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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of Decision: 28.05.2024.

Ajaib Singh

...Appellant.

Versus

Gurmail Singh

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Ms. Gagandeep Kaur, Advocate and
Mr. Barjinder Singh, Advocate
for the appellant.

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/ respondent filed a suit for recovery of Rs.1,65,000/- (Rs.1,20,000/- as principal amount and Rs.45,000/- as interest) on account of interest @ 12.5% per annum w.e.f. 09.04.2015 till upto date, with the averments that the defendant borrowed an amount of Rs.1,20,000/- from the plaintiff on 09.04.2015 and agreed to pay interest @ 1.50% per month and executed a pronote and receipt dated 09.04.2015 in favour of the plaintiff after admitting the contents of pronote and receipt thereof as correct the defendant signed the

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same in the presence of the witnesses. Defendant also made endorsement regarding pronote of Rs.1,20,000/- and signed the same. But after execution of the execution of the said pronote and receipt defendant failed to return any amount to the plaintiff towards principal or interest, despite the demand raised by the plaintiff several times. Hence the plaintiff has filed the present suit.

3. Upon notice, defendant appeared and filed written statement alleging therein that the suit was not maintainable and the alleged pronote and receipt dated 09.04.2015 were result of fraud and false and frivolous pronote and receipt had been prepared by the plaintiff. No consideration was passed through the said pronote and receipt. It was alleged that the Gurmail Singh-plaintiff and his wife Manjit Kaur in connivance with each other committed fraud with the defendant and both husband and wife i.e. plaintiff and his wife prepared two false and frivolous pronotes of the same date i.e. 09.04.2015 against the defendant and then filed two recovery suits in the Court against the defendant with malafide intention. It was also alleged that the defendant is relative of plaintiff Gurmail Singh and his wife and he usually visited the house of the plaintiff and the plaintiff and his wife also used to visit his house. So they might have taken the signatures of the defendant on empty pronote and receipt under the influence of liquor.

4. From the pleadings of the parties following issues were framed:-

1. *Whether the plaintiff is entitled to recover Rs.1,65,000/- as prayed for? OPP*
2. *Whether present suit is not maintainable? OPD*

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3. *Whether the suit of the plaintiff is time barred? OPD*

4. *Whether the plaintiff has not come to the Court with clean hands and has suppressed the material facts? OPD*

5. *Relief.*

5. The suit of plaintiff was decreed by the trial Court, vide judgment and decree dated 04.10.2019. The appeal preferred by the appellant/ defendant before the First Appellate Court was dismissed, vide judgment and decree dated 06.10.2023. Hence, the present Regular Second Appeal has been filed by the appellant/defendant.

6. Learned counsel for the appellant/ defendant has contended that the appellant never borrowed the alleged amount from the respondent. The pronote and receipt in question are forged and fabricated documents and have no value in the eyes of law. He has further contended that the signatures of the defendant were obtained under the influence of liquor. But the Courts below have not appreciated the evidence on record in the right perspective and judgment and decree passed by the Courts below are totally against the law and facts.

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

8. In order to prove her case the plaintiff himself stepped into the witness box as PW2 and reiterated the averments of the plaint. PW3- Sukhdev Singh is the marginal witness of pronote Ex.P1 and receipt ExP2, who has categorically deposed regarding borrowing of Rs.1,20,000/- from the respondent and regarding execution of pronote and receipt in question. Scribe of the pronote has also been examined as PW1 Mohinder Pal Jindal, Deed Writer, who has been corroborated from the testimony of PW2 and

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PW3. He has also deposed that pronote Ex.P1 and receipt Ex.P2 were duly entered in the Deed Writer register. On the other hand, just plea of appellant/ defendant in the absence of any cogent evidence is not sufficient to prove that the respondent and her husband had taken signatures of the appellant on empty pronotes and receipts under the influence of liquor. There is nothing on record to prove the plea of the appellant/ defendant that the pronote and receipt are forged and fabricated documents, without consideration. Rather as already observed, from the evidence led by the plaintiff, the execution of pronote and receipt in question has been duly proved.

9. Once execution of pronote and receipt is proved then the statutory presumption under Section 118(a) of Negotiable Instruments Act, 1881 arises regarding passing of consideration unless rebutted. In the instant case, the said presumption has not been rebutted by the defendant.

10. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

11. Appeal stands dismissed being bereft of merits.

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

(SUKHVINDER KAUR)
JUDGE

28.05.2024.

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