THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL NO.1281 OF 2010

JUDGMENT:

The defendant in O.S.No.26 of 2003 on the file of the Additional Senior Civil Judge, Ongole and appellant in A.S.No.152 of 2004 on the file of the IV Additional District Judge (Fast Track Court), Ongole preferred this appeal challenging the concurrent findings recorded by the trial Court and the 1st appellate Court passing a decree in favour of the plaintiff – respondent herein for recovery of the suit amount.

For convenience of reference, the ranks given to the parties before the trial Court in O.S.No.26 of 2003 will be adopted through out the Judgment.

The plaintiff filed the suit for recovery of Rs.1,63,233.50 ps. the amount on the strength of the promissory note executed by the defendant, alleging that the defendant borrowed Rs.66,000/- from the plaintiff for his family expenses on 29.04.1996 and executed a promissory note agreeing to repay the same together with interest at 24% p.a. (annual compoundable) either to the plaintiff or to his order as and when demanded. Subsequently, the defendant paid an amount of Rs.100/- on 25.04.1999 and another sum of Rs.100/- on 24.04.2002 acknowledging his liability to pay the debt due under the promissory note and endorsed those payments on the reverse of the promissory note. As the defendant did not discharge the debt, the plaintiff demanded both orally and in writing by legal notice dated 28.08.2002, but the defendant did not discharge the debt due under the promissory note.

The defendant filed written statement denying the material allegations *inter alia* contending that he does not know the plaintiff or the attestors of the promissory note. One B.Tirupathi Swamy, who is carrying finance business under the name and style of Lakshmi Finance Corporation is the close friend of the defendant and they have financial dealings. When the defendant borrowed Rs.17,000/- from him, he obtained signatures of the defendant on the suit promissory note and 5 other promissory notes and on Rs.50/- bond paper (N.J.stamp paper) without mentioning the amount and also obtained payment endorsements in the own hand writing of the defendant on the reverse of the suit promissory note on 25.04.1999 and 24.04.2002 and the defendant agreed to pay interest at 72% p.a. on Rs.17,000/- to B.Tirupathi Swamy. Later, the defendant discharged the debt due to the said B.Tirupathi Swamy and requested him to return the blank signed promissory notes and stamp paper, but he refused to return those papers, and filed the present suit in the name of the plaintiff as if the defendant borrowed Rs.66,000/- and that some columns were left blank and the handwriting in various columns of the promissory note is not in the handwriting of the defendant. Therefore, the defendant is not liable to pay any amount and prayed for dismissal of the suit.

Based on the above pleadings, the trial court framed the following three issues for trial:

(1) Whether the suit promissory note is not fully supported by consideration and the same is executed by circumstances stated in the written statement?

(2) Whether the payment endorsements, dated 25.4.99 and 24.4.02 were came to be made by the Defendant in the circumstances stated in the written statement?

(3) To what relief?

During trial, on behalf of the plaintiff P.Ws.1 and 2 were examined and marked Exs.A.1 to A.5. On behalf of the defendants, D.W.1 was examined and no documents were marked on his behalf.

Upon hearing argument of both the counsel, considering the oral and documentary evidence on record, the trial Court decreed the suit in favour of the plaintiff for Rs.1,63,233.50 Ps with costs and future interest at 12% p.a. from the date of filing of the suit till the date of decree and at 6% p.a. from the date of decree till the date of realization.

Aggrieved by the decree and judgment of the trial Court, the defendant being unsuccessful preferred A.S.No.152 of 2004 on the file of the IV Additional District Judge (Fast

Track Court), Ongole, which ended in dismissal concurring the findings recorded by the trial Court.

Aggrieved by the decree and judgment passed by the trial Court and the 1st appellate Court, the defendant preferred the present appeal raising several contentions.

At the stage of admission, this Court heard Sri J.Seshagiri Rao, learned counsel for the appellant/defendant and Sri Dr.K.Manmadha Rao, counsel for the respondent/plaintiff and formulated the following substantial question of law.

> ***Whether the defendant signed on the printed promissory note without filling various columns and handed over to Sri B.Tirupathi Swamy, and created any legal obligation to pay any amount to the plaintiff, if not, whether the plaintiff is entitled to recover the suit amount based on Ex.A.1 suit promissory note?***

SUBSTANTIAL QUESTION OF LAW:

According to the plaintiff, the defendant borrowed an amount of Rs.66,000/- for his family expenses, executed Ex.A.1 promissory note dated 29.04.1996 agreeing to repay the same together with interest as and when demanded by him. Subsequently, the defendant made part payments of Rs.100/- each on 25.04.1999 and 24.04.2002 acknowledging his liability under the Ex.A.1 promissory note. The said part payment endorsements were marked as Exs.A.2 and A.3. The defendant himself admitted in this written statement that

Exs.A.2 and A.3 are in his hand writing and also admitted his signatures on Ex.A.1, but part of promissory note is not in his own hand writing. The only contention before this Court is that he borrowed Rs.17,000/- from B.Tirupathi Swamy and handed over the signed promissory note, partly filled by the defendant himself. The trial Court disbelieved the said contention and the 1st appellate Court also did not accept the contention and concluded that the defendant borrowed Rs.66,000/- under Ex.A.1 promissory note and decreed the suit. The trial Court based on the evidence of P.Ws.1 and 2 i.e. the plaintiff and one of the attestors of Ex.A.1 suit promissory note, accepted the contention of the plaintiff and believed borrowing and execution of Ex.A.1 suit promissory note. P.W.2 is the crucial witness, from whom the defendant allegedly borrowed Rs.17,000/- and agreeing to repay the same together with interest at 72% p.a. and discharged the debt. Nothing could be elicited from the cross-examination of P.W.2 by the learned counsel for the defendant before the trial Court in support of the contention of the defendant except eliciting that he was carrying on finance business. However, nothing was elicited to discredit the testimony of P.W.2 and that apart P.W.1 categorically testified about the borrowing and execution of Ex.A.1 suit promissory note by the defendant in his favour.

The jurisdiction of this Court under Section 100 of Code of Civil Procedure is limited to substantial question of law.

Therefore, this Court need not go into the evidentiary aspect unless it is contended and established that the judgment of the trial Court and the 1st appellate Court is perverse. However, in this appeal the limited question which arises for consideration is with regard to the execution of promissory note only, which is a substantial question of law formulated by this Court in the earlier paragraphs.

Assuming for a moment, that the defendant signed on the promissory note without filling various columns of the promissory note, at best it is an inchoate stamped negotiable instrument as per Section 20 of Negotiable Instruments Act and it is extracted hereunder for better appreciation of facts.

> ***"20. Inchoate stamped instruments:- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. "***

In view of Section 20 of Negotiable Instruments Act, even if the instrument is partly filled or partly left blank, it is nothing but authorising the holder to complete the document for the amount not exceeding the amount covered by the stamp affixed thereon.

Even if the contention of the defendant is accepted i.e. handing over of partly filled signed promissory note to Sri B.Tirupathi Swamy, it is nothing but authorising the said B.Tirupathi Swamy, holder of instrument to complete the instrument for the amount not exceeding the amount covered by the stamp affixed thereon.

When the defendant raised a contention that he borrowed an amount of Rs.17,000/- from Sri B.Tirupathi Swamy, P.W.2, and handed over blank signed promissory note along with stamp paper worth Rs.50/-, it is for him to establish his case either by examining himself or by examining any independent witness to corroborate his testimony or at least by eliciting something in the cross-examination of P.W.2, from whom he allegedly borrowed Rs.17,000/- and handed over the singed blank promissory note to him. Curiously, the defendant did not examine any other witness in support of his contention and failed to elicit anything in the cross-examination of P.W.2 to establish the defence set up by him.

When the defendant gave authorisation to the holder i.e. P.W.2 B.Tirupathi Swamy allegedly, it creates a contractual obligation between the plaintiff and defendant, whose name was filled in the instrument in view of authorisation under Section 20 of the Negotiable Instruments Act.

The 1st appellate Court relied on the judgment of Karnataka High Court rendered in “***Mysore State Road***

Transport Corporation v. Somashankar[1]". In the said judgment it was held that where a printed promissory note duly signed or filled given with the space for rate of interest being blank; it is not an incomplete instrument in law as it enables the promise to fill up the same so as to complete the instrument within the meaning of Section 20, hence enforceable and recoverable even rate of interest originally shown kept blank and later shown filled.

The 1st appellate Court also relied on two other judgments of Madras High Court rendered in "***Chidambaram v. P.T.Ponnuswamy***[2]" and "***Op.Talamalai Chetty v. Rathinaswamy***[3]". In both the judgments, Madras High Court held that where, either admittedly or on proof, the signature on a blank promissory note as that of the defendant and is delivered to the plaintiff, a decree should be passed on the suit promissory note from implied authority in delivering the signed blank promissory note to bind the signatory, provided the amount filled is shown to be not exceeding the arrangement and the amount covered by the stamp as Section 20 of the Negotiable Instruments Act is itself a clear authority to the holder of the inchoate stamped and signed instrument to fill up the blank and to negotiable the instrument.

[1] AIR 1982 Karnataka 227 (D.B.)
[2] 1952 (2) Law Weekly 719
[3] 1997 (1) Law Weekly 843

On the strength of the principles laid down in the above judgments, the 1st appellate Court affirmed the decree passed by the trial Court.

Before this Court, it is contended by the counsel for the appellant/defendant that the trial Court did not frame appropriate issue and the 1st appellate Court did not frame the point when the defendant's case is consistent from the beginning that he borrowed only Rs.17,000/- from B.Tirupahi Swamy, P.W.2 and in such case an issue is required to be framed and the trial Court and the 1st appellate Court are expected to answer such issue, but in fact nothing prevented the defendant to raise such contention before the trial Court and file a petition under Order XIV Rule 5 to frame additional issue and similarly before the 1st appellate Court, having kept quiet for a considerable period, for the first time such contention was urged before this Court in the 2nd appeal. Therefore, at this stage no issue need be framed since the jurisdiction of this Court is limited to substantial question of law.

Even before this Court it is contended that the defendant borrowed Rs.17,000/- from P.W.2, then it is for the plaintiff to establish that the defendant borrowed Rs.66,000/- from the plaintiff for his family expenses by adducing cogent and satisfactory evidence. To substantiate his contention the plaintiff himself was examined P.W.2, attestor of the document. When the plaintiff proved execution of the promissory note, the presumption under Section 118 of the Negotiable Instruments Act would arise and in such a case, the onus of proof will automatically shift on to the defendant to prove that it is not supported by consideration. Even otherwise, it is for the defendant to disprove the execution of Ex.A.1 promissory note and to prove handing over of signed blank promissory note to B.Tirupathi Swamy, but nothing has been elicited in the cross-examination of P.W.2. In those circumstances, the 1st appellate Court based on Section 20 of Negotiable Instruments Act disbelieved the contention of the defendant while accepting the contention of the plaintiff and affirmed the decree passed by the trial Court.

When a similar question came up before the Nagpur High Court in "***Dalchand Mulchand v. Hasanbi***[4]", the Nagpur High Court relied on the judgment in "***Deviclas v. Mamooji***[5]" held as follows:

> "an admission by the Defendant that-a document bears his signature coupled wiiti an assertion, that it had been placed upon a blank piece of paper upon which the rest of the document was fraudulently scribed was not an admission ol execution and so the burden of proof lies upon the Plaintiff. One of us (Rose, J.) recently came to the opposite conclusion in Second Appeal No. 208-13 of 193,"5. In view of this conflict of opinion, we think it desirable to examine the question at length .... As ait abstract proposition, it is beyond doubt that: the initial burden of proving execution when it is denied is upon the Plaintiff. The real question we have to decide here is not that but whether this onus can be discharged by mere proof of signature; not proof of execution as such but by bare proof of signature. With the utmost

[4] AIR 1938 Nag 152
[5] AIR 1924 Nag 103

respect for the learned A. J. C, who decided AIR 1921 Nag 103we think it can."

In "**Duggineni Seshagiri Rao Vs. Kothapalli Venkateswara Rao[6]"**, this Court held as follows:

"Four things are necessary for an instrument to be a promissory note: 1) It should be in writing; 2) It should have an unconditional undertaking; 3) It should be signed by the maker; and 4) it should be in favour of ceratin person or to a bearer.

Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of 'inchoate' is 'incomplete'. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the 'promissory note' under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to

---
[6] 2001 (6) ALT 95 (D.B.)

be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was in drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions.

Holder of the instrument becomes a bearer of the instrument."

"The plaintiff had been able to prove the execution of the document. On the other had, if the document was disputed or doubted the onus was on the defendant to show that the document was a forgery because a presumption is in favour of plaintiff under Section 118 of the Negotiable Instruments Act."

The Karnataka High Court in "**H.Maregowda and etc. Vs. Thippamma and others (C.R.P.Nos.1574, 1590 and 1591 of 1995, dated 01-10-1999)"**, it is held as follows:

"A reading of Section 20 of the Negotiable Instruments Act which is extracted above will reveal that the words used are either wholly blank or having written thereon an incomplete negotiable instrument. Thus, even if a blank promissory note is given, it cannot be taken as a defence to avoid a decree based on such instrument, once it is found that the document produced before the Court satisfies the requirements of a promissory note within the meaning of the Negotiable Instruments Act. The instrument may be wholly blank or incomplete in particular; in either case, the holder has the authority to make or complete the instrument as a negotiable one."

In "**Sukhminder Singh v Nirbhai Singh[7]"** reiterated the same principle.

[7] AIR 2013 P&H 77

In view of the law declared by this Court and persuaded by judgments of other High Courts, it can safely be held that the defendant authorised the holder of the document i.e. Sri B.Tirupathi Swamy, P.W.2 to complete the document within the meaning of Section 20 of Negotiable Instruments Act. Even assuming for a moment that what the defendant pleaded is true, in such a case the defendant is liable to pay the debt due under the promissory note.

In the present case, the plaintiff could establish that the defendant borrowed an amount of Rs.66,000/- under Ex.A.1 suit promissory note and made part payments marked as Exs.A.2 and A.3 by examining the attestor, P.W.2.

The defendant is an employee in Sub-Registrar's office. As the defendant working as Shroff and as a educated person he is aware about the consequences of handing over such signed blank promissory note and not expected to hand over such document as an ordinary prudent man. Therefore, the defence set up by the defendant in his written statement is improbable to the ordinary conduct of a prudent educated employee, more particularly who is dealing with financial transactions as a Shroff in the Sub-Registrar's office. Based on the improper defence set up by the defendant, the claim of the plaintiff cannot be thrown overhead disbelieving entire transaction. Therefore, the trial Court and the 1st appellate Court rightly concluded and passed a decree in favour of the plaintiff believing the execution of promissory note, borrowing Rs.66,000/- from the plaintiff by the defendant.

One of the contentions urged before this court is that this Court has to frame additional issue with regard to handing over the blank signed promissory note by the defendant to B.Tirupathi Swamy and direct the Trial Court to permit the parties to adduce evidence and decide the matter afresh on remand, such course is not open to this Court, even otherwise no such steps were taken before the trial Court and the appellate Court to frame additional issue. At this stage, additional issue cannot be framed to direct the trial Court to re-try the matter and record evidence thereon. Even to remand the matter under Order XLI Rule 23-A of Code of Civil Procedure, there must be some material on record to remand the matter and mere failure of the defendant to establish his case can never be a ground for remand the matter by setting aside the decree and judgment of the trial Court and even mere insufficiency of evidence is not a ground to remand the matter to the trial Court or 1st appellate Court by this Court while exercising power under Section 100 of Code of Civil Procedure. Therefore, it is not a fit case to set aside the decree and remand the matter to the trial Court after framing additional issue.

On an overall consideration of the entire material available on record, the blank signed promissory note allegedly handed over by the defendant to P.W.2, B.Tirupathi

Swamy is enforceable under law since he was authorised to complete the document within the limits of Section 20 of Negotiable Instruments Act assuming that the defence set up by the defendant is true. Accordingly, the substantial question of law is answered in favour of the plaintiff and against the defendant.

In view of my foregoing discussion, I find no ground to set aside the decree passed by the trial Court and affirmed by the appellate Court and the present appeal is deserves to be dismissed as it is devoid of merit.

In the result, the second appeal is dismissed without costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:09.09.2016
Ksp