

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

RSA-927-2000 (O&M)
Reserved on: 27.02.2025
Pronounced on: 03.03.2025

SOM NATH

... APPELLANT

Vs.

JODHA SINGH

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Surinder Garg, Advocate, for the appellant.

Mr. Vinod Kumar Kataria, Advocate, for the respondent.

DEEPAK GUPTA, J.

Suit for recovery of ₹84,700/- filed by plaintiff-Som Nath (*appellant herein*) was decreed by the trial Court of Id. Additional Civil Judge (Sr. Division), Gidderbaha vide judgment dated 12.11.1997. However, the appeal filed by defendant-Jodha Singh (*respondent herein*) was accepted by the First Appellate Court of Id. Additional Judge, Muktsar, dismissing the suit vide judgment dated 19.11.1999. Against this reversal, plaintiff has approached this Court by way of the present Regular Second Appeal.

2.1 According to plaintiff, defendant had taken a loan of ₹70,000/- from him on 08.06.1994 and had agreed to repay the same along with interest @ 2% per month. Defendant had executed a pronote and receipt in this regard. However, later on defendant failed to pay either the principal amount or the interest. With these averments, plaintiff brought the suit for recovery of ₹70,000/- as principal amount and ₹14,700/- towards the interest, thus totaling ₹84,700/-.

2.2 Defendant opposed the suit and alleged the pronote and receipt relied by the plaintiff to be forged and fabricated documents, which were not even properly stamped. According to him, plaintiff is a money lender and

had no license and that he (defendant) had not taken any loan from the plaintiff at any point of time. He prayed for dismissal of the suit.

2.3 After framing issues and taking evidence produced by both the parties, the trial Court by relying upon the pronote and receipt produced by the plaintiff, decree the suit. However, the Appellate Court reversed the finding.

3. Assailing the reversal, it is contended by Id. counsel for the appellant-plaintiff that Id. First Appellate Court has failed to appreciate the evidence in right perspective and wrongly reversed the judgment of the trial Court, inasmuch as the pronote and receipt executed by the defendant were duly proved on record. On the other hand, counsel for the respondent-defendant contended that Id. First Appellate Court has rightly come to the conclusion that plaintiff failed to prove lending of the amount to the defendant and so, rightly dismissed the suit.

4. I have considered submissions of both the sides and have appraised the record carefully.

5. The Appellate Court had noticed that though plaintiff had examined PW1-Raj Singh, who had scribed the pronote (Ex.P1) and Receipt (Ex.P2) and deposed that he had scribed the same at the instance of the plaintiff, but there were certain circumstances, due to which he was not reliable. It was found that receipt (Ex.P2) was alleged to have been attested by one Janak Ram, but he had not been examined by the plaintiff; rather, plaintiff in his statement had only stated that Janak Ram was not ready to give evidence. Plaintiff had placed on record an application (Ex.P5) moved before the trial Court stating therein that defendant had threatened Janak Ram in case he appeared before the Court. However, the said allegation made by the plaintiff was found to be false, inasmuch as Janak Ram was examined by the defendant as DW2. In his testimony, Janak Ram categorically denied that he had ever been threatened by the plaintiff. Janak Ram denied execution of the pronote or receipt by the defendant in favour of the plaintiff. According to him, plaintiff had obtained his signature about 5-6

months earlier, when he used to sell milk to the plaintiff. Appellate Court noticed some more circumstances to come to the conclusion that testimony of DW2 Janak Raj was more credible comparing to PW1-Raj Singh, the scribe.

6. Apart from above, it was noticed by the First Appellate Court that defendant never had any dealings with the plaintiff. As per evidence on record, defendant had come to the plaintiff only 2-3 days earlier for taking the loan, as was stated by the plaintiff. So much so, while advancing the alleged loan to the defendant, the plaintiff had not obtained the signature of defendant in his account book/ledger or any other document. It was found that except for the pronote and receipt as relied by the plaintiff, there was no other evidence to prove the case of the plaintiff. So much so, though the firm of the plaintiff is an Income Tax assessee and used to keep regular account books as was admitted by the plaintiff, but the alleged loan amount was presumably not shown therein, as plaintiff failed to produce any such account books. In the absence of any entry in the account books or signature of the defendant in the account books, the Appellate Court came to the conclusion that passing of the consideration of the amount mentioned in the pronote and receipt was not established.

7. Not only above, Appellate Court noticed that perusal of pronote Ex.P1 indicated that all the three stamps were connected with each other and the word 'Jodha' appeared on first stamp, while word 'Singh' appeared on the second stamp and only a line appeared on the third stamp. These stamps could be easily removed jointly or individually from the pronote and could be affixed on any other document, which meant that they had not been cancelled in accordance with the provisions of Section 12(1)(a) and 12(3) of the Stamp Act. In these circumstances, the pronote (Ex.P1) was deemed to be unstamped and so, it was inadmissible in evidence. Appellate Court came to the conclusion that since claim of the plaintiff was based only on the pronote, he could not be granted any benefit of the receipt, which was part of pronote.

8. After hearing Id. counsel for both the side and appraising the entire evidence on record, this court does not find any reason to differ with the findings as recorded by the First Appellate Court, which are based upon proper appreciation of evidence. Cogent reasons have been given by the First Appellate court to discard the testimony of PW1–Raj Singh, the scribe of the document and to rely upon the testimony of DW2-Janak Raj, who was alleged witness to the pronote and receipt. Appellate Court has also given reasons for discarding the pronote, as the signature of the defendant appeared on the three stamps in such a manner that these stamps could be removed very easily to be affixed on any other document.

9. In account of the aforesaid discussion, this Court does not find any ground to interfere in the findings of facts as recorded by the First Appellate Court. There is no illegality or perversity in the said finding. Consequently, the present appeal is hereby dismissed.

03.03.2025

Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>