

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****109****RSA-3312-2019 (O&M)****Reserved on : 10.02.2025****Pronounced on : 18.02.2025**

Nihal Singh

....Appellant

VERSUS

Jaideep

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjeev Kumar Panwar, Advocate for the appellant.

ALKA SARIN, J

1. Present appeal has been preferred by the defendant-appellant challenging the judgment and decree dated 28.02.2019 passed by the First Appellate Court decreeing the suit of the plaintiff-respondent. The Trial Court vide judgment and decree dated 30.04.2015 had dismissed the suit.

2. The brief facts relevant to the present *lis* are that plaintiff-respondent filed the present civil suit for recovery averring that on 24.05.2010 the defendant-appellant had borrowed Rs.600000/- in cash from him and agreed to repay the money with interest at the rate of 1.50% per month. The defendant-appellant also executed a pronote and receipt on the same day and signed the same. According to the plaintiff-respondent the defendant-appellant was requested time and again to repay the amount with interest but to no avail despite issuance of legal notice on 19.03.2013. Hence, the suit. In his written statement the defendant-appellant denied having borrowed any money from the plaintiff-respondent. It was submitted that infact he had

entered into an agreement to sell regarding his agricultural land with some relative/acquaintance of the plaintiff-respondent and received the earnest money. The plaintiff-respondent was stated to being the middle man in the deal. As per the stand taken, the plaintiff-respondent obtained the signatures of the defendant-appellant on the pronote and receipt on the pretext that the same would be destroyed after the earnest money etc. was returned by the defendant-appellant to the relative/acquaintance if the deal collapsed. The deal did not go through, and the earnest money was returned by the defendant-appellant but the plaintiff-respondent did not destroy the pronote and receipt. Replication was filed denying the averments made in the written statement and reiterating those made in the plaint.

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

- 1) Whether plaintiff is entitled to recover suit amount Rs.924000/- (principal amount Rs.600000/- and interest Rs.324000/-) along with future interest, if so, to what rate ? OPP
- 2) Whether plaintiff has no locus standi to file the present suit ? OPD
- 3) Whether the suit is not maintainable in the present form ? OPD
- 4) Whether plaintiff has not come to the Court with clean hands and has concealed true and material facts from the Court ? OPD
- 5) Relief.

4. The Trial Court vide judgment and decree dated 30.04.2015 dismissed the suit of the plaintiff-respondent. Aggrieved by the same, an appeal was preferred by the plaintiff-respondent which appeal was accepted by the First Appellate Court vide judgment and decree dated 28.02.2019. Hence, the present regular second appeal by the defendant-appellant.

5. Learned counsel for the defendant-appellant would contend that the First Appellate Court erred in decreeing the suit of the plaintiff-respondent. It is urged that no amount was borrowed by the defendant-appellant so there was no question of the suit being decreed. Learned counsel has contended that the amount which was received by the defendant-appellant was earnest money in a transaction of sale and when the transaction fell through the defendant-appellant returned the earnest money to the proposed vendee who was a relative/acquaintance of the plaintiff-respondent. According to counsel, the defendant-appellant had executed the pronote and receipt only as security and the plaintiff-respondent had misused the same.

6. Heard.

7. In the present case the plaintiff-respondent claimed the amount from the defendant-appellant on the basis of a pronote and receipt executed on 24.05.2010. The attesting witness to this document (PW1 Vedpal) proved the same. The handwriting and fingerprint expert (PW2 Shamsheer Singh Malik) also gave a report about the signatures of the defendant-appellant on the document. The stand taken by the defendant-appellant about there being an agreement to sell was not accepted by the First Appellate Court as the original of such agreement was never produced in Court. The other proposed vendors also did not step in to the witness box. Moreover, the plaintiff-respondent was not a party to this supposed transaction. The defendant-

appellant has not denied the existence of the pronote and the receipt but took the plea that the said document was for some other purpose and has been misused by the plaintiff-respondent. It was thus incumbent upon the defendant-appellant to have proved the existence of the other purpose which he failed to do satisfactorily.

8. The First Appellate Court has also noticed the pendulous stand taken by the defendant-appellant and found that “It is further pertinent to observe that during trial, vide order dated 8.1.2014, learned Trial Court adjourned the matter for 20.2.2014 for admission and denial of documents as well as for exploring the possibilities of settlement of dispute. However, on 20.2.2014, the defendant failed to appear before the Court, on which, learned Trial Court has observed that “Despite directions defendant has not appeared in person, hence, adverse inference shall be drawn against the defendant at an appropriate stage.....” . Furthermore, vide order dated 30.5.2014, learned Trial court has mentioned that “The matter has been compromised between the parties and the defendant has submitted that he will pay Rs.8,50,000/- to the plaintiff till 30.7.2014. Separate statement is recorded to this effect.....” . The perusal of record shows that the defendant made a statement on 30.5.2014, wherein, he stated that he has settled the matter with the plaintiff and he will pay Rs.8.5 lakhs till 30.7.2014. The perusal of the cross-examination of the defendant Nihal Singh further reflects that he conceded that on 30.5.2014 he gave a statement before Trial Court qua his agreeing to pay Rs.8,50,000/- to the plaintiff. Thereafter, he stated that he has already given the money and got a receipt prepared. But, he stated that he has not brought that receipt today and he has not paid that money in front of Court. Further in his cross-examination, he again stated

that payment has already been made and receipt qua the same has been procured. But he does not have it at that time. Further, qua his contention, he stated that he cannot tell the date and month etc., as to when he refunded the money in lieu of agreement. Thereafter, he stated that the receipt qua the refund of money is different from the photocopy of agreement and receipt placed on record by him. No such receipt was ever placed on record by the defendant. He further conceded during his cross- examination that the photocopy of agreement and receipt placed on record by him nowhere bears the signature of plaintiff Jaideep. He further stated that he does not have the original agreement. Thus, the defendant is denying his liability in utmost superficial manner without any cogent evidence to support of his contentions” .

9. In the absence of any cogent and reliable evidence having been led by the defendant-appellant to prove and substantiate the stand taken in the written statement, no fault can be found with the judgment and decree passed by the First Appellate Court. In the face of the findings recorded by the First Appellate Court, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the defendant-appellant for this Court to take a contrary view from the one taken by the First Appellate Court. In view thereof, no fault can be found with the findings returned by the First Appellate Court. No other point was argued.

10. Before parting it may be mentioned here that as per the website of District Courts, Gurugram, in the execution proceedings the defendant-appellant has been paying in parts the decretal amount to the plaintiff-respondent. In view of the discussion above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law,

arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.02.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO