IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3607-2023 (O&M)
Reserved on: 31.01.2024
Date of decision: 05.02.2024

RANBIR SINGH CHAUHAN

..Appellant

Versus

CHETAN PARAKSH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nikhil Kaushik, Advocate
for the appellant.

ANIL KSHETARPAL, J.

1. In this regular second appeal, the defendant prays for setting aside the concurrent judgments passed by the Courts below.

2. The respondent filed a suit for foreclosure of the mortgage and recovery of the amount by sale of the mortgaged property. Two different registered mortgage deeds were executed between the parties. The first mortgage deed was against the loan of Rs.1,00,000/-, whereas, the second mortgage deed was against the loan of Rs.1,25,000/-. The execution of the first mortgage deed is not disputed, however, the defendant claims that the second mortgage deed was not executed by him. Both the Courts on appreciation of evidence have come to a conclusion that both the mortgage deeds were executed by the defendant and therefore, the plaintiff is entitled to recover the amount by sale of the mortgaged property.

3. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

4. He contends that the defendant while executing the first

mortgage deed has appended his signatures, whereas, on perusal of the second mortgage deed, it becomes evident that the same is thumb marked allegedly by the defendant. He submits that once the defendant knows how to sign, then the alleged thumb impressions upon the second mortgage deed is a result of forgery. While relying upon the judgment passed in ***N.M. Veerappa Vs. Canara Bank and others, (1998) 2 SCC 317***, he further contends that interest for the period prior to the filing of the suit could not be awarded.

5. This Court has considered the submissions of the learned counsel representing the appellant.

6. With respect to the argument of the leaned counsel representing the appellant that the second mortgage deed was not executed by him. It may be noted that defendant has not produced any evidence to prove that he never thumb marked the second mortgage deed. The deed has been registered. There is a presumption of its correctness. Furthermore, it is the defendant (appellant) who positively asserts that he never thumb marked the aforesaid mortgage deed. Then, the onus to prove that fact would be on the defendant, however, he failed to prove the same. It is not necessary that a person who knows how to sign cannot in any circumstances put his thumb impression.

7. With respect to the second submission of the learned counsel representing the appellant, it may be noted that there is a specific stipulation in the deed of mortgage for grant of interest from the date of loan. The aforesaid interest in absence of payment is required to be granted by the Court. This Court has also carefully read the judgment passed in ***N.M. Veerappa's case (supra)***. In that case, the Court was examining the discretionary power to grant interest at variance with the contractual rate of

interest. The Court also considered that Section 34 of the Code of Civil Procedure, 1908, does not apply to the mortgage suits. With greatest respect, in the aforesaid judgment, the Hon'ble Supreme Court has not laid down that the interest with respect to the period anterior to the filing of the suit was not the issue before the Supreme Court.

8. Keeping in view the aforesaid discussion, the appeal lacks substance. Hence, this appeal is dismissed in limine.

9. All the pending miscellaneous applications, if any, are also disposed of.

February 05th, 2024 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No