

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****222****RSA-1074-2012 (O&M)****Date of decision: 09.03.2026****Jagtar Singh****...Appellant(s)****Vs.****Nachhattar Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr. Anil Kumar Garg, Advocate
for the appellant.

Mohd. Salim, Advocate for the respondent.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant against the concurrent judgments and decrees of the Id. District Courts; whereby suit filed by the plaintiff/respondent for recovery of Rs.1,50,000/- has been decreed by both the District Courts.

2. It is the pleaded case of the plaintiff that on 15.09.2000, defendant/appellant had borrowed an amount of Rs1,50,000/- from the plaintiff and executed Promissory Note and Receipt in his favour in the presence of marginal witnesses. Defendant had also agreed to pay interest @ 2% p.m. on the loan amount. Despite various requests, defendant had failed to repay the loan amount. Consequentially, plaintiff had filed instant civil suit on 05.03.2003.



3. Upon appraisal of the pleadings and the evidence led by the parties the Additional Civil Judge (Senior Division), Malerkotla had decreed suit of the plaintiff vide judgment and decree dated 17.12.2010, as follows:

“23. As a consequence of my findings on above issues, present suit of the plaintiff succeeds and is decreed for recovery of Rs.1,50,00/- (One lac and fifty thousands) along with interest there-above @ 12% per annum from the date of advance i.e. 15.9.2000 till date of decree, with proportionate Costs. The plaintiff is further entitled for interest @ 6% per annum from the date of decree till final realization. Decree sheet be prepared and file be consigned. to the record room after due compliance.”

4. The Civil Appeal filed by the defendant was dismissed with costs by the learned District Judge, Sangrur vide judgment and decree dated 01.12.2011. Hence, present second appeal by the defendant.

5. It is *inter alia* submitted by learned counsel for the appellant that it was the clear case of the appellant that the Pronote on the basis of which the present civil suit had been filed, was a forged document. It is submitted that the appellant in para 1 of the written statement, had categorically stated as follows: -

“1. Para no.1 of the plaint is wrong and denied. The defendant never borrowed a sum of Rs.1,50,000/- from plaintiff @ 2% per month on 15.9.2000 and further never promised to return the same along with interest @2% per month to the plaintiff on demand. It is further wrong and denied that the defendant executed a pronote and receipt



pronote in favour of plaintiff. The alleged pronote and receipt pronote dated 15.9.2000 is a forged and fictitious document. It is wrong and denied that the defendant received Rs.1,50,000/- in cash from plaintiff in the presence of any witnesses nor put his signatures on the alleged pronote and receipt pronote and canceled the revenue stamps on the alleged pronote and receipt pronote with his signatures. It is further wrong and denied that the defendant handed over any pronote and receipt pronote to plaintiff. The alleged pronote and receipt pronote dated 15.9.2000 are forged and fictitious document which has been manufactured by plaintiff in connivance with the witnesses of alleged pronote and receipt pronote and 15.9.2000."

6. Clearly therefore, the defendant had taken the plea that the document is forged and fabricated one and he had denied the execution of the same and passing of the consideration.

7. Learned counsel submits that despite the above categorical averment/denial of the appellant in the written statement, the plaintiff had only produced PW1 Rakesh Kumar, PW2 Nachchattar Singh, and PW3 Bhag Singh in his evidence; and plaintiff deliberately chose not to examine any Handwriting Expert in affirmative evidence to prove issue regarding execution of the Pronote and Receipt Pronote dated 15.09.2000. However, the appellant had duly examined Handwriting Expert Navdeep Gupta, who had given categorical Report that the signatures on the Pronote and Receipt Pronote are not original rather are traced. It is submitted that the appellant had therefore, established on record that the Pronote and



Receipt Pronote on the basis of which the present civil suit for recovery was filed, are forged and fabricated. Moreover, the said evidence remained unrebutted by the respondent. As such, suit of the respondent could not have been decreed.

8. Learned counsel further points out that the plaintiff had thereafter moved an application to examine Handwriting Expert in rebuttal and he was allowed to do so by the learned Trial Court. However, the appellant had moved an application for disallowing the evidence of the Handwriting Expert sought to be produced by the respondent in rebuttal as it was incumbent upon the plaintiff to produce the same during his evidence in affirmative to prove issue No.1. It is submitted that the said application of the appellant was dismissed. However, the Revision Petition filed by the appellant before this Court was allowed vide order dated 16.09.2010 holding that the defendant cannot be called upon to lead evidence in negative to disapprove the Pronote and Receipt Pronote; and that it was upon the plaintiff to prove his case by leading evidence in affirmative. Thus, the report submitted by the Handwriting Expert Navdeep Gupta examined by the appellant remained unrebutted; yet the learned District Courts did not take into consideration the relevant evidence and without assigning any cogent reason discarded the unrebutted Expert evidence produced by the appellant. It is submitted that learned District Courts did not take into consideration that the plaintiff failed to prove the Pronote and Receipt Pronote.



9. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of District Courts be set aside.

10. *Per contra*, learned counsel for the respondent opposes submissions made on behalf of the appellant and draws attention of this Court to the fact that the appellant himself has denied the standard signatures on the basis of which the Expert Report was submitted in favour of the appellant. It is contended that therefore, the suit of the plaintiff has been rightly decreed by both the District Courts. It is for the contented that in Second Appeal, this Court cannot interfere in the concurrent findings of fact of both the Courts below. He accordingly prays for dismissal of the present Appeal

11. No other argument is raised by learned counsel for the parties. I have heard Id. counsel and perused the case file in detail. I find merit in the submissions made on behalf of Id. counsel for the respondent/plaintiff.

12. A perusal of the record of the case shows that the plaintiff has duly proved the Pronote Ex.P1 and Receipt Ex.P2, by examining PW3 Bhag Singh marginal witness; PW1 Rakesh Kumar Scribe of the Pronote Ex.P1 and Receipt Ex.P2; and by appearing himself as PW2. All three witnesses have supported the case of the plaintiff; which could not be shaken despite lengthy cross-examination. PW3 has given detailed evidence to the effect that money was given to the appellant in 15 packets of currency notes of denomination of Rs.100. The record reveals that even no suggestion was put by the defendant to PW3 to controvert the said



statement made by PW3. Thus, the appellant has not disputed the correctness of the statement of PW3. From the above fact, it is clear that the plaintiff had discharged the initial burden of proof; and had duly proved that loan was advanced by the plaintiff to the defendant. Plaintiff had also proved the execution of Pronote and Receipt by the defendant in favour of the appellant. Thus, contention of the appellant that the plaintiff failed to prove the Pronote and Receipt is factually incorrect as there are concurrent findings of both the District Courts to the contrary.

13. As regards Handwriting Expert produced by the appellant, no doubt appellant in his written statement as well as in his evidence as DW2 has categorically stated that the Pronote and the Receipt in question are forged and fabricated documents and without consideration. However, no credence can be attributed to the said statement of the appellant in view of the following observations of the learned First Appellate Court in para 31 of the judgment dated 01.12.2011: -

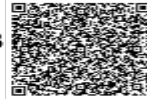
“31. It also needs to be stated here that conduct exhibited by the appellant is such that his version cannot be termed as reliable and probable. Appellant did not put his signatures on written statement filed by him before the learned trial Court and has put his thumb impressions. However, when he entered the witness stand as DW2 he has tendered his sworn affidavit Exhibit DW2/A. On his said affidavit, the appellant put his signatures but put his thumb impression on his cross examination dated 26.10.2009 and signatures on his further cross examination dated 18.11.2009. While denying his signatures appearing on promissory note, Exhibit P1 and receipt, Exhibit P2 he even has denied his signatures on an



application dated 20.02.2009 made by him for directing Navdeep Gupta, Handwriting & Fingerprints Expert (DW1) to examine his disputed signatures and application dated 31.07.2009 made by him for allowing expert to inspect the file and take the photographs. All these facts and circumstances would go to show that the appellant entered the arena with a determination not to speak the truth and as such, his testimony is held to be completely unworthy of credence. Even to the naked eye it is clear that questioned signatures of the appellant appearing on the promissory note and receipt and standard/specimen signatures of the appellant are of one and the same person."

14. Over and above, even otherwise, the Expert Report Ex.DX sought to be relied upon by the appellant to disapprove the Pronote and Receipt is liable to be rejected in view of the following findings of the learned First Appellate Court in paras 28, 29 and 32 of the judgment dated 01.12.2011, which read as follows: -

"28. As regards signatures of the defendant-appellant appearing on specimen sheet dated 20.03.2009 marked as S1 to S10 and signatures, S11, appearing on his statement given by him in the Court dated 20.03.2009, suffice it to say that as per own admission of the expert, if a person signs more than once at the same time or at different times, natural variations are bound to occur and no two genuine signatures of that person will be exactly alike and that standard as also specimen signatures examined by him are of later period than the disputed signatures and that he has not demanded any standard signatures of prior period than the disputed signatures.



29. *In the instant case, appellant executed promissory note, Exhibit P1 and receipt Exhibit P2 on 15.09.2000 and specimen signatures of the appellant were obtained by the learned trial Court on 20.03.2009 meaning thereby that disputed signatures of the appellant appearing on promissory note, Exhibit P1 and Exhibit P2 are about more than 8 years old than his specimen/standard signatures. After such a long period natural variations are bound to occur in the signatures of a person and the appellant cannot be allowed to take advantage of the natural variations by terming these natural variations as basic dissimilarities. There is nothing on record to show that expert of the appellant has ever made any effort to obtain admitted/standard signatures of the appellant pertaining to the period when promissory note and receipt were executed by the appellant.*

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32. *As discussed above, the appellant has miserably failed to rebut the presumption arising under Section 118(a) of the Act in favour of the respondent because as per settled law once the plaintiff has succeeded in proving execution of a negotiable instrument onus shifts to the defendant to prove that there was no consideration for such document in view of presumption of law under Section 118(a) of the Act and the defendant can rebut such presumption either by direct evidence or circumstances and the defendant can prove non-existence of consideration either by direct evidence or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies but as discussed above in the case on hand the defendant has failed to rebut that presumption by raising probable defence and has failed to establish his so-called plea of plain denial."*



15. Moreover, the said report Ex.DX cannot be relied upon also on account of the fact that DW1/Expert Witness Navdeep Gupta has admitted that signatures A1 to A4 are on the photocopy of the Sale Deed, which are not the best standard signatures for comparison. DW1 has further admitted in his cross-examination that he did not ask the party to provide him the original Sale Deed or its copy from the office of the Sub Registrar. DW1 has also admitted in cross-examination that it is correct that if a person signs more than once at the same time or at different times, natural variations are bound to occur, and no two signs will be exactly alike. It was in this background, that the learned District Courts correctly held that Expert opinion carries no weight especially when pitted against the cogent and reliable evidence marginal witnesses and also Ex. P1 and Ex.P2. Moreover, the learned District Courts have correctly held that Expert opinion is only opinionative in nature and cannot take place of substantive evidence.

16. It is also to be taken into consideration that defendant has failed to bring any evidence on record to show that any complaint or FIR was registered by him against the plaintiff or the marginal witnesses in respect of the alleged forgery of the Pronote and the Receipt.

17. Even otherwise, it is undisputed position in law that this Court in Second Appeal has limited jurisdiction to interfere in the concurrent findings of fact rendered by the Courts below; as held by the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, as under:-



*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force."

18. In the present case, appellant has been unable to show any procedural or other legal error in the present case.

19. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings, or even the legal position noted above.

20. As such, no ground is made out to interfere in the concurrent judgments and decrees of the learned District Courts. The present Regular Second Appeal is accordingly dismissed.
21. Pending applications, if any, stand disposed of.

09.03.2026

Divyanshi

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No

(NIDHI GUPTA)

JUDGE