IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

109 **RSA-4092-2019 (O&M)**
Date of decision:28.05.2024

Harbans Singh through Power of Attorney Iqbal Singh ... Appellant

Vs.

Harmesh Lal ... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. PKS Phoolka, Advocate for the appellant.

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SUKHVINDER KAUR, J.

1. Instant regular second appeal has been filed by the appellant/defendant against the concurrent findings recorded by both the Courts below vide which suit of the plaintiff for recovery has been decreed.

2. Brief facts of the case are that the plaintiff/respondent filed a suit for recovery of Rs.6,75,000/- (Rs.4,50,000/- as principal amount and Rs.2,25,000/- as interest @ 2% per month from 16.02.2011 to till date) with the averments that on 16.02.2011, defendant borrowed a sum of Rs.4,50,000/- from the plaintiff and agreed to repay the same @ 2% per month to the plaintiff. At the time of borrowing the aforesaid amount from the plaintiff on 16.02.2011, defendant executed pronote and receipt in favour of the plaintiff in consideration, in the presence of witnesses. Contents of the pronote and receipt were read over to the defendant and defendant after admitting the contents of the pronote and receipt to be correct, put his thumb impressions on the pronote and receipt. Afterwards defendant did not make

any payments towards principal or the interest despite repeated demands made by the plaintiff. Hence, the present suit was filed by the plaintiff.

3. On notice, defendant appeared and filed written statement taking the preliminary objections regarding maintainability, *locus standi,* cause of action etc. It was denied that defendant had borrowed any amount from the plaintiff as alleged and executed the alleged pronote and receipt in his favour. It was averred that the alleged pronote and receipt were forged and fabricated documents which had been prepared by the plaintiff in connivance with the alleged witnesses. No consideration was ever passed to the defendant. Brother of the plaintiff, namely, Satish Kumar had also filed civil suit against the defendant for specific performance in the civil Court at Mandi Dabwali and in the said suit, Krishan Kumar was also a witness. It was alleged that plaintiff had been running a shop of commission agency and the defendant used to sell his crops through the said commission agency of the plaintiff. He used to deposit the price of the food grains with the plaintiff and also used to take the partly amount as per his needs, out of the price of the food grains deposited by him. During the said transaction, plaintiff used to obtain the thumb impressions of the defendant on some printed and blank papers and defendant used to append his thumb impressions on the printing form at the asking of the plaintiff, considering those papers as settlement of account. It was also alleged that defendant never borrowed Rs.4,50,000/- from the plaintiff at any point of time. It was further alleged that the plaintiff is doing the business of money lending without obtaining any license in this regard from the competent authority.

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

1. Whether the plaintiff is entitled to relief of recovery of Rs.4,50,000/- alongwith interest, as prayed for? OPP

2. Whether the alleged pronote and receipt are fabricated and without consideration? OPD

3. Whether plaintiff has concealed the material facts from the Court, if so, its effect? OPD

4. Whether plaintiff is money lender without license. If so, its effect? OPD

5.Relief.

5. Thereafter, the parties led their respective evidence.

6. Vide judgment and decree dated 29.11.2016, suit of the plaintiff was decreed. An appeal was preferred before the First Appellate Court which was dismissed vide judgment and decree dated 10.11.2017. Hence, feeling aggrieved of the same, defendant/appellant has knocked the doors of this Court by way of filing the present regular second appeal.

7. Learned counsel for the appellant has contended that the Courts below have failed to properly appreciate the true facts and law while passing the impugned judgements and decrees. The appellant had never borrowed the alleged amount from the plaintiff/respondent and he had never executed the alleged pronote and receipt in his favour. He has further contended that the alleged pronote and receipt are forged and fabricated documents which have been prepared by the plaintiff in connivance with the witnesses. He has argued that the pronote and receipt have not been properly proved on record

by the plaintiff. The plaintiff was not having the capacity to lend such a huge amount to the appellant. He has further submitted that it has also not been appreciated that plaintiff is a money lender and is indulging in the business of money lending without the money lender's license.

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

9. In order to prove execution of pronote and receipt Ex.P1 and P2, plaintiff has appeared as his own witness as PW1 and has also examined PW2 Krishan Kumar, who is the marginal witness of receipt Ex.P2.

10. It is the own case of the appellant that he used to sell his crops to the commission agency of the plaintiff and at that time, he used to obtain his thumb impressions on the printed form. So obviously, the appellant has not disputed his thumb impressions on the pronote and receipt in question. In order to substantiate the plea of fraud taken by him, defendant has not led any cogent and convincing evidence. The self serving statement of the defendant is not sufficient to prove this plea. Upon the pronote and receipt in question, the defendant had appended his thumb impressions at five places including the revenue stamps affixed upon the same. In the absence of any cogent evidence, this plea of the appellant is not acceptable, that, the same were taken by the plaintiff on the pretext of settlement of account. Otherwise also, the defendant has not produced on record any evidence regarding selling of his crops with the commission agency of the plaintiff and no 'J' form has been produced on record in this respect.

11. DW2 Dhariya Kant has also admitted in his cross-examination

that style of writing which is curved and elongated could be found in the writing of other writers also. He has admitted that he had not compared the thumb impressions on the disputed pronote and receipt and had not given any opinion that the pronote was containing any material alteration so as to prove the plea of forgery taken by the defendant.

12. Once the execution of the pronote and receipt Ex.P1 and P2 is proved then presumption under Section 118 of the Negotiable Instruments Act regarding passing of the consideration arises, until the contrary is proved. The initial burden lies on the defendant to prove non-existence of consideration by bringing on record such facts and circumstances either by direct evidence or by preponderance of probability showing that the existence of the consideration was improbable or doubtful. So once the defendant has failed to discharge the same, the respondent/plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) of the Negotiable Instruments Act in his favour. As the appellant/defendant has failed to lead any cogent and convincing evidence that he had appended his signatures/thumb impression by misrepresentation, pressure or coercion or fraud etc., so this presumption has remained unrebutted.

13. From the evidence on record, there is nothing to suggest that the plaintiff/respondent is running a business of money lending. It is well settled that merely from some stray transactions of loan, the plaintiff cannot be taken as a money lender within Section 2(9) of the Punjab Registration of the Money Lenders Act. When due execution of pronote and receipt in

question as well as passing of consideration is proved, then this contention of learned counsel for the appellant pales into insignificance that source of advancing the loan amount has not been disclosed. Moreover, during his cross-examination, the plaintiff has categorically stated that he is running a commission agency shop and has 5-6 acres of agricultural land at Rama Mandi. No specific question has been put to him in his cross-examination that he was not in the capacity of advancing loan to the defendant.

14. No question of law much less substantial question of law arises for determination in the present second appeal. The appeal is without any merits and is hereby dismissed.

15. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

28.05.2024
harjeet

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No