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

RSA-2889-2019 (O&M)

Date of Decision : 24.09.2024

Baldev Singh

... Appellant(s)

Versus

Raman Kumar

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Paramjit Singh Jammu, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 29.11.2018 passed by the First Appellate Court reversing the judgment and decree dated 29.09.2016 passed by the Trial Court.

2. Brief facts relevant to the present *lis* are that a suit for recovery was filed by the plaintiff-appellant herein on the basis of a pronote and receipt. The case set up by the plaintiff-appellant was that on 01.05.2010 the defendant-respondent borrowed an amount of Rs.2,00,000/- from the plaintiff-appellant for his personal needs and at the time of borrowing the amount he promised to pay the amount back to the plaintiff-appellant alongwith interest @ 2% per month. In token of the loan, the defendant-respondent executed a pronote and receipt in favour of the plaintiff-appellant and that the amount was paid to the defendant-respondent in the presence of the witnesses. However, since the amount was not returned, the present suit. The defendant-respondent contested the suit on the ground that the pronote and receipt were never executed and that he only borrowed an amount of

Rs.20,000/- and the plaintiff-appellant obtained his signatures on some blank and printed papers and assured him that he would return the papers as and when the money was returned. It was further averred that the amount had been repaid but the plaintiff-appellant did not return the papers and fabricated the pronote and receipt. It was further the stand that the plaintiff-appellant had concealed the fact that a legal notice was sent on 27.06.2012 by the plaintiff-appellant through his counsel in which it was stated that the defendant-respondent had borrowed an amount of Rs.1,00,000/- whereas the suit itself was for an amount of Rs.2,00,000/-. The remaining averments of the plaint were denied.

3. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled to recovery amount as prayed for in the headnote of the plaint ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has got no cause of action and locus standi to file the present suit ? OPD
4. Whether the plaintiff has concealed and suppressed the true and material facts from the court ? OPD
5. Relief.

4. The Trial Court decreed the suit vide judgment and decree dated 29.09.2016. Aggrieved by the same, an appeal was preferred by the defendant-respondent before the First Appellate Court. Vide judgment and

decree dated 29.11.2018 the judgment and decree dated 29.09.2016 passed by the Trial Court was reversed. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the discrepancy in the legal notice was explained by the witnesses that the said was an inadvertent mistake. It is further the contention that the amount was paid in the presence of witnesses and that the plaintiff-appellant had borrowed the said amount from Richhpal Singh, who was also the attesting witness and stepped into the witness box as PW2 and that the said amount had been paid back to him. However, the defendant-respondent refused to return the money and hence the suit. It is urged that the First Appellate Court erred in dismissing the suit which infact deserved to be decreed.

6. I have heard the learned counsel for the plaintiff-appellant.

7. In the present case it was noticed by the First Appellate Court that in his cross-examination the plaintiff-appellant - Baldev Singh - who stepped in the witness box as PW1, had stated that he had taken the loan of the said amount from Richhpal Singh, the attesting witness (PW2), however, the said fact was not disclosed in the plaint. It has further been noticed that had it been the case where the money was taken from Richhpal Singh by Baldev Singh (plaintiff-appellant herein) and thereafter the loan was extended to the defendant-respondent, there was no reason why Richhpal Singh did not execute the pronote directly. Though the stand taken by the plaintiff-appellant was that he borrowed the money from Richhpal Singh and further extended the loan to the defendant-respondent, however, no accounts were produced by him to substantiate his claim. In any event, the story as set up in his examination was not pleaded. That being so, the said stand cannot

be accepted. Further still, there was no evidence produced on the record to show that the amount of Rs.2,00,000/-, which is stated to have been borrowed by Baldev Singh (plaintiff-appellant herein) from Richhpal Singh, was ever borrowed and was returned as alleged.

8. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

24.09.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO