

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

115

RSA-2009-2024 (O&M)**Date of Decision:20.08.2025**

Gurjant Singh

... Appellant

Versus

Itbarjeet Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. P.S. Jammu, Advocate, for the appellant.

Mr. Satbir Singh Gill, Advocate, for the respondent.

AMARINDER SINGH GREWAL, J. (ORAL)

1. The defendants are the appellants before this Court challenging the judgment and decree dated 13.02.2024 passed by the learned First Appellate Court whereby the appeal preferred by the respondent-plaintiff was allowed and the suit for recovery of ₹5,77,500/- (₹3,75,000/- as principal and ₹2,02,500/- as interest @ 18% per annum upto 18.08.2016) on the basis of pronote and receipt dated 19.08.2013, was decreed, with a further direction that the plaintiff-respondent shall be entitled to future interest @ 6% per annum on the decretal amount from the date of filing of the suit. Earlier, the learned Trial Court, vide judgment and decree dated 11.03.2019, had dismissed the said suit.

2. In brief, the facts are that the plaintiff-respondent filed a suit for recovery of ₹5,77,500/- (₹3,75,000/- as principal and ₹2,02,500/- as interest @ 18% per annum upto 18.08.2016) on the basis of pronote and receipt dated 19.08.2013 titled as "*Itbarjeet Singh Vs. Gurjant Singh*". The case of the plaintiff is that the defendant-appellant borrowed a sum of ₹3,75,000/- in cash from him on



19.08.2013 and executed a pronote and receipt in his favour in the presence of witnesses, with an assurance to pay interest @ 18% per annum. The said amount was to be returned on demand. However, when the plaintiff demanded repayment, the defendant failed to pay even a single penny. The plaintiff issued legal notice dated 27.07.2016, but the same was returned with the report of refusal. Even thereafter, despite repeated demands, the defendant failed to pay the amount. Hence, the suit.

3. Upon notice of the suit, the defendant appeared and filed written statement through their counsel denying execution of pronote and receipt or borrowing any amount. It was alleged that the plaintiff and his family members had filed six different false suits for recovery against the defendant and his family members on the basis of forged and fabricated pronotes and receipts, all purportedly executed on the same date with only interchanged witnesses. It was further averred that in earlier proceedings regarding surplus land, the plaintiff's father Satpal Singh had obtained signatures/thumb impressions of the defendant and his family members on blank and printed papers, which were later misused to fabricate pronotes and receipts. Additional objections were also taken that the plaintiff was a minor in 2013, without any independent source of income, and therefore incapable of lending such a huge amount. The defendant also pleaded that the suit was not maintainable, without cause of action, barred by mis-joinder and non-joinder of necessary parties, and liable to be dismissed with special costs under Section 35-A CPC.

4. On the basis of the pleadings, the learned trial Court framed the following issues vide order dated 05.01.2018:



1. Whether the plaintiff is entitled for recovery of ₹5,77,500/- along with interest as prayed for? OPP
 2. Whether the suit is not maintainable in the present form? OPD
 3. Whether the plaintiff has no locus standi and no cause of action to file the present suit? OPD
 4. Relief.
5. In order to prove their case, the plaintiff examined PW-1 Lajpat Rai, deed writer; PW-2 Lakhvir Singh, attesting witness; PW-3 Itbarjeet Singh, plaintiff; PW-4 Anil Kumar Gupta, Handwriting & Finger Print Expert, besides tendering documents Ex.P1 to Ex.P10 including the pronote, receipt, deed writer's register, legal notice, postal receipts and expert report. The defendant, on the other hand, examined himself as DW1 along with DW2 Gurpyas Singh and DW3 Ashok Kumar (Addl. Ahlmad) and produced documentary evidence Ex.D1 to Ex.D28 including copies of plaints, pronotes, receipts and judgments in other civil suits to substantiate his defence.
6. On appreciation of the evidence, the learned trial Court observed that there were material contradictions between the witnesses of the plaintiff regarding payment of consideration; that the plaintiff failed to plead the purpose of advancing such a huge amount; that the defendant's plea of misuse of signatures obtained during surplus land proceedings appeared credible. Consequently, issue No.1 was decided against the plaintiff, whereas issues No.2 and 3 were not pressed. The suit of the plaintiff was dismissed with costs vide judgment and decree dated 11.03.2019 passed by the learned trial Court.
7. Aggrieved thereby, the plaintiff filed first appeal. The learned First Appellate Court, on re-appreciation of the entire evidence, held that the plaintiff had duly proved execution of the pronote and receipt by examining the deed writer,



attesting witness as well as handwriting expert, and once signatures were proved, presumption under Section 118 of the Negotiable Instruments Act, 1881 (for short the Act of 1881) arose in favour of the plaintiff. It was observed that the defence raised by the defendant was contradictory and unsupported by cogent evidence. The appellate Court further held that though the plaintiff was a student at the relevant time, his deposition regarding having income from agricultural land and sale of crop could not be disbelieved merely because he had not produced bank statements. It was further held that once due execution was proved, the onus was on the defendant to rebut the presumption, which he failed to discharge.

8. Accordingly, the appeal was allowed vide judgment and decree dated 13.02.2024, the judgment of the trial Court was set aside, and the suit of the plaintiff was decreed for recovery of ₹5,77,500/- (₹3,75,000/- as principal and ₹2,02,500/- as interest @ 18% per annum upto 18.08.2016). The plaintiff was also held entitled to future interest @ 6% per annum on the decretal amount from the date of filing of the suit till realization, besides costs. Hence, the present Regular Second Appeal by the defendant-appellant.

9. Learned counsel for the appellant-defendant submits that the impugned judgment and decree dated 13.02.2024 passed by the learned District Judge, Sirsa, is wholly perverse and contrary to the record, inasmuch as it has wrongly set aside the well-reasoned judgment and decree dated 11.03.2019 passed by the learned Civil Court, whereby the suit of the plaintiff had been dismissed.

10. It is urged that the plaintiff instituted the present suit on the basis of a pronote and receipt dated 19.08.2013 for an amount of ₹5,77,500/-, but failed to prove the execution of the pronote, the passing of consideration, or the source from which such a huge amount was allegedly advanced. The plaintiff was a student at



the relevant time and even his college fees were being borne by his father, thereby demonstrating his incapacity to advance any such loan. He further submits that the plaintiff and his family members have filed as many as six similar suits against the appellant and his relatives, all founded upon pronotes and receipts of the same date, with the same amount and attested by witnesses who are none other than the plaintiff's own relatives. It is argued that such a pattern clearly establishes collusion and fabrication of documents. It is also submitted that during the surplus land litigation, pertaining to land measuring 32 kanals 16 marlas, the father of the plaintiff, namely Satpal Singh, had obtained the signatures and thumb impressions of the appellant and his family members on certain blank and printed papers, which were subsequently misused, in connivance with other relatives, to fabricate the impugned pronote and receipts. The learned trial Court had rightly appreciated these circumstances and dismissed the suit, but the learned Lower Appellate Court has overlooked such material evidence. It is further contended that the presumption under Section 118 of the Negotiable Instruments Act stood effectively rebutted by the appellant/defendant through cogent evidence. The plaintiff, having neither disclosed the purpose of the alleged loan nor established any financial capacity, could not prove the passing of consideration. The witnesses examined in support of the pronote are stock witnesses, who had already been disbelieved in connected suits, yet the learned 1st Appellate Court has chosen to rely upon them. On the strength of the aforesaid submissions, learned counsel prays that the impugned judgment and decree dated 13.02.2024 be set aside and the judgment and decree dated 11.03.2019 of the learned Civil Court, dismissing the suit of the plaintiff, be restored.



11. Per contra, learned counsel for the respondent-plaintiff has supported the impugned judgment and decree dated 13.02.2024, submitting that the pronote and receipt dated 19.08.2013 stood duly proved and the statutory presumption under Section 118 of the Act of 1881 operates in favour of the plaintiff. It is argued that the defence of signatures on blank papers is without substance and unsupported by evidence, and the mere pendency of similar suits by family members cannot discredit the present claim. It is further submitted that the trial Court erred in dismissing the suit by ignoring material evidence, which has rightly been appreciated by the learned Lower Appellate Court, and hence no interference is warranted.

12. Having heard learned counsel for the parties and after going through the record, this Court finds merit in the submissions advanced by learned counsel for the appellants-defendants.

13. In a suit on a promissory note where 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 Section 118 of the Act of 1881 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 Section 118 of the Act of 1881 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 act upon the supposition that consideration did not exist. Though the evidential burden is initially placed on the defendant by virtue of Section 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 Section 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. In the judgment passed by the Hon'ble Supreme Court in ***Bharat Barrel & Drum Manufacturing Co. v. Amin Chand Payrelal (1999) 3 SCC 35***, the Hon'ble Supreme Court has held as under:-

"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 a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a 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 disentitle 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 the 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.....”

14. The plaintiff-respondent had instituted the suit on the basis of a pronote and receipt dated 19.08.2013 for a sum of ₹5,77,500/-. Statement of PW-2 Lahvir Singh, one of the attesting witness of all the alleged six pronotes and receipts that consideration was received by the defendant in his presence in front of deed writer was belied by the said deed writer-Lajpat Rai, who stepped into witness box as PW-1 to state that no consideration was paid in his presence. Thus, contradictory testimonies of aforesaid witnesses made a dent to the presumption gained by the plaintiff under the provisions of Section 118 of the Act of 1881 and



shifted the burden on plaintiff, which he failed to discharge, as he failed to prove that he had financial capacity to advance such an amount nor proved the passing of consideration. At the relevant time, the plaintiff was a student whose educational expenses were even borne by his father. Furthermore, no source of funds or purpose of the alleged loan has been disclosed.

15. The record further reveals that as many as six similar suits were instituted by the respondent-plaintiff and his family members against the appellant and his relatives, all founded on pronotes of identical date and amount, witnessed only by close relations. Such a pattern unmistakably raises serious doubts about the genuineness of the transactions. Significantly, the respondent-plaintiff himself admitted before the learned trial Court through the testimony of PW-3 Itbarjeet Singh i.e. respondent-plaintiff and attesting witness PW-2 Lakhvir Singh in their cross-examinations that the defendant and his family members, who are defendants in the other five recovery suits, are financially well-off and owners of agricultural land. The suspicion further increases because the respondent-plaintiff has not even mentioned the purpose for which such a large amount was allegedly given.

16. The learned trial court, appreciating these circumstances, rightly dismissed the suit. The presumption under Section 118(a) of the Act of 1881 was rebutted by the defendant by raising a probable defence. The learned 1st Appellate Court, however, misdirected itself by ignoring these material aspects and reversing the well-reasoned judgment passed by the learned trial Court.

17. In view of the aforesaid discussion, this Court finds that the impugned judgment and decree dated 13.02.2024 passed by the learned District Judge, Sirsa, is unsustainable in law and is hereby set aside. Resultantly, the judgment and



decree dated 11.03.2019 passed by the learned trial Court dismissing the suit of the plaintiff stands restored.

18. Accordingly, the regular second appeal is allowed. Decree sheet shall be prepared accordingly. There shall be no order as to costs.

19. Miscellaneous application(s), if any, also stand disposed of

(AMARINDER SINGH GREWAL)
JUDGE

August 20, 2025

Pankaj*

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