

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

-

SECOND APPEAL.NO.982 OF 2012

-

JUDGMENT:

The defendant in O.S.No.263 of 2007 on the file of the Principal Senior Civil Judge, Rajahmundry and the appellant in A.S.No.235 of 2010 on the file of the VIII Additional District Judge (Fast Track Court), East Godavari, Rajahmundry preferred this appeal being unsuccessful throughout, under Section 100 of the Civil Procedure Code, challenging the concurrent findings recorded by the Trial Court and the Appellate Court and passed a decree in favour of the plaintiff in the suit for recovery of the suit amount together with interests.

The plaintiff filed suit for recovery of an amount of Rs.2,97,950/- on the foot of a promissory note. It is alleged that the defendant borrowed Rs.2,00,000/- on 23.08.2004 from the plaintiff for his family expenses and to discharge sundry debts agreeing to repay the said amount with interest at 24% per annum either to the plaintiff or to his order as and when demanded. But, subsequently, the defendant issued post dated cheque for the entire amount due under the promissory note vide cheque No.0066290 dated 30.04.2007 for Rs.2,95,750/- drawn on Vijaya Bank, Rajahmundry in favour of the plaintiff, after deducting the payments made by the defendant. Since the defendant failed to discharge the debt, the plaintiff filed a suit for recovery of total sum of Rs.2,97,950/-.

The defendant denied the alleged borrowing of amount from the plaintiff, execution of the promissory note, issue of cheque, etcetera, while contending that he borrowed Rs.1,00,000/- in the month of December, 2000, from one Satyanarayana who is a colleague of the defendant in the Railways and at the time of borrowing amount, Satyanarayana obtained bank passbooks containing 20 leaves duly

signed by the defendant and 15 blank bond papers containing the signatures of the defendant and 15 blank promissory notes duly signed by the defendant and also the salary pass book of the defendant for the purpose of withdrawal of monthly salaries of the defendant. The said Satyanarayana appointed an agent by name B. Balaji Naik as personal assistant to withdraw the salary of the defendant and to present the cheques into the bank. Thus, Satyanarayana recovered an amount of Rs.1,89,000/- from the defendant's salary and subsequently this defendant paid an amount of Rs.1,00,000/- by availing loan from Vijaya Bank, Rajahmundry to Satyanarayana, husband of the plaintiff and in total, he paid an amount of Rs.4,24,000/- on different occasions referred above.

It is also contended that the defendant got issued a legal notice dated 24.04.2007 calling upon Satyanarayana to return all the papers referred above, but Satyanarayana issued a contentious reply on 07.05.2007 with untenable allegations. Taking advantage of the papers available with Satyanarayana, created the suit promissory note and got filed the suit and thus, there is no relationship of creditor and debtor between the plaintiff and the defendant and prayed for dismissal of the suit.

Basing on the pleadings, the Trial Court framed three issues and during Trial, on behalf of the plaintiffs P.Ws 1 & 2 were examined, Exs.A- to A-3 were marked and on behalf of the defendant D.W-1 to D.W-4 were examined, marked Exs.B-1 to B-4 and Exs.X-1 to X-3 were marked.

Upon hearing argument of both the learned counsel, the Trial Court decreed the suit in favour of the plaintiff together with interests, as prayed for.

Aggrieved by the decree and judgment passed by the Trial Court, the defendant preferred an appeal before the VIII Additional District Judge, East Godavari in A.S.No.235 of 2009 which was

dismissed by decree and judgment dated 30.12.2011 confirming the findings recorded by the Trial Court on all issues.

The present appeal is filed under Section 100 of the Civil Procedure Code, raising several contentions and framed six substantial questions of law, but none of them are substantial questions of law and they are purely questions of fact. However, Sri Mangena Sree Rama Rao, learned counsel for the appellant drawn attention of this Court that the Trial Court and the Appellate Courts failed to take into consideration of evidence of P.W.2 regarding time and date of execution and also Exs.X-1 to X-3, to prove that he was not present at the place of execution, raising a plea of alibi under Section 10 of the Indian Evidence Act. In fact, the Appellate Court discussed this issue at length and concluded that there is every possibility for the plaintiff to attend his personal work during recess time while staying in the dormitory, as he is permitted by the department and disbelieved the contention based on Exs.X-1 to X-3. Even otherwise, this question would not give rise to a substantial question of law.

The jurisdiction of this Court under Section 100 of C.P.C is limited to substantial question of law and what is substantial question of law depends upon various circumstances of the case, in **Union of India v. Ibrahim Uddin**, the Apex Court discussed the scope of second appeal in paragraphs 47 onwards, which is to the following effect:

“47. Section 100 Code of Civil Procedure provides for a second appeal only on the substantial question of law. Generally, a Second Appeal does not lie on question of facts or of law.

48. In **State Bank of India and Ors. v. S.N. Goyal** AIR 2008 SC 2594, this Court explained the terms "substantial question of law" and observed as under:
The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general

*importance, but refers to impact or **effect of the question of law on the decision in the lis between the parties.** 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. ... **any question of law which affects the final decision in a case is a substantial question of law as between the parties.** A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case.*

(Emphasis added)

Similarly, in **Sir Chunilal v. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Company Ltd.** AIR 1962 SC 1314, this Court for the purpose of determining the issue held:

*The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or **whether it directly and substantially affects the rights of the parties.***

(Emphasis added)

49. In **Vijay Kumar Talwar v. Commissioner of Income Tax, New Delhi**, (2011) 1 SCC 673, this Court held that, a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. It will, therefore, depend on the facts and circumstance of each case, whether a question of law is a substantial one or not; the paramount overall consideration being the need for striking a judicious balance between the

indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

(See also: **Rajeshwari v. Puran Indoria**, (2005) 7 SCC 60).

50. The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, the existence of a substantial question of law is a sine-qua-non for the exercise of jurisdiction under the provisions of Section 100 Code of Civil Procedure. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

There may be a question, which may be a "question of fact", "question of law", "mixed question of fact and law" and "substantial question of law." Question means anything inquired; an issue to be decided. The "question of fact" is whether a particular factual situation exists or not. A question of fact, in the Realm of Jurisprudence, has been explained as under:

A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong."

In view of the principle laid down in the above judgment, the grounds that are urged before this Court would not give rise to any substantial question of law within the ambit of Section 100 of the Civil Procedure Code and none of the grounds formulated as substantial question of law in the grounds of appeal and urged before the Court would not fall within the ambit of substantial question of law. Since, the Trial Court and the Appellate Court recorded concurrent fact findings, believing execution of promissory note and passing a consideration thereunder based on evidence, this Court need not disturb the fact findings recorded by the Trial Court which is confirmed by the

Appellate Court exercising power under Section 100 of Civil Procedure Code.

Therefore, I am not inclined to interfere with the findings of the Trial Court, the Appellate Court and the second appeal is devoid of merits and it deserves to be dismissed.

In the result, the second appeal is dismissed at the stage of admission itself.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:26.07.2016

SP