

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.1354 of 2012

JUDGMENT:

The Defendant in O.S.No.18 of 2002 on the file of Junior Civil Judge, Kaikaluru, who is the appellant in A.S.No.195 of 2010 on the file of XI Additional District Judge, Gudivada, preferred this Second appeal under Section 100 of the Code of Civil Procedure, 1908 ('CPC' for short) challenging the decree and judgment passed by the trial Court, which was confirmed by the appellate Court in its Decree and Judgment and dt.17.02.2012.

2. For convenience of reference, the ranks given to the parties before the trial Court in O.S.No.18 of 2002 will be adopted through out the Judgment.

3. The plaintiff filed the suit for recovery of Rs.84,320/- together with interest and costs on the foot of promissory note alleging that the defendant borrowed an amount of Rs.60,000/- from him on 21.05.2000 and executed a promissory note in his favour agreeing to repay the same together with interest at 24% per annum either to the plaintiff or to his order as and when demanded. But, the defendant failed to discharge the debt due under the promissory note, the plaintiff got issued a legal notice to the defendant and the defendant having received the notice, did issue any reply. Hence, the suit.

4. The Defendant filed Written Statement denying the material allegations while contending that she never borrowed any amount and never executed the suit promoted in favour of the plaintiff and the promissory note is a forged one and that she had no acquaintance with the plaintiff, prayed for dismissal of the suit.

5. Basing on the above pleadings, the trial Court framed the following issues for trial:

- i) Whether the plaintiff is entitled to recover the suit amount as prayed for ?
- ii) Whether the suit promissory note is forged as contended by the defendant ?
- iii) To What relief ?

6. During trial, on behalf of plaintiff, PWs. 1 and 2 were examined and Exs. A.1 to A.3 were marked. On behalf of defendant, Dw.1 was examined and no documents were marked.

7. Upon hearing argument of both the counsel, the trial Court believed execution of Ex.A.1 and passing of consideration to the defendant and held that the plaintiff proved the debt due under the promissory note and partly decreed the suit in his favour.

8. Aggrieved by the decree and judgment of the trial Court, the defendant being unsuccessful before the trial Court, preferred an appeal A.S.No.195 of 2010 before XI

Additional District Judge, Gudivada, and the appellate Court by its Decree and Judgment dt. 17.02.2012 dismissed the appeal confirming the decree and judgment passed by the trial Court. Thus, the trial Court and the Appellate Court recorded concurrent findings and passed a decree in favour of plaintiff.

9. The present appeal is filed by the Appellant/defendant raising several contentions and most of the grounds urged in the grounds of appeal are regarding appreciation of evidence and formulated four substantial questions of law in para No.7 of the grounds of appeal and they are '(a) to (d)', which are as follows:

a) Whether in the facts and circumstances of the case, the burden of proof was shifted on to the appellant when the respondent/plaintiff failed to discharge his burden to prove the execution of Ex.A.1-Promissory Note and passing of consideration thereunder ?

b) Whether non-issuance of reply notice by the appellant to the notice got issued by the respondent would amount to admission of the contents of the said notice. Since the notice cannot be termed as pleading as defined under the provisions of Order 6 of CPC ?

c) Whether the judgments of the Courts below are right though they misread and misinterpreted the evidence and case law ?

d) Whether the judgments of the Courts below are legally sustainable under law ?

10. The first substantial question of law is regarding the proof of execution of Ex.A.1 and shifting of burden on the defendant. But, the trial Court and the Appellate Court specifically recorded a finding that the plaintiff proved the execution of Ex.A.1 by the defendant by complying the presumption under Section 118 of Negotiable Instrument Act regarding shifting of burden to the defendant rightly, which permits the Court to draw a presumption that Negotiable Instrument is supported by consideration when execution of Negotiable Instrument is proved or admitted. Therefore, the trial Court and the Appellate Court rightly shifted the onus of proof to the defendant to disprove that Ex.A.1 was not supported by consideration and there is no legal infirmity in the conclusion arrived by the Courts below warranting interference of this Court while exercising power under Section 100 of CPC, which is limited to a substantial question of law.

11. The second substantial question of law is non-issuance of reply by the defendant to the legal notice issued by the plaintiff. In fact, that is not a ground and the trial Court did not base its findings only by drawing presumption for non-issuance of reply. Therefore, it is not a substantial ground warranting interference of this Court with regard to concurrent findings of the trial Court, which was confirmed by the Appellate Court.

12. So far as substantial questions of law (c) and (d) are concerned, they are neither questions of law nor substantial questions of law. But, those two grounds pertain to appreciation of evidence based on question of fact and hence, the appeal cannot be

admitted on substantial questions covered by (c) and (d), vide para No.7 of the grounds of appeal.

13. On overall consideration of entire material available on record, I find no infirmity much as legal infirmity in the concurrent findings of the trial Court, which was confirmed by the Appellate Court, in passing a decree in favour of plaintiff. Hence, this Second Appeal is *de void* of merits and deserves to be dismissed.

14. In the result, this Second Appeal is dismissed at the stage of admission. But without costs in the circumstances of the case.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 19-08-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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SA No. 1354 of 2012

Dt. 19-08-2016

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