

HIGH COURT OF TRIPURA
AGARTALA

RFA 02 OF 2021

Shri Sankar Ghosh, son of Late Parimal Ghosh,
Office at 14, A.K.Road, PO, PS-West Agartala,
PO & Sub-Division-Agartala, District-West Tripura,
Pin-700001; resident of Ramnagar Road No.11,
P.O. Ramnagar, PS-West Agartala, PO & Sub-Division-Agartala,
District-West Tripura, Pin-799002.

....**Appellant.**

Vrs.

1. Smt. Rikta Pal (Sarkar), Wife of Late Sankar Prasad Sarkar,
Resident of Jail Road, PO, PS & Sub-Division-Belonia,
District-South Tripura.

....**Respondent.**

Present:

For the appellant : Mr. Sankar Lodh, Advocate.

For the respondent : Mr. D. Bhattacharya, Sr. Advocate.
Mr. Samar Das, Advocate.

Date of hearing &
date of delivery of
judgment : 15.03.2023

Whether fit for reporting : Yes/ No

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR.JUSTICE ARINDAM LODH

JUDGMENT & ORDER(ORAL)

[T. Amarnath Goud, ACJ]

This first appeal under Section 96 of the Code of Civil Procedure,1908 is directed against the judgment dated 18.02.2020 & decree dated 02.03.2020, passed by learned Civil Judge (Sr. Division), Belonia, South Tripura in Money Suit No.01/2017.

2. It is the case of the original plaintiff that during life time of her husband, namely, Sankar Prasad Sarkar, the defendant had a good relation with the plaintiff and their family and used to take bricks from the Brick Industries being owned by plaintiff's daughter along with her partners. Having the advantage of that relation, the defendant approached to the husband of plaintiff to give Rs.15,00,000/- (Rupees Fifteen Lakh) only in order to run his business and also assured to return the same within two years with 25% profit from his business. At that time, the defendant was very distressed and the plaintiff and her husband become emotional and agreed to give loan to him. On being agreed by the plaintiff and her husband, the defendant executed a Promisory Bond on a Non-Judicial stamp paper stating that the husband of the plaintiff gave Rs.15,00,000/- on 06.06.2014 in the house of the plaintiff in presence of the plaintiff and one Smt. Shampa Datta who were cited as witnesses of the Promisory Bond.

3. It is asserted in the plaint that after one year of the execution of Promisory Bond, when the husband of the plaintiff fell ill, the plaintiff requested the defendant to return back the said amount for spending the same in connection with treatment of her husband. The defendant, then, refused to pay the said amount. Ultimately, on 10.04.2016 her husband died. The plaintiff thereafter on 06.06.2016, served an Advocate Notice to the defendant but that was turned down by the defendant.

4. The plaintiff being one of the legal heirs of deceased Sankar Prasad Sarkar filed a Money Suit being numbered as MS 01 of 2017 before the court of learned Civil Judge (Sr. Division), Belonia, South Tripura for realization or recovery of Rs.15,00,000/- from the defendant Sankar Ghosh which was taken by him as a loan from the deceased husband of the plaintiff on 06.06.2014 after executing a Promissory Bond.

5. By way of filing written statement by the defendant, it is contended that he had not taken any loan for an amount of Rs.15,00,000/- on 06.06.2014 from the husband of the petitioner after executing any Promissory Bond. It is contended that the said Promissory Bond is manufactured one and it is false, fabricated and concocted. It is the plea of the defendant that though he had received an Advocate Notice, but, he felt redundant to reply since he did never take any loan from the plaintiff. The defendant's further plea is that since he dealt with the business of civil construction, he had a good relation with the husband of the petitioner who was engaged in brick kiln. In the year 2015 when the husband of the petitioner fell ill, the defendant took him out of the State for his better treatment and the entire expenditure of the treatment of the husband of the petitioner was borne by the defendant. It is the assertion of the defendant that just to grab money from him, the plaintiff had instituted the money suit.

6. After having gone through the plaint and written statement of the parties to the suit, the learned trial court had framed the following issues for decision:

- (i) Whether the present case is maintainable in its form and nature?
- (ii) Whether the plaintiff has got a proper cause of action?
- (iii) Whether the plaintiff is entitled to get a decree declaring that the defendant owes an amount of Rs. 15,00,000/ with a direction to re-pay the same ?
- (iv) Whether the plaintiff is entitled to get a decree for realization of the above amount with any interest accrued thereupon? And
- (v) To what other relief the plaintiff is entitled?

7. After hearing learned counsels appearing for the parties, the learned trial court had allowed and decreed the suit in favour of the plaintiff with the following order:

“It is ordered that the defendant do pay to the plaintiff the sum of Rs.15,00,000/- (Rupees fifteen lakh only) with interest thereon at the rate of 9% (Nine percent) per annum from the date of decree to the date of realization.”

8. Being aggrieved by and dissatisfied with the judgment and decree of the learned trial court, the defendant Sankar Ghosh, i.e. the appellant herein, has filed the instant appeal before this court.

9. We have heard Mr. Sankar Lodh, learned counsel appearing for the appellant as well as Mr. D. Bhattacharya, learned senior counsel assisted by Mr. S. Das, learned counsel appearing for the respondent.

10. In this appeal, the entire controversy centers around the Promissory Bond which was executed by the appellant, Sankar Ghosh on 06.06.2014. On perusal of the cross-examination of the defendant-appellant i.e. DW-1, it appears that he denied the entire allegation levelled against him by the plaintiff-respondent. In cross-examination the defendant-appellant stated that he did not borrow Rs.15,00,000/- (Rupees Fifteen Lakh) only on execution of any Promissory Note from the husband of the plaintiff-respondent in presence of Advocate Shampa Datta and the plaintiff. He also denied that he put his signature on the Promissory Note and agreed to return the borrowed money to the plaintiff.

11. Another witness i.e. PW-2, Miss Shampa Datta though has identified her signature as Exbt. 1/2 in the Promissory Note dated 06.06.2014, but, at the time of her cross-examination, she stated that she could not remember the amount or the number of the stamp paper in which the Promissory Note was prepared.

12. PW-1, the plaintiff has stated in her examination-in-chief that she signed on a Promissory Note as a witness and she identified her signature which was marked as Exbt.1/1. In cross-examination, PW-1

stated that she did not mention in her examination-in-chief or in the complaint as to how her husband arranged for the cash amount of Rs.15,00,000/-. She did not submit any document relating to income tax assessment or payment made by her husband or the status of his bank account.

13. On careful scrutiny of the evidence of the parties, we find that the alleged Promissory Bond was prepared in a non-judicial stamp paper on 06.06.2014 in the house of the plaintiff. On perusal of the Promissory Bond it appears that the stamp was purchased in the year 2005 from the stamp vendor Ashish Acharjee, but, in whose favour it was purchased nothing could be gathered. Further, we find that the signature of the executant i.e. the defendant-appellant, Sankar Ghosh has not been exhibited to prove the contents of the said Promissory Bond. It is again observed that the transaction between the husband of the petitioner and the defendant was occurred in the year 2014 though, the stamp paper was purchased in the year 2005. This clearly shows that the stamp paper was purchased long before the date of execution. The stamp paper could have purchased just before the date of execution. So, this time gap between the time of purchasing and executing of the Promissory Bond was abnormally long. If such huge money was lent, then, there could be an execution of registered document between the parties. But, no such registered document is there.

So, the alleged Promissory Bond which is the basic document has not been proved and it appears to be a fictitious and concocted document.

14. For the reasons stated above, the impugned judgment & Decree dated 18.02.2020 & 02.03.2020 respectively, passed in MS 01 of 2017 by the learned Civil Judge (Sr. Division), Belonia, South Tripura, is not sustainable on law as well as on facts and the same deserves to be quashed and set aside. Accordingly, the same is quashed and set aside.

The appeal, accordingly, stands allowed and disposed of. Pending application(s), if any, shall also stand disposed.

Send down the LC records along with a copy of this judgment forthwith.

JUDGE

CHIEF JUSTICE (ACTING)



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