IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

108 **RSA-2409-2023 (O&M)**
Date of decision: 26.04.2024.

Sher Singh ...Appellant.

Versus

M/s Jain Sales Corporation ....Respondent.

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CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

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

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Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/ defendant against the concurrent findings recorded by both the Courts below vide which the suit of the plaintiff was decreed.

2. Brief facts of the case as per plaint are that plaintiff firm is a proprietorship concern and the present suit is filed through its proprietor Satish Kumar. The plaintiff firm carried on the business of commission agent at Anaj Mandi, Safidon. The plaintiff firm maintained account books in the regular course of business which were being produced before the Sales Tax and Income Tax authorities. Defendant, who is an agriculturist used to sell his wheat produce at the shop of the plaintiff. On 15.04.2013 the defendant sold wheat worth Rs.67,207/- to the plaintiff and the transaction

was duly recorded in Nakal Bahi. The plaintiff had paid amount of Rs.67,207/- to the defendant on 24.04.2013. The defendant had borrowed Rs.4,00,000/- on 25.04.2023, Rs.40,000/- on 01.05.2013 and Rs.2,50,000/- on 08.05.2013 from the plaintiff firm, which transactions were recorded in Rokar Bahi, duly signed by the defendant in English with endorsement in Hindi. The defendant had agreed to repay the borrowed amount alongwith interest @ 24% per annum. In the year 2013-14, the defendant had sold paddy worth Rs.3,45,104/- to the plaintiff firm and entries of which were made in the Nakal Bahi. The plaintiff firm had paid amount of Rs.3,45,104/- to the defendant on 31.10.2013. On 31.10.2023, a sum of Rs.1,51,900/- had accrued as interest @ 24% on the outstanding amount. So, in this way, a total sum of Rs.8,41,900/- was due towards the defendant on 31.03.2014.

3. It was further averred that on 30.04.2014, the defendant had borrowed a sum of Rs.4,50,000/- from the plaintiff and executed pronote and receipt duly signed/ thumb marked in token of correctness thereof. The said pronote were scribed by Kailash son of Ram Kumar, resident of Safidon and was attested by Gurmukh Singh son of Gurbachan Singh, resident of Rampura and Parveen Kumar son of Janak Raj, resident of Village Singhala. The defendant agreed to repay the borrowed amount alongwith interest @ 24% per annum on demand. On 30.04.2014, a sum of Rs.76,919/- had accrued as interest on the outstanding amount. Thus, a total sum of Rs.13,69,819/- was due towards the defendant. After May, 2014, the defendant did not sell his agricultural produce to the plaintiff. The plaintiff requested the defendant to repay the outstanding amount but to no avail.

Hence, the instant suit was filed.

4. Upon notice, defendant appeared and filed written statement by taking preliminary objections regarding maintainability, cause of action, estoppel, locus standi etc. It was also alleged that the defendant never borrowed alleged amounts from the plaintiff at any point of time. The entries of alleged amounts are forged and have been prepared by the plaintiff by playing a fraud and under the pretext of receipt of payment of the sold agricultural produce. The execution of pronote and receipt dated 30.04.2014 in favour of the plaintiff was also denied.

5. The suit of appellant/defendant was decreed by the trial Court, vide judgment and decree dated 08.01.2018. The appeal preferred by the appellant/ defendant before the First Appellate Court was upheld with a slight modification, vide judgment and decree dated 02.02.2023. Hence, the present Regular Second Appeal has been filed by the appellant/ defendant, before this Court.

6. Learned counsel for the appellant/ defendant has contended that the plaintiff has not successfully proved his case. Defendant had never executed the pronote and receipt in question in favour of the plaintiff and the alleged pronote and receipt were the result of fraud. The appellant/ defendant used to sell his agricultural produce at the shop of the plaintiff and he had never borrowed the alleged amount at any point of time. He has argued that when the defendant had sold crop worth lakhs of rupees at the shop of the plaintiff and others, then question of borrowing the alleged amount by defendant does not arise. The entries of the alleged amount were

forged and fabricated.

7. I have heard learned counsel for the appellant and have gone through the record thoroughly.

8. While appearing in the witness box as PW1, plaintiff Satish Kumar has proved copies of Bahi entries as Ex.P3 to Ex. P15, pronote dated 30.04.2014 as Ex.P16 and receipt as Ex.P17. He has also proved the copy of audit report as Ex.P18. The plaintiff has also examined Kailash Chand as PW3, who had scribed the pronote and receipt Ex.P16 and Ex.P17. The attesting witness Parveen Kumar has also proved the aforesaid documents who has been examined as PW4.

9. Though, defendant has denied that on 25.04.2013, he had taken loan of Rs.4,00,000/- from the plaintiff, but upon copy of Bahi entry Ex.P5, he admitted the words written in Hindi language that he had taken loan from him to meet with the agricultural expenses alongwith interest @ 2% per month and the date is also in the handwriting of the defendant. He has also identified his signatures in English language on the documents Ex.P4 and Ex.P6, where it has been written in the handwriting of the defendant that he had taken loan of Rs.40,000/- on 01.05.2013. After seeing the original record of Ex.P7, he identified his handwriting and signatures at mark E, F and G, and he had made the endorsement in Hindi language regarding the loan availed on 08.05.2013 for a sum of Rs.2,50,000/-. He has also admitted his signatures/ thumb impression on the documents Ex.P16 and Ex.P17 the pronote and receipt dated 30.04.2014 respectively executed when an amount of Rs.4,50,000/- was taken as loan from the plaintiff. Thus the conduct of the defendant speaks volumes, as on the one hand, he has denied having

availed loan from the plaintiff but on the other hand he has admitted his signatures and thumb impressions on the record produced by the plaintiff regarding availing of the loan amount and has also admitted his handwriting endorsing the loan taken by him on different dates.

10. The execution of pronote and receipt in question has also been duly proved on record by the plaintiff. The Bahi entries having been proved by the plaintiff, the defendant was to prove the alleged fraud and misrepresentation as alleged by him, which the defendant has miserably failed to prove. Neither the said alleged fraud has been pleaded with the material particulars as required in law nor any material has been produced on record to prove such a plea.

11. Once the execution of pronote and receipt is proved then the presumption under Section 118 (a) of the Negotiable Instruments Act, 1881 arises regarding passing of the consideration. The onus to rebut the said presumption lies upon the defendant, but no cogent evidence has been produced on record by the defendant to rebut the said presumption.

12. The defendant has also not been able to prove that the plaintiff was a money lender, no material has been brought on record to substantiate the alleged money lending transactions made by the plaintiff with general public or with anybody else other than the defendant, in order to prove that the plaintiff was dealing in money lending without having obtained a license.

13. For the reasons recorded above, the present Regular Second Appeal fails and is dismissed as it does not raise any question of law much

less substantial question of law.

14. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

26.04.2024.
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No