

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

106

RSA-2568 of 2019

Date of Decision:11.01.2024

Hanuman Parshad

....Appellant

Versus

Jitender Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. J. P. Sharma, Advocate,
for the appellant.

SUDEEPTI SHARMA, J. (Oral)

1. The challenge in the present appeal is to the judgment and decree dated 01.12.2015 passed by the learned Civil Judge (Junior Division), Mohindergarh, whereby the suit for recovery of Rs.7,45,440/- filed by the respondent-plaintiff against the appellant-defendant has been decreed and the judgment and decree dated 12.10.2018 passed by the learned Additional District Judge, Narnaul, vide which the appeal filed by the appellant-defendant has been dismissed.

2. Learned counsel for the appellant-defendant contends that both the learned Courts below did not appreciate the evidence properly and have drawn wrong inference.

3. I have heard learned counsel for the appellant-defendant and perused the impugned judgments passed by learned both the Courts below.

4. After perusing the same, this Court conclude as under:-

i) The brief facts of the case are that on 25.04.2010 the appellant-defendant had borrowed Rs.6,00,000/- from the respondent-plaintiff in cash and had executed a pronote and receipt in token there of and after perusing and understanding the contents thereof in presence of witnesses appended their signatures on pronote and receipt. The rate of interest was agreed to be 18% per annum. The respondent-plaintiff demanded the aforesaid amount from the appellant-defendant and also issued a legal notice for the same, but despite it, appellant-defendant failed to return the borrowed amount alongwith the interest. Hence, the suit.

ii) On notice, the appellant-defendant appeared and filed his written statement taking certain preliminary objections *qua locus standi*, maintainability, respondent-plaintiff not having any money lending license, limitation etc. On merits, it was submitted, *inter alia* that he never borrowed amount of Rs.6,00,000/- from the respondent-plaintiff or executed any pronote and receipt as averred in the plaint. Execution of pronote and receipt was completely denied. It was submitted that there was a contradiction in execution of pronote and receipt in para No.1 of the plaint. At one place, it was averred that on 25.04.2010, pronote and receipt were executed but on the other place this date was mentioned as 02.05.2010 which is itself contradictory. In fact, Sanjay, confided of the respondent-plaintiff had falsely prepared receipt and pronote. It is submitted that father of the respondent-plaintiff is married at Satnali as

that of appellant-defendant, therefore he had been in good relations with the appellant-defendant and respondent-plaintiff's father. Their family has good reputation at Mohindergarh. The respondent-plaintiff's brother was the counselor at Municipal Commissioner, Mohindergarh. Some days back, the respondent-plaintiff and his father went to appellant-defendant and said that they had been preparing some loan limit from bank which necessitated surety bonds. For this purpose, father of the appellant-defendant had put his signatures on the letter head, whereas the appellant-defendant put his signatures on some blank papers. These valuable papers were fraudulently used by the respondent-plaintiff to his wrongful gain. These valuable documents are the result of fraud, cheating, misrepresentation and undue influence etc. Further, it was asserted that the respondent-plaintiff was not paying the income tax and had not shown the huge amount of Rs.6,00,000/- in his income tax return. Further, it was submitted that no registered cover was received by the appellant-defendant as asserted in the plaint. Lastly, denying all the other averments of the plaint, its dismissal was prayed for.

6. Replication was filed wherein it was stated that due to typographical mistake date of execution of pronote and receipt were mentioned as 02.05.2010 instead of 25.04.2010. On the pleadings of the parties, the following issues were framed by the learned trial Court on 09.05.2012:-

1. Whether the plaintiff is entitled to a decree of recovery of Rs.7,45,440/- alongwith the agreed interest as prayed for in the plaint? OPP

2.

Whether the suit of the plaintiff is not maintainable in the present form? OPD
3.

Whether the plaintiff has no locus standi and cause of action to file the present suit: OPD
4.

Whether the suit of the plaintiff is time barred? OPD
5.

Relief.
7.

In order to support his case, the respondent-plaintiff stepped in the witness box as PW2 and got examined Sanjay PW1; Sham Sher Singh Malik, handwriting expert PW3 and Vikram Singh as PW4 and closed his evidence on 24.03.2015. The following documents were tendered in his evidence:-

Ex. PW1/B	Pronote
Ex. PW1/C	Receipt
Ex. PW3/C	Specimen signatures of Hanuman
Ex. PW3/B	Finger print expert report
Ex. PW3/C-1 to	
Ex. PW3/C-16	Photographs of signatures of Hanuman
Ex. PW4/C	Postal receipt
Ex. PW4/D	Acknowledgment cover
8.

In order to rebut the evidence of respondent-plaintiff, appellant-defendant appeared in the witness box as DW-1 and tendered document Mark D-1 and thereafter, appellant-defendant's evidence was closed by Court vide order dated 08.09.2015.
9.

As per the averments of respondent-plaintiff, the appellant-defendant borrowed a sum of Rs.6,00,000/- on 24.05.2010 in lieu of which pronote and receipt Ex.PW1/B and Ex.PW1/C respectively were executed in favour of the respondent-plaintiff and the recitals of pronote and receipt were proved by the testimony of attesting witness Sanjay

PW1. Since onus to prove issue No.1 was on the respondent-plaintiff, therefore he proved the same by producing pronote and receipt i.e. Ex.PW1/B and Ex.PW1/C respectively executed in favour of respondent-plaintiff. Further recitals were also proved by the testimony of PW1 Sanjay who in his statement also stated that he was also present at the time of execution of pronote and receipt. Even in his cross-examination, he stated that the pronote was executed at the shop of the respondent-plaintiff at 2:00 PM. Further, the time of execution of pronote and receipt was ratified by Jitender Kumar PW2. Both of them had very specifically and categorically mentioned about the time of execution of pronote and receipt. In the cross-examination of PW2 Jitender which was conducted lengthy, learned counsel for the appellant-defendant failed to extract anything to impeach the veracity of his testimony. Further, in the present case, the respondent-plaintiff also examined Sham Sher Singh as PW3 handwriting and finger print expert who gave his report qua signatures of the appellant-defendant on the pronote and receipt. His report is reproduced as under:-

“The disputed signatures marked Q1 to Q5 tally with the standard signatures marked S1 to S15 of Hanuman Parsad. So, the disputed signatures marked Q1 to Q5 have been written by the same person Hanuman Parsad, who had written his standard signatures marked S1 to S15 on the above mentioned documents, despite an effort to disguise the standard signatures marked S11 to S15.

The disputed writing marked D1 & D2 tally with the standard writing marked A1 & A2 of Hanuman Parsad. So, the disputed writing marked D1 & D2 has been written by

the same person Hanuman Parsad, who had written his standard writings marked A1 & A2 on the above mentioned documents, despite an effort to disguise the standard writing marked A2”.

10. The appellant-defendant could not rebut the same except for oral assertions that the pronote was never executed by him.

11. Under Chapter XIII i.e. Special Rules of Evidence, Section 118 of the Negotiable Instruments Act, 1881 is regarding the presumptions as to negotiable instruments. In the present case, Section 118(a) would be applicable, which is reproduced as under:-

“118. Presumptions as to negotiable 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;”

12. A bare reading of the above shows that Section 118(a) of the Negotiable Instruments Act, 1881 makes it clear that when execution of pronote and receipt is proved, the same is deemed to have been executed for consideration as per presumption and the burden of proof shifts on the defendant to prove that the pronote was executed without consideration. Therefore, in the present case the appellant-defendant failed to rebut the presumption. Further, the appellant-defendant failed to prove fraud and misrepresentation etc. in execution of pronote and receipt in question, whereas the respondent-plaintiff discharged his burden and proved his

case.

13. In view of the above, I do not find any infirmity in the judgments and decrees impugned in the present appeal. Hence, the present appeal is hereby dismissed.

14. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 11, 2024
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No