

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

RSA-1507-2021(O&M)

Date of decision:-8.12.2022

Kharak Singh

...Appellant

Versus

Mohinder Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ashish Grover, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Mohinder Singh had filed a suit under Order XXXVII of the Code of Civil Procedure, 1908 for recovery of Rs.11,78,500/- i.e. Rs.7,00,000/- being the principal amount and Rs.4,78,500/- being the interest thereon @ Rs.1.5 per hundred per month, for the period from 15.01.2010 to 20.7.2012 on the basis of pronote and receipt dated 15.01.2010 on the assertion that defendant Kharak Singh borrowed an amount of Rs.12,00,000/- from plaintiff for his agricultural expenses and to repay the housing loan and promised to pay back the said amount along with upto date interest as and when demanded by the plaintiff; the defendant

executed a pronote and receipt in favour of the plaintiff in presence of marginal witnesses; when the plaintiff asked the defendant to return the loan amount by presenting/showing the pronote and receipt to him, he put of the matter on one pretext or the other; the plaintiff ultimately got served a legal notice dated 21.12.2010 upon the defendant; on receipt of notice, the defendant approached the plaintiff and requested for some more time to repay the loan amount along with interest; in the month of October, 2011, the defendant paid Rs.5 lacs to the plaintiff and further assured to pay the remaining amount along with interest after Baisakhi of 2012 after harvesting the wheat crop, but he did not stick to of that promise; the plaintiff again got served a legal notice dated 14.06.2012 upon the defendant, but the defendant in reply to it took false and baseless defence, giving rise to a cause of action to the plaintiff to file the suit in the Court of law.

2. On notice, the defendant appeared and filed written statement contesting the suit raising preliminary objections that the plaintiff has no locus standi or cause of action to file the present suit; the suit of the plaintiff is not maintainable in the present form; the plaintiff has not come to the Court with clean hands and has suppressed the material facts; the plaintiff is estopped from filing the present suit by his own act and conduct; the alleged pronote and receipt dated 15.01.2010 are forged and fabricated documents and have been manipulated by the plaintiff in connivance with the alleged attesting witnesses; the defendant had not borrowed alleged amount of Rs.12,00,000/- from the plaintiff nor executed any pronote and receipt in favour of the plaintiff; as a matter of

fact he had borrowed Rs.4,00,000/- in cash from the plaintiff in the year 2006 for construction of his house and at that time, the plaintiff had obtained signatures of the defendant on blank pronote and receipt as security for repayment of said amount along with interest thereon; on 08.10.2011, the defendant repaid the said amount to the plaintiff and requested the plaintiff to return back the blank signed pronote and receipt of the defendant, but the plaintiff did not do so on the pretext that same has been misplaced and that he would return the said blank pronote and receipt to the defendant as and when same were traced out and those will be destroyed; the plaintiff assured not to misuse the pronote and receipt; the defendant bonafidely believed the plaintiff and aforesaid blank signed pronote and receipt remained in possession of the plaintiff, which the plaintiff has misused and filed suit in question; the plaintiff is doing business of money lending without holding any legal and valid money lending license; the suit of the plaintiff is time barred and has not been properly valued for purposes of Court fee and jurisdiction; the suit of the plaintiff is false and frivolous. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

3. The plaintiff had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

4. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for recovery as prayed for?OPP
2. Whether the plaintiff has no locus standi or cause of action to file

the present suit? OPD

3. Whether the suit is not maintainable? OPD

4. Whether the plaintiff has not come to the Court with clean hands and has concealed the true and material facts from this Court? OPD

5. Whether the suit is time barred by law of limitation? OPD

6. Whether the suit has not been valued for the purpose of Court fee? OPD

7. Whether the alleged pronote and receipt dated 15.01.2010 are forged and fabricated?OPD

8. Relief

5. The parties lead evidence in support of their respective claims.

During the course of evidence of the plaintiff, he examined Dilawar Singh an attesting witness of pronote and receipt as PW-1, who tendered into evidence his duly sworn affidavit Ex.PW-1/A and supported the case of the plaintiff on material points proving pronote as Ex.P1 and receipt as Ex.P2. The plaintiff further examined another attesting witness Bachhittar Singh as PW2, who tendered in evidence his affidavit Ex.PW2/A and lent support to the case of the plaintiff on material points. Plaintiff Mohinder Singh got his own statement recorded as PW3 repeated on oath his case as given in the plaint and he tendered in evidence his affidavit Ex.PW3/A. He proved on record documents Ex.P1 as pronote, Ex.P2 as receipt, Ex.P3 as copy of legal notice dated 21.12.2010, Ex.P4 as postal receipt, Ex.P5 as copy of legal notice dated 14.06.2013, Ex.P6 as reply to legal notice, Ex.P7 to Ex.P15 Jamabandis for the year 2016-17

and Ex.P16 to Ex.P22 as copies of 'J' forms.

6. In rebuttal the defendant got his statement recorded as DW1 repeated on oath his case as given in the written statement.

7. With that the evidence of the defendant stood closed.

8. After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 7 in favour of the plaintiff and against the defendant, issues No.2 to 6 were decided in favour of the plaintiff against the defendant. As a result of findings on issues, the suit of the plaintiff was partly decreed with costs and the plaintiff is hereby held entitled to recover the amount of Rs.7,00,000/- as principal amount from the defendant along with interest at the rate of 9% per annum from the date of execution of pronote and receipt i.e. 15.01.2010 till date of filing of this suit along with pendente-lite and post decree interest @ 6% per annum, till actual realization of the amount. This was so done vide judgment and decree dated 29.4.2019.

9. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Bathinda, who vide judgment and decree dated 13.8.2021 dismissed the said appeal with costs upholding the judgment and decree passed by the trial Court.

10. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant has filed the present regular second appeal before this Court.

11. I have heard learned counsel for the appellants besides going through the record.

12. Both the courts below have returned concurrent findings that

defendant had borrowed a sum of Rs.12 lakhs from the plaintiff on 15.1.2010 executing pronote Ex.P1 and receipt Ex.P2 and in the month of October, 2011, he had returned Rs.5 lakhs to the plaintiff but failed to pay the balance amount. The version of the defendant that he had borrowed a sum of Rs.4 lakhs only from the plaintiff, which he had returned to him and plaintiff had obtained his signatures on a blank pronote and receipt as security, which he did not return despite repeated request was not found to have any merit and was rejected. The allegations levelled by defendant that pronote Ex.P1 and receipt Ex.P2 are forged and fabricated documents were also found to be without merit. Therefore, the plaintiff was found entitled to recover amount of Rs.7 lakhs with interest.

13. Learned counsel for the appellant has argued that the plaintiff was a money lender carrying on money lending business without licence, which he could not do. In support of his such contention, he has referred to judgment *Mewa Singh Versus Vipin Kumar and another* passed by this Court in RSA No.3390 of 2013, decided on 4.5.2016. However, I find the argument to be least convincing. There is no worthwhile evidence on the record to show that plaintiff had been lending money to various persons on professional basis and charging interest thereon. Therefore, it could not be said that he was engaged in the business of money lending without money lending licence, which might have affected the merits of the case.

14. The other arguments advanced by learned counsel for the appellant are almost the same, which are repetition of the stand taken by the defendant in the written statement and those pleas have been

conveniently dealt with by the Courts below and I do not see any reason to differ with the Courts below in that regard.

15. The judgments passed by the Courts below show due application of mind to the facts and circumstances of the case proper marshalling of facts and correct understanding and use of relevant law. With concurrent findings being there in favour of the plaintiff and against the appellant/defendant with which I find no reason to disagree with both the Courts having given valid and detailed reasons for arriving at the conclusion drawn, no substantial question of law or fact arises in this case.

16. Finding no merit in the present appeal, the same stands dismissed with costs.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

8.12.2022

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No