

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****123-2****RSA-2944-2024 (O&M)****Date of decision: 19.02.2025****Charanjit Singh****...Appellant(s)****Vs.****Gurcharan Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ms. Manmohan Kaur, Advocate for the appellant.

NIDHI GUPTA, J.

The defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the plaintiff for recovery of Rs.49,600/- (Rs. 40,000/- as principal amount + Rs.9,600/- as interest @ 1.5% p.m.) on the basis of pronote and receipt dated 22.03.2017, has been decreed by both the courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant'; and the respondent is the 'plaintiff'.

3. The brief facts of the case as set out in the plaint are that on 22.03.2017, the defendant took a loan of Rs.40,000/- from the plaintiff at Nihal Singh Wala, District Moga, got executed a pronote and receipt, signed the same and got it attested from the witnesses. The defendant promised to repay the said amount along-with interest @ 1.5% per month. It is



further averred that inspite of repeated requests, reminders and presentation of pronote and receipt, the defendant did not make any payment out of principal or the interest. Now the plaintiff is entitled to recover a sum of Rs.40,000/- on account of principal amount and a sum of Rs.9,600/- on account of interest @ 1.5% per month, totalling Rs.49,600/-. It is further averred that the defendant was asked many a times to pay the said amount, but he has finally refused to pay the same. Hence, this suit.

4. Upon notice, the appellant/defendant appeared and contested the suit on various grounds by stating that the plaintiff had concealed the material facts, the defendant had never borrowed any amount from the plaintiff; neither he had ever executed the pronote and receipt in question nor he signed the same; and prays for dismissal of the suit.

5. No replication was filed by the plaintiff.

6. On the basis of the pleadings of the parties, following issues were framed vide order dated 21.08.2019:-

1. Whether the plaintiff is entitled to the relief of recovery of Rs.49,600/- on the basis of pronote and receipt dated 22.03.2017, as prayed for?OPP

2. Whether the suit is not maintainable in the present form?
OPD

3. Whether the plaintiff has no locus-standi to file the present suit?OPD

4. Relief.

7. Upon appraisal of the pleadings and the evidence led by the parties, the learned trial Court decided issue No. 1 partly in favour of the plaintiff; issues No.2 & 3 in favour of the plaintiff as the same were not



pressed during arguments by defendant; resultantly decreeing the suit of the plaintiff vide judgment and decree dated 03.03.2023. The appeal filed by the defendant was also dismissed by the learned Additional District Judge, Moga vide judgment and decree dated 30.10.2024. Hence, present second appeal.

8. Learned counsel for the appellant/defendant assails the concurrent judgments and decrees of the learned Courts below by submitting that the learned Courts below have failed to appreciate that the appellant had never borrowed the said amount from the respondent/plaintiff nor he had executed any pronote and receipt in his favour. The judgments and decrees of the learned Courts below are based on conjectures and surmises and are therefore, liable to be set aside. It is contended that even no passing of consideration has been proved on record; and therefore, the defendant had successfully rebutted the presumption under Section 118 of the Negotiable Instruments Act. It is contended that as the defendant has discharged the onus of showing that the passing of consideration is doubtful by cross-examining the plaintiff; as well as the attesting witnesses; and scribe, the said onus of passing consideration was shifted upon the plaintiff and it was for the plaintiff to prove that consideration was passed from the plaintiff to defendant in the presence of attesting witnesses. It is further submitted that defendant is an uneducated and illiterate man. It is accordingly prayed that the present appeal be allowed; and impugned judgments and decrees be set aside.



9. No other argument is raised on behalf of the appellant/defendant.

10. I have heard learned counsel for the appellant/defendant and perused the case file in great detail.

11. It is the case of the plaintiff in the plaint that defendant had taken a loan of Rs.40,000/- from the plaintiff in respect of which he had got executed a pronote and receipt (Ex.P1 and Ex.P2 respectively) dated 22.03.2017. The said pronote and receipt were duly signed by the defendant and was attested. The said amount was lent by the plaintiff along with interest @ 1.5% per month.

12. I find no merit in the arguments advanced on behalf of the defendant as the pronote and receipt in question were duly proved by the plaintiff by way of leading cogent evidence. The plaintiff examined Karamjit Singh PW-2, the marginal witness of pronote and receipt through his affidavit Ex.PW-2/A. PW-2 also proved the original pronote (Ex.P1) and original receipt (Ex.P2) and duly identified his signatures on Ex.P2. The said pronote and receipt were also proven by the evidence of PW-3 Resham Singh, scribe of the pronote and receipt, who deposed that the said pronote and receipt dated 22.03.2017 were scribed by him at the instance of the defendant himself in favour of the plaintiff. PW-3 also proved the attested copy of his register Ex.P3. Even the plaintiff as PW-1 through his affidavit in evidence Ex.PW-1/A proved the averments made in the plaint.

13. On the other hand, only bald averments were made by the defendant without leading any proof in support of his contention that he



had never borrowed any amount from the plaintiff nor executed the pronote and receipt in his favour. It is to be noted that although the defendant had denied his signatures upon the said pronote and receipt, however, no handwriting expert was examined by him to disprove his signatures affixed on the disputed pronote and receipt.

14. It is also to be noticed that the defendant as DW-1 in his cross-examination deposed that *"he has seen written statement dated 21.08.2019, which does not bear his signatures at Point A and B and further deposed that he has seen written statement dated 21.08.2019, which bears the signatures of his counsel at Point C. He further deposed that he know Gurcharan Singh plaintiff, Karamjit Singh son of Dalip Singh of his village and Resham Singh, Document Writer in Tehsil Complex Nihal Singh Wala and he has no enmity with above said persons. He further deposed that he has not moved any application/complaint against the plaintiff or witnesses regarding pronote and receipt in question before any competent authority". Meaning thereby, the demeanor of defendant is untrustworthy and he cannot be believed upon as he himself is denying his signatures over written statement dated 21.08.2019 filed by him in the Court. Moreso, besides his said bald statement, no cogent and convincing evidence have been brought on record by the defendant to rebut the evidence of the plaintiff. Thus, the defendant has failed to prove the plea taken by him in his written statement."*



15. In view of the above unequivocal evidence, the argument of the defendant that there is no proof of passing the consideration, is liable to be rejected.

16. The present regular second appeal is hereby **dismissed**.

17. Pending applications, if any, stand disposed of.

19.02.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No