

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3323-2023 (O&M)
Date of Decision:- 21st February, 2024

SAWAI SINGH
... Appellant
Versus
JAI BHAGWAN
... Respondent

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Present:- Ms. Dhivya Jerath, Advocate
for the appellant.

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RITU TAGORE, J.

1. The appellant – defendant is assailing the concurrent findings of the learned Courts below, whereby the suit of the respondent-plaintiff for recovery of ₹4,80,800/- (₹2,80,000/- principal amount and ₹2,00,800 /- as interest) based on pronote as well as receipt dated 20.03.2012, has been decreed, and the first appeal preferred by the appellant, has been dismissed.
2. For sake of convenience, parties to the *lis* hereinafter, shall be referred to by their original status in the suit.
3. The plaintiff, filed a suit for recovery with the averments that defendant borrowed an amount of ₹2,80,000/- from him on 20.03.2012, regarding which defendant executed a pronote and receipt of even date and agreed to pay interest @ 24% per annum. After reading and understanding the contents of pronote and receipt, defendant signed and thumb marked

them in token of its correctness and acceptance. It is pleaded that despite repeated verbal requests and service of legal notice dated 18.02.2015, defendant failed to repay the amount that necessitated him to file suit against defendant.

4. On put to notice, defendant appeared and filed his written statement denying borrowing any sum of ₹2,80,000/- from the plaintiff on 20.03.2012 and execution of any pronote and receipt in favour of the plaintiff on payment of any interest thereon. The defendant pleaded that the plaintiff taking advantage of his acquaintance might have obtained his signatures on some papers and converted them into pronote and receipt, which are not binding upon him. He did not obtain any money under any pronote or receipt. The defendant further pleaded that he gave an appropriate reply to the legal notice given by the plaintiff. By denying the averments of the plaintiff, the defendant pleaded that suit of the plaintiff is based on false facts and prayed for the dismissal of the suit.

5. Since the parties were at variance, the learned trial Court framed the following issues:-

1. Whether defendant executed pronote and receipt in favour of plaintiff on 20.03.2012 and borrowed ₹2,80,000/-? OPP
2. If issue No.1 is proved whether plaintiff is entitled to recovery of ₹4,80,800/- (₹2,80,000/- principal amount and ₹2,00,800/- as interest) alongwith future interest from defendant as alleged in the plaint? OPP
3. Whether the suit is not maintainable in the present form?
OPD

4. Whether the suit is time barred? OPD

5. Relief.

6. In order to prove due execution of pronote and receipt, plaintiff appeared as PW-2 and substantiated the facts of plaint in entirety. He testified that defendant borrowed ₹2,80,000/- from him on 20.03.2012, regarding which defendant executed a pronote (Ex.PW1/G) and receipt (Ex.PW1/H) and also agreed to pay interest @ 24% per annum on the borrowed amount. He further deposed that after reading and understanding the contents of pronote and receipt, defendant signed and thumb marked them in token of its correctness and acceptance. He further testified that despite repeated verbal requests and service of legal notice dated 18.02.2015 (Ex P-3), defendant failed to repay the amount on demand, that constrained him to file suit against defendant. In support of his version, plaintiff examined Jaivir Singh, Handwriting and Fingerprint Expert (PW1), who testified that disputed handwriting and signature of the defendant appearing on pronote (Ex.PW1/G) and receipt (Ex.PW1/H) tallies with the admitted signatures and handwriting of the defendant. Smt. Minakshi Yadav Advocate (PW3) proved the legal notice Ex P3 and postal receipt Ex.P4, stating that she had sent the notice through registered post. On the contrary, defendant did not lead any evidence, rather after putting an appearance, chose to default thereafter and was proceeded against *ex-parte*.

7. Learned lower Court, on appraisal of evidence returned the findings on issues No.1 to 2 in favour of the plaintiff, holding defendant borrowed money from the plaintiff and duly executed pronote and receipt and also agreed to pay the interest thereon and further concluded that

defendant failed to repay the amount on demand. The learned trial Court answered the issues No.3 and 4 against the defendant holding that he failed to prove them, having proceeded against *ex-parte*. Consequently, decreed the suit for recovery in favor of the plaintiff.

8. First appeal filed by defendant was dismissed vide judgment and decree dated 01.08.2023 passed by Additional District Judge, Narnaul affirming the findings of the learned Trial Court, leading to filing of present regular second appeal.

9. Learned counsel for the appellant/defendant argued that both the Courts below overlooked the material averments of the defendant that pronote (Ex.PW1/G) and receipt (Ex.PW1/H) in question are result of fraud. The defendant never borrowed any money from the plaintiff and never executed pronote (Ex.PW1/G) and receipt (Ex.PW1/H) in favor of plaintiff and they are not binding upon him. To support her contention, learned counsel points out that both the documents are not attested by any marginal witness and no reason has been assigned by the plaintiff in this regard, though admitted that both the documents were prepared at the *Nohra* of the village, which is frequented by villagers most of the time. Learned counsel submits that the solitary statement of the plaintiff is not sufficient to rely upon to prove the due execution of the pronote and the receipt.

10. Learned counsel for the appellant further submits that statement and report of the handwriting expert is also not enough to prove the execution of pronote and receipt as he is not witness to the execution of pronote and receipt. Further, the witness cannot be taken as an independent

because as such a witness always speak in favor of the party, who engages him.

11. Learned counsel further urges that as per the specific stance of the defendant, the plaintiff might have misused the signatures of the defendant and converted them into documents in question, whereas defendant had no occasion and reasons to borrow money from the plaintiff. Learned counsel urges that in given facts extensive reliance upon the statement and report of the Handwriting Expert by the Courts below to prove due execution was fallacious and misconceived.

12. It is next contended by the learned counsel for the appellant that plaintiff failed to prove his financial capacity to lend the amount in question. He failed to prove the source of income with him by adducing any bank statement or sale deed of the land, which he sold and the person from whom he had taken the money to establish the availability of the cash with him on the relevant day.

13. The learned counsel for the appellant further submitted that the plaintiff claimed to have lent heavy amount to the defendant, which necessarily implies that plaintiff is in business of money lending. In circumstances, the plaintiff was required to prove his money lending license. However, learned Courts below failed to notice the material infirmity in the case of the plaintiff. It is further submitted that Courts below also failed to note that the plaintiff has failed to prove legal notice Ex.P3 by examining its author. The testimonial account of PW3 is of no probative value and should not have been relied upon. The learned counsel submits that plaintiff led no cogent and reliable evidence to prove due execution of pronote and receipt to

charge the defendant with liability of payment of money as alleged. It is stated that findings of the Court below are arbitrary, perverse and be set aside and suit of plaintiff should be dismissed.

14. I have heard learned counsel for the appellant and have perused the record, and is of the view that there is no force and merit in the submissions made by the learned counsel for the reasons delineated below:-

i. Perusal of the oral evidence of the plaintiff (PW2) coupled with statement of handwriting and fingerprint expert Jaivir Singh (PW1) and his report Ex.PW1/B leave no manner of doubt that defendant had executed Pronote dated 20.03.12 (Ex.PW1/G) and receipt (Ex.PW1/H) with full knowledge and understanding, and borrowed ₹2,80,000 from the plaintiff and also agreed to pay interest @24% per annum on the borrowed amount, and further agreed to repay the amount on demand.

ii. The plaintiff categorically deposed that documents were duly read over and made understand to the defendant, who signed and thumb them in token of its correctness and acceptance. The plaintiff also deposed that defendant himself brought the pronote and receipt and filled up them in his own writing and also expressed no requirement of any other person to write pronote and receipt for him as he asserted that he could prepare the same being educated. From the statement of the plaintiff, it is made out that no person was available at *Nohra* when pronote and receipt were executed. The defendant failed to dilute the testimonial account of the plaintiff and his witnesses, handwriting and finger print expert (PW-1) by bringing any admission

in his favour or any circumstance to disbelieve them as a probable ground or reason to doubt their version.

iii. On the contrary, the defendant has not denied his handwriting and signature on the pronote and receipt, rather has pleaded that since plaintiff was his his known, he might have obtained his signatures and misused them, and converted them into documents. In given stand, the defendant was required to prove alleged fraud by leading cogent and convincing evidence. Law is settled that whosoever takes the plea of fraud must prove the same beyond reasonable doubts like a criminal charge. Here in present case, defendant what to speak of presenting cogent evidence, did not bother to come in the witness box to put forth his stand, rather preferred to default and chose to proceed against *ex-parte*. It is settled that pleadings are no proof of evidence. Learned Courts below have rightly discarded the version of defendant and believed the un rebutted evidence of the plaintiff.

iv. The learned counsel for the appellant has raised the contention that since pronote and receipts are not attested by the marginal witnesses, therefore, it should not be relied upon. The contention needs to be repelled on the grounds that firstly, plaintiff (PW2) cogently explained the circumstances, in which documents were executed and there is nothing to doubt his version on the same. Secondly, there is no requirement under the law that pronote and receipt should be attested from the attesting/marginal witnesses.

Section 4 of Negotiable Act 1881 -defines *Promissory note as follows:-*

4. “Promissory Note”- *A “promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.’*

The perusal of the aforesaid provision does not require attestation. Attestation of a document is usually done for the sake of abundant caution even though attestation is not requirement of law. So, the fact of non attestation of pronote (Ex.PW1/G) and receipt (Ex.PW1/H) in present case, do not make them doubtful. Furthermore, in present case plaintiff has been able to prove the execution of the pronote and receipt. There is nothing on record to show that both the Courts below have mis-read or misinterpreted the evidence on this aspect.

Still further, there is presumption of Section 118(a) of The Negotiable Instruments Act, 1881 that pronote and receipt are for consideration unless contrary is proved. There is nothing on file to establish that passing of consideration has not been proved on record. As noticed above, defendant did not come in witness box to rebut the version of the plaintiff. Law is settled that when a party remains away from the witness-box, without any explanation, an adverse inference can be drawn against him and whatever pleaded by him may be taken as wrong against him. In the present case, defendant led no cogent evidence to show his inability to appear in the witness box and controvert the assertions of the plaintiff. It is a fit case to raise adverse

inference against the defendant and to presume that whatever has been stated by the plaintiff is correct.

In **Kapil Kumar Vs. Raj Kumar (2022) 10 Supreme Court Cases 281**, it was held that if the presumption under Section 118 of the Negotiable Instruments Act, 1881 can be raised in the facts and circumstances of the case, non examination of the witness to prove have no effect. There is no dispute with the observations made in authority titled as **Rajaram S/O Sriramulu Naidu (Since Deceased) Through LRs vs. Maruthachalam (Since Deceased) Through LRs**, but same is of no help to the appellant as it is evident that he did not contest the suit and preferred to default.

v. Further, it is urged by the learned counsel for the appellant – defendant that in this case plaintiff has not proved that he was in capacity to make the payment of ₹2,80,000 except his self serving statement as (PW2). The contention is not sustainable for the reasons that plaintiff has duly explained the source of income with him and consequently, his capacity to lend money to defendant. He categorically deposed that he had sold $\frac{2}{3}$ *killas* of land about four to five years ago and had given the amount to Jai Kishan son of Pola ram and had taken that money from him and gave to defendant. His said statement has remained unchallenged on record. Further, when plaintiff has proved the execution of pronote and receipt, the presumption as available under 118(a) of the Negotiable Instruments Act, 1881 become available to him and defendant has failed to rebut the said presumption, in such circumstances plaintiff is not required to

prove his capacity to make the payment. Similar view was expressed by this Court in case of **Jit Singh Vs Nachhatar Singh and Others 2007(4) RCR (Criminal) 114.**

vi. The plaintiff specifically deposed that he is not in the business of money lending. The plaintiff led no evidence to rebut the same, so in circumstances plaintiff was not required to place any licence of money lending. She also proved the legal notice Ex.P3 by examining Smt. Minakshi Yadav Advocate, she specifically deposed that she had sent the registered letter and also tendered the receipt and identified the signature of the learned Advocate who had send the notice.

15. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity.

16. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on application of oral and documentary evidence. I affirm the findings and find no ground for interference much less involvement of any substantial question of law.

17. Resultantly, there is no merit in the appeal and is, hereby, dismissed.

18. Pending miscellaneous application(s), if any, are also disposed of accordingly.

21.02.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No