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

**CM No. 6103-C of 2022 in/and
RSA No. 1404 of 2019 (O&M)
Date of Decision : 15.09.2023**

Chanan Singh

...Appellant / defendant

Versus

Pritam Singh

...Respondent / plaintiff

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Krishan Kanha, Advocate
for the appellant-defendant.

HARKESH MANUJA, J. (ORAL)

CM No. 6103-C of 2022

Prayer in the present application moved on behalf of the applicant-appellant, is for restoration of the main appeal, which was dismissed for non-prosecution on 18.08.2022.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is **allowed** and main appeal is ordered to be restored at its original number.

Registry to do the needful.

On the oral request of learned counsel for the appellant, the main case is taken on board today itself.

RSA No. 1404 of 2019 (O&M)

CM Nos. 3638-39-C of 2019

Prayer in the present two applications (i) CM No. 3638-C of 2019 is for condonation of delay of 326 days in re-filing the appeal; and (ii) CM No. 3639-C of 2019 for condonation of delay of 113 days in filing the appeal.

For the reasons set out in the applications which make out sufficient cause and also duly supported by the affidavit(s), the same are **allowed**. The delay as occurred respectively in re-filing & filing the appeal is condoned.

MAIN APPEAL

By way of present appeal, challenge has been laid to the judgments & decrees dated 06.02.2017 & 10.08.2017 passed by learned Trial Court and the Appellate Court, respectively, whereby a suit for recovery, filed by the respondent-plaintiff (Pritam Singh) was decreed, and the first appeal filed by the appellant-defendant (Chanan Singh) was dismissed.

[2] Briefly put the facts are that the respondent-plaintiff filed a suit for recovery of Rs. 5,70,000/- (principal + interest) against the appellant-defendant based on pronote as well as receipt dated 06.05.2012, while stating that the appellant-defendant borrowed a sum of Rs. 3,85,000/- from the respondent-plaintiff, which was payable alongwith interest @ 1.5% per month.

[3] Upon notice, the appellant-defendant appeared and submitted that the pronote and receipt were prepared at the instance of respondent-plaintiff in connivance with the marginal witnesses and no such valid document was ever executed between the parties. It was further stated that no consideration was received in pursuance thereof by the appellant-defendant and thus, prayed for dismissal of suit.

[4] After appreciating the evidence on record as well as after hearing learned counsel for the parties, Trial Court, vide judgment & decree dated 06.02.2017, decreed the suit of plaintiff to the following effect:-

“ **ISSUE NO.6 RELIEF**

19. *In view of my above discussion and findings on the aforesaid issues, the suit of the plaintiff succeeds and the same is hereby decreed with costs. The plaintiff is entitled to recover the amount of Rs.3,85,000/- from the defendant alongwith interest @ 6% per annum from the date of execution of the pronote and receipt i.e. 6.5.2012 till the date of realization of actual amount (as the interest claimed by the plaintiff is highly exorbitant and penal in nature). ”*

[5] Dissatisfied with the judgment & decree dated 06.02.2017 passed by the trial Court, the defendant-appellant filed first appeal, however, the same was also dismissed by the Court of District Judge, Bathinda, vide judgment dated 10.08.2017.

[6] Impugning the aforementioned judgments & decrees dated 06.02.2017 & 10.08.2017 passed by the Courts below, learned counsel for the appellant-defendant (Chanan Singh) submits that the pronote or

the receipt in question were never proved on record. In support, he points out that the report of handwriting expert (PW-3) could not have been relied upon for the purpose of proving the execution of pronote in question as he was neither appointed under the orders of the Court nor he gave any opinion about the handwriting or even about the pens used while execution of the said document. He further submits that for the purpose of proving pronote even the statement of marginal witness, i.e. Baljit Singh (PW-2), was wholly unreliable for the reasons that he (PW-2) deposed that the defendant-appellant himself filled the pronote and signed it with the same pen, whereas the deposition of PW-1 in this regard was totally contrary to it, who stated that the witness and the defendant signed with their separate pens having different ink.

[7] Learned counsel for the appellant further submits that the trial in the present case was wholly vitiated as neither the list of witnesses was ever furnished by the respondent-plaintiff post settlement of issues in the suit; nor the original documents as well as any copy thereof was submitted before the trial Court as envisaged under Order 13 Rule 1 CPC before the trial commenced. He also submits that non-filing of replication on the part of respondent-plaintiff in the facts and circumstances of the present case was to be treated as fatal in terms of written statement filed by the defendant-appellant.

[8] Learned counsel again submits that in the facts and circumstances of the present case, the financial capacity of the respondent-plaintiff so as to lend a sum of Rs. 3,50,000/- to the

appellant-defendant was not established on record, whereas on the contrary, it was established that the appellant-defendant was having sound financial condition. In the alternate, it was also submitted that at the best, the present was a case of filling-up of the blank entries in the proforma pronotes after it was got signed from the appellant-defendant.

[9] I have heard learned counsel for the appellant and gone through the paper book as well as the records. I am unable to find merits in the submissions made on behalf of the appellant.

[10] From the evidence available on record, it is evident that the execution of pronote as well as the receipt has been duly proved as Ex. P-1 & Ex. P-2 respectively. Besides, one of the marginal witness appearing as PW-2 supporting the execution, the signatures of appellant-defendant over the pronote as well as the receipt have been proved on record, by the handwriting expert / PW-3. Moreover, the suggestion having been put to PW-1 / plaintiff in his cross-examination that the amount stands paid, itself, establishes the factum of payment of money against the pronote in question. On the contrary, no evidence was produced on record from the side of appellant-defendant to establish the return of any such amount. In these circumstances, even the source of money with respondent-plaintiff was not required to be proved separately as the execution of pronote itself carried presumption under section 118(a) of Negotiable Instruments Act, 1881, though the same can always be rebutted, yet it was never done in this case by the

appellant-defendant. Similar view was expressed by the Court in case of *Jit Singh Versus Nachattar Singh*, reported as **2007 (4) RCR 114**.

[11] So far as the minor inconsistencies in the statements made by the witnesses, i.e. PW-1 and PW-2 regarding mentioning of the colour of pen used while signing the documents is concerned, the same needs to be ignored being of lesser relevance in the present facts for the reason that with the passage of time, memories do fade a little bit and one, therefore, cannot expect a witness to remember such details of lesser importance with mathematical perfection.

[12] Minor alterations regarding date of pronote and the receipt which were neither set up in the defence, nor even proved to have caused any prejudice to the appellant–defendant also may not come to his rescue, particularly, when no complaint or any FIR regarding any forgery about the execution of two documents in question was ever made by the appellant–defendant.

[13] No force can be found in the submissions made on behalf of the appellant-defendant that since no replication was filed to his written statement, thereby the plea of forgery of documents as pleaded therein was admitted by the respondent-plaintiff. Mere non-filing of replication to the written statement cannot be termed to be an admission of fact pleaded therein. The Code of Civil Procedure, 1908, nowhere mandates filing of replication to rebut the averments made in the written statement and it has majorly been left upon the plaintiff to either skip or file replication after obtaining permission of the Court, as

in civil suits, parties are to prove their case as set up in the pleadings by leading oral as well as the documentary evidence in support and the proceedings are not to be adjudicated merely on the basis of plaint, written statement or replication.

[14] Another plea raised on behalf of the appellant-defendant that the list of witnesses was never supplied in advance by the respondent-plaintiff and, therefore, the proceedings in the suit were vitiated is also devoid of merits. Non-supplying of list of witnesses in advance can, at best, be an irregularity and not an illegality, which could nullify the proceedings already culminated into final adjudication by the Courts below, especially when no such objection was either raised during trial of suit, nor even any such plea was ever raised before the Trial Court or before the First Appellate Court.

[15] I do not find merit in the contention raised on behalf of the appellant-defendant that the report of handwriting expert cannot be taken into consideration as he was never appointed by the Court. This plea has no merits. In order to prove signatures or handwriting of any person on a document, it can be proved by comparing the same on the document in question with his standard signatures, as envisaged under Section 73 of the Indian Evidence Act, 1872. This exercise can be got done through a private expert, and the report thereof can be proved in the trial. It is never mandatory that a handwriting expert is always appointed by the Court only and any party to the litigation itself

cannot the comparison done through a private expert and prove the report by producing the said expert as witness.

[16] In view of the detailed discussion made here-in-above, finding no illegality or perversity with the judgments passed by the Courts below, the present appeal is **dismissed**, being devoid of merits.

[17] Pending application(s), if any, shall also stand disposed off.

[18] Record of the Courts below be sent back forthwith.

September 15, 2023
‘dk kamra’

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No