

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA-1201-1998 (O&M)
Reserved on: 21.04.2025
Pronounced on: 24.04.2025**KARTAR SINGH**

. . . . APPELLANT

Vs.

VIPAN KUMAR

. . . . RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTAArgued by:- Mr. Harinder Sharma, Advocate
for the appellant.Mr. R.K. Bashambo, Advocate
for the respondent.

DEEPAK GUPTA, J.

This regular second appeal has been filed by the defendant against the concurrent findings of the Courts below.

2.1 Suit was filed by plaintiff Vipin Kumar (*respondent herein*) for recovery of ₹52,730/-, which includes principal amount of ₹42,800/- and interest @ 2% per month amounting to ₹9,930/- on the basis of pronote and receipt dated 07.03.1994. According to plaintiff, defendant had borrowed the amount of ₹42,800/- from him on 07.03.1994 and executed pronote and receipt in his favour. He did not return the amount to him till date and hence the suit.

2.2 Defendant denied having availed any loan from the plaintiff. According to him, he has been bringing his crops to the shop of the plaintiff and that account was settled on 05.02.1994 and at that time, plaintiff had procured his thumb impressions on some blank forms and it is possible that those blank forms, thumb marked by the defendant have been misused by the plaintiff in preparing the alleged pronote and receipt. Defendant alleged the pronote and receipt to be forged documents without any consideration and prayed for dismissal of the suit.

3. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court decreed the suit by holding that plaintiff was entitled to the principal amount of ₹42,800/- besides interest @ ₹1/- per month worked out to be ₹4,965/- and thus, decreed the suit for ₹47,765/- along with future interest @ 6% per annum from the date of filing of the suit till actual realization. Said judgment dated 11.12.1996 passed by the trial Court has been affirmed by the First Appellate Court vide judgment dated 22.01.1998, while dismissing the appeal filed by the defendant-Kartar Singh (*appellant herein*).

4.1 Assailing the aforesaid concurrent findings, it is contended by learned counsel for the appellant-defendant that though as per Section 118 of the Negotiable Instruments Act, 1881, the Court is obliged to presume that promissory note was made for consideration, until the contrary is proved, which means that the said presumption is rebuttable. Learned counsel contends that burden is upon the defendant to prove non-existence of consideration by bringing on record such facts and circumstances, which would lead the Court to believe the non-existence of consideration either by direct evidence or by preponderance of probabilities showing that existence of consideration was improbable, doubtful or illegal. In this regard learned counsel has referred to ***“Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm” 2008(3) RCR (Criminal) 205.***

4.2 Learned counsel contends that in the present case, it was the specific stand of the defendant-appellant that his thumb impressions were obtained by the plaintiff on some blank papers, while settling the account and the same has been misutilized by the plaintiff to convert the same into the pronote and receipt, which are forged documents and that in fact no consideration was paid to the defendant as mentioned in the pronote.

4.3 With these submissions learned counsel prayed for accepting this appeal and dismiss the suit of the plaintiff-respondent by setting aside the impugned judgments passed by the Courts below.

5. Refuting the aforesaid contentions, it is argued by learned counsel for the respondent-plaintiff that there is no scope for interference in the

concurrent findings of courts below, as the same are based upon proper appreciation of evidence on record. It is urged that pronote and receipt had been duly proved not only by the testimony of plaintiff, but further supported by the scribe & attesting witness to the same. It is also pointed out that payment of consideration to the defendant further finds support from the entries in the account book of the plaintiff and the Income Tax Returns and so, there is no reason to disturb the findings. He prayed for dismissal of the appeal.

6. This Court has considered submissions of both the sides and has appraised the record carefully.

7. As has been found by the Courts below that pronote Ex.P-1 and receipt Ex.P-2 have been proved by the testimony of PW-1 Sham Singh, one of the attesting witness, who testified that these documents were scribed by Pradyuman Singh at the instance of the defendant; that scribe had read over and explained the contents of the same to the defendant and after admitting the same to be correct, defendant had put his thumb impressions thereon. He also deposed that he and Pradyuman Singh had also signed the receipt as marginal witnesses and that defendant had received an amount of ₹42,800/- as loan from the plaintiff in their presence. The said testimony of PW1 Sham Singh finds support from the testimony of PW-3 Pradyuman Singh, the scribe to the document Ex.P-1 and P-2.

8. Thus, the testimony of the plaintiff examined as PW-2 regarding payment of ₹42,800/- to the plaintiff against pronote and receipt, stands duly proved. Not only this, it has been rightly observed by the Courts below that defendant did not deny his thumb impressions on the pronote and receipt and simply alleged that his thumb impressions were taken on some blank forms, which were not later on returned by the plaintiff and which might have been used in forging the documents. However, no credible evidence has been produced by the defendant in this regard.

9. Not only above, it has been observed by the Courts below on the basis of evidence produced on file that there is entry in the accounts books of the plaintiff regarding payment of ₹42,800/- to the defendant as loan. It is

further found that account with the defendant was finally settled on 28.12.1993 regarding the previous transactions and that entry of the loan given on 07.03.1994 was even carried forward in his subsequent accounts books, copies of which were produced on record as Ex.P-4 to P-10. Not only this, the said loan amount was also shown by the plaintiff in his Income Tax Returns.

10. In the aforesaid facts and circumstances, no illegality has been committed by the Courts below in returning the concurrent findings of the fact to the effect that an amount of ₹42,800/- was advanced as a loan by the plaintiff to the defendant against pronote (Ex.P-1) and receipt (Ex.P-2), which has not been returned by the defendant till date. Simply because defendant has made the allegation that the documents might have been forged by the plaintiff by using the blank signed documents, is not sufficient to rebut the presumption as mentioned in Section 118 of the Negotiable Instruments Act, 1881.

11. Consequently, this Court does not find any ground whatsoever to interfere in the well-reasoned concurrent findings as returned by the Courts below, which are based upon proper appreciation of evidence on record. Finding no illegality of perversity in the judgments passed by the Courts below, this Court holds that there is no merit in the present appeal and as such, the same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

24.04.2025

Vivek

Whether speaking/reasoned?	Yes
Whether reportable?	No