

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5697 of 2011

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India is filed by the unsuccessful defendant assailing the orders dated 02.08.2011 of the learned Junior Civil Judge, Palakonda passed in I.A.No.852 of 2010 in O.S.No.16 of 2008, filed under Order XIV Rule 5 (2) of the Code of Civil Procedure by the plaintiffs 2 to 4 to strike out the issues 1 and 2 framed by the trial Court.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant ('the defendant', for brevity) and the learned counsel for the respondents/plaintiffs 2 to 4 ('the plaintiffs 2 to 4', for brevity). I have perused the material record.

3. The facts, which are necessary for consideration and which are relevant and undisputed, in brief, are as follows:-

The deceased sole plaintiff had brought a suit against the sole defendant for recovery of money. His legal heirs are brought on record as the plaintiffs 2 to 4. The defendant filed a written statement resisting the suit *inter alia* contending that the amount borrowed from the deceased plaintiff was discharged and that the said borrowal and discharge transaction has nothing to do with the suit document or suit transaction and that the defendant did not borrow any amount under the suit document.

4. Having regard to the pleadings of the parties, the trial Court, at the first instance, had framed the following four issues:-

1. **Whether the plaintiff is entitled to recover the suit amount from the defendant as prayed for?**
2. **Whether the suit promissory note is supported by consideration?**
3. **Whether the discharge pleaded by the defendant is true?**
4. **To what relief?**

5. However, the plaintiffs 2 to 4, having filed the aforementioned interlocutory application, requested the trial Court to delete the issues 1 and 2 already framed by *inter alia* contending that the defendant had borrowed the amount mentioned in the plaint and had executed the suit document dated

30.07.2005 in favour of the deceased plaintiff and that inspite of demands made orally and by registered notice, the defendant did not repay the said debt, but had issued reply notice with false allegations and that in the written statement, the defendant had categorically admitted the receipt of the amount from the deceased plaintiff and also the execution of the document and had pleaded discharge of the debt under a receipt obtained to that effect from the deceased plaintiff and that therefore, in the light of the pleadings the issues 1 and 2 already framed are not necessary and that the said issues are to be deleted as the issues 3 and 4 already framed are only necessary for trial.

6. The defendant filed counter in the said interlocutory application resisting the said application *inter alia* contending that he never admitted either in the reply notice or in the written statement that he had borrowed the amount under the suit document and that according to his defence in the written statement, he had only borrowed Rs.30,000/- on various occasions under a chit transaction, but not at one point of time under the promissory note and that the plaintiff did not state in his pleadings as to what is the nature of the suit document and that unless the nature of the suit document is determined, the suit cannot be adjudicated and that therefore, the burden is on the plaintiff to show that the defendant had executed the suit document and that the plaintiff is entitled to a decree for recovery of the suit amount as prayed for.

7. Having heard the submissions of the learned counsel and considered the pleadings in the interlocutory application, the trial Court had allowed the interlocutory application and deleted the issues 1 and 2, which were framed by it earlier, and had amended and reframed the issues as under: "(1). Whether the defendant discharged the debt covered under suit document? (2). To what relief?"

8. Having been aggrieved of the said orders of the trial Court, this Civil Revision Petition is filed by the defendant. At the hearing, the learned counsel for the revision petitioner/defendant, while reiterating the defence of the defendant in the suit and also in the interlocutory application, had *inter alia* contended that though the defendant had admitted that he had borrowed certain amount from the plaintiff and had further pleaded that the had

discharged the said amount, that transaction pleaded in the defence is totally different from the suit transaction and that the defendant had borrowed only Rs.30,000/- on various occasions under a chit transaction, but not at one time under the suit document and that without the plaintiff disclosing what is the nature of the suit document, the *lis* cannot be properly adjudicated and that therefore, the burden is on the plaintiffs 2 to 4 and not on the defendant and that the plaintiffs 2 to 4 have to first let in evidence, but not the defendant and that in the facts and circumstances the trial Court had erred in deleting the issues 1 and 2 and in amending the issues that were already framed.

9. On the other hand, the learned counsel for the plaintiffs 2 to 4, while supporting the orders impugned, had *inter alia* contended that since the defendant had pleaded discharge, the order of the Court below cannot be faulted and that the order impugned brooks no interference.

10. I have bestowed my attention to the facts and gave earnest consideration to the submissions.

11. It is now well settled that in a civil case, the Rule of Standard of Proof is 'Preponderance of Probabilities'. The 'Burden of Proof' in the broader sense means the legal burden to establish the whole case. This legal burden always remains on the party, who is asserting a fact or proposition. However, the 'Onus of Proof' shifts. Section 101 of the Indian Evidence Act, 1872 enunciates the general rule "*He who asserts, Must prove*". Section 102 of the said Act fixes the burden of proof on the person who would fail, if no evidence at all were given on either side. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. The said section of law imposes the burden of proving a fact on that person, who substantially alleges an affirmative of the issue. 'Onus of proof' means the evidentiary burden or the burden to introduce evidence. "Thus, there is an essential distinction between the 'Burden of Proof' and the 'Onus of Proof'. The Burden of Proof lies upon the person, who has to prove a fact and it never shifts, but the 'Onus of Proof' shifts. Such a shifting of onus of proof is a continuous process in the evaluation of evidence." [Vide *A.Raghavamma and another v. A.Chenchamma* (AIR 1964 SC 136)]. It is also apposite to mention that after both the parties adduce evidence, the rule

of onus of proof pales into insignificance and it is for the (trial) Court to evaluate and appreciate the evidence and arrive at a just decision on the issues framed basing on the evidence brought on record.

12. Be that as it may. As per Rule 106 of the Civil Rules of Practice, which deals with the framing of the issues, the Court while framing issues shall proceed as stated in the said Rule. As per the said Rule, every material proposition of fact and every proposition of law, which is affirmed by the one side and denied by the other, shall be made the subject of a separate issue and every issue of fact shall be so framed as to indicate on whom the Onus of Proof lies. Further, no question regarding admissibility of evidence shall be made subject of an issue. It is also well settled that every issue has to be framed in the affirmative and not in the negative, unless there is a Rule like presumption reversing the Onus of Proof. Issues arise when a material proposition of fact or law is affirmed by one party or denied by the other.

13. Having regard to the aforementioned legal position, which is undisputed, this Court has examined the pleadings of the parties in the interlocutory application and also considered the submissions based on the pleadings. In a suit for recovery of money, when the defendant is not admitting the suit transaction and is *inter alia* contending that the discharge pleaded in the defence relates to a different transaction, that is, a chit transaction which has nothing to do with the suit document and the suit transaction, the proper issue that requires to be framed is “*whether the plaintiffs 2 to 4 (who are the legal representatives of the deceased plaintiff) are entitled to recover the suit amount or any part thereof from the defendant?*”. It is true that the plaintiff did not state in his pleadings the nomenclature or the nature of the suit document; and, what is the nature of the suit document as per the transaction recited therein has to be decided by the trial Court at an appropriate stage or after full-fledged trial. The learned counsel for the plaintiff would contend that if the transaction in regard to which the defendant had pleaded discharge has nothing to do with the suit transaction, the defendant ought not to have pleaded about the said discharge in the written statement while defending the suit claim. Be that as it may. In view of the fact that the defendant had also taken a plea of discharge and that the plaintiffs’ further case is that the said alleged discharge plea is

only with regard to the suit transaction and as each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue, this Court is of the well considered view that there shall also be an issue as follows: “*whether the discharge pleaded by the defendant is true? And, if so, whether or not the said plea of discharge is in regard to the suit transaction?*”

14. In view of the aforesaid reasons, this Court is of the considered view that this revision petition can be disposed of by modifying the impugned order of the trial Court and by framing the issues involved for trial as indicated *infra*.

15. In the result, the Civil Revision Petition is allowed in part and the impugned order is accordingly modified, and the issues that arise for determination of the matters in controversy between the parties are framed as follows:-

- 1. Whether the plaintiffs 2 to 4 are entitled to recover the suit amount or any part thereof from the defendant? And, if so, what amount?**
- 2. Whether the discharge pleaded by the defendant is true?**
- 3. And, if so, whether or not the said plea of discharge is in regard to the suit transaction?**
- 4. To what relief?**

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this civil revision petition, shall stand closed.

M.Seetharama Murti, J

10th February, 2016
Bvv