

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.430 OF 2006

Dated 19-1-2015

Between:

Yarram Reddy Ramanjaneyulu.

..Appellant.

And:

V.N.Prasad.

..Respondent.

-
-

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.430 OF 2006

JUDGMENT:

This is an appeal against judgment dated 29-12-2005 in A.S.No.21 of 2003 on the file of Senior Civil Judge, Chirala, whereunder judgment dated 27-10-2003 in O.S.No.327 of 1998 on the file of Principal Junior Civil Judge, Chirala, is confirmed.

Appellant herein is plaintiff and he filed the above referred suit O.S.No.327 of 1998 contending that the respondent herein requested him for hand loan of Rs.50,000/- and accordingly, he advanced Rs.50,000/- on 27-7-1995 in the presence of Dr.G.Prakasarao. Plaintiff further contended that defendant agreed to repay the said amount with interest at 24% per annum within a short period and therefore, plaintiff has not obtained any document for the said hand loan due to his acquaintance with the defendant and confidence on him. He also contended that defendant failed to repay the said amount within two months and when plaintiff insisted and demanded for repayment, defendant issued a cheque dated 30-9-1995 for Rs.50,000/- as part payment towards the loan amount and when the cheque was presented for collection, it

was returned with endorsement "Insufficient Funds" and on that plaintiff issued a registered letter on 20-12-1995 and on the request of defendant, cheque was again presented on 24-1-1996 and as the cheque was again dishonoured, he got issued a legal notice on 8-2-1996 through his advocate demanding payment of amount within 15 days but the defendant neither paid the amount nor given any reply to the notice. Plaintiff further contended that he filed a criminal case under Section 138 of the Negotiable Instruments Act for dishonour of the cheque.

Defendant disputed the transaction as pleaded by plaintiff and according to him, Dr.Prakasa Rao's son was a student of defendant who got a seat in Dental College and in that connection, plaintiff came to Bangalore and as he require some amount, defendant issued cheque to plaintiff for the purpose of Prakash Rao's son's seat and as the plaintiff received money from Dr.Prakash Rao by T.M.O., plaintiff did not tender the cheque for encashment and defendant did not press for return of cheque due to confidence on Dr.G.Prakash Rao. Defendant further contended that he never went to Chirala and he had no intimacy with Dr.G.Prakasasrao or plaintiff.

Defendant contended that plaintiff has to prove oral debt as pleaded besides passing of consideration and that the suit is filed by the plaintiff at the instance of Dr.G.Prakasa Rao. It is further contended that plaintiff has no locus standi to file the suit and he has no capacity to advance such huge amount.

On these pleadings, trial court framed necessary issues and conducted trial during which, two witnesses are examined on plaintiff's side besides marking eight documents and one witness is examined on defendant's side and no documents are marked.

On an overall consideration of oral and documentary evidence, trial court dismissed the suit holding that the plaintiff failed to prove the transaction of hand loan as pleaded. Aggrieved by the dismissal of the suit, plaintiff preferred appeal to the appellate court and the learned appellate judge on a reappraisal of evidence confirmed findings of the trial court and dismissed the appeal. Now aggrieved by the same, present second appeal is preferred.

This court admitted the Second Appeal treating the ground 'a' as a ground involving substantial question of law which reads as follows:

(a) Whether in a suit filed for recovery of money basing on a cheque admittedly issued by the defendant while the court holding that "It is not probable to believe that the defendant issued Ex.A.1 in the circumstances pleaded by him" can dismiss the suit on the ground that the hand loan pleaded by the plaintiff is not proved when section 13 of Negotiable Instruments Act prescribes that the cheque is a Negotiable Instrument and that under Section 118 of the Negotiable Instruments Act that it shall be presumed that the cheque was for consideration?

-

Heard both sides.

Advocate for appellant mainly contended that the trial court was wrong in holding that the judgment of criminal court is not binding on civil court. He submitted that in a criminal case, standard of proof required is more when compared with the standard of proof in a civil dispute. He further submitted that in criminal cases, prosecution is expected to prove the allegations beyond all reasonable doubt whereas in civil matters, it is sufficient if it is probabalises the version of the plaintiff. He also submitted that when the criminal court accepted the issue of cheque towards discharge of existing debt, discarding the

same by civil court is incorrect. He submitted that the evidence on record would clearly disclose that defendant borrowed Rs.50,000/- as hand loan and plaintiff has discharged his burden and defendant failed to rebut the evidence on plaintiff's side but both trial court and appellate court without considering these aspects and also without considering the presumption under Section 118 of the Negotiable Instruments Act dismissed the suit and the judgments of the courts below are liable to be set aside.

On the other hand, advocate for defendant contended that plaintiff has to prove the facts that are pleaded with regard to hand loan transaction but he miserably failed in proving the same and for that reason, both courts dismissed the suit. He further submitted that P.Ws.1 and 2 gave different versions with regard to the alleged hand loan transaction and considering the same, trial court held that plaintiff failed to prove the transaction as pleaded in the plaint and the same is confirmed by the appellate court and that there are no grounds to interfere with the concurrent findings. He also submitted that the judgment of criminal court cannot be taken as substantial piece of evidence and it may be considered as corroborative piece of evidence when the evidence of P.Ws.1 and 2 is not convincing and not confirmed with the plaint pleadings and the corroborative piece of evidence i.e., Criminal Court judgment is of no use and on that ground, trial court held that it is not binding and therefore, there is no question of law involved in the Second Appeal and the same is liable to be dismissed.

Now the point that would arise for my consideration in this Second Appeal is whether the courts below have erred in applying presumption under Section 118 of the Negotiable Instruments Act

and in not accepting the criminal court judgment?

POINT:

It is the specific case of plaintiff that defendant borrowed Rs.50,000/- from him on 27-7-1995 as a hand loan and this transaction took place in the presence of Dr.G.Prakasarao who is examined as P.W.2. On plaintiff's side, two witnesses are examined, out of them, P.W.1 is the plaintiff and P.W.2 is Dr.G.Prakasarao. Though P.W.1 in his pleadings and in his chief affidavit deposed that he has not obtained any document for the money advanced because of his acquaintance with the defendant and confidence on the defendant, on a scanning of the entire evidence of P.Ws.1 and 2, it is crystal clear that there is no acquaintance of any kind between plaintiff and defendant. In fact, P.W.1 admitted in his cross-examination that he has no personal acquaintance with the defendant and that he does not know whether the defendant has got any branch of his coaching centre at Bangalore. According to the version of P.W.1, on the assurance of P.W.2, he has advanced money to defendant. But P.W.2 gave a contra version and deposed that plaintiff has got acquaintance with the defendant and at the time of advancing money, P.W.1 i.e., plaintiff noted this transaction on a slip but not obtained any signature from the defendant, whereas P.W.1 specifically deposed that he has not prepared any slip for the hand loan transaction and he has not made any entry in any account books.

Admittedly, P.W.1 is running a Medical Stores in "BAPUJI NURSING HOME" which clinic belongs to maternal uncle of P.W.2. From the evidence, it is clear that the acquaintance was between P.Ws.1 and 2 but not between P.W.1 and defendant. When such is the case, it is highly improbable for a business man to

advance such huge amount of Rs.50,000/- without taking any security. Considering this part of evidence, trial court held that transaction of advancing money as hand loan is not at all proved, as such, plaintiff is not entitled for any relief.

According to advocate for plaintiff, courts below ought to have drawn presumption under Section 118 of the Negotiable Instruments Act. Admittedly, the suit is not based on any document or any negotiable instrument namely cheque. The claim of the plaintiff is purely based on oral transaction of hand loan dated 27-7-1995. Drawing presumption under Section 118 of the Negotiable Instruments Act would only arise when the suit claim is based on a negotiable instrument and even the cheque said to have been issued by the defendant is not the basis for suit claim. It is only relied as a supporting piece of evidence. As rightly contended by advocate for defendant, considering supporting piece of evidence would arise only when there is evidence establishing the original transaction. In other words, if plaintiff is able to prove the hand loan transaction dated 27-7-1995, then the cheque would lend support to the main transaction, for which, the presumption can be drawn under Section 118 of Negotiable Instrument Act. When the suit is not based on any negotiable instrument, the contention of the appellant with regard to presumption under Section 118 of Negotiable Instrument Act cannot be accepted and both the courts rightly discarded this contention of plaintiff.

With regard to binding nature of criminal court judgment, as rightly pointed out by advocate for defendant that judgment cannot be taken as substantial piece of evidence, it would only be taken as corroborative piece of evidence and when the

plaintiff failed to prove the hand loan transaction, the criminal court judgment would no way helpful to the plaintiff, therefore, trial court and appellate court have rightly discarded it.

For these reasons, I am of the considered view that there is no substantial question of law involved in this Second Appeal and all the objections raised are in respect of factual aspects and therefore, there are no merits in the appeal.

Accordingly, this Second Appeal is dismissed with costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 19-1-2015.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

-
-
-
-
-
-
-
-
-
-
-
-
-

-
-
-
-
-
-

SECOND APPEAL No.430 OF 2006

Dated 19-1-2015

Dvs