

RSA-2796-2022 &
RSA-2797-2022

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

(106)

RSA-2796-2022 (O&M)
Date of Decision:-19.12.2022.

Raj Rani

.....Appellant

Versus

Suresh Kumar

.....Respondent

RSA-2797-2022 (O&M)

Raj Rani

.....Appellant

Versus

Suresh Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Prateek Pandit, Advocate for the appellant.

ALOK JAIN, J. (Oral)

By this common order, both the Regular Second Appeals, as numbered above, shall be disposed, as the point in issue is identical.

CM-9615-C-2022 in RSA-2796-2022

This is an application for condonation of delay of 141 days in filing the appeal.

For the reasons recorded in the application, the same is allowed and delay of 141 days in filing the appeal stands condoned.

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CM-9618-C-2022 in RSA-2797-2022

This is an application for condonation of delay of 136 days in filing the appeal.

For the reasons recorded in the application, the same is allowed and delay of 136 days in filing the appeal stands condoned.

Main Appeals (O&M)

The present appeals raise challenge to the judgment and decree dated 11.04.2022 passed by the learned Additional District Judge, Kapurthala, whereby appeal of the respondent-plaintiff has been allowed and the judgment and decree dated 06.07.2018 has been set aside. In the same judgment and decree, the appeal filed by the appellant qua the findings of issue No.6 by the trial Court also stands dismissed. Aggrieved by the same, the appellant is in the Regular Second Appeals before this Court.

Counsel for the appellant has submitted that the learned trial Court had rightly examined the entire evidence and dismissed the suit by finding that there was contradiction in the testimony of the marginal witnesses to the said pronote. Although the learned trial Court did not rely upon testimony of handwriting expert which clarified that the said note and receipt was forged and fabricated by holding that the report of handwriting expert is not a substantive piece of evidence but still the trial Court dismissed the suit. He further contends that the learned First Appellate Court has reversed the findings on surmises and conjectures which has led to decree of the suit.

Heard.

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It is a settled principle of law that as per provision of Section 68 of Indian Evidence Act, the execution of a document has to be proved by examination of one witness and it is not essential that both the witnesses should be examined. In the present case, one witness had supported the plaintiff respondent in entirety and there was no dent in the testimony of the said marginal witness. The plaintiffs have been successful in proving the execution of the pronote. The second argument raised by counsel for the appellant with regard to the non-consideration of the handwriting expert, it is held that once the marginal witness had proved the execution of the document, the handwriting and finger print expert who is expected to submit report in favour of the parties approaching it, has been rightly held to be not a substantive piece of evidence in the peculiar fact of the case that the marginal witness had already proved the pronote.

No other issue was argued by the appellant.

Accordingly, finding no infirmity in the order passed by the learned Lower Appellate Court, which has rightly appreciated the provisions of Section 68 of the Indian Evidence Act and relied upon the positive testimony of the marginal witness, the present appeals are dismissed.

Pending miscellaneous applications, if any, in both the appeals shall also stand disposed of.

(ALOK JAIN)
JUDGE

December 19, 2022.

Sandeep

Whether speaking/reasoned:- Yes/No
Whether Reportable:- Yes/No