

(2012) 01 P&H CK 0069

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 3921 of 2010 (O and M)

Gurmail Singh

APPELLANT

Vs

Lal Singh etc.

RESPONDENT

Date of Decision: Jan. 24, 2012**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, Order 6 Rule 4
- Negotiable Instruments Act, 1881 (NI) - Section 118

Citation: (2012) 166 PLR 263**Hon'ble Judges:** G.S. Sandhawalia, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

G.S. Sandhawalia, J.

The present appeal has been filed by the defendant who is aggrieved against the concurrent findings of the Courts below whereby the suit for recovery and permanent injunction filed by the plaintiff has been decreed. Plaintiff, Lai Singh filed the suit against the appellants for recovery of Rs. 3,14,465/- along with interest on the ground that the appellant and defendant No. 2, Niranjana Singh (who has not filed the appeal) had borrowed a sum of Rs. 2,50,000/- on 06.08.2002 from the plaintiff for their business of brick-kiln in the presence of the witnesses and in return, executed pro-note receipt dated 06.08.2002 in favour of the plaintiff in the presence of the witnesses, Gurminder Singh and Teja Singh. Despite the demand for the said amount along with interest, it was not returned and notice dated 23.08.2003 was served upon them. Hence the present suit was filed on 05.09.2003. The suit was contested by the defendants on various grounds including maintainability, locus standi, limitation and on merits, it was pleaded that the defendants had never borrowed any amount as alleged in the plaint and in fact, the pro-note and the receipt were forged and fabricated documents and both the defendants had filed separate suit for injunction against the plaintiff restraining the

plaintiff from getting the signatures on the blank papers with the help of police officials. On the basis of the pleadings, the trial Court framed the following issues:

1. Whether defendants took a loan of Rs. 2,50,000/- from plaintiff and executed pronote and receipt dated 6.8.2002 in his favour? OPP
2. Whether the plaintiff is entitled to recovery of suit amount along with interest, if so at what rate? OPP
3. Whether the pronote and receipt dated 6.8.2002 are forged and fabricated documents? OPD
4. Whether suit is within limitation? OPP
5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
6. Relief.

2. After taking into consideration the five witnesses produced by the plaintiff and four witnesses produced by the defendants, the trial Court came to the conclusion that the attesting witnesses, Teja Singh and Gurminder Singh and the scribe, Jaswant Kaur had proved that a sum of Rs. 2,50,000/- was borrowed from the plaintiff, Lal Singh in the presence of the witnesses after admitting the pro-note (Exhibit P3) and receipt (Exhibit P4) as correct and put their signatures in the presence of the witnesses. Even opinion of the hand-writing expert, PW5 was that the disputed signatures of both the defendants on the pro-note and receipt were similar to the signatures of the defendants. It was noticed that the defendants had moved an application under Order 6 Rule 17 CPC to take the plea that the signatures were taken on blank papers with the help of the police officials but the said application was dismissed. The filing of the civil suits by the defendants dated 05.04.2005 (Exhibit P39) and the certified copy of the judgment (Exhibit P4) was also taken into consideration whereby the civil suits for injunction filed by the defendants separately were dismissed. The trial Court also noticed discrepancies in the statements of the witnesses but noticed that a clarification had been given subsequently and was swayed by the fact that the photographs of the defendants were also affixed on the pronote, and therefore, the minor discrepancies in the pro-note regarding the place and time of execution were held to be minor variations. The fact that Gurmail Singh had taken a contradictory plea whereby he denied his signatures on the pro-note and the receipts in the written statement and his stand in the affidavit that the signatures were obtained forcibly was also noticed. Accordingly, keeping in view the judgment of the Hon'ble Supreme Court in the case of [Mallepudi Venkatarao Vs. State of A.P.](#), on the issue of presumption of existence of the consideration passing on the execution of the pro-note u/s 118 of the Negotiable Instruments Act, the trial Court came to the conclusion that consideration had passed and the defendants were liable to return the amount.

However, the rate of interest was reduced to 12% from the date of execution of the pro-note till decretal of the suit and further @ 6% per annum as future interest from the date of decretal amount till realisation of the principal amount. The relief of injunction had not been pressed and no issue having been framed to that effect, was decided in favour of the plaintiff and against the defendants. On the question of limitation, since the suit was filed within 3 years, it was, accordingly, held that the provisions of limitation and locus standi of the plaintiff to file the suit was up-held. Accordingly, the judgment and decree was passed on 18.03.2009.

3. An appeal was filed before the lower appellate Court which was dismissed on 29.04.2010. Resultantly, the present regular second appeal has been filed. The counsel for the appellant has vehemently contended that the Courts below have failed to take into consideration legal notice dated 01.08.2002 (Exhibit D1) which was proved by the defendants by examining Basant Pal, Clerk of Sh. D.P. Bhardwaj to point out that a notice dated 01.08.2002 had been sent to them prior to the alleged date of pro-note and receipt on 06.08.2002. He has further contended that the discrepancies in the statements of the witnesses had been noticed by the Courts below but in spite of that, a decree had been passed against the defendants.

4. The submission of the counsel regarding the issue of the notice dated 01.08.2002 is without any substance as, admittedly, in the written statement, no such stance was taken and thus, the plaintiff could not explain in the replication regarding the said notice. It is settled principle that the parties cannot plead evidence beyond their pleadings and in the present case, once nothing was pleaded regarding the notice dated 01.08.2002, the defendants could not be permitted to spring a surprise by producing the said notice in evidence. The second submission made by the counsel for the appellant that the statements of the witnesses were not supporting each other regarding the signing of the pro-note and the place cannot be given much importance as, admittedly, the pro-note was executed on 06.08.2002 and the statements were recorded after a period of 2 years on 21.07.2004. Witnesses cannot be expected to depose in a parrot like manner and slight discrepancy is bound to occur which goes on to show that they are speaking the truth. Once both the witnesses to the pro-note had been examined u/s 118 of the Negotiable Instruments Act, there is a presumption that consideration has passed and in view of the law laid down by Hon"ble Supreme Court in the case of Bharat Barrel & Drum Company v. Amin Chand Payrelal, 2 1999(2) CCC 535 the plaintiff had succeeded in proving his case and the onus thus shifted upon the defendants. The defendants, in their written statement, neither gave exact particulars of the fraud committed upon them as per provisions of Order 6 Rule 4 of the Code of Civil Procedure, and therefore, once such particulars of fraud had not been given and neither anybody has been examined to show that such fraud has been committed upon them, the defence taken by them is without any basis, and accordingly, they failed to prove the said plea. Keeping in view the above facts and circumstances, no question of law much less any substantial question of law arises for consideration of this Court, and

accordingly, the appeal is dismissed and the judgments and decrees of Courts below are up-held.