant with the averments that defendant – Peerdan borrowed a sum of Rs. 2,10,000/- from plaintiff on 27.08.2016 with interest @ Rs.2/- per hundred rupee per month. A pronote and receipt in this regard was executed by defendant in favour of plaintiff. Said pronote and receipt was

scribed by Rajesh Sheoran, Advocate. Defendant after reading and understanding the same, received the amount of Rs.2,10,000/- from plaintiff and appended his signatures over the same. Despite repeated requests and demand notice dated 02.01.2017 sent by the plaintiff, no amount of loan or interest was paid by the defendant. Hence, suit was filed by the plaintiff.

Defendant/present appellant contested the suit while taking preliminary objections of the suit being not maintainable, plaintiff having no locus standi or cause of action amongst others. Appellant/defendant denied borrowing any amount from plaintiff. It is pleaded that there were two earlier 'Bahi' entries regarding amount of Rs.45,000/- and Rs.15,000/- and in settlement of the same, an amount of Rs.1,10,000/- was agreed to be paid to plaintiff by defendant and amount of Rs.1,00,000/- was to be taken as further loan by defendant, therefore, pronote and receipt of amount of Rs.2,10,000/- was prepared. It is further pleaded that amount of Rs.1,00,000/- was in fact never handed over by the plaintiff to defendant. Said pronote and receipt was simply signed by the defendant in good faith and belief that plaintiff shall give the amount of Rs.1,00,000/-. A Panchayat was convened in this regard and plaintiff assured the defendant that he will hand over Rs.1,00,000/- but the same was never paid by plaintiff and the suit was filed. It is further averred that pronote and receipt in question are result of fraud and plaintiff intends to grab money from defendant under the garb of pronote and receipt in question. It is further averred that defendant has not taken any amount on loan from plaintiff and in such circumstances, there is no question of repayment of loan amount. Dismissal of the suit was sought.

Replication to the written statement was filed by the plaintiff.

Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i. Whether the plaintiff is entitled for recovery of amount of Rs.2,25,000/- alongwith pendent-lite and future interest? OPP.
- ii. Whether the pronote and receipt in question are a result of fraud? OPD
- iii. Whether the plaintiffs has no locus-standi and cause of action to file the present suit? OPD
- iv. Whether the present suit is bad for suppressio-viri? OPD
- v. Whether the present suit is not maintainable in the present form? OPD
- vi. Whether the present suit is barred by provision of Money Lending Act as the plaintiff has no money lending license? OPD
- vii. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case decreed the suit and held the plaintiff entitled to recovery of amount of Rs.2,25,000/- i.e. Rs.2,10,000/- as principal amount and Rs.15,000/- as interest from the defendant while holding that pronote and receipt were duly proved by the plaintiff on the basis of evidence on record.

Appeal preferred by the present appellant/defendant was dismissed by learned Additional District Judge, Charkhi Dadri, vide

impugned judgment and decree dated 07.01.2020. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that delivery of the amount in question has not been proved on record. Learned counsel submits that PW-3 Rajesh Sheoran, who is witness of the pronote and receipt, has clearly stated that amount in question was not handed over in his presence. In fact, it was only an amount of Rs.45,000/- and Rs.15,000/- which was taken as loan by the defendant-appellant and in the settlement thereof amount of Rs.1,10,000/- was to be handed over by the defendant/appellant to the plaintiff. Defendant/appellant had intended to take a further loan of Rs.1,00,000/- from plaintiff and it is in this view of the matter that pronote and receipt for the amount of Rs.2,10,000/- was prepared. Plaintiff had assured the defendant/appellant that payment of Rs.1,00,000/- would be delivered to the defendant/appellant but amount of Rs.1,00,000/- was never received by the appellant. Both the learned Courts below have not even considered this aspect in the correct perspective. Therefore, in this view of the matter both the learned Courts below have grossly erred in law and on facts. It is thus prayed that this appeal be allowed. Judgments and decrees passed by both the Courts below be set aside.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

It is a matter of record that in order to prove his case, plaintiff examined Rajesh Sheoran (PW3) – Deed Writer i.e. scribe of pronote and receipt (Ex. P4 and P5) respectively, who stated that pronote and receipt was

scribed by him and bear his signatures as scribe. PW2 further stated that amount of Rs.2,10,000/- was borrowed by defendant from plaintiff on 27.08.2016 with interest @ Rs.2/- per hundred rupee per month and that the defendant/appellant appended his signatures on the pronote and receipt in his presence. Argument raised by learned counsel for the petitioner that handing over of the amount of Rs.2,10,000/- is not proved on record, is belied by the evidence on record. It is specifically mentioned in the pronote Ex.P4 that amount of Rs.2,10,000/- has been kept by defendant at his home after counting the same. Two revenue stamps with the signatures of defendant are present, therefore, statement of PW2 Rajesh Sheoran to the effect that amount of Rs.2,10,000/- was not paid in his presence proves that PW2 is a truthful witness. It is relevant to note at this stage that defendant, who has deposed as DW2, has admitted his signatures over the pronote Ex.P4 and receipt Ex.P5. Plea raised by the defendant is that his signatures have been obtained fraudulently on the said instruments, however, learned counsel for the appellant is unable to point out an iota of evidence on record to indicate perpetuation of any fraud and misrepresentation by the plaintiff. Similarly plea taken by the appellant that two sums i.e. Rs.45,000/- and Rs.15,000/- were earlier borrowed by defendant from plaintiff and in settlement thereof an amount of Rs.1,10,000/- was agreed to be paid by defendant who intended to take a further loan of Rs.1,00,000/- from the plaintiff, therefore, pronote and receipt for the amount of Rs.2,10,000/- were prepared, is not borne out from the record. Defendant while deposing as DW2 has not revealed the date, month or even the year when amount of Rs.45,000/- and Rs.15,000/- was taken by him from plaintiff. DW2 further stated that

writing regarding the said amount was scribed by Ishwar – Namberdar and that the settlement was arrived at in the Panchayat where Ishwar – Namberdar, Kartar – Namberdar and Banwari were present. Defendant has admittedly not examined even one of the said persons. Learned Courts below have rightly held that no reliance can be placed on the testimony of Mahipal DW1, who stated that he was present at the time of execution of pronote and receipt Ex.P4 and P5, respectively but amount of Rs.2,10,000/- was not handed over in his presence. Admittedly, neither pronote nor receipt bear signatures of Mahipal, who admittedly is the nephew of defendant. Thus, his presence at the spot at the time of execution of pronote and receipt in question is not proved. In fact DW1 in his cross-examination went on to admit that he was not present with the parties at the time of execution of pronote and receipt Ex.P4 and P5. Thus, plaintiff has clearly succeeded in proving his case on the basis of evidence on record.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 20.04.2018, passed by learned Additional Civil Judge (Sr. Division), Charkhi Dadri as well as judgment and decree dated 07.01.2020, passed by learned Additional District Judge, Charkhi Dadri, which calls for any interference by this Court in second appeal.

In my considered opinion, no question of law, much less a substantial question of law arises for adjudication in this appeal. Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record, which brooks no interference.

No other argument has been raised.

Accordingly, appeal is dismissed with no order as to cost. Judgment and decree dated 20.04.2018, passed by learned Additional Civil Judge (Sr. Division), Charkhi Dadri as well as judgment and decree dated 07.01.2020, passed by learned Additional District Judge, Charkhi Dadri, respectively are upheld.

There is a delay of 3 days in filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

Pending application/s, if any, is/are decided accordingly.

September 01, 2021
Sunil

(**LISA GILL**)
JUDGE

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