THE HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.876 OF 2015

JUDGMENT:

The defendant in O.S. No.7 of 2013 on the file of the Senior Civil Judge's Court, Bodhan, (for short, 'the trial court') and appellant in A.S. No.5 of 2015 on the file of the VII Additional District Judge at Bodhan, (for short, 'the first Appellate Court') preferred this appeal challenging the Decree and Judgment passed in A.S. No.5 of 2015, whereby the Decree passed by the trial Court in O.S. No.7 of 2013 is confirmed.

02. The respondent – Chalasani Sudeer filed the suit for recovery of Rs.8,50,000/- which is inclusive of principal and interest based on the promissory note allegedly executed on 29.09.2012 for Rs.4,50,000/- by the defendant for his family necessities, agreeing to repay the same with interest @ 24% per annum. Despite several demands made by the plaintiff, the defendant did not discharge the debt due. Hence the suit.

03. The defendant filed written statement denying the material allegations *inter alia* contending that the plaintiff never borrowed any amount from the plaintiff under the promissory note. The plaintiff and the defendant are acquainted with each other and for running dairy milk centre at Kotagiri by the defendant, he purchased 27 cows from the plaintiff. The plaintiff with a *malafide* intention to have wrongful claim, made him to believe that 20 cows are pregnant cows and 7 cows are milk giving cows and those cows are hale and healthy. Out of 27 cows, 15 cows died due to some unknown disease. At the time of purchase of the said cows on 29.09.2012 at Nachupally, the plaintiff obtained three blank promissory notes which were filled with only date and three blank cheques. Taking advantage of the blank signed promissory notes, the plaintiff fabricated promissory note and filed the present suit. As such, the promissory note is not supported by any consideration and prayed to dismiss the suit.

04. On the strength of the above pleadings, the trial Court framed the following issues.

1. *Whether the suit documents are true, valid and binding on the defendant?*
2. *Whether the plaintiff is entitled for recovery of suit amount?*
3. *To what relief?*

05. During trial, on behalf of the plaintiff, P.Ws.1 to 4 were examined, got marked Ex.A.1 and on behalf of the defendant, D.Ws.1 to 5 were examined, got marked Ex.B.1.

06. Upon hearing both the learned counsel, considering the oral and documentary evidence, the trial Court Decreed the suit for Rs.4,83,900/- together with interest @ 24% per annum from the date of filing the suit till the date of Decree and thereafter @ 6% per annum on the principal amount of Rs.4,50,000/-

07. Aggrieved by the Decree and Judgment, the appellant (the defendant before the trial court) preferred the appeal in A.S. No.3 of 2015 before the VII Additional District Judge at Bodhan and the first Appellate Court, upon hearing argument, considering the grounds urged before it, dismissed the appeal, confirming the Decree and Judgment passed by the trial Court.

08. The defendant being unsuccessful before the Appellate Court preferred the second appeal raising various contentions and the following are the substantial questions of law raised in paragraph 16 (a) to (e).

a) *Whether in the facts and circumstances as emerged by evidence on record, the Judgment of the lower Courts are not on account of perversity in reaching the findings and due to misreading of evidence and due to non-ascertaining the fact as to whether the suit document Ex.A.1 was given as security for cows' transaction?*

b) *Whether the lower Appellate Court below is right in law in confirming the Judgment and Decree of the trial Court without ascertaining the fact as to whether consideration under Ex.A.1 was passed?*

c) *Whether in the facts and circumstances as reflected by evidence on record in a suit for recovery of money basing on a promote, it is not incumbent/ obligatory on respondent to discharge the burden of proof to rebut the plea of appellant as regards non passing of consideration under Ex.A.1 pronote but relating the pronote as security for a separate transaction covered by Ex.B.1 in a situation where the signature of respondent on Ex.B.1 is admitted and the explanation therefore as dominating creditor obliging the debtor with an unreal version is highly inprobable?*

d) *Whether the approach of the respondent with reference to transaction reflected by Ex.B.1 i.e. vouching for a fictitious transaction for purpose obtaining loan from financial institution is not opposed to public policy?*

e) *Whether the lower Courts below are justified in not ascertaining a to whether Ex.B.1 is having any bearing on Ex.A.1 to ascertain that the suit document (Ex.A.1) was issued as security for cows' transaction (Ex.B.1)?*

09. During course of argument at the stage of admission, the learned counsel for the appellant, Sri S.A. Razack, would contend that the promissory note was obtained as security for sale of cows under Ex.A.1 and it was not supported by any consideration. Therefore, the burden is upon the plaintiff to prove that the promissory note was supported by consideration. He further contended that the agreement under Ex.B.1 was executed to obtain loan from the Bank and therefore, the transaction is against the public policy and not enforceable under law. Therefore, the plaintiff is disentitled to claim any relief in the suit and prayed to allow the appeal setting aside the Decree and Judgment, since both the trial Court and first Appellate Court failed to consider oral and documentary evidence with reference to specific pleas raised by the defendant.

10. The learned counsel for the appellant/ defendant mainly placed reliance on the Judgment of this Court reported in **Ratanchand Hirachand v. Askar Nawaz Jung and others**[1] to contend that no plea is required to challenge the enforceability of the transaction, when it is opposed to public policy. He also further contended that the burden is upon the plaintiff to prove that Ex.A.1 is supported by consideration, when the defendant is able to discharge his initial onus of proof, placing reliance on the Full Bench Judgment of this Court reported in **G. Vasu v. Syed Yaseen Sifuddin Quadri**[2] and another Judgment of the Apex Court reported in **Kundan Lal Rallaram v. Custodian Evacuee Property, Bombay**[3]**.**

11. The present appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), whereunder the jurisdiction of this Court is limited and this Court has to examine whether there is substantial question of law or not and if the Court finds that there is no substantial question of law, the Court can dismiss appeal summarily at the stage of admission.

12. One of the major contentions of the defendant is that the promissory note - Ex.A.1 was executed as security for the transaction covered by Ex.B.1. Even in the evidence of D.W.1, he admitted about the execution of the promissory note. Even assuming for a moment, the plea of the defendant that he handed over blank signed promissory note, it is nothing but permitting the plaintiff to fill the document. The promissory note, at best, is an inchoate document under Section 20 of the Negotiable Instrument Act 1881 (for short, 'the Act') and when once a document was duly signed and delivered to the plaintiff, it is nothing but an inchoate instrument under Section 20 of the Act and Section 20 of the Act deals with the Inchoate Stamped Instrument. It reads as under:

> *"20. Inchoate stamped instruments:- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount."*

13. So a bare reading of Section 20 of the Act makes it clear that a holder is competent to make or complete the instrument, when the negotiable instrument is handed over duly signing on it. It also impliedly granted that the holder is authorized to fill the document.

14. In this regard, I am persuaded by a Judgment (unreported) of Karnataka High Court in CRP Nos.1574, 1590, and 1591 of 1995 decided on 01.10.1999 (**H. Maregowda and etc., v. Thippamma and others)** wherein the Single Judge of Karnataka High Court held as follows:

> *"A reading of Section 20 of the Negotiable Instruments Act which is extracted above will reveal that the words used are either wholly blank or having written thereon an incomplete negotiable instrument.*
>
> *Thus, even if a blank promissory note is given, it cannot be taken as a defence to avoid a Decree based on such instrument, once it is found that the document produced before the Court satisfies the requirements of a promissory note within the meaning of the Negotiable Instruments Act. The Instrument may be wholly blank or incomplete in particular; in either case, the holder has the authority to make or complete the instrument as a negotiable one."*

15. In **Alapati Sivaramakrishnayya v. Alapati Kasiwiswanadham and others**[4] this Court laid down the same principle and held as follows:

"In the case of a letter where there can be no possible question of execution in the sense that no formalities are insisted upon by law, proof of a man's signature under it is prima facie proof that the contents of the letter are attributable to his authorship. If a person denies that he has written a letter which contains his signature, then surely he must prove what he alleges, i.e. the letter was got up on a blank piece of paper containing his signature, as also the circumstances in which he happened to put his signature on such a piece of paper. There is no question of proving the "execution" of a letter by the signatory.

Even where formal execution as such has got to be proved, cases have held that where a man's signature appears in a document at the place where the executant of such a document would normally sign, then the signature may prima facie be taken as having been put in token of execution and that therefore the proof or admission of a signature in a document requiring the execution in a particular form is prima facie proof that the document was executed by the signatory, because normally, it has to be presumed under Section 114 of the Evidence Act that a person only puts a signature in a document in token of his execution thereof. But the case of letter is an fortiori case because in such a case, there is no question of any execution."

16. Similarly, in **Duggineni Seshagiri Rao Vs. Kothapalli Venkateswara Rao**[5], the Division Bench of this Court held as follows:

"Four things are necessary for an instrument to be a promissory note: 1) It should be in writing; 2) It should have an unconditional undertaking; 3) It should be signed by the maker; and 4) it should be in favour of certain person or to a bearer. Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of 'inchoate' is 'incomplete'. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the 'promissory note' under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was in drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions. Holder of the instrument becomes a bearer of the instrument."

It was further held as follows:

"The plaintiff had been able to prove the execution of the document. On the other had, if the document was disputed or doubted the onus was on the defendant to show that the document was a forgery because a presumption is in favour of plaintiff under Section 118 of the Negotiable Instruments Act."

17. In **Sukhminder Singh Vs. Nirbhai Singh**[6], the Single Judge of Punjab and Haryana High Court reiterated the same principle.

18. In view of the law declared by the Division Bench of this Court and persuaded by the Judgments of Single Judges of Karnataka and Punjab and Haryana High Court, I find that the promissory note – Ex.A.1 duly signed with date and delivered to the plaintiff, is a valid document as it satisfies the conditions required under Section 42 of the Act.

19. One of the contentions of the defendant is that the transaction covered by Ex.A.1 and execution of Ex.B.1 is opposed to public policy. In fact, the written statement is silent about this plea and no specific plea was raised before the trial court as required under Rule 4 of Order VI of the Code of Civil Procedure. Even in the grounds of the appeal before the first Appellate Court, no such plea was raised, but for the first time the plea that the transaction covered by Ex.B.1 is against the public Policy was raised during hearing in the second appeal, while raising the substantial question of law in paragraph 16 of the grounds of appeal. He mainly contended that no plea need be raised in the written statement to invalidate the transaction covered by Ex.B.1 coupled with Ex.A.1, and drawn the attention of this Court to the Judgment in **Ratanchand Hirachand's** case referred to supra and drawn attention of this Court at paragraphs 36 and 37 of the Judgment, wherein the Division Bench of this Court held as follows:

"In our view, an agreement the object of which is to use the influence of a person with Ministers of the Government to obtain favourable decision, is destructive of all sound and god administration. It discloses a tendency to corrupt or to influence public servants to decide and determine matters otherwise than upon their own merits, a tendency more injurious to the public interest. We do not have the slightest doubt that such an agreement is contrary to public policy."

20. The Division Bench while following the principles laid down in **Montepone v. Menday Motor Components Company Limited**[7] to conclude that it is the duty of the Judge to take the objection when it comes to the notice that the agreement is contrary to the public policy.

21. He has drawn the attention of this Court to Section 23 of the Indian Contract Act, 1872, which deals with what considerations and objects are lawful, and what not. Even according to Section 23 of the Indian Contract Act, 1872, the consideration or object of an agreement is lawful, unless "it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

22. No doubt, if there is specific plea in the written statement and considered by the trial court and first Appellate Court, it is a good ground to consider the same by this Court in the second appeal while exercising the jurisdiction under Section 100 of the Code. The general principle is that unless a specific plea is raised in the written statement, any amount of evidence adduced cannot be looked into to grant relief in favour of a particular party.

23. The general principle is that Court cannot travel beyond pleadings and record finding as held by the Apex Court in **State of Maharashtra v. Hindustan Construction Company Limited**[8] **Kalyan Singh Chouhan v. C.P. Joshi**[9] and **Maria Margarida Sequeria Fernandes v. Erasmo Jack De Sequeria**[10] wherein the Apex Court held that

> *"Relief not founded in pleading cannot be granted. A decision of a case cannot be based on ground outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of pleadings in that respect. No party can be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the parties in support of the case set up by it."*

And it further held that

> *"where evidence was not in lines of pleadings, the said evidence cannot be looked into or relied upon."*

24. In **Hindustan Construction Company Limited** and in **Kalyan Singh Chouhan** cases referred to supra the Apex Court held that

> *"Pleadings and particulars are required to enable the Court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the Court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule, relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ."*

25. In view of the law declared by the Apex Court referred to supra, the law declared by the Division Bench of this Court is not binding on this Court. Even otherwise the general principle is that when special pleas like fraud, misrepresentation etc., are raised the parties have to specifically raise such plea with material particulars in view of Rule 4 of Order VI of the Code. When the defendant did not raise such plea either before the trial Court or before the first Appellate Court, such plea cannot be entertained for the first time by this Court in the second appeal. The jurisdiction of this Court is limited in view of Section 100 of the Code. Therefore, the contention of the counsel for the appellant, Sri S.A. Razak, is without any substance. On this ground the Decree passed by the trial Court, confirmed by the first Appellate Court, cannot be reversed.

26. The third contention raised before this Court is that when the plaintiff is able to discharge initial onus of proof as required under Section 118 of the Act, the onus of proof will automatically shift to the plaintiff to rebut the evidence adduced by the defendant. But the plaintiff did not adduce satisfactory and cogent evidence to dispel the evidence of defendant. Thus, the trial court as well as the first Appellate Court committed an error in passing the Decree in favour of the plaintiff.

27. In support of his contention, he placed reliance on the Judgments of the Apex Court reported in **Kundan Lal Rallaram's** case and **G. Vasu**'s case referred to supra, wherein the Full Bench of this Court and the Apex Court discussed about the burden of proof and the scope of presumption under Section 118 of the Act. Even according to the Judgment of the Full Bench of this Court, when execution of promissory note is proved by the plaintiff by producing cogent and satisfactory evidence, the onus of proof is on the defendant to prove that it was not supported by consideration. In view of the presumption that the promissory note is supported by consideration, it is for the defendant

to dispel the statutory legal presumption contained under Section 118 of the Act either by eliciting anything in the cross examination of the plaintiff's witnesses or by examining independent witnesses in support of his contention.

28. The evidence on record was not accepted by the trial Court and the first Appellate Court and drawn the presumption that Ex.A.1 was supported by consideration. The defendant failed to rebut the statutory legal presumption in any of the modes laid down in **G.Vasu's** case, this Judgment was followed in latter Judgment of the Apex Court in **Bharat Barrel And Drum Manufacturing Company Vs. Amin Chand Payrelal[11].**

29. In view of the law declared by the Apex Court and Full Bench of this Court, the duty of the defendant is to dispel

30. A perusal of the entire Judgment of the trial Court and confirmed by the first Appellate Court, it is evident that or

31. Accordingly, the appeal is dismissed at the admission stage. No costs.

32. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt.18.12.2015
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[1] 1975(1) (HC) 344
[2] AIR 1987 AP 139
[3] AIR 1961 SC 1316(1)
[4] AIR 1957 AP page 584
[5] 2001(6) ALT 95 (DB)
[6] AIR 2013 Punjab & Haryana 77
[7] (1918) 2 KB 241
[8] 2010(4) SCC 528
[9] AIR 2011 SC 1127
[10] AIR 2012 SC 1727
[11] (1999) 3 SCC 35