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

RSA-2082-2023 (O&M)

Date of Decision: August 29, 2025

SURENDER GHANGAL

.....Appellant

Versus

MOLU RAM

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Rattan Singh Dhillon, Advocate for the appellant.

Mr. Sudhanshu Makkar, Advocate for the respondent.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgment and decree dated 24.04.2023 passed by the Court of learned District Judge, Bhiwani, whereby the judgment and decree dated 31.08.2018, passed by learned Civil Judge (Senior Division) Bhiwani, stands reversed thereby decreeing the suit for recovery filed at the instance of respondent-plaintiff.

2. Briefly stating, the respondent-plaintiff filed a suit for recovery of Rs.45,00,000/- along with interest @ 18% per annum from 13.08.2013 to 12.08.2016 i.e. Rs.24,30,000/- totaling to Rs.69,30,000/-. It was pleaded that the respondent-plaintiff lent a sum of Rs.45,00,000/- to the appellant-defendant on 13.08.2013 along with interest @3% per month and a writing dated 13.08.2013 to that effect was prepared which was duly signed by the appellant-defendant. However, the appellant-defendant failed to pay back the interest as well as the principal amount to the respondent-plaintiff, as such, the respondent-plaintiff filed the suit.

3. Upon notice, written statement was filed at the instance of

appellant-defendant stating that neither amount was advanced to him by respondent-plaintiff, nor writing in this regard was ever signed by him. With respect to writing dated 13.08.2013, it was pleaded that the plaintiff might have obtained his signatures on the blank documents which were misused by him and hence, prayed for dismissal of the suit.

4. No replication to the written statement was filed on behalf of respondent-plaintiff.

5. Based on the pleadings of the parties, following issues were framed on 04.01.2017:-

1. "Whether the plaintiff is entitled to recovery of Rs.69,30,000/- from the defendant as prayed for, on the grounds as mentioned in the plaint? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPP
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Relief.

6. The trial Court vide judgment and decree dated 31.08.2018 dismissed the suit mainly by holding that the respondent-plaintiff failed to establish the source of money and the writing i.e. Ex.P-1 relied upon by the respondent-plaintiff could not be considered as a cogent piece of evidence being surrounded by suspicious circumstances.

7. Aggrieved of the aforesaid judgment and decree, respondent-plaintiff filed an appeal. The Appellate Court vide its judgment and decree dated 24.04.2023 reversed the findings of the learned trial Court regarding the evidentiary value of promissory note Ex.P-1 while holding that the same was proved on record. It was also recorded that once the signatures over the receipt Ex.P1 were admitted by the appellant-defendant and on the contrary, no fraud played upon was established, there was presumption about receipt of consideration by the appellant-defendant. Moreover, relying upon cross-examination

of respondent-plaintiff who appeared as PW-1, the learned Appellate Court held that the financial capacity was also proved on record by him as the plaintiff was a retired teacher and his son who was living abroad had sent him Rs.20,00,000/- besides his two employed daughters-in-law were also contributing.

8. Aggrieved of the judgment and decree dated 24.04.2023 passed by learned District Judge, Bhiwani, the present appeal has been filed at the instance of appellant-defendant.

9. Impugning the aforementioned judgment and decree, learned Senior counsel appearing on behalf of the appellant-defendant submits that the presumption attached to the receipt i.e. Ex.P-1 was rebutted on the face of it from the cross-examination of the respondent-plaintiff wherein, he failed to produce any record relating to Rs.20,00,000/- been sent by his son from abroad. He also submits that once a specific plea was raised in the written statement to the effect that the alleged amount was never reflected in the Income Tax Returns by the respondent-plaintiff followed by non-production of Income Tax Returns by him, it was sufficient for rebuttal to the presumption attached to the receipt Ex.P1, in terms of proviso to Section 118 of Negotiable Instruments Act, 1881 especially, when a specific plea was raised about forgery and fabrication of the receipt on the blank signed papers of appellant-defendant by the respondent-plaintiff was raised.

9.1. Learned Senior counsel thus submits that in the absence of Income Tax Returns been produced by the respondent-defendant, adverse inference was required to be drawn against him so as to non-suit him, especially in case of such a substantial amount, besides also the fact that the lender even waited for an unexplained period of around

three years for filing of the recovery suit. Learned Senior counsel also relies upon judgment passed by this Court in "**Tarsem Singh vs. Teja Singh**" reported as "**2016(2) RCR (Civil) 793**" to support his contentions. Relevant para 21 thereof is reproduced hereunder:-

"The plaintiff had not shown the loan amount as due against defendants in his income tax return. The plaintiff had failed to disclose his viable source of lending huge amount. The documents produced on file were discussed and it was observed by Additional Civil Judge (Senior Division) in para 24 of the judgment, as follows:-

*"24. Despite persistent questioning, plaintiff failed to disclose his viable source of such loan lending. He stated to have got rental income of * 2 lacs per annum, agricultural income to the tune of & 25,000/- per annum and income tax practise income from & 1 lac to & 1.25 lac per annum. He has not produced any proof or account books of such income. No doubt onus is not upon plaintiff to prove his capacity to lend yet he is supposed to produce the record and give clear reply when requisitioned or questioned by defendant. He claims to have withdrawn the loan amount from his Bank a day prior to the transaction but did not disclose the name of the bank. He stated that he did not maintain any account books of his loan transactions. All these assertions are not believable and make the passing of consideration improbable. In Balbir Singh v. Harbans Singh, 2009 (3) RCR (Civil) 127 judgment supra Hon'ble Punjab and Haryana High Court treated the presumption under Section 118 of the Negotiable Instruments Act as rebutted inter alia on the grounds that plaintiff could not prove his source of money."*

9.2. Learned Senior counsel further submits that once no documentary evidence was produced on record by the respondent-defendant showing the receipt of ₹20 lakhs from his son besides not even having produced receipts from his daughters-in-law with respect to the remaining amount been borrowed from them; the source of money having transacted under Ex.P1 was not established on record.

9.3. Learned Senior counsel also points out that the execution of receipt i.e. Exhibit P1 was surrounded by suspicious circumstances as the same was witnessed by the real nephew of the respondent-plaintiff himself, besides, the fact that on earlier occasions, thrice, only a small amount of ₹1,00,000 ₹3,00,000 and ₹1,00,000 respectively was lent in favour of appellant-defendant, whereas within three months thereafter, such a huge amount of ₹45,00,000/- been offered to him was wholly suspicious, especially in the absence of the source having been established on record by respondent-plaintiff. He also pointed out that once the transaction involved huge amount of ₹45 lakhs, it was highly suspicious that the sum was lent in favour of the appellant-defendant without taking any security or execution of a Pronote.

9.4. Learned Senior counsel further points out that there being contradictions in the depositions made by respondent-plaintiff while appearing as PW1 and the statement of the marginal witness to the receipt, namely Prahlad Singh, who appeared as PW2, presumption attached to the said document stood rebutted on its own. He further points out that during his deposition while appearing as PW1, respondent-plaintiff denied the fact that appellant-defendant had borrowed ₹1,00,000/-, ₹3,00,000 and ₹1,00,000 respectively on three different occasions from the respondent-plaintiff, whereas on the other hand, PW-2 deposed to the contrary, having admitted the factum of appellant-defendant having borrowed such amount. The other contradiction pointed out by learned Senior counsel is that respondent-plaintiff in his deposition claimed that the money was received by the appellant-defendant in a bag, whereas the marginal witness to the receipt deposed that the money was collected by the appellant-

defendant in a 'thela'. Further, learned Senior counsel also points out that as per PW1, i.e. the respondent-plaintiff, the entire transaction took place in ½ hour whereas according to the statement of the marginal witness- PW2 the same concluded in about 1½ hour. Learned Senior counsel also points out that as per PW2, the transaction took place in his presence, besides the presence of plaintiff-defendant and the wife of plaintiff, whereas according to the plaintiff-PW1, no one else besides him, defendant and PW2 were present at the time of transaction.

9.5. Learned Senior counsel also relies upon a decision passed by Lahore High Court as back as in the year 1921 in case of "**Siraj ud-din vs. Mst. Champ and Anr.**" reported as **1921 AIR(Lah)148**, to submit that in case of inconsistency in the statements of the plaintiff and his agent, the onus shifts upon the plaintiff to prove the transaction.

Para five of the said judgment is reproduced hereunder:-

"There is no doubt a presumption under the law the maker of a promissory note has received the consideration for it, and if the only material before the Subordinate Judge when he framed the issue had been the plaintiff and the defendant's pleas it would certainly have been right to place the onus on the defendant. But the Subordinate Judge had also the statement of the plaintiff's agent before him and the fact that statement with regard to the consideration for the promissory note was entirely inconsistent with the plaintiff's allegation in his plaint was, I consider, sufficient to shift the onus at once to the plaintiff, and the Subordinate Judge was therefore right in calling upon the latter to prove that consideration passed. Zohra Jan v. Rajan Bibi (1915) 48 P.R. 1915 = 62 P. W.R. 1915 = 28 I.C. 402 = 146 P.L.R. 1915 is a case in point"

In view of the submissions made hereinabove, learned Senior counsel submits that the appeal was liable to be accepted.

10. On the other hand, learned counsel for respondent-plaintiff submits that once the execution of exhibit P1 was proved on record from the deposition of PW2, the presumption under section 118 (1)(a)

was available and attached to the transaction with respect to the consideration part and no further evidence in this regard was required to be led by the respondent-plaintiff. In support learned counsel for the respondent relies upon the finding recorded by the learned First Appellate Court, wherein it was held that the respondent, being retired teacher received Rs.20 lakhs from his son who was settled abroad whereas some amount was given to him by the two employed daughters-in-law besides the remaining amount was available from the sale proceeds of agricultural land and, thus the consideration was proved on record. Learned counsel for the respondent further submits that no fraud has been established on record from the side of respondent-plaintiff and the contradictions in the deposition made by PW1 and PW2 were never material to the transaction, thus, liable to be ignored. He thus, prayed that the appeal was liable to be dismissed.

11. I have heard learned counsel for the parties and gone through the paper book. I am unable to find substance in the submissions made of the appellant-defendant.

12. The suit filed on behalf of respondent-plaintiff is based on receipt exhibit-P1 dated 13/08/2013, whereby, a sum of ₹45 lakhs was stated to be borrowed by the appellant-defendant. The appellant-defendant though has admitted his signatures over the receipt Exhibit P1 however, disputed and denied its execution as well as receipt of money under the same.. Further, it is material to note here that under the signatures, the date has also been affixed which has not been denied or controverted by defendant-appellant and even the amount has also been written in words. In such circumstances, heavy burden was upon appellant-defendant to establish his plea of Ex.P-1 being

result of fraud and fabrication which he failed to prove. Importantly, no specific particulars of fraud or fabrication were ever pleaded by appellant-defendant in his written statement nor there was any proof in this regard particularly when the signatures were affixed by the appellant-defendant in English and that too on the revenue stamp, being an educated person. Furthermore, neither any criminal complaint, nor any FIR was ever got registered at the instance of appellant-defendant against the respondent-plaintiff about any such fraud been played upon him by the other side. In view of the above, valid execution of receipt Ex. P1 dated 13.08.2013 was duly proved on record and as such in terms of Section 118(a) of the Negotiable Instruments Act, 1881 it carried presumption qua the consideration part and the source thereof was not required to be established.

13. At this stage, before dealing with the plea raised on behalf of the defendant-appellant about the absence of proof of adequate financial capacity of the respondent-plaintiff or the availability of evidence on record so as to rebut the presumption attached under Section 118(a) of the Negotiable Instrument Act 1881 regarding the consideration having been passed through Exhibit P1, in the humble opinion of this Court, it may be necessary to discuss Section 118(a) of the Negotiable Instruments Act, 1881 which reads as under:-

“118. Presumptions as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration”

While dealing with the aforementioned provision, the Hon'ble Apex Court, in case of "**Bharat Barrel and Drum Manufacturing Compnay Vs. Amin Chand Payrelal**", reported as "**1999(3) Supreme Court cases, Page 35**" has been pleased to deliberate upon the legal presumption attached to the Negotiable Instruments and the aspect of rebuttal thereto. Relevant Paragraph Nos.11 and 12 of the judgment are reproduced hereunder:-

"11. Section 118 of the Act deals with the presumptions as to negotiable instruments. One of such presumptions is "that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration." This presumption is based upon a principle and is not a mere technical provision. The principle incorporated being, inferring of a presumption of consideration in the case of a negotiable instrument. A Full Bench of the Rajasthan High Court in Heerachand Vs. Jeevraj and Anr. (AIR 1959 Raj. 1) held that, "presumption, therefore, as to consideration is the very ingredient of negotiability and in the case of negotiable instrument, presumption as to consideration has to be made." A Full Bench of the Andhra Pradesh High Court is G. Vasu Vs. Syed Yaseen Sifuddin Quadri (AIR 1987 Andhra Pradesh 139) while dealing with the words "until the contrary is proved" held that it was permissible for the Court to look into the preponderance of the probabilities and the entire circumstances of the particular case. After referring to Sections 3,4 and 101 to 104 of the Evidence Act, the Court held that while dealing with the absence of consideration, the Court shall have to consider not only whether it believed that consideration did not exist but also whether it considered the non-existence of the consideration so probable that a reasonable man would, under the circumstance of a particular case, could act upon the supposition that the consideration did not exist. Once the defendant showed either by direct evidence or circumstantial evidence or by use of the other presumptions of law or fact that the promissory note was not supported by consideration in the manner stated therein, the evidentiary burden would shift to the plaintiff and the legal burden reviving his legal burden to prove that the promissory note was supported by consideration and at that stage, the presumption of law covered by Section 118 of the Act would disappear, Merely because the plaintiff came forward with a case different from the one mentioned in the promissory note it would not be correct to say that the presumption under Section 118 did not apply at all. Such a presumption applies once the execution of the promissory note is accepted by the defendant. The circumstances that the plaintiff's case was at a variance with the once contained in the promissory note could be relied by the defendant for the purpose of rebutting the presumption of shifting the evidential burden to the plaintiff. After referring to the catena of authorities on the point, the Full Bench held:-

Having referred to the method and manner in which the presumption under Section 118 is to be rebutted and as to how, it thereafter 'disappears' we shall also make reference to three principles which are relevant in the context. The first one is connected with the practical difficulties that beset the defendant for proving a negative, namely that no other conceivable consideration exists. We had occasion to refer to this aspect earlier. Negative evidence is always in some sort circumstantial or indirect, and the difficulty of proving a negative lies in discovering a fact or series of facts inconsistent with the fact which we seek to disprove (Gulson, Philosophy of Proof, 2nd Edition, P. 153 quoted in Cross on Evidence, 3rd Edition, page 78 Fn).

In such situations, a lesser amount of proof than is usually required may avail. In fact, such evidence as renders the existence of the negative probable may shift the

*burden on to the other party (Jones, quoted in A Sarkar on Evidence, 12th Edition, p.870). The second principle which is relevant in the context is the one stated in S. 196 of the Evidence Act. That section states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. It is very generally stated that, where the party who does not have the evidential burden, such as the plaintiff in this case, possesses positive and complete knowledge concerning the existence of fact which the party having the evidential burden, such as the defendant in this case, is called upon the negative or has peculiar knowledge or control of evidence as such matters, the burden rests on him to produce the evidence, the negative averment being taken as true unless disproved by the party having such knowledge or control. The difficulty of proving a negative only relieves the party having the evidential burden from the necessity of creating a positive conviction entirely by his own evidence so that, when he produces such evidence as it is in his power to produce, its probative effect is enhanced by the silence of the opponent (Corpus Juris, Vol. 31, Para 113). The third principle that has to be borne in mind in the one that when both parties have led evidence, the onus of proof loses all importance and becomes purely academic. Referring to this principles, the Supreme Court stated in *Narayan Vs. Gopal*, AIR 1960 SC 100 as follows:*

"The burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail, where, however, parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic."

We have referred to these three principles as they are important and have to be borne in mind by the Court while deciding whether the initial 'evidential burden' under As. 118 of the Negotiable instruments Act has been discharged by the defendant and the presumption 'disappeared' and whether the burden has shifted and later whether the plaintiff has discharged the 'legal burden' after the same was restored.

For the aforesaid reasons, we are of the view that where, in a suit on a promissory note, the case of the defendant as to the circumstances under which the promissory note was executed is not accepted, it is open to the defendant to prove that the case set up by the plaintiff on the basis of the recitals in the promissory note, or the case set up in suit notice or in the plaint is not true and rebut the presumption under S.118 by showing a preponderance of probabilities in his favour and against the plaintiff. He need not lead evidence on all conceivable modes of consideration for establishing that the promissory note is not supported by any consideration whatsoever. The words 'until the contrary is proved' in S.118 do not mean that the defendant must necessarily show that the document is not supported by any form of consideration but the defendant has the option to ask the court to consider the non-existence of consideration so probable that a prudent man ought, under the circumstances of the case, to fact upon the supposition that consideration did not exist. Though the evidential burden is initially placed on the defendant by virtue of S.118 it can be rebutted by the defendant by showing a preponderance of probabilities that such consideration as stated in the pronote, or in the suit notice or in the plaint does not exist and once the presumption is so rebutted, the said presumption 'disappears'. For the purpose of rebutting the initial evidential burden, the defendant can rely on direct evidence or circumstantial evidence or on presumptions of law or fact. Once such convincing rebuttal evidence is adduced and accepted by the Court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the plaintiff who has also the legal burden. Thereafter, the presumption under S.118 does not again come to the plaintiff's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance....."

12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under [Section 118\(a\)](#) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would

dis-entitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under [Section 118\(a\)](#) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as existence of negative evidence is neither possible nor contemplated and even if led is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. We find ourselves in the close proximity of the view expressed by the Full Benches of the Rajasthan High Court and Andhra Pradesh High Court in this regard.”

In terms of the above legal position, on the facts in hand, it may be noticed that neither any plea with respect to the financial capacity of the respondent-plaintiff was ever raised in the written statement by the appellant-defendant, nor even any specific suggestion in rebuttal to the deposition made by the respondent-plaintiff about the source of money was made to him, the respondent-plaintiff went on to depose specifically that a sum of ₹20 lakhs was received by him from his son who was living abroad, besides certain sum being given to him by his employed daughters-in-law and the remaining been possessed by him against sale of his agricultural land. In such a situation, mere non-filing of income tax returns by the respondent-plaintiff was not to be taken against him especially when the only suggestion put to him in the cross-examination was merely with respect to non-production of any receipt about the sum received by him from his son, who was living abroad and not about the fact of he having received any money from his son. In such circumstances, the receipt of money from the son by appellant-plaintiff not been controverted amounted to admission of source been proved. Furthermore, there was no cross on the aspect

that the two daughters-in-law of the respondent-plaintiff were working and also that he himself retired as teacher besides owning land as well. Moreover, the delivery of consideration under the receipt was even proved from the deposition of PW1 and PW2 i.e. the respondent-plaintiff himself and his nephew-Prahlad.

14. The argument raised on behalf of the learned Senior counsel to the effect that document Exhibit P1 was surrounded by suspicious circumstances, based on the facts that the transaction related to huge sum of ₹45 lakhs was without security; receipt was not executed by regular deed writer; witness was close relative of respondent-plaintiff or the suit been filed just three days before the limitation, in the humble opinion of this Court, is not made out. Once from the evidence available on record, the presumption attached to the contents of exhibit P1 with respect to the consideration part had gone, unrebutted, the magnitude of the amount under the document Exhibit P1 was not to be taken as a suspicious circumstance. Besides it, once the suit was filed within the period of statutory limitation of three years, the same was not to be considered as suspicious circumstance. Furthermore, it has come on record that the parties belong to same village and are known to each other, mere fact that the receipt was not executed by registered deed writer or there was no security taken against the huge amount cannot be considered as suspicious. Moreover, even witness to the receipt being the nephew of respondent-plaintiff was also not to be taken as suspicious being natural behavior.

15. Next, it has been argued by learned Senior counsel for the appellant-defendant that there were serious contradictions in the deposition made by PW1 and PW2. In the humble opinion of this Court,

little variance about time taken in conclusion of transaction or about presence of wife of respondent-plaintiff especially, when the transaction took place in his house, in the circumstances of the present case, being not of fundamental nature are not to be taken as material contradictions, strong enough to disbelieve the transaction. As such, the judgment passed in case of Sirajuddin (Supra) does not apply to the facts of the present case.

16. Accordingly, in view of the detailed discussion made herein-above, finding no illegality or perversity with the findings of fact recorded by learned First Appellate Court, there being no overlooking of the material available on record, re-appreciation of pleadings and evidence being impermissible, the present appeal being devoid of merits is thus, dismissed.

17. Pending application(s), if any, shall also stand disposed of.

29.08.2025

Tejwinder

(HARKESH MANUJA)
JUDGE

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| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether Reportable</i> | <i>Yes/No</i> |