

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4523-2018 (O&M)
DECIDED ON: 06.09.2023

SUKHWINDER SINGH

.....APPELLANT

VERSUS

GAGANDEEP SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. P.K.S. Phoolka, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

CM-12016-C-2018

Prayer in the present application is for condonation of delay of 9 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 9 days in re-filing the appeal is condoned.

CM-12017-C-2018

Prayer in the present application is for condonation of delay of 66 days in filing the appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit of the applicant, the same is allowed and the delay of 66 days in filing the appeal is condoned.

RSA-4523-2018 (O&M)

1. This is defendant's second appeal against concurrent findings recorded by the Courts below vide which the suit filed by the respondent-plaintiff for recovery of ₹2,43,000/- was decreed by the Court of Additional

Civil Judge (Senior Division), Sunam vide judgment dated 07.12.2015 and the appeal filed against the said judgment and decree was dismissed by the District Judge, Sangrur vide judgment and decree dated 11.09.2017.

2. The respondent/plaintiff-Gagandeep Singh filed a suit for recovery of ₹2,43,000/- against the appellant-defendant. The case of the respondent-plaintiff was that the appellant-defendant had obtained a loan of ₹1,80,000/- from the respondent-plaintiff on 30.04.2009. A pronote and a receipt had been executed. The loan had been agreed to be returned alongwith interest @ 12% per annum. Since the amount was not repaid, the suit was filed.

3. The suit was resisted by the appellant-defendant. Preliminary objections with regard to *locus standi*, cause of action, the respondent-plaintiff not having approached the Court with clean hands, the pronote and receipt dated 30.04.2009 being forged and fabricated etc. were raised. On merits, it was denied that the appellant-defendant had obtained a loan of ₹1,80,000/- from the respondent-plaintiff. It was further pleaded that the father of the respondent-plaintiff had got FIR No.16 dated 04.12.2010 under Section 420 IPC registered at Police Station Bhikhi, District Mansa, against the appellant-defendant wherein it had been alleged that the father of the respondent-plaintiff had strained relations with the appellant-defendant for two and a half years preceding to the filing of the FIR and, therefore, under the circumstances, there was no question of the respondent-plaintiff advancing any loan to the appellant-defendant.

4. From the pleadings of the parties, the trial Court framed the following issues:-

“1. Whether the plaintiff is entitled to recover Rs.1,80,000/- from the defendant with interest, if so, at

what rate? OPP

2. Whether the plaintiff has got cause of action and locus standi to file the present suit? OPP

3. Whether the suit of the plaintiff is maintainable? OPP

4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

5. Relief.”

5. Parties led their respective evidence.

6. The trial Court decreed the suit filed by the respondent-plaintiff finding the pronote and receipt to have been validly executed and no evidence having been led by the appellant-defendant to prove that no such loan had been advanced to him or that the pronote and the receipt were forged and fabricated. The appeal filed by the respondent-plaintiff also came to be dismissed by the First Appellate Court leading to the filing of the present appeal.

7. I have heard learned counsel for the appellant.

8. Learned counsel for the appellant has submitted that the Courts below gravely erred in decreeing the suit filed by the respondent-plaintiff. It has been submitted that the execution of the pronote and the receipt had not been proved and, under the circumstances, there was no occasion for the Courts below to have decreed the suit filed by the respondent-plaintiff and to have dismissed the appeal against the said judgment and decree of the trial Court.

9. I have considered the submissions made by learned counsel for the appellant.

10. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law

in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including *Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545*, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in *Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92* respectively.

11. The respondent-plaintiff based his claim upon the pronote (Ex. P1) and the receipt (Ex.P2), both executed on 30.04.2009 by the appellant-defendant. Apart from this, the respondent-plaintiff examined one Mahatma Lal as PW-2 who duly deposed that the pronote and the receipt (Ex. P1 and P2) had been filled by him on the instructions of the appellant-defendant and that the same had been read over and explained to him. The appellant-defendant, after admitting the contents of the same to be correct, had put his thumb impressions upon the same. This witness duly admitted his own signatures as well on both the documents. Apart from this, the respondent-plaintiff stepped into the witness box as PW-1 and produced the pronote and receipt in evidence.

12. On the contrary, the appellant-defendant could not lead any evidence worth its name to buttress his claim that the pronote and the receipt were forged and fabricated. Merely because the father of the respondent-

plaintiff had got some FIR registered against the appellant-defendant would not be sufficient to disprove the pronote and the receipt. The appellant-defendant could have examined some expert to prove that his thumb impressions were not there on the pronote and the receipt. This, however, was not done. It is settled law that the plea of fraud and that of forgery is to be pleaded and proved by leading cogent evidence. As has been observed earlier also, the appellant-defendant could not lead any evidence worth its name to prove that the pronote and the receipt had not been validly executed.

13. Both the Courts below recorded concurrent findings of fact based upon evidence which, in the considered opinion of this Court, are not liable to be interfered with in second appeal.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

06.09.2023
Prince Chawla

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No