

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

RSA-623-2018(O&M)

Date of decision:-22.2.2023

Chaman Lal

...Appellant

Versus

Sohan Lal

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sunny K.Singla, Advocate
for the appellant.

Mr.Varun Jain, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Sohan Lal had brought a suit for recovery of Rs.1,72,000/- against defendant Chaman Lal on the averments that the latter had raised a loan of Rs.1,00,000/- from the former on 12.1.2012 at Malerkotla, executing a pronote and receipt in his favour promising to return the loan amount along with interest @ 2% per month on demand, however, the defendant failed to pay any amount to the plaintiff towards principal amount or interest despite repeated requests and demands, giving rise to a cause of action to the plaintiff to bring the suit.

2. On getting notice, the defendant appeared and filed a written

statement contesting the suit raising various legal objections contending that the suit was not maintainable in the present form as the alleged pronote and receipt were without consideration and result of fraud; the rate of interest claimed was highly excessive. On merits, the defendant denied having borrowed any amount from the plaintiff or executing any pronote or receipt in his favour. He claimed that pronote and receipt set up by the plaintiff are forged and fabricated documents prepared by him in connivance with the help of his own men. Furthermore, the defendant is a money lender practising money lending without getting licence, therefore suit deserved dismissal for that reason.

3. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to recover Rs.1,00,000/- including interest as prayed for? OPP.
2. Whether suit is not legally maintainable? OPD.
3. Whether plaintiff has not come to the Court with clean hands and has concealed the true and material facts? OPD.
4. Whether the alleged pronote and receipt is illegal, null , void and without consideration and a result of fraud? OPD.
5. Relief.

4. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

During the course of his evidence, the plaintiff got his statement recorded as PW1. He further examined Sh.Birbal Khan, Deed

Writer as PW2 and Sh.R.V. Vashisht, Handwriting and Fingerprint Expert as PW3. After tendering certain documents including Expert Report Ex.PW3/B, the plaintiff closed his evidence.

In rebuttal, the defendant got his statement recorded as DW1 and relied upon affidavit of plaintiff Ex.D1. With that the evidence of the defendant stood closed.

5. After hearing learned counsel for the parties, the trial Court decided issues No.1 and 4 in favour of the plaintiff and against defendant, issues No.2 and 3 were also decided in favour of the plaintiff against the defendant. Resultantly, suit of the plaintiff was decreed for recovery of Rs.1,00,000/- along with interest @ 1% per month from 12.1.2012 till date of filing of the suit with further interest @ 6% per annum on the decretal amount till actual realization. This was so done vide judgment and decree dated 23.3.2016.

6. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Sangrur, who vide judgment and decree dated 21.11.2017 had dismissed the same.

7. Still feeling dissatisfied, the defendant had knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit be dismissed.

8. Notice of the appeal was issued to the respondent/plaintiff, who had put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. In this case both the Courts below by deep and thorough analysis of the evidence brought on record by the parties in view of their pleadings and settled legal position have returned concurrent findings that the defendant had borrowed a sum of Rs.1,00,000/- from the plaintiff on 12.1.2012 agreeing to return the loan amount with interest @ 2% per month on demand, executing pronote Ex.P1 and receipt Ex.P2. It was kept in mind that pronote and receipt have been scribed by a regular Deed Writer with entry being there in his register, copy of which being Ex.P3 and such entry bears signatures of defendant Chaman Lal as well as marginal witnesses and furthermore the story set up by the defendant that pronote and receipt relied upon by the plaintiff were forged and fabricated documents was rejected.

11. As against the cogent and convincing evidence both oral as well as documentary adduced by the plaintiff, there was only solitary statement of the defendant. The defendant did not examine any handwriting expert to show that signatures on pronote and receipt as well as in register of Scribe PW2 Birbal Khan had not been appended by him but by some other person impersonating as defendant.

12. Furthermore, though according to the defendant, the plaintiff had indulged into alleged fraud and forgery of documents but strangely enough the defendant did not report the matter to the police and did not initiate any criminal action against the plaintiff, scribe and attesting witnesses of the pronote and receipt. Such conduct of the defendant goes to show that the stand taken by him is devoid of any merit. The Courts below have taken into consideration the presumption under Section 118 of

negotiable instructions that until the contrary is proved, it would be presumed that every negotiable instrument was made or drawn for consideration.

13. Though the defendant had come up with another plea that plaintiff was a professional money lender practising money lending without licence and the plaintiff while getting his statement recorded as PW1 has admitted that he has lend money to several persons, in that way, the suit was not maintainable and deserved to be dismissed. This very objection has been raised by learned counsel for the appellant during arguments.

14. Whereas, learned counsel for the respondent/plaintiff has contended that the plaintiff is not a professional money lender, though he has been advancing money to the persons acquainted with him so as to help them during financial crises. Therefore, there was no question of his requiring any licence.

15. After hearing the rival contentions, I find that this objection so taken is devoid of any element of merit since advancing money to some needy persons known to the plaintiff does not go to show that he is a professional money lender indulging in money lending without licence. In that way, the maintainability of the civil suit is not effected.

16. As regards the judgments i.e. **Nikoo Ram Ashok Kumar Versus Jagtar Singh, 2005(3) RCR(Civil)716** and **Daljit Kumar and another Versus Popal Dass, 1981 AIR(Punjab) 211** referred to by learned counsel for the appellant, those are not applicable due to different facts and circumstances of the case and the context in which such

observations had been made.

17. It needs to be mentioned here that though as per pronote the defendant had agreed to return the loan amount with interest @ 2% per month but the Courts below found such rate of interest to be on higher side and granted interest @ 1% per month till the date of decree with further interest @ 6% per annum on the decretal amount till actual realization. The interest so granted is found to be quite reasonable.

18. I find that the verdict given by the Courts below are based upon proper appreciation and correct interpretation of law. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

19. No substantial question of law or fact arises in this appeal.

20. The appeal stands dismissed with costs accordingly.

The order dated 30.1.2018 passed by this Court staying the operation and implementation of the impugned judgments thus comes to an end.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

22.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**