

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.3.2015

PRONOUNCED ON :1.4.2015

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

S.A.No.291 of 2008

K. SasikumaranAppellant/Defendant

vs.

G. SasikumarRespondent/Plaintiff

Second Appeal against the judgment and decree dated 28.3.2007 and made in A.S.No.1 of 2007 on the file of the Subordinate Court, Coimbatore, reversing the judgment and decree dated 26.10.2006 and made in O.S.No.1862 of 2004 on the file of the District Munsif Court, Coimbatore.

For appellant : Mr.Rupert J. Barnabas

For respondent : Mr.G. Jehanathan

JUDGMENT

The judgment and decree, dated 28.3.2007 and made in A.S.No.1 of 2007 on the file of the Subordinate Court, Coimbatore, reversing the judgment and decree dated 26.10.2006 and made in O.S.No.1862 of 2004 on the file of the District Munsif Court, Coimbatore, are under challenge in this memorandum of second appeal.

2. The appellant is the defendant in the suit in O.S.No.1862 of 2004, whereas the respondent is the plaintiff.

3. For easy reference and for the sake of convenience, the appellant may hereinafter be referred

to as the defendant and the respondent be referred to as the plaintiff wherever the context so require.

4. The necessary facts leading to the filing of this second appeal are as under:-

a. On 22.12.2002 the defendant had borrowed a sum of Rs.50000/- from the plaintiff agreeing to repay the same together with interest at the rate of 24% per annum.

b. In spite of repeated demands, since the defendant had not chosen to repay either the principal or interest, the plaintiff has filed the for the following relief:-

a. Directing the defendant to pay a sum of Rs.54,000/- together with interest on Rs.50000/- at 24% per annum from the date of the suit and till realisation and also for costs.

5. Since the defendant is working as Head Cook in Cadet Mess Air force Administrative College, Red Fields and earning Rs.8000/- and odd as monthly wages, the defendant is not entitled to the benefits under the Debt Relief Act.

6. The defendant resisted the suit by filing his written statement denying the allegations made in the plaint. The defendant denied that he never received Rs.50000/- from the plaintiff for interest. He borrowed money from the K.K.K. Finance, which was running by Mrs. Selvi w/o. Kattalai Kannan and a notice, dated 5.1.2001 was sent through a lawyer. A pro note given to the said finance company was obtained and misused with an ulterior motive.

7. Further, the plaintiff was working as an collection agent of the said finance company. The defendant also denies that he was receiving a sum of Rs.8000/- as monthly salary by working as chief chef in the administrative office of the Air Force.

8. The defendant had also filed a additional written statement saying that in the year 1996, the defendant had borrowed a sum of Rs.10000/- and he paid the same along with the interest of Rs.12000/-. But he did not receive the unfilled and signed pro notes from the said finance company. Later, the said finance company was closed and approached the said Selvi and asked to return the unfilled and signed documents

and pro notes. But the said selvi had assured that those documents were torn off.

9. The defendant has further stated that when the money borrowed from the said finance company and singed in the unfilled pronotes in which only 40 paise stamp was affixed, i.e., (20 + 20).

10. While so, the plaintiff had filed a suit against the defendant in the year 2004 saying that the defendant had borrowed a sum of Rs.50000/- in the year 2002.

11. The defendant has stated further that in the year 1998 the Stamp Act was amended and that instead of 0.20 paise stamp, one rupee stamp has to be affixed. However, even in the year 2002, only 0.40 paise stamp was affixed, which would show that the plaintiff had misused the pro note given to the said finance company.

12. On the aforesaid averments, the defendant sought for the dismissal of the suit.

13. Based on the material proposition of facts arising from the pleadings of the parties to the suit, the trial Court has formulated as nearly as four issues and one additional issue for the better adjudication of the suit.

14. In order to substantiate their respective cases, both the plaintiff and the defendant were directed to face the trial. Accordingly, the plaintiff Sasikumar has examined himself as P.W.1 and one more witness was examined as P.W.2 and during the course of their examination only one document has been marked as Ex.A.1. On the other hand, the defendant K. Sasikumaran was examined as D.W.1 and during the course of his examination also only one document has been marked.

15. On evaluating the evidences both oral and documentary, the trial court had proceeded to dismiss the suit.

16. Having been aggrieved by the impugned judgment and decree of the trial Court, dated 26.10.2006, the plaintiff had preferred an appeal in A.S.No.1 of 2003 on the file of the Principal Sub Court, Coimbatore.

17. That appeal was allowed and hence, the defendant has filed the present second appeal before this Court.

18. The second appeal has been admitted on the following substantial question of law:-

"a. When specific stand had been taken in the written statement regarding insufficiency stamped promissory note should the trial court frame that as an issue or not? And in its absence should not the lower appellate court frame that as an issue?

b. Whether an insufficiently stamped promissory note can be admitted in evidence in violation of the scheme and scope of Section 35 of the Indian Stamp Act?

c. Whether the explanation given by the Appellant in cross examination would amount to rebuttal or not as contemplated under Section 118 of the Negotiable Instruments Act?"

19. Heard Mr. Rupert J. Barnabas, learned Counsel appearing for the appellant and Mr. G. Jehanathan, learned counsel appearing for the respondent.

20. Since the above second appeal has been admitted on the above substantial questions of law, it is imperative on the part of this Court to see whether the lower appellate court had framed the issues on the above questions and decided the same.

21. The lower appellate court had framed the following three issues:-

a. Whether the plaintiff is entitled for a decree as sought for in the plaint?

b. Whether the suit pronote was created based on the pronote given as security to the K.K.K. Finance by the defendant?

c. Whether the appeal can be allowed setting aside the judgment and decree of the lower court?

22. In the written statement filed by the defendant, it is stated as under:-

"The defendant further submits that in the year 1996 for his family emergency expenses, he has needed to borrow a sum of Rs.10000/-. At that time the defendant has approached the said K.K.K. Finance, the said finance company has made the defendant to sign some of the documents and unfilled pronotes which was affixed 20+20 paise revenue stamped. The defendant is ready to prove that he has signed in the year 1996."

23. Further, it is stated that,

"The defendant further submits that in the year 1998 the revenue stamp was amended to one rupees from 20 paise. But in the year 2002, 20+20 paise revenue stamp were affixed in the pronote. This would show that the plaintiff is trying for wrongfully gaining to recovery the money from the defendant, which was signed presented in the year 1996 to K.K.K. Finance."

24. From the above averments averred in the written statement filed by the defendant would clearly show that the case of the defendant is that the alleged pronote was given in the year 1996 to the K.K.K. Finance as security for a sum of Rs.10000/- and the stamp was affixed for 40 paise, i.e., 20+20 and the same was misused by the plaintiff for demanding money from the defendant as if the defendant had borrowed a sum of Rs.50000/- in the year 2002, if so, as per the amended stamp act, one rupee stamp should have been affixed in the pronote, if it had been executed in the year 2002, whereas in the suit pronote only 40 paise stamp has been affixed and therefore, the further case of the defendant is that the pronote, which was given as security to the K.K.K. Finance in the year 1996, was misused by the plaintiff for the purpose of the present suit and therefore, the suit pronote is a forged one and hence, the suit is liable to be dismissed.

25. Though the defendant had averred as above in his written statement, a perusal of the judgment of the lower appellate court and the above

extraction of the issues framed by the lower appellate court would reveal that no issue has been framed with regard to the insufficiently stamped pronote and if so, whether can it be admitted in evidence and the explanation given by the defendant in his cross examination would amount to rebuttal or not as contemplated under Section 118 of the Negotiable Instruments Act.

26. It is settled law that based on the pleadings of the parties, the issues to be framed and such issues to be decided based on the legal evidence.

27. In the case on hand, though the defendant had averred about the stamp affixed in the pronote is insufficient and therefore, it is a forged one, no issue has been framed to decide the same. Further, no issue has been framed as to whether such insufficiently stamped pronote can be admitted in evidence or not. Further, in the judgment of the lower appellate court nothing has been discussed about the explanation given by the defendant in his cross examination as to whether such explanation would amount to rebuttal as contemplated under Section 118 of the Negotiable Instruments Act.

28. In the absence of framing of such issues by the the lower appellate court and in the absence of any answer for the above said issues, when especially, this second appeal is admitted on the above said substantial questions of law, this Court is of firm view that atleast the lower appellate court, even in the event of the failure of the trial court to frame such issues, being a final fact finding court, should have framed the issues as afore stated and decided the same on the basis of the legal evidence. In the absence of the same, it is not just and proper for this Court to dispose of the second appeal on merits either one way or the other.

29. While dealing with the identical situation, the learned Single Judge of the High Court of Gujarat at Ahmedabad in Dumala Vaghpara Gram Panchat vs. Chunilal Tribhovandas Patel (CDJ 1999 GHC 280), has observed as under:-

5). Appeal is a valuable right of the parties conferred by law. There is a hierarchical arrangement made in the law to finally decide the controversy of the parties litigating so as to avoid any further litigation.

(6.) First Appellate Court is very important link in the hierarchical chain because the First Appellate Court is a last court of the fact finding. It is, therefore, an obligatory upon the First Appellate Court being final court of fact finding to meet with the reasoning's of the trial court and to indicate its own reasons for the conclusion which it might arrive at. It is also the duty of the First Appellate Court to discuss the material evidence on record so as to decide the controversy finally between the parties on the issues of law and facts. Rule 31 O.41 of the Code of Civil Procedure, therefore, is enacted and it casts upon a duty that in the judgment, the Appellate Court must state the following facts: (i) the points for determination, (ii) the decision thereon; (iii) the reasons for the decision; and (iv) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. This provision is mandatory and imperative. The object behind the provision is two fold. Firstly, to afford the parties an opportunity of knowing and understanding the grounds of the decisions with a view to enable them to exercise the right of Second Appeal, and secondly, to enable the High Court in Second Appeal to judge whether the Lower Appellate Court has properly appreciated the case and has decided it after applying its mind to it and that whether material on record is considered in judicial manner.

(7.) Therefore, it is expected from the First Appellate Court that the decision of the First Appellate Court must be self-contained and complete and adequate and satisfactory. To achieve the above mentioned two objectives thorough scrutiny to appreciate the evidence on record and the reasons for the conclusions arrived at through the above mentioned judicial process are essentials and these are the salient features of the judgment as has been envisaged under R.31 O.41 of the Civil Procedure Code.

(8.) When the First Appellate Court reverses the findings of the trial court, then, the First Appellate Court must be more careful. Its judgment must contain the definite finding of the questions involved, the reasons for reversing the decision of the trial court must be distinctly stated; and appellate court is duty bound to express its valuable opinion on all points on which the lower court has based its conclusion. All that necessary is its judgment must clearly suggest that it has applied judicial mind to the appreciation of the evidence and manifestly conveys the judicial thinking by which it differs from the conclusion of the lower court.

(12.) Therefore, the circumstances have led to only one conclusion, and that too, to remand the matter to the First Appellate court for the proper adjudication. I am conscious of the fact that the First Appellate Court may not decide the issues which are not necessary or important for deciding the Appeal, but that is not the law that the appeal can be decided even not deciding the crucial and necessary issues. I am also conscious of the fact that under Sec. 103 of the Civil Procedure Code, in certain circumstances, Second Appellate Court can decide the issue of fact, but this is not the proper case to deal with under Sec.103 of the Civil Procedure Code. This is the case where there is no judgment at all of the First Appellate Court according to law. The Second Appellate Court, which by law, empowered only to decide the substantial questions of law, cannot be expected to decide the question of fact and law and act as First Appellate Court, and hence, inevitably the only course open is to remand the Appeal back to the First Appellate Court i.e. District Court, Bharuch, to decide the same according to the law.

(13.) Therefore, in the facts and circumstances of this case, the judgment of the First Appellate Court in Civil Appeal No. 51 of 1993 pronounced on 31/12/1998, is required to be quashed and set aside and accordingly the same is quashed and set aside. Regular Civil Appeal No. 51 of 1993, therefore, is remanded back to the District Court at Bharuch. The District Court, Bharuch, is directed that after affording sufficient opportunities to the parties of hearing to decide the Appeal afresh on all

points which may arise in the matter according to law. Learned counsels of parties have agreed here that by consent of both the parties that they be allowed to produce additional evidence if necessary for final adjudication of the matter, and if such request is made by the either party, the First Appellate Court shall allow such party to lead relevant evidence, documentary or oral. The First Appellate Court shall then take all the material into consideration and shall decide the appeal afresh on the issues. The District Court is further directed to decide the Appeal within two months from the date of receipt of writ of this Court.

30. Further, the learned Single Judge of this Court in Kunjammal alias P.J. Aleyamma Vs. Mrs. Mariammal Iype and another (CDJ 2001 MHC 727), has held that since the judgment of the learned appellate Judge is not a judgment in the eye of law and it stands vitiated by bias, instead of this court deciding the matter on the evidence recorded by the trial court, it would be fit and proper to remand the matter to the first appellate court for fresh disposal and within a time frame.

31. Therefore, in the considered view of this court and in the light of the principles laid down in the above cited decisions, this Court being the Second Appellate Court, which by law, empowered only to decide the substantial questions of law, cannot be expected to decide the question of fact and law and act as the First Appellate Court, and hence, inevitably the only course open is to remand the Appeal back to the First Appellate Court i.e. Subordinate Court, Coimbatore, to decide the same according to the law.

32. Therefore, in the facts and circumstances of this case, the judgment and decree of the First Appellate Court, dated 28.3.2007 and made in A.S.No.1 of 2007 is required to be quashed and set aside and accordingly the same is quashed and set aside and the matter, therefore, is remanded back to the Subordinate Court, Coimbatore. The Subordinate Court, Coimbatore, is directed that after affording sufficient opportunities to the parties of hearing to decide the Appeal afresh on all points, including the following points, which may arise in the matter according to law.

a. Whether the suit pronote is insufficiently stamped and if so, can it be admitted in evidence as per Section 35 of the Indian Stamp Act.

b. Whether the suit pronote was the pronote given to K.K.K.Finance by the defendnat.

c. Whether the explanation given by the defendant in cross his examination would amount to rebuttal or not as contemplated under Section 118 of the Negotiable Instruments Act?"

33. Further, the learned counsels of the parties have agreed here that by consent of both the parties that they be allowed to produce additional evidence if necessary for final adjudication of the matter, and if such request is made by the either party, the First Appellate Court shall allow such party to lead relevant evidence, documentary or oral. The First Appellate Court shall then take all the material into consideration and shall decide the appeal afresh on the issues, as afore stated. The Subordinate Court, Coimbatore, is further directed to decide the Appeal within three months from the date of receipt of a copy of this order.

With the above directions, the second appeal is disposed of. However, there will be no order as to costs. Office is directed to send back the Record and Proceedings of the matter immediately to the First Appellate Court.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rnb

To

1. The Sub Court, Coimbatore.
2. The District Munsif Court, Coimbatore.

Copy to: The Section Officer,
V.R. Section,
High Court, Madras.

- + 1 cc to Mr.Rupert J. Barnabas, Advocate Sr.18487
- + 1 cc to Mr.G. Jehanathan, Advocate Sr.18535

S.A.No.291 of 2008