

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2776 of 2017 (O&M)
Date of Decision:05.01.2023

Mukhtiar Singh
Vs.
Hardev Singh

.....Appellant
.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rajesh Bhatheja, Advocate for the appellant.

Mr. Sarju Puri, Advocate for the respondent.

DEEPAK GUPTA, J.

Defendant of the case is in this appeal against the reversal of the judgment of the trial Court by the First Appellate Court. To avoid confusion, the parties shall be referred as per their status before learned trial Court.

2. According to plaintiff Hardev Singh (now respondent), defendant Mukhtiar Singh (now appellant) had borrowed an amount of ₹ 6,40,000/- from him on 31.05.2007 against a pronote and receipt and agreed to repay the same alongwith interest @ 2% per month. Defendant failed to pay the same despite various requests and demands. An amount of ₹ 6,40,000/- as principal and ₹2,30,400/- as interest @ 1% per month became due at the time of filing of the suit and hence, the suit for recovery of ₹ 8,70,400/- was instituted.

3. Defendant in the written statement denied to have availed any loan from the plaintiff. He also raised some preliminary objections including that the suit is barred by limitation. Prayer for dismissal of the suit was made.

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4. Following issues were framed by the learned trial Court for adjudication:-

- “1. Whether on 31.05.2007, defendant borrowed a sum of Rs.6,40,000/- from the plaintiff on interest, and executed a pronote and receipt in his favour?OPP
2. Whether the suit is within limitation?OPP
3. Whether suit is not properly valued?OPD
4. Whether there are material alterations in the pronote and receipt?OPD
5. Whether pronote and receipt is a forged and fabricated document?OPD
6. Whether the plaintiff is entitled for recovery of the borrowed amount along with interest?OPP
7. Relief.”

5. After taking evidence produced by the parties, the learned trial Court heard the matter. Issues No.1, 4, 5 and 6 were taken up together for discussion. Issues No.1 and 2 were decided against the plaintiff by holding that plaintiff had failed to prove pronote Ex.P1 and receipt Ex.P2 to have been executed by the defendant and that defendant had proved that the documents did not bear his signatures. Issue No. 4 & 5 were decided against the defendant. Under Issue No.2, suit was held to be within limitation and so, issue was decided in favour of the plaintiff. Under Issue No.3, suit was held to be properly valued for the purpose of Court fee and so, issue was decided against the defendant. Consequent to these findings, the suit was dismissed vide judgment and decree dated 31.10.2014.

6. However, the appeal filed by the plaintiff succeeded. Learned First Appellate Court reversed the findings of the trial Court and held that plaintiff had successfully proved his case and as such, suit was decreed vide judgment and

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decree dated 03.02.2017 by learned Additional District Judge, Moga (First Appellate Court) by reversing the judgment of the trial Court.

7. Against the aforesaid reversal, defendant is in this appeal. It is contended that well-reasoned judgment of the trial Court has been wrongly reversed by the First Appellate Court. Learned First Appellate Court failed to appreciate that pronote and receipt Ex.P1 and Ex.P2 were not proved on record. The attesting witness to the same was not examined and the handwriting and finger print expert examined by the defendant had proved that the signature on Ex.P1 and Ex.P2 were not that of the defendant. With these submissions, prayer is made to restore the judgment passed by the trial Court and to reverse the impugned judgment passed by the First Appellate Court and to dismiss the suit of the respondent- plaintiff by allowing this appeal.

8. On the other hand, learned counsel for the respondent- plaintiff urged that learned First Appellate Court appreciated the evidence in right perspective and rightly decreed the suit. Prayer is made for dismissal of the appeal.

9. I have considered the submissions of both the sides and have perused the record carefully.

10. Ex.P1 is the pronote and Ex.P2 is the receipt, both dated 31.05.2007, as per which defendant had obtained loan of ₹6,40,000/- from the plaintiff and had agreed to repay the same along with interest @ 2% per month. These documents were drafted by Kamal Kumar, scribe and witnessed by Nachhatar Singh. Plaintiff examined himself as PW2 duly proved both the documents. His statement finds corroboration from the testimony of scribe PW1 Kamal Kumar. It has come in the testimony of plaintiff- Hardev Singh that attesting witness Nachhatar Singh has been won over by the defendant, due to which he was not

produced.

11. Defendant Mukhtiar Singh in his testimony as DW1 though denied the availing of loan from the plaintiff or to have executed the pronote and the receipt but his testimony is not believable because of the fact that attesting witness has not been examined by him, despite the categorical statement of plaintiff – PW2 Hardev Singh to the effect that said attesting witness had been won over by the defendant. In case Nachhatar Singh was not witness to the pronote and the receipt, it was quite easy for the defendant to examine him to disprove the documents or that he did not avail the loan. Non-production of the said witness by the defendant in the witness box, despite categorical statement of PW1 to the effect that he has been won over, gives rise to the presumption that had the defendant examined him, he will not be able to deny the execution of pronote and receipt Ex.P1 and Ex.P2.

12. It may be noted here itself that both the parties examined their respective handwriting and finger print expert, who obliged their respective pay master in support of their respective stand. Statement of such witnesses cannot be believed. Even otherwise, the science of handwriting comparison is not exact.

13. I agree with the submissions of learned counsel for the respondent-plaintiff that once the execution of pronote and receipt was proved, there was presumption in favour of the plaintiff as per Section 118 Clause (a) of the Negotiable Instruments Act, which was required to be rebutted by the defendant.

14. Section 118 of the Negotiable Instruments Act reads as under:-

“118. Presumption as to the negotiable a instruments. - Until the contrary is proved, the following presumptions shall be made: -

(a) of consideration —that every negotiable instrument was made or

drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration”

15. Once there is a presumption as per the above provision, the defendant cannot be allowed to take plea of financial incapacity of the plaintiff. Reliance in this regard can be placed upon ***Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Pyarelal, 1999(2) RCR (Civil) 615***, wherein it was held by Hon'ble Supreme Court that there was presumption of consideration so the promissory note.

In the above Case before Hon'ble Supreme Court, defendant alleged that the promissory note was procured by the plaintiff as a collateral security but failed to discharge his initial burden of proving non-existence of consideration. It was held by Hon'ble Supreme Court that in the absence of disproving the existence of consideration, the onus of proof of legal presumption in favour of the plaintiff could not be shifted.

16. In ***Mallavarapu Kaisivisweswara Rao Vs. Thadikonda Ramulu Firm and others, 2008(3) CCC 392***, Hon'ble Supreme Court held that there is a presumption under Section 118 (a) of the Negotiable Instruments Act to the pronote to the effect that it is supported by consideration. Such presumption is rebuttable by a probable defence. Onus shifts on the plaintiff, when defendant discharges the initial onus of proof showing that existence of consideration was improbable or doubtful or the same was illegal. Burden upon defendant of proving the non-existence of consideration can be either direct or by bringing on record the preponderance of probabilities. If the defendant fails to discharge the initial onus of proof by showing the non-existence of consideration, the plaintiff

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would invariably be held entitled to the benefit of presumption arising under Section 118 of the Negotiable Instruments Act.

17. In *Balwant Singh Vs. Dr. Ashok Kumar Goel, 2010(1) PLR 105*, it has been held by this High Court that once plaintiff is able to prove the execution of the pronote, it is for consideration. It is the executant of the pronote, who has to rebut the presumption available under Section 118. In another case, *Jit Singh Vs. Nachhatar Singh and others, 2007(3) PLR 399*, it has been held that once plaintiff proves the execution of the pronote and receipt, he is not further required to prove his financial incapacity to make the payment. Taking similar view in *Harnek Singh Vs. Surjit Singh, 2003(2) RCR (Civil) 639*, it was held that once execution of promissory note and receipt are proved on record, there is presumption under Section 118 of the Negotiable Instruments Act that consideration was passed on to defendant.

18. In view of the factual and legal position as above, it is held that learned First Appellate Court did not commit any error in coming to the conclusion that pronote and receipt Ex.P1 and Ex.P2 were duly proved on record. Once it is so, there was presumption that consideration had passed on to the defendant. It was for the defendant to rebut the presumption. He failed to discharge this onus and so, cannot be allowed to take the plea of financial incapacity of the plaintiff.

19. As such, finding no merit in the present appeal, the same is hereby dismissed with costs.

January 05, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No