
(2011) 08 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 418 of 1987 (O and M)

Rattan Chand

APPELLANT

Vs

Mst Yousaf Jahan Begum and others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 100(4), 100(5)
Negotiable Instruments Act, 1881 (NI) — Section 118
Punjab Courts Act, 1918 — Section 41
Punjab Relief of Indebtedness Act, 1934 — Section 30

Citation : (2011) 164 PLR 324

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ram Chand Gupta, J.—The present regular second appeal has been filed against judgment and decree dated 14.10.1986 passed by the then learned District Judge, Sangrur, dismissing the appeal filed by present appellant-plaintiff against judgment and decree dated 14.2.1984 passed by the then learned Sub Judge, Ist Class, Malerkotla, vide which suit filed by present appellant-plaintiff was partly decreed for a sum of Rs.59,500/- alongwith cost and future interest @ 6% per annum from the date of decree till the realisation of the decretal amount.

2. I have heard learned counsel for the parties and have gone through the whole record carefully including both the judgments passed by learned Courts below.

3. Briefly stated, appellant-plaintiff filed this suit for recovery of Rs.98,500/- alongwith cost and interest on the plea that the said amount was advanced by appellant-plaintiff to respondent-defendant (deceased) Nawab Iftkhar Ali Khan on 17.7.1975 and he executed a pronote and receipt in his favour after receiving the said amount. Further plea is that he returned Rs.500/- out of the said amount and made an endorsement dated 15.7.1978 in his own hands. Hence, he filed a suit for recovery of Rs.98,000/- by way of principal amount and Rs.72,666.50 by

way of interest, i.e., total recovery of Rs. 1,70,666.50.

4. Respondent-defendant had denied having received of Rs.98,500/- in cash from appellant-plaintiff on 17.7.1975. Rather specific plea has been taken by respondent-defendant that he had already received Rs.30,000/- from appellant-plaintiff on 6.9.1969 on the basis of pronote and receipt dated 6.9.1969 and thereafter he had not taken any loan from the appellant-plaintiff in cash. Further plea has been taken that however, appellant-plaintiff used to get pronote and receipt executed from him after including interest from time to time and hence, appellant-plaintiff cannot claim more than double the amount of Rs.30,000/-, i.e., more than Rs.60,000/-.

5. From the pleadings of the parties, learned trial Court framed the following issues.-

1. Whether the impugned pronote was executed in lieu of the previous pronote if so the amount of loan under the original pronote? OPD

2. Whether the impugned pronote was executed without consideration? OPD

3. Whether the rule of Damdupat is applicable in the present case? OPD

4. Whether the suit is within time? OPP

5. Whether the suit is time barred? OPD

6. Whether the plaintiff is a money lender if so its effect? OPD

7. Whether the defendant is entitled to the concession of instalments if so of what amount and duration? OPD

8. Whether the pronote in dispute is inadmissible into evidence? OPD

9. Relief.

6. Parties adduced evidence in support of their respective contentions.

7. Learned trial Court discussed issues No.1 and 2 together and decided the same partly in favour of present appellant-plaintiff by holding that only Rs.30,000/- were paid by appellant-plaintiff to respondent-defendant on 6.9.1969 on the basis of pronote Ex.D2 and receipt Ex.D3 and thereafter no amount was paid and hence, it was held, while deciding issue No.3, that he is not entitled to receive more than the total amount, i.e., more than Rs.60,000/- and, however as he has already received Rs.500/- as part payment and hence, he is entitled to recover Rs.59,500/-.

8. Issue No.3 was accordingly decided in favour of defendants. Issues No.4 and 5 have been decided in favour of appellant-plaintiff and issue No.5 has been decided against the defendants. Issues No.6, 7 and 8 were decided against the defendant.

9. In view of the findings on various issues, the suit of the appellant-plaintiff was

decreed for a sum of Rs.59,500/- with cost and future interest.

10. Aggrieved against the said judgment and decree, appellant-plaintiff filed appeal, which was dismissed by learned first appellate Court, vide judgment and decree dated 14.2.1984.

11. Still aggrieved, he filed the present regular second appeal, which was admitted for hearing by this Court vide order dated 3.8.1987 without framing any substantial question of law.

12. A Full Bench of this Court in the case of Ganpat Vs. Ram Devi and Others, , had taken a view that in view of Section 41 of the Punjab Courts Act, the amended provisions of Section 100 of the Code of Civil Procedure, as amended in 1976, were not applicable to the second appeals filed in this Court and accordingly, no substantial question of law was framed, nor the aforesaid regular second appeals were admitted on any such substantial question of law. However, the Hon''ble Apex Court in the case of Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc., has held that after amendment of CPC in the year 1976, thereby amending Section 100, Section 41 of the Punjab Courts Act had become redundant and repugnant to the Central Act, i.e., CPC and therefore was to be ignored and therefore, the second appeal shall only lie to this Court u/s 100 of the amended Code of Civil Procedure, on a substantial question of law.

13. It may be mentioned here that though question of law was not framed at the time of admission of present appeal, and however, it has been observed by Full Bench of this Court in Dayal Sarup v. Om Parkash (since deceased) through L.Rs and others, (2010-4) 160 P.L.R. 1, that this Court can formulate question of law as contemplated u/s 100 of the CPC at any point of time before hearing of the appeal, even without amending the grounds of appeal. It has also been held that it is the duty of the Court to formulate substantial question of law while hearing the appeal under Sections 100(4) and 100(5) of the Code and question of law can be permitted to be raised at any stage of proceedings.

14. It has been contended by learned counsel for the appellant-plaintiff that both the Courts after coming to the conclusion that impugned pronote and receipt were executed by respondent-defendant have failed to draw inference that they were executed for consideration. It is further contended that there is a presumption regarding the fact that pronote and receipt were executed for consideration u/s 118 of Negotiable Instruments Act and heavy onus lay on the respondent-defendant to rebut the said presumption and, however, in this case respondent-defendant failed to discharge the said onus. It is also contended that it is a case of misreading and mis-appreciation of evidence by both the Courts below as amount advanced by virtue of previous pronote by appellant-plaintiff to respondent-defendant was returned by respondent-defendant and an amount of Rs.98,500/- was actually advanced by appellant-plaintiff to respondent-defendant at the time of execution of impugned pronote and receipt. Hence, the

following substantial questions of law can be stated to have arisen in this appeal for consideration of this Court:

(i) Whether respondent-defendant has been able to rebut the presumption u/s 118 of the Negotiable instruments Act in favour of appellant-plaintiff that pronote and receipt were executed for consideration?

(ii) Whether it is a case of misreading and mis-appreciation of the evidence by the Courts below in coming to the conclusion that only Rs. 30,000/- was advanced at the time of execution of previous pronote and receipt?

15. It has been contended by learned counsel for the appellant-plaintiff that when execution of impugned pronote and receipt is not denied, learned trial Court should have decreed the suit filed by appellant-plaintiff for the entire amount alongwith pendente lite and future interest.

16. On the other hand it has been contended by learned counsel for the respondent-defendant that decree passed by both the Courts below is based on evidence and the correct inference has been drawn by both the Courts below. Further contended that appellant-plaintiff has failed to produce the best evidence of his possession, i.e., his account books, to show that any amount was actually advanced at the time of execution of pronote and receipt and to show that earlier as well amount was advanced and the payments were received. It is also contended that though it has been admitted that appellant-plaintiff used to file income tax returns and used to show the amount advanced and the interest earned including the transactions which have taken place between the parties and, however, he has failed to prove even the said income tax returns.

17. Though execution of impugned pronote and receipt is not denied and the same has also been duly proved. However, there is no force in the argument of learned counsel for the appellant-plaintiff that respondent-defendant has not been able to rebut the presumption in favour of appellant-plaintiff that the pronote and receipt were executed for consideration. It is settled law that appellant-plaintiff has to stand on its own legs. It was for the appellant-plaintiff to show that the amount was actually advanced to respondent-defendant. He has intentionally with-held the account books of his possession. He has admitted that he used to maintain account-books in due course of business and used to enter each and every transaction in the account books. He has also admitted that he used to pay income tax and used to show the amount advanced to respondent-defendant in the account books. However, the income tax returns have been with-held and hence it has been rightly held by both the Courts below that contention of defendant carries weight as pronote Ex.D2 was executed by deceased-Nawab Iftkhar Ali Khan on 6.9.1969 though for a sum of Rs.30,000/- and before expiry of limitation another pronote Ex.D4 was executed in favour of appellant-plaintiff on 2.9.1972 for a sum of Rs.58,480/-, which include principal amount of Rs.30,000/- and interest thereon, which became due on the basis of pronote Ex.D2. Limitation of that pronote expired on 2.9.1975. However, before that

another pronote Ex.P2 was got executed from respondent-defendant by appellant-plaintiff on 17.7.1975 for a sum of Rs.98,500/-, which includes principal amount of Rs.58,480/-. Hence, it has been rightly observed by both the Courts below that appellant-plaintiff used to get executed subsequent pronotes and receipts from respondent-defendant-Nawab Iftkhar Ali Khan before expiry of limitation of previous pronotes and that the amount shown in subsequent pronotes used to be inclusive of principal as well as interest. Hence, it cannot be said that any illegality has been committed by learned Courts below by coming to the conclusion that only Rs.30,000/-was advanced.

18. So far as the payment of interest is concerned, learned Courts below have rightly come to the conclusion that as respondent-defendant-Nawab Iftkhar Ali Khan was an agriculturist, hence as per Section 30 of the Punjab Relief of Indebtedness Act, 1934, appellant-plaintiff was not entitled to recover more than twice the sum advanced. Hence, appellant-plaintiff could not recover more than Rs.60,000/- and as he already received Rs.500/-, suit was rightly decreed for a sum of Rs.59,500/-.

19. Hence, both the aforementioned substantial questions of law are decided in favour of respondent-defendant and against the appellant-plaintiff.

20. As a consequence to my above discussion, I am of the view that there is no merit in the present appeal and hence, the same is, hereby, dismissed with cost.