

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 131 of 2021 (O&M)

Date of decision : March 16, 2021

Charanjit Kaur

.....Appellant

Versus

Jagtar Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Himani Kapila, Advocate for the appellant.

LISA GILL, J.

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

Appellant-defendant has filed this regular second appeal challenging judgment and decree dated 18.01.2018 passed by the learned Civil Judge (Junior Division), Moga as well as judgment and decree dated 17.02.2020 passed by learned Additional District Judge, Moga whereby suit filed by the respondent – plaintiff has been decreed.

Brief facts necessary for adjudication of the case are that plaintiff – respondent filed a suit for recovery of Rs.3,92,380/- (Rs.2,30,000/- principal amount and Rs.1,62,380/- as interest till 16.01.2016) on the basis of pronote dated 06.04.2013 alongwith interest pendente lite as well as future interest at the rate of 2% per month from the date of filing of the suit till actual realisation of the entire amount. It is pleaded that the present appellant – defendant borrowed a sum of Rs.2,30,000/- from the plaintiff and promised to return the same on demand alongwith interest at the rate of 2% per month. It is further pleaded that appellant – defendant executed pronote and receipt dated 06.04.2013 which was scribed by the

Tasver Singh Gill, Document Writer PW3 and that the pronote and receipt were signed by the defendant - appellant in the presence of marginal witnesses Davinder Singh PW2 and Johan Masih son of Bhag Masih. Despite request when the defendant – appellant did not return the same, suit was filed.

Appellant - defendant contested the suit while taking a plea that she had borrowed a sum of Rs. 35,000/- from respondent – plaintiff and that a blank pronote and receipt signed by her had been misused by the plaintiff. It is further stated that the amount of Rs.35,000/- stood returned to the plaintiff vide receipts dated 04.05.2013, 05.06.2013, 18.07.2013, 10.09.2013, 09.10.2013 and 05.11.2013. Pronote was not returned by the plaintiff in an illegal manner. Objection regarding violation of provisions of Section 269 SS of the Income Tax Act were also taken.

Following issues were framed on the basis of the pleadings:-

1. Whether the plaintiff is entitled to the relief of recovery as prayed for? OPP
2. Whether the amount of pronote and receipt is liable to be declared unlawful and void? OPD
3. Whether the amount of pronote and receipt and its transaction defeat the provisions of Section 23 of the Indian Contract Act? OPD
4. Whether plaintiff has not come to the court with clean hands? OPD
5. Whether the suit of plaintiff has not been properly valued? OPD
6. Relief

Evidence was led by both the parties.

Learned trial court after considering the facts, circumstances and evidence on record concluded that the plaintiff had proved his case. Execution of the pronote and receipt, it is observed, was admitted and defendant – appellant failed to prove any fraud or misrepresentation at the hands of the plaintiff. Plaintiff was, thus, held entitled to recover a sum of Rs. 2,30,000/- with interest at the rate

of 9% per annum on the principal sum from 06.04.2013 till the passing of the decree and that the plaintiff would be entitled to interest at the rate of 6% per annum from the date of passing of the decree till actual realisation of the decretal amount. Appeal preferred by the present appellant was also dismissed by the learned District Judge, Moga vide judgment and decree dated 17.02.2020. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant submits that both the learned courts below have failed to appreciate the controversy at hand. Appellant had taken a specific stand that her husband had borrowed a sum of Rs. 35,000/- in the month of April, 2013 for domestic purposes. It is further submitted that there is no explanation as to why the suit was not filed till March, 2016. Amount in question, it is submitted, is not proved to have been given to the appellant. The plaintiff never produced his income tax returns despite admitting to be an income tax payee. Therefore, both the learned courts below have grossly erred in decreeing the suit filed by the plaintiff - respondent. It is, thus, prayed that judgment and decree dated 18.01.2018 passed by the learned Civil Judge (Junior Division), Moga as well as judgment and decree dated 17.02.2020 passed by learned Additional District Judge, Moga be set aside and suit filed by the plaintiff be dismissed throughout.

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

Plaintiff has specifically stated that the amount in question was borrowed by defendant – appellant due to her requirement for domestic purposes. Plaintiff duly testified before the learned trial Court as PW1 and was steadfast in his testimony. Scribe of the pronote and the receipt – PW3 Tasveer Singh has also testified regarding execution of the same by the defendant – appellant in favour of the plaintiff after admitting the contents of the same to be true. Specific entry in respect to the receipt and pronote has been proved in the register maintained by

PW3 where signatures of the appellant are duly reflected. PW2 Davinder Singh Numberdar is the witness to the pronote. PW2 specifically stated that defendant – appellant had borrowed and received a sum of Rs.2,30,000/- from the plaintiff in his presence and executed the note and pronote in question in his presence.

It is rightly observed by the learned trial Court that the witnesses PW1 to PW3 have stood firm in their cross examination regarding material aspects of the transaction and there is no inconsistency on record, which shakes their credibility. In such a situation, it was incumbent upon the defendant – appellant to have substantiated her plea of fraud and misrepresentation. Defendant while deposing as DW1 on one hand has admitted her signatures on the pronote/receipt while stating that she had appended her signatures on blank pronote/receipt. However, in the next breath, she has denied her signatures on the said instrument. It is specifically observed by the learned trial Court that the defendant is evidently a literate lady and can read and write Punjabi and that no legal action whatsoever was ever initiated by the defendant against the plaintiff in case she claims to have been defrauded by him.

Doubtlessly, once execution of the pronote and receipt were proved, it was incumbent upon the defendant – appellant to have substantiated and proved her plea of fraud and misrepresentation. Learned courts below have taken note of the contradictory and vacillating stands taken by the defendant herself. At one point of time, defendant admitted that her signatures were obtained on blank pronote and receipt dated 06.04.2013 and at the same time she has denied her signatures on the said documents. Reliance has been sought to be placed on the receipts Ex.D1 to Ex.D6 i.e. the receipts stated to have been issued by the plaintiff after receiving a sum of Rs.35,000/-. It has been explained by PW1, plaintiff that said receipts were issued by the plaintiff in favour of Naib Singh son of Ishwar Singh i.e. husband of the appellant – Charanjit Kaur in respect to a sum of

Rs.35,000/- borrowed by him. This aspect has been succinctly dealt with by the learned Additional District Judge, Moga. DW2 Surjit Singh and DW3 Darshan Singh deposed that the appellant had borrowed a sum of Rs.35,000/- from the plaintiff – respondent, who in lieu thereof had got a blank signed pronote from the appellant as surety. Rs.35,000/- is stated to have been returned, though blank signed pronote was not returned and the suit filed by misusing the same. It is, however, to be noted that DW2 and DW3 in their cross examination expressed ignorance as to whether the appellant had delivered a blank signed pronote to the plaintiff. They further stated that the defendant – appellant had paid a sum of Rs5,000/- only to the plaintiff in their presence on 05.11.2013 and they were not aware if any balance amount was repaid. Reference to testimony of DW2 and Dw3 is of no avail to the appellant. Learned courts below have returned concurrent findings of fact, based upon proper appreciation of the evidence on record.

Keeping in view the facts and circumstances, there is no question of law, much less a substantial question of law, which is involved for consideration in this regular second appeal.

No other argument has been addressed.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 18.01.2018 passed by the learned Civil Judge (Junior Division), Moga as well as judgment and decree dated 17.02.2020 passed by learned District Judge, Moga, which calls for any interference by this Court in second appeal.

Accordingly, this appeal is dismissed with no order as to costs.

March 16, 2021
Rts

(Lisa Gill)
Judge

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