IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-258-2022 (O&M)
Reserved on: 09.10.2023
Date of decision: 19.10.2023

NIRMAL SINGH

..Appellants

Versus

M/S MADAN LAL AND SONS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jasbir Rattan, Advocate
for the appellant.

ANIL KSHETARPAL, J.

1. In this appeal, the correctness of the concurrent findings of the fact arrived at by the Courts below is challenged by the defendant. The Courts have decreed the suit for recovery of Rs.5,90,824.81/- along with interest at the rate of 6% per annum from the date of execution of pronote and receipt till realization of decretal amount in favour of the respondent (the plaintiff) and against the appellant.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The respondent filed a suit for recovery of Rs.6,42,521.98/- on the basis of pronote, receipt dated 01.11.2011 and regular books of account maintained by the firm. It is claimed that the respondent is running the business of commission agent and the appellant used to sell his crop at their shop. The plaintiff also maintains regular account books. The defendant (appellant) while contesting the suit denied execution of pronote and receipt

and claimed that he had never borrowed Rs.6,00,000/-. It was stated that the respondent being a commission agent used to obtain blank signatures from the farmers and the alleged pronote and receipt is a forged and fabricated document.

4. In order to prove the case, the plaintiff examined PW-1 Abdul Gaffar, marginal witness of the pronote, PW-2 Sh. Gurjivan Singh other marginal witness of the pronote and receipt, PW-3 Sh. Vinod Kumar, accountant of the plaintiff-firm, who is writing the account books, PW-4 Sh. Madan Lal, proprietor of the plaintiff-firm.

5. On the other hand, the defendant appeared as DW-1.

6. Both the Courts on appreciation of evidence decreed the suit.

7. This Bench has heard the learned counsel representing the appellant and with his able assistance perused the paperbook.

8. The learned counsel representing the appellant contends that the respondent being a commission agent was in a dominating position vis-a-vis the appellant who is a farmer. It is further contended that the respondent Sh. Madan Lal, proprietor of the firm in the cross-examination has failed to disclose the names of the farmers from whom he had received Rs.6,00,000/- and since all the other payments were made through cheque, therefore, the Court must draw inference that the plaintiff failed to prove his case. It is further contended that failure of the plaintiff to produce Income Tax Return, is sufficient to draw an adverse inference against the plaintiff and therefore, the Courts below erred in decreeing the suit. It is further contended that the consideration amount has not been proved and therefore, the pronote and receipt is a mere paper transaction.

9. This Court has considered the submissions of the learned counsel representing the appellant.

10. The scope of interference by the High Court in regular second appeal is regulated by Section 41 of the Punjab Courts Act, 1918. This provision came up for interpretation before the Supreme Court in ***Randhir Kaur Vs. Prithi Pal Singh, 2019 (17) SCC 71, Dhanpat Vs. Sheo Ram (Deceased) through LRs and others, 2020(16) SCC 209*** and ***Avtar Kaur Vs. Bimla Devi, 2021(13) SCC 816***. Consistently, it has been held that unless there is an error in law or procedure and not merely on a question of fact the Court cannot interfere merely because the High Court thought that another view could be a better view. In that context, this Court is required to examine the arguments of the learned counsel representing the appellant.

11. The first argument of the learned counsel representing the appellant is based on the inference, which he wants the Court to draw and therefore, reverse the findings of the fact arrived at by the Courts below.

12. The copy of the pronote and receipt has been produced by the learned counsel representing the appellant along with the grounds of appeal. It is evident that the pronote and receipt, which is a negotiable instrument, has been scribed in '*gurmukhi*' (Punjabi) and the appellant has also signed in the same language. He has appended as many as four signatures on the pronote and receipt including two signatures on the adhesive revenue stamps affixed on the pronote and receipt. No evidence has been led by the appellant to prove that he did not append those signatures. Although, he while filing the written statement had taken a definite stand that he never signed the pronote and receipt. The appellant also does not dispute that he has been dealing with the plaintiff-firm.

13. As far as the next argument, it may be noted that the respondent-firm is dealing with a large number of customers including the appellant. It is not reasonable to expect that the proprietor of the firm can

remember the name of the farmers, who had deposited the amount of Rs.6,00,000/-, which was further lend to the appellant and that also after a sufficiently long time. It may be noted here that this amount was entered in the books of accounts Ex.P-3. Thus, it would not be appropriate to conclude that the plaintiff has failed to prove that the pronote and receipt was executed against payment of consideration.

14. The next argument of the learned counsel representing the appellant stems out from the failure of the plaintiff to produce Income Tax Return. It may be noted here that once it has been proved by the plaintiff that the appellant executed the pronote and receipt and the firm has entered the amount of loan in books of accounts namely Ex.P-3, onus on the part of the plaintiff stood discharged.

15. The next argument of the learned counsel representing the appellant is also based on inference. Because, once a negotiable instrument, which carries a statutory presumption is proved by examining both the marginal witnesses. The Court is not expected to draw an inference merely on the basis of assumptions but the statutory presumption must be taken into consideration.

16. Keeping in view the aforesaid facts, no ground to interfere with the findings of fact is made out.

17. Dismissed accordingly.

18 All the pending miscellaneous applications, if any, are also disposed of.

October 19th 2023 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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