

RSA-4696-2012 (O&M)

212

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4696-2012 (O&M)

Date of decision: May 24, 2023

Kulwant Singh Brar

....Appellant

versus

Jagjit Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. D.S. Bhinder, Advocate for appellant.

Mr. Parminder Singh-I, Advocate for respondent.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellant/plaintiff in second appeal before this Court assailing learned trial Court judgment and decree dated 08.08.2011, as upheld by learned First Appellate Court vide its judgment and decree dated 20.07.2012 dismissing the Plaintiff/appellant's suit for recovery of Rs.2,48,000/- on the basis of pronote and receipt executed in his favour by defendant on 20.11.1999.

3. Briefly stated, facts, as noticed by learned Courts, are as below:

"2. The facts put forth in the plaint are that defendant Jagjit Singh s/o Lal Singh resident of Village Jandanwala, borrowed a sum of Rs.2,00,000/- in cash from the plaintiff on 20.11.1999 at Bathinda for the installation of the building of cold Storage. He undertook to pay interest @ 28 per mensem and promised to return the principal amount alongwith with interest on demand by the plaintiff. As a token of the said amount, Jagjit Singh defendant executed a pronote and receipt on 20.11.1999, in favour of the plaintiff. After admitting the contents to be correct and affixing the requisite stamps, defendant appended his signatures on the pronote and receipt in the presence of the scribe and marginal witnesses. The defendant inspite of several demands by the plaintiff had failed to make the payment either towards the principal amount or towards the interest A total amount of RS.2 lac towards principal amount and Rs.48,000/- as interest has become due from the

defendant to plaintiff, which the defendant has failed to return inspite of repeated requests. Hence, the present suit.”

4. Upon notice, defendant filed written statement taking legal objections that plaintiff had no locus standi or cause of action to file suit; suit was not maintainable. Plaintiff did not approach the Court with clean hands and had concealed true and material facts. It was stated that plaintiff had taken his signature on the pronote by misrepresentation without any consideration. Further certain averments were made and at last, prayed for dismissal of the suit.

4.1. Replication was filed reiterating the averments of plaint. In the replication, plaintiff admitted the execution of agreement to sell by defendant and his son in favour of wife and mother-in-law of plaintiff. Remaining averments in the written statement were denied.

5. Based on the rival pleadings, following issues were framed:

- “1. *Whether the defendant borrowed amount of Rs.2,00,000/- by way of pronote and receipt dated 20.11.1999 from the plaintiff? OPP.*
2. *Whether plaintiff is entitled to recover the amount claimed along with interest? If so, at what rate? OPD.*
3. *Whether the pronote and receipt are forged and fabricated documents? OPD*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Whether plaintiff is a money lender? If so its effect? OPD*
6. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issues No.1 and 2 against plaintiff. Issues No.3 and 4 were decided against defendant. While deciding issue No.5, findings were returned that this issue was framed inadvertently since there was no plea of defendant regarding plaintiff being a money lender, to the contrary plea was that plaintiff was a petition writer and an advocate. Consequently, suit filed by the plaintiff was dismissed.

RSA-4696-2012 (O&M)

8. Feeling aggrieved against the said judgment and decree dated 08.08.2011, appellant/plaintiff preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. Learned counsel for appellants would contend that plaintiff had duly proved execution of pronote (Exhibit P1) and receipt (Exhibit P2) and passing of consideration by leading consistent evidence. Even defendant had not denied his signatures on the pronote in the written statement. He further contends that attesting witness DW-1 was close relative of defendant and it was but natural for him to help defendant to absolve from liability under pronote and receipt. He would further canvass that loan advanced by the Bank to defendant was not 100% of cost of the project rather some margin money was to be arranged by the borrower; and respondent has nowhere proved that from where he arranged the margin money of the project. Learned Court below wrongly discarded the plea of plaintiff that he advanced loan of Rs. 2 lakh to defendant for cold storage.

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

12. Per contra, learned counsel for respondent/defendant supports the impugned judgments and decrees and argues that same are based on correct findings and reasoning.

13. I have heard learned counsel for the parties and perused the case file.

14. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“xxxx xxxx xxxx xxxx
18. Now the question for determination arises as to whether the versions and assertions put forth by the defendant is liable to be accepted. The answer would be in affirmative.

19. On the strength of oral as well as documentary evidence produced by both the parties it transpires that there was a sale transaction between the defendant and his son Gursewak Singh as vendor and Karamiit Kaur and Balwant Kaur, wife and mother-in-law of Kulwant Singh plaintiff as vendees on 29.7.1996 and 29.1.1997, which stands admitted by the plaintiff in his replication as well as in his cross-examination. These two documents have been exhibited as Ex.D.1 and Ex. D.2 respectively. Concededly, the earnest money of a sum of Rs.5, 00,000/- was paid to the defendant. The dated fixed for execution of the sale deed was 30.10.1998 and Paramjit Kaur DW.3 has proved that it was the vendees, who did not honour the agreement in question. The defendant has come forward with the plea that Kulwant Singh plaintiff is an Advocate, having practice of around 20 years as petition writer and he exercises influence over the local police. He had made all out efforts to get back the earnest money paid by his wife and mother-in-law, under threat and coercion from the defendant. In order to prove this factum on the file, reference can be made to Ex.D.3, which is writing on the reverse of Ex.D.2. Kulwant Singh plaintiff, while stepping into the witness box as PW-3, did not deny the execution of the document Ex. D.1 as well as Ex.D.2. He has also admitted the receipt of the earnest money by the defendant. Consequently, both the agreements to sell have been admitted and the plaintiff has also admitted that the sale deed in terms of agreement Ex. D.2 was not got executed. Thus, the admission of Ex. D.3 on the part of plaintiff Kulwant Singh goes a long way to demonstrate that on 29.1.2000, the plaintiff received an amount of Rs.2,50, 000/- from the defendant.

20. Therefore, it also comes out that the relations between the plaintiff and defendant regarding the sale transaction were not cordial and therefore, it does not sound to the reasoning that a person, who is claiming certain amount from the other person, would in the intervening period again advanced a loan of the same amount. As discussed above, Ex.D.1 and Ex.D.2, the agreements to sell, are dated 29.7.1996 and 29.1.1997 and it also transpires that Ex.D.3 writing, vide which, the amount of Rs.2,50,000/- was returned by the defendant to the plaintiff is dated 29.1.2000. Pronote and receipt pertain to 20.11.1999. Here, learned trial Court has rightly held that if during this period, there was a dispute regarding the amount between the plaintiff and defendant, there was no question of the plaintiff giving a loan to the defendant on 20.11.1999, as alleged by the plaintiff. In *Amarjit Singh Vs. Nazar Singh*, 2009(3), Civil Court cases, 321', our own Hon'ble High Court has held that when there is long standing dispute between the parties prior to the execution of pronote and receipt, the defendant could not have approached the plaintiff for borrowing the amount in dispute nor the latter could give such a huge amount as a loan to the defendant.

21. There is another aspect of this case. From the perusal of document Ex.D.7, it transpires that on 18.11.1999, the defendant executed a mortgage deed to secure the loan of Rs.50, 00,000/- from the bank for setting up of a cold storage. It is beyond comprehension that on 18.11.1999, a loan of Rs. 50,00, 000.00 is taken from the bank for the cold storage by the defendant and three days thereafter i.e. on borrowed a sum of 20.11.1999, the Rs.2,00, 000/- defendant from the plaintiff. It is pertinent to mention here that it is a case of the plaintiff that the amount was advanced by him to the defendant for setting up the cold storage. However, if an amount of Rs.50,00, 000/- was taken as a loan by the company, in which the defendant is partner 18.11.1999, then there

appears to be no reason for the defendant Jagjit Sing having taken a loan of Rs.2,00, 000/- for the same purposes from the plaintiff on 20.11.1999.

22. *Also, the plaintiff has failed to establish on record by leading any cogent and convincing evidence on the record that he had the capacity to lend the amount to the defendant.*

23. *In the light of what is discussed above and without elaborating further, this court is also of the considered opinion that the defendant has succeeded to rebut the presumption which arises under section 118 of Negotiable Instruments Act. The plaintiff could not bring on record any evidence to dislodge the probabilities raised and proved by the defendant. Therefore, it has not be held that pronote by the defendant, Therefore, it has to be held that pronote and receipt, in question have not been proved to have been executed for consideration. Consequently, the findings returned by learned trial Court on Issues No.1 & 2 are upheld. There appears to be no reason to interfere into the findings recorded by learned trial court on Issues No.3 to 5. Therefore, the findings of the same are also affirmed. Resultantly, the Judgment and decree, rendered by the learned trial court, are upheld and as a result thereof, the instant appeal falls and the same is accordingly dismissed with costs.”*

15. Having perused the impugned judgments, my considered opinion is that the same submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

15.1. No new arguments have been raised other than reiteration of the stand taken before & duly considered and rejected by learned Courts below.

16. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

17. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

18. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

RSA-4696-2012 (O&M)

19. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
20. Pending application(s), if any, shall also stand disposed of.
21. No order as to costs.

(ARUN MONGA)
JUDGE

May 24, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No