

**Hardas Singh. Vs. Darshan Singh.**

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**Court :** Punjab and Haryana

**Decided On :** Jan-17-2011

**Judge :** L. N. Mittal, J.

**Acts :** Negotiable Instruments Act - Section 118

**Appeal No. :** R. S. A. No. 214 of 2011

**Appellant :** Hardas Singh.

**Respondent :** Darshan Singh.

**Advocate for Pet/Ap. :** Mr. B. S. Sewak, Adv.

**Judgement :**

1. Although strictly speaking, no sufficient ground for condonation of delay of 159 days in filing the appeal is made out from the averments made in the application supported by affidavit, yet adopting liberal approach, the said delay is condoned. The application stands allowed accordingly.
2. Main Appeal :Defendant Hardas Singh, having failed in both the courts below, has filed the instant appeal.
3. Respondent-plaintiff Darshan Singh filed suit against defendant-appellant for recovery of 6,74,000/- alleging that the defendant, on 22.05.2000, borrowed 5,50,000/- from the plaintiff and agreed to repay the same with interest @ 1.56% per month and executed pronote and receipt for the same. The plaintiff, however,

claimed interest @ 1.50% per month. The defendant did not pay any amount towards principal and interest. Accordingly, the plaintiff sought recovery of 6,74,000/-, which included principal amount of 5,50,000/- and interest amount of 1,24,000/- till filing of the suit.

4. The defendant broadly denied the plaint allegations. The defendant alleged that he never borrowed any amount from the plaintiff nor executed any pronote and receipt for the same. The impugned pronote and receipt are forged and fabricated documents and result of fraud and misrepresentation. The plaintiff is not even known to the defendant. Defendant had no dealing with the plaintiff. The impugned pronote and receipt have been prepared by the plaintiff in connivance with Avtar Singh and Yadwinder Singh, who are Commission Agents. Defendant had five sons, out of whom two have since died and the remaining three sons are living separately from the defendant. Defendant's son Nachhatar Singh used to sell his crop through Avtar Singh Commission Agent, who is also witness of the pronote and receipt in question. Defendant used to visit the (O&M;) 3 shop of Avtar Singh to take meals for his son Nachhatar Singh. During conversation, the defendant told Avtar Singh that his (defendant's) son Balbir Singh had died as victim of terrorism, but no compensation had been paid to the defendant. Accordingly, defendant sought assistance of Avtar Singh to claim compensation. The defendant gave necessary documents to Avtar Singh for the same. Avtar Singh came to defendant's village and obtained thumb impressions of defendant on some documents. At that time, Avtar Singh might have obtained thumb impressions of defendant on blank pronote and receipt by misrepresentation and fraud. Defendant moved application to police in this regard, but no action was taken. The defendant then filed criminal complaint against Avtar Singh, Yadwinder Singh and the plaintiff, in which they are facing trial. Various other pleas were also raised.

5. Learned Additional Civil Judge (Senior Division), Nabha, vide judgment and decree dated 23.10.2009, decreed the plaintiff's suit for recovery of principal amount of 5,50,000/- with interest thereon @ 12% per annum from the date of pronote and receipt till decision by the trial court and future interest @ 6% per annum till recovery. First appeal preferred by the defendant has been dismissed by learned District Judge, Patiala vide judgment and decree dated 11.05.2010.

Feeling aggrieved, defendant has preferred the instant second appeal.

6. I have heard learned counsel for the appellant and perused the case file.

The plaintiff himself stepped into the witness-box and stated according to his own version. The plaintiff has also examined Avtar Singh (PW-1) and Yadwinder Singh (PW-2) both attesting witnesses of pronote- cum-receipt in question. Both of them have supported the plaintiff's case. Avtar Singh had also scribed the pronote and receipt at the instance of the defendant. All of them have stated that defendant received 5,50,000/- from the plaintiff and then thumb-marked the pronote and receipt. On the other hand, the defendant himself appeared as DW-1 and broadly stated according to his own version. Defendant has also examined Gurmail Singh (DW-2), who broadly stated according to defendant's version that Avtar Singh had obtained thumb impressions of the defendant regarding his claim for compensation relating to death of his son on account of terrorist activities.

7. The plaintiff has led sufficient evidence to prove his case. Besides himself appearing in the witness-box, the plaintiff has examined both attesting witnesses of pronote-cum-receipt. Due execution of pronote and receipt by the defendant and receipt of consideration of 5,50,000/- for the same by the defendant from the plaintiff is sufficiently proved from the plaintiff's evidence. Statements of defendant and his witness Gurmail Singh are not sufficient to rebut the aforesaid cogent and credible evidence of the plaintiff.

8. In this context, it has to be noticed that according to the learned counsel for the defendant-appellant, defendant's son, for whose compensation he sought help of Avtar Singh, had died in the year 1992. However, the impugned pronote-cum-receipt is dated 22.05.2000. This long gap of eight years also negatives the defendant's version. It has also come in evidence that defendant had purchased some land. This circumstance further corroborates the plaintiff's version as defendant might have borrowed the amount in question for purchase of land.

9. In addition to the aforesaid, it is highly significant to notice that in view of the defendant's version noticed herein before, defendant's son Nachhatar Singh was a very material witness. However, defendant has not examined his own son

Nachhatar Singh as witness and therefore, strong adverse presumption arises against the defendant. Since execution of pronote-cum-receipt by the defendant is fully proved, there is also presumption under Section 118 of the Negotiable Instruments Act, 1881 that the pronote was executed for consideration. The plea of fraud taken by the defendant is required to be proved just like a criminal charge, but the defendant has failed to establish the same even by preponderance of evidence. The defendant instituted private criminal complaint against plaintiff and witnesses of pronote-cum-receipt, but admitted that the said criminal complaint has since been quashed by this Court. On the other hand, the defendant has impliedly admitted his thumb impressions on the pronote-cum-receipt in question. The defendant has also not produced any document like J-Form or record of Market Committee to depict that his son Nachhatar Singh had been selling his crop at the shop of Avtar Singh or Yadwinder Singh. The defendant also stated in cross-examination that he had with him the record of death of his son during terrorism in Punjab. However, no such record has been produced by the defendant and for this reason also, adverse inference arises against him. Statements of defendant and his witness Gurmail Singh have been impeached in their cross-examination, as discussed by the trial court by assigning cogent reasons. The defendant even stated that he received summons in the suit just 2-3 days after he had affixed thumb impressions at the instance of Avtar Singh.

10. Thus, defendant's evidence has been rightly discarded by the courts below being not reliable. On the other hand, plaintiff has led sufficient evidence to prove his case. There is concurrent finding by both the courts below in favour of plaintiff-respondent. The said finding is supported by cogent reasons recorded by both the courts below. The said finding is not shown to be perverse or illegal so as to warrant interference in this second appeal. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is bereft of any merit and is accordingly dismissed in limine.

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