THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

SECOND APPEAL No.581 of 2017

JUDGMENT:

This appeal is filed under Section 100 of CPC, by the defendant, assailing the decree and judgment dated 22.2.2017 in A.S.No.64 of 2011 on the file of the Court of II Additional District Judge, Kadapa at Proddatur, wherein and whereby the decree and judgment dated 07.2.2011 in O.S.No.118 of 2007 on the file of the Court of Senior Civil Judge, Proddatur, decreeing the suit for recovery of money based on the promissory note, was confirmed.

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the suit.

3. The averments of the plaint, in brief, are as follows: On 09.8.2004, the defendant borrowed an amount of Rs.61,500/- from the plaintiff and executed a promissory note of even date, agreeing to repay the same with interest at 30% per annum to the plaintiff or any other person authorised by him. The plaintiff paid Rs.61,500/- to the defendant by way of three cheques bearing Nos.882454, 882456 and 882457, dated 09.8.2004. Since the defendant did not repay the amount borrowed, as promised, the plaintiff filed the suit.

4. The defendant filed the written statement admitting the execution of the promissory note in favour of the plaintiff *inter alia* contending that the father of defendant by name Jaya Rami Reddy has close acquaintance with the plaintiff since 40 years. With that acquaintance, the plaintiff takes the help of the defendant and his

father whenever he requires. One Jaya Prakash Narayana, a close relative of the plaintiff, wanted to sell a vacant land to one Muniswamy Naidu of Potladurthi. In that regard, Jaya Prakash Narayana faced a problem and the plaintiff requested the defendant and his father to solve the problem and if they do so, Jaya Prakash Narayana will pay commission to them. Even after solving the problem, Jaya Prakash Narayana did not pay the commission. Then the defendant and his father approached the plaintiff and asked him to direct Jaya Prakash Narayana to pay their commission, for which the plaintiff bore grudge and filed the suit. Prior to that, the plaintiff used to issue cheques in the name of the defendant and his father, to encash the same and return the money to the plaintiff. On 12.11.2004, due to pressure of the plaintiff, Jaya Rami Reddy pledged gold chain and paid Rs.30,000/- to the plaintiff. Further, in the month of January, 2005, the defendant paid Rs.30,000/- in cash to the plaintiff. Hence, the suit is liable to be dismissed.

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

> 1. Whether the suit promissory note dated 09.8.2004 is true, valid and binding on the defendant?
>
> 2. Whether the defendant has paid Rs.60,000/- to the plaintiff towards the suit promissory note?
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> 3. Whether the defendant is an agriculturist and therefore entitled to scale down the rate of interest as per Act IV of 1938?
>
> 4. Whether the plaintiff is entitled to the suit claim?
>
> 5. To what relief?

6. Before the trial Court, to substantiate the case, the plaintiff examined himself as P.W.1 and got marked Exs.A1 to A5. To non-

suit the plaintiff, the defendant examined himself as D.W.1 and got marked Ex.B1 receipt.

7. After having thoughtful consideration to the oral, documentary evidence and other material available on record, the trial court arrived at a conclusion that the defendant executed the promissory note in favour of the plaintiff on 09.8.2004 and failed to prove the discharge of the debt amount; and consequently decreed the suit. Feeling aggrieved by the judgment and decree of the trial Court, the defendant preferred the appeal. The first appellate Court, after reappraising the oral and documentary evidence available on record, without being influenced by the findings recorded by the trial Court, arrived at a conclusion that Ex.A1 promissory note is true, valid and binding on the defendant and accordingly dismissed the appeal. Hence, the defendant preferred the second appeal.

8. Heard the learned counsel for the appellant, learned counsel for the respondent and perused the material available on record.

9. The substantial questions of law urged by the learned counsel for the appellant are as follows:

> (1) Whether the Courts below have justified in decreeing the suit basing on the weaknesses of the case of the defendant? and
>
> (2) Whether the Courts below misconstrued the provisions of Act IV of 1938?

10. Question No.1: As seen from the testimony of P.W.1, the defendant borrowed an amount of Rs.61,500/- and executed Ex.A1 promissory note on 09.8.2004 in his favour. In the written statement, the defendant, while admitting the execution of the

promissory note, contended that he has discharged the amount covered under Ex.A1 suit promissory note. In such a situation, the burden of proof lies on the defendant to establish that he has discharged the suit debt under the original of Ex.B1 receipt, dated 12.11.2004. If really the defendant discharged the suit debt on 12.11.2004, this Court is unable to understand why the defendant did not take back the promissory note-Ex.A1 from the plaintiff. A perusal of Ex.B1 reveals that the defendant paid the amount to the plaintiff in respect of pledging of gold ornaments. In order to appreciate the contention of the defendant, it is not out of place to extract hereunder the relevant portion from the cross-examination of the defendant as D.W.1.

> " ... ... It is true that the amounts under the said three cheques noted in Ex.A1 were credited in my account and I had also withdrawn the said amount. It is true that there is no document to show that about the return of the said three amounts to the plaintiffs. ... ..."

A perusal of the above cross-examination of D.W.1 clearly reveals that the defendant has not discharged the amount borrowed under Ex.A1 promissory note. The plea taken by the defendant that he discharged the amount covered under Ex.A1 promissory note is not supported by any oral or documentary evidence. On the other hand, the admission made by the defendant in his cross-examination negatives the contention of the defendant in the written statement that he discharged the suit debt. By examining himself as P.W.1 and marking Exs.A1 to A3, the plaintiff established that the defendant borrowed an amount of Rs.61,500/- from him and executed Ex.A1 promissory note. Basing on Ex.A1 promissory note, the plaintiff is entitled for the relief of recovery of the suit amount. The said finding recorded by the Courts below is supported by oral and documentary evidence. There are no grounds much less valid grounds to upset the concurrent finding of fact recorded by the Courts below. Accordingly, question No.1 is answered.

11. Question No.2: The burden of proof lies on the defendant to establish that he is entitled for scaling down the rate of interest on the suit debt, in view of the provisions of Act IV of 1938. Mere pleading in the written statement would not amount to its proof. Act IV of 1938 is intended to provide the relief to the indebted agriculturists in the Andhra Area of the State of Andhra Pradesh. The burden of proof lies on the defendant that he is an agriculturist thereby to claim benefit of Act IV of 1938. The defendant has not adduced any evidence much less cogent and convincing evidence to establish that he is an agriculturist by profession. In the absence of such evidence, the defendant is not entitled to claim the benefit under the Act IV of 1938. Therefore, the defendant is not entitled for scaling down the rate of interest. Both the Courts concurrently held that the defendant is not entitled for scaling down the rate of interest as per the provisions of Act IV of 1938, in view of lack of evidence. The Courts below have assigned reasons much less cogent and valid reasons to its findings. Accordingly, question No.2 is answered.

12. In **Municipal Committee, Hoshiarpur v. Punjab SEB**[1], while dealing with the scope of Section 100 of C.P.C., the Hon'ble apex Court held at paragraph No.16 as follows:

> 16. ... ... A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of

[1] (2010) 13 SCC 216

> law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. ... ...

13. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the points raised by the learned counsel for the plaintiff will not fall within the ambit of Section 100 of C.P.C. There is no question of law much less substantial question of law in this appeal.

14. In the result, the second appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

December 21, 2017
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