

Balbir Singh Vs. Anil Kumar

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Court : Punjab and Haryana

Decided On : Nov-15-2002

Reported in : (2003)135PLR333

Judge : Amar Dutt, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : Regular Second Appeal No. 4500 of 2001

Appellant : Balbir Singh

Respondent : Anil Kumar

Advocate for Def. : S.K. Garg, Adv.

Advocate for Pet/Ap. : A.S. Jattana, Adv.

Disposition : Appeal dismissed

Judgement :

Amar Dutt, J.

1. This defendant's appeal seeks to challenge the judgment and decree passed by the Additional Civil Judge (Senior Division), Safidon on 25.7.1998 and affirmed by the Additional District Judge, Jind on 28.9.2001.

2. Anil Kumar had filed a suit asserting that the defendant-appellant had borrowed a sum of Rs.30,000/- from him on 24.6.1992. The defendant had executed a pronote and receipt as well as agreed to pay interest at the rate of 2 per cent per mensem. The interest on the date of the filing of the suit came to more than Rs.20,000/- but the claim was restricted to the aforesaid amount and recovery of a total sum of Rs.50,000/- was sought. Defendant had denied the transaction as well as any agreement to pay interest on the amount alleged to have been borrowed by him. He also denied execution of the pronote and receipt. He had also asserted that the plaintiff was money lender who had not obtained licence for the same and so the suit was liable to be dismissed.

From the pleadings of the parties, the following issues were framed:-

1. Whether the defendant had borrowed a sum of Rs.30,000/- as loan and executed a pronote and receipt pronote in favour of plaintiff? OPP
2. Whether the defendant is agreed to pay the interest @ 2% per month? OPP
3. If issues No. 1 & 2 are proved, then whether the plaintiff is entitled to recover the suit amount i.e., Rs.50,000/- from the defendant? OPP.
4. Whether the alleged pronote and receipt pronote are forged documents and the same are based on fraud and misrepresentation as alleged? OPD
5. Whether the plaintiff is a money-lender and he has not obtained any licence for the same, hence the suit is liable to be dismissed? OPD
6. Relief.

3. The trial Court had recorded the evidence and after hearing arguments, decided issues No. 1 to 3 in favour of the plaintiff. Issues No. 4 and 5 were not pressed by the defendant and decided against him. The trial Court decreed the suit of the plaintiff. In appeal, the findings were affirmed. Hence, the present appeal.

4. The short ground, on which the reversal of the view taken by the Courts below is sought for, is the fact that the plaintiff had not appeared in the witness box and there is only statement of his father appearing as power of attorney to prove the

transaction. The Court below had relied upon the testimony of Ram Chander PW3, the father of the plaintiff, to prove the execution of the pronote as not only pronote Ex.P1 and receipt Ex.P2 had been executed in his presence but also the amount too had been paid at the same time. Bhagwan Dass PW1 and Ram Bilas PW2 have also supported the plaintiff's version. In view of this, the trial Court had relief upon the testimony of these PWs- for coming to the conclusion that there was nothing in law, which would prevent the holder of general power of attorney to depose regarding the circumstances, in which any particular transaction had taken place.

5. Learned counsel for the appellant on the basis of the judgment reported as Ram Prasad v. Hari Narain and others, A.I.R. 1998 Rajasthan 185 submits that a holder of power of attorney cannot appear as a witness. In the case, this authority would have no application to the facts and circumstances of the case as the father of the plaintiff was present at the time when the pronote and receipt were executed and so he was competent in the circumstances of the case to depose regarding execution of the pronote and receipt as well as receipt of the money. Thus, finding no merit in this appeal, the same is hereby dismissed.