

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.533 of 2013

JUDGMENT:-

This Second Appeal under Section 100 of Code of Civil Procedure by the unsuccessful defendant is directed the against the decree and judgment dated 09.04.2013 of the learned District Judge, East Godavari at Rajahmundry, passed in A.S.No.69 of 2012. The learned District Judge, while dismissing the said appeal, had confirmed the decree and judgment dated 30.04.2012 of the learned I Additional Junior Civil Judge, Rajahmundry, passed in O.S.No.131 of 2009, filed by the sole plaintiff against the sole defendant for recovery of Rs.85,660/- being the principal and interest due under a promissory note dated 19.02.2006 executed by the defendant in favour of the plaintiff for a sum of Rs.50,000/- and for subsequent interest and for costs of the suit.

2. I have heard the submissions of the learned counsel for the appellant/defendant ('the defendant', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. At the time of admission of this second appeal, this Court had taken note of the substantial questions of law stated in ground nos.8, 9 and 10 of the grounds of appeal. The said questions are as follows:-

8. Whether the judgment and decree of the Courts below are vitiated by non-consideration of relevant pleading, valid evidence and by perverse reasoning?
9. Whether the Courts below are justified in decreeing the money suit under promissory note when respondent/plaintiff failed to prove the existence of enforceable debt?
10. Whether the Courts below are justified in decreeing the suit when the appellant denied the execution of

promissory note basing on admitted signature without there being any proof showing passing of consideration by the respondent as required under Negotiable Instruments Act?

4. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the pleadings of the parties in brief.

5. The case of the plaintiff is that the defendant had borrowed from the plaintiff an amount of Rs.50,000/- on 19.02.2006 to meet his family expenses and discharge sundry debts and had executed the demand promissory note on the same day agreeing to repay the said sum with interest at the rate of 24% per annum either to the plaintiff or his order on demand and that despite issuance of a notice under the original of exhibit A2, the defendant did not repay the said debt and that, therefore, the plaintiff is constrained to file the suit for recovery of the amount due.

6. The defendant resisted the suit. His defence, in brief, is this: 'The averments in the plaint are false; In the year 2000, the defendant had borrowed an amount of Rs.5,000/- by way of a cheque drawn on Andhra Bank from the first attester of the promissory note (PW2) who was working as a science teacher in Viswateja Residential High School, wherein, the defendant was working as a Record Assistant; when the defendant had borrowed the said amount from PW2, he had obtained the signatures of the defendant on two blank promissory notes, which are undated and unfilled; after the discharge of the said debt, the defendant had demanded PW2 to return the said two blank promissory notes; at that time, PW2 had represented that the promissory notes were misplaced when he had moved into another house and had promised to return the same as and when they are traced out; while the matter stood thus, since PW2 was not attending to the school properly, the defendant had to mention the same in the attendance register; on that PW2 beat the defendant; hence, the

defendant had lodged a complaint with the Station House Officer of III Town Police Station, Rajahmundry; on that PW2 gave a written apology before the police; therefore, PW2 bore grudge against the defendant and got filed the present suit through the plaintiff; The plaintiff had fabricated the said promissory note on the blank promissory note containing the signatures of the defendant; his name is not 'Annam Venkata Krishna Rao' and he is only called as 'Annam Venkata Naga Krishna Rao'; therefore, the suit is liable to be dismissed.'

7. Taking into consideration the above pleadings, the trial Court framed the following issues for trial:-

- 1. Whether the plaintiff is entitled for the suit claim as prayed for?**
- 2. Whether the plaintiff is entitled for subsequent interest at the rate of 24% per annum?**
- 3. To what relief?**

8. At trial, the plaintiff and the attesor of the promissory note were examined as PWs 1 and 2 and exhibits A1 to A3 were marked. The defendant was examined as DW1; no documents were exhibited on his side.

9. On merits, the trial Court had decreed the suit of the plaintiff. The first appeal preferred by the defendant was dismissed by the first appellate Court confirming the decree and judgment of the trial Court. Feeling aggrieved, the defendant had preferred this second appeal.

10. The learned counsel for the defendant would contend that the suit promissory note was brought into existence by PWs 1 and 2, in the circumstances stated in the written statement, and that the said promissory note is not supported by consideration and that the evidence brought on record by the plaintiff does not show the passing of consideration and that the Courts below had shifted the burden of proof on the defendant under a presumption under section 118 of the

Negotiable Instruments Act without any legal evidence adduced on the side of the plaintiff and that the Courts below ought to have seen that PW2 is only a henchman of PW1 and that in the light of the evidence brought on record by the defendant, the Courts below ought to have accepted the defendant's version and that the decrees and judgments of both the Courts below are vitiated for non-consideration of relevant pleadings and the material evidence and that therefore, the judgments of the Courts below are perverse and unsustainable and that in view of the fact that the suit promissory note is fabricated on a blank promissory note containing the signatures of the defendant and not supported by consideration, there is no enforceable debt.

11. On the other hand, the learned counsel for the plaintiff, having supported the concurrent findings of both the Courts below, had forcefully contended that none of the questions raised in this appeal are substantial questions of law. He had further read the portions of the impugned judgment and contended that the Courts below have properly considered the facts and had further appreciated the evidence in right perspective and that the well-considered judgments of both the Courts below do not call for any interference.

12. I have noted the submissions and I have given my earnest consideration to the facts and submissions.

13. The suit was brought by the plaintiff on the foot of a promissory note under exhibit A1, after issuing notice to the defendant under the original of exhibit A2. The notice was not served on the defendant and was returned with an endorsement under exhibit A3 that the addressee is not traced out. PW1 had deposed in-line with his pleadings and had maintained his stand in the cross-examination while denying the suggestions given to him in-line with the defence. He had further examined PW2, the attesor of the suit promissory note from whom the defendant, as per his defence, was said to have borrowed Rs.5,000/- by way of a cheque drawn on Andhra Bank. PW2 had supported the

case of the plaintiff and had denied the suggestions given to him in-line with the defence and had maintained his stand. Therefore, the evidence brought on record by the plaintiff is sufficient to come to a safe conclusion that the onus of proof that was on the plaintiff stood discharged. Before proceeding further, what is to be noted is that the defendant had admitted his signatures on the suit promissory note. Therefore, the initial onus of proof is on the defendant to prove his pleaded defence and also the further defence that the suit promissory note is not supported by consideration. Though the defendant had deposed in-line with his pleadings, his evidence does not find corroboration from any independent source. His defence is that he had earlier borrowed Rs.5,000/- from PW2 by way of a cheque drawn on Andhra Bank. To substantiate his evidence, he could have produced the certified copy of statement of his bank account particulars to prove that the cheque that was given by PW2 was encashed and was credited to his bank account. He could have also got summoned the bank account particulars of PW2. He did not do so. His further evidence is that as PW2 was not regularly attending to the school, he had to mention the same in the attendance register and that had led to serious disputes between him and PW2 and that he had even lodged a police complaint and that on that PW2 had tendered an apology before the police. The defendant did not take any steps to summon the record from the school or from the police station to prove his defence in this regard. Therefore, even though there was ample opportunity to produce some documentary evidence in support of his defence, the defendant did not put in any effort to produce any such documents to substantiate his defence and corroborate his oral testimony, which is self-serving.

14. In the grounds of appeal, there is no mention about the portion of material evidence, if any, which is omitted from consideration by both the Courts below. Therefore, this Court finds that the

appellant/defendant could not establish that there is any perversity in the judgments of both the Courts below. Having gone through the judgments of the Courts below, this Court finds that both the Courts below have appreciated the facts properly and the evidence in the right perspective before recording concurrent findings in favour of the plaintiff and against the defendant.

15. Viewed thus, this Court finds that no questions of law, muchless substantial questions of law, are involved in this appeal and that the appeal is devoid of merit and is liable to be dismissed.

16. Accordingly, the appeal is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in this appeal shall stand dismissed.

M. Seetharama Murti, J

11th August, 2015
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