

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 13.12.2017
PRONOUNCED ON: 22.12.2017

CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A. No.1224 of 2001

V.Selvam

... Appellant/Defendant

Vs.

G.Rajaraman

... Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.138 of 1998 dated 09.03.2001 on the file of the VI Additional Judge, City Civil Court, Madras confirming the Judgment and decree of the XI Assistant Judge, City Ciil Court of Madras, dated 5.2.1997 and made in O.S.No.3085/1993.

For Appellant : Mr.R.Lakshminarayanan

For Respondent : No appearance - Set exparte

J U D G M E N T

This second appeal is directed against the judgment and decree dated 09.03.2001 passed in A.S.No.138 of 1998 on the file of the VI Additional Judge, City Civil Court, Madras confirming the judgment and decree dated 05.02.1997 passed in O.S.No.3085 of 1993 on the file of the XI Assistant Judge, City Civil Court, Madras.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for recovery of money.

4.The case of the plaintiff in brief is that the defendant has been carrying on printing business along with one K.Mani in partnership and on account of certain misunderstandings between the partners, later, the disputes were settled under which the defendant agreed to pay to the said K.Mani a sum of Rs.2,30,000/- in full settlement of the partnership accounts and accordingly a deed of dissolution was entered into between the

defendant and the said K.Mani on 14.08.1992 in and by which the said K.Mani relinquished all his rights in the partnership business and the defendant was allowed to carry on the business in the name and style of Selvamani Printers as sole proprietor. Accordingly, the defendant paid the sum of Rs.1,50,000/- to the said K.Mani and for the remaining amount of Rs.80,000/- as per the terms of the deed of dissolution, the defendant executed a promissory note for the said sum in favour of the said K.Mani and the said K.Mani duly endorsed the above said promissory note in favour of the plaintiff for consideration by an endorsement dated 21.02.1993 and thus the plaintiff is entitled to recover the amount due under the promissory note from the defendant as an assignee and the plaintiff issued a legal notice and the defendant did not respond to the said notice and hence the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendant in brief is that it is true that as per deed of dissolution of the partnership business, the defendant agreed to pay the total sum of Rs.2,30,000/- to K.Mani and paid the sum of Rs.1,50,000/- by D.D and Cheque and for the balance sum of Rs.80,000/- executed a promissory note in favour of K.Mani. However, the said amount of Rs.80,000/- was agreed to be paid in six months subject to clause 3 of the dissolution deed and in and by which, inasmuch as the partnership business owed money to M/s.P.L.Chemicals Limited and it has been agreed between them that if any claim is made by M/s.P.L.Chemicals Limited and if any amount is payable by the firm Selvamani Printers, the claim amount have to be equally shared by the defendant and K.Mani and the defendant has also been empowered to deduct the amount payable to K.Mani from the amount payable towards Rs.80,000/- under promissory note and according to the defendant, M/s.P.L.Chemicals Limited sent a debit note for a sum of Rs.2,22,140/- and as per the above said terms of the deed of dissolution, K.Mani liable to pay Rs.1,11,070/- and the said amount is in excess of the amount payable by the defendant to K.Mani under the promissory note and there is an excess sum of Rs.31,070/- and as such the defendant is not liable to pay any amount to K.Mani and therefore the plaintiff cannot lay the suit for recover the suit amount from the defendant by way of the assignment of the promissory note in his favour by K.Mani and the suit promissory note is not supported by any determined consideration, it has been given only as per the clause 3 of the deed of dissolution and therefore the same not being negotiable and could not be assigned as per law. It is thus contended that the plaintiff cannot maintain the suit for recover of the amount on the basis of the assignment of the said promissory note. The defendant has sent a reply to the notice issued by the plaintiff and hence the plaintiff has no cause of action to lay the suit. The suit is liable to be dismissed.

6. In support of the plaintiff's case, P.W.1 has been examined. Exs.A1 to A5 were marked. On the side of the defendant, D.W.1 was examined. Exs.B1 to B7 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and granted the reliefs in favour of the plaintiff. Assailing the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

(i) Whether on the facts and circumstances of the case Ex.A1 could at all be treated as a pronote since it is based on Ex.B1 in particular clauses 2 and 3 of Ex.B1?

(ii) Whether plaintiff is entitled to invoke Order 37 Rule 1 C.P.C. By filing the plaint as an assignee holder within the meaning as per Negotiable Instruments Act so as to give Ex.A1 the character of its being negotiable?

(iii) Whether the lower Appellate Court is justified in having failed to appreciate the ratio of the decision in 1973 Kerala 22 which applies on all fours to this case?

9. It is not dispute that in respect of the partnership business carried on by the defendant and one K.Mani, sorting out the issues between them, they had entered into the deed of dissolution on 14.08.1992, which document has come to be marked as Ex.B1, where under the defendant had agreed to pay the sum of Rs.2,30,000/- to K.Mani, towards the final settlement in respect of his claims over the partnership business and accordingly on the said understanding, it is found that the defendant has paid the sum of Rs.1,50,000/- to K.Mani by way of D.D and Cheque and for the remaining sum of Rs.80,000/- it is found that the defendant has executed the suit promissory note in favour of K.Mani and accordingly as per the recitals contained in Ex.B1, it is found that the entire amount payable by the defendant to K.Mani has come to be settled and thus it is found that only for the sum due to be paid by the defendant to K.Mani in respect of the dissolution of the partnership business as recited in Ex.B1, it is evident that the suit promissory note had come to be executed in favour of K.Mani by the defendant. Therefore, it

is seen that only in respect of the antecedent debt, amounting to Rs.80,000/- the suit promissory note had been executed by the defendant in favour of K.Mani, which document has come to be marked as Ex.A1.

10. It is found that K.Mani had as assigned the suit promissory note in favour of the plaintiff and the same could be evidenced from the endorsement marked as Ex.A2. The defendant as such is not challenging the assignment of the suit promissory under Ex.A2 in favour of the plaintiff.

11. The main defence taken by the defendant in this matter is that the suit promissory note does not satisfy the requirements of the promissory note as contemplated under Section 4 of the Negotiable Instruments Act and therefore the plaintiff cannot maintain the suit on the basis of the said promissory note based on the assignment. However, as rightly found by the Courts below, a perusal of the terms of Ex.A1 would go to show that the defendant had agreed to pay the sum recited therein to K.Mani on demand as per clause 2 of the deed of dissolution of partnership dated 14.08.1992, which document, as above seen, has come to be marked as Ex.B1. A perusal of clause 2 of Ex.B1 would go to show that the defendant had executed the suit promissory note Ex.A1 in favour of K.Mani for the sum, which is liable to be paid to K.Mani towards the dissolution of the partnership business and accordingly, it is found that for the balance sum of Rs.80,000/- payable by the defendant to K.Mani, he had executed the suit promissory note agreed to repay the same on demand within a period of six months and also agreed that if the said sum is not paid within six months, he would pay the said sum with interest at 18% therefrom. Therefore, when the recitals found in Ex.A1 read in conjunction with clause 2 of Ex.B1, as rightly found by the Courts below, only in respect of the sum, which the defendant owes to K.Mani, he had executed the promissory note and accordingly the contention put forth by the defendant that there is no antecedent liability as such for a quantified amount between the parties concerned so as to pave the way for the execution of Ex.A1 as such cannot be accepted.

12. The plea has been taken by the defendant that the amount to be settled between the parties not having been firmly quantified on the date of execution of Ex.A1, it is contended that Ex.A1 would not satisfy the requirements of the promissory note as contemplated under the Act. This plea is taken on the basis of clause 3 of Ex.B1. However, as rightly found by the Courts below, when Ex.A1 promissory note has come to be executed only as per clause 2 of the deed of dissolution Ex.B1, it is found that clause 3 would not in any manner bind either K.Mani or the plaintiff as such for laying the necessary action in the

recovery of the amount due to them under the suit promissory note.

13.It is seen that the partnership business carried on by the defendant and K.Mani owed certain amount to M/s.P.L.Chemicals Limited and accordingly at the time of the deed of dissolution of the partnership business under Ex.B1, the parties had agreed that if any claim is made by M/s.P.L.Chemicals Limited, the said claim amount should be equally paid by the defendant and K.Mani and accordingly the defendant can deduct the amount payable to K.Mani from the amount payable by him towards the sum of Rs.80,000/- for which he had executed the promissory note as per clause 2. However, it is found that as per clause 2 of Ex.B1, the defendant is liable to pay the same as recited in the suit promissory note within six months from the date of execution and such being the position, when the defendant has not paid the said sum within the time stipulated, accordingly it is seen that the plaintiff on the basis of the assignment of the promissory note, after issuing the legal notice had chosen to lay the suit against the defendant for the recovery of the sum due under the promissory note.

14.The contention raised by the defendant that the amount, which is to be paid under the promissory note having not been firmly quantified on the date of execution of the same as such cannot be accepted, when it is seen that M/s.P.L.Chemicals Limited had not raised any debit note within six months from the date of execution of the promissory note. On the other hand, it is seen that the debit note had been raised by M/s.P.L.Chemicals Limited only on 28.04.1993, which document has come to be marked as Ex.B3 and when the said document has come into existence after the institution of the suit and when K.Mani or the plaintiff on the basis of the assignment is entitled to receive the amount under the promissory note within six months from the date of execution, as rightly found by the Courts below, the defendant cannot be allowed to take shelter under clause 3 and contend that the amount to be settled between the parties has not been firmly quantified at the time of the execution of Ex.A1 as such cannot be countenanced. On the other hand, when it is seen that the suit promissory note has come to be executed by the defendant only for the sum, which he is liable to pay to K.Mani towards the final settlement of the partnership business and accordingly, when it is seen that by way of the execution of the promissory note, the entire amount payable to K.Mani had been settled between the parties concerned, it is seen that as per clause 2 of Ex.B1, the defendant is liable to pay the sum of Rs.80,000/- to the plaintiff, he being the assignee of the suit promissory note under Ex.A2 and accordingly it is seen that the Courts below have rightly found that the defendant cannot be

allowed to take shelter under clause 3 of Ex.B1 for stifling the case of the plaintiff based on the suit promissory note and it is found that, when the defendant has not paid the suit promissory amount within the time stipulated as per clause 2 of Ex.B1, it is found that he is liable to pay the sum with interest at 18% there from and therefore it is seen that the Courts below have rightly held that the plaintiff is entitled to recover the suit amount from the defendant as claimed in the plaint.

15. In the light of the above discussions, the contention put forth by the defendant's counsel that Ex.A1 cannot be treated as a promissory note in view of the clauses 2 and 3 of Ex.B1 as such cannot be accepted. On the other hand, as rightly held by the Courts below Ex.A1 has satisfied all the requirements of a promissory note as defined U/s 4 of the Negotiable Instruments Act and accordingly it is seen that the document is negotiable and accordingly it is further seen that the plaintiff has obtained a valid assignment of the same from K.Mani and laid the suit rightly under Order 37 Rule 1 of the Code of Civil Procedure. In such view of this matter, it is found that the decision relied upon by the defendant's counsel reported in AIR 1973 Kerala 22 [Sankaran Sankaran Namboori Vs. Mathai Abraham] is found not applicable to the case at hand. The amount recited in the promissory note is a settled amount, which the defendant is liable to pay to K.Mani pursuant to the deed of dissolution marked as Ex.B1 and particularly when it is noted that by way of execution of the suit promissory note, the amount payable by the defendant to K.Mani had become settled. In such view of this matter, the substantial questions of law formulated for consideration in the second appeal are answered against the defendant and in favour of the plaintiff.

16. In conclusion, the second appeal fails and is accordingly dismissed. No costs. Connected miscellaneous petition if any is closed.

mfa

Sd/-

Assistant Registrar(CS IIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The VI Additional Judge, City Civil Court, Madras.
- 2.The XI Assistant Judge, City Civil Court, Madras.

Copy to: The Section Officer
VR section,
High Court, Madras (2copies)

+1cc to Mr.R.Lakshmi Narayanan, Advocate Sr.NO.92013

S.A. No.1224 of 2001

MP (CO)
sm:29.1.2018



WEB COPY