THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.6318 OF 2004

DATED : 30.11.2017

Between :

Malladi Hari Prasadarao S/o.Tirupathirayudu,
Age 52 yrs, Record Assistant in A.S.High School,
R/o.Parchur, Parchur (M), Prakasam District
.. Petitioner/Defendant

And

Sreedhar Tobaccos, rep., by its Proprietor,
K.Sreedhararao, S/o.Veeranjaneyulu,
41 yrs, Cultivation R/o.Bodawadamandagunta,
Parchur, Prakasam District.
.. Respondent/Plaintiff

This court made the following :

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ORDER:

For the sake of convenience, the parties herein are referred to as arrayed in the suit.

2. Plaintiff instituted suit for recovery of an amount of Rs.1500/- with interest @ 24% p.a. The suit was tried as S.C.No.1 of 2004 on the file of Additional Junior Civil Judge at Parchur. The trial Court granted decree in favour of the plaintiff directing the defendant to pay an amount of Rs.2,513/- with subsequent interest @ 6% p.a., on the principal amount of Rs.1500/- from the date of suit till the date of realization. Aggrieved thereby, this revision is filed by the defendant.

3. Heard learned counsel for the plaintiff and learned counsel for the defendant.

4. Learned counsel for the defendant contends that there is no proof filed on behalf of the plaintiff to show that defendant borrowed from the plaintiff. No presumption can be drawn that amount was lent to the defendant and he failed to discharge the debt given to him. According to learned counsel, the burden is on the plaintiff to prove that loan was extended to the defendant and defendant failed to discharge the same. Learned counsel further contends that under Section 139 of the Negotiable Instruments Act (for short 'the N.I.Act'), presumption is in favour of Defendant and plaintiff failed to disprove the said presumption.

5. Learned counsel for the plaintiff submits that the evidence on record would clearly prove that plaintiff has given cheque for Rs.1500/- and cheque was en-cashed by the defendant and that defendant failed to repay the amount borrowed. In support of his contention plaintiff examined Pws.1 and 2 on his behalf and got marked Exs.A.1 toA.5. According to Pw.1 he has advanced amount to defendant. Thus, his evidence clinchingly establishes that the defendant borrowed the amount and failed to repay the same to the plaintiff. According to the deposition of Pw.2-Bank Manager, cheque was en-cashed by the defendant. According to learned counsel, no other material is placed on record to show that the cheque given by the plaintiff was in discharge of the loan amount taken by the plaintiff as sought to be contended. Learned counsel further submits that presumption as contended by learned counsel for defendant is not available when borrowing of amount by the defendant is proved and when an allegation of non-repayment of the said amount is made.

6. It is clear from reading of the judgment of the trial Court that cheque bearing No.125877 dated 11.05.2001 drawn on Syndicate Bank, Nagulapalem was en-cashed by the defendant. The Bank Manager cited as Pw.2 deposed that the cheque was en-cashed and the cheque amount was paid to the defendant. According to the Pw.1- plaintiff the said amount was borrowed by the defendant and same was not repaid. It is averred that defendant and his son beat him and on that he gave report and therefore defendant refused to re-pay the money borrowed. This evidence of the plaintiff is not rebutted by any other cogent evidence to show that the defendant did not borrow the money and that the cheque given to the

defendant was not infact in discharge of the amount borrowed by the defendant. A vague assertion was made that son of the plaintiff borrowed amount from the son of the defendant but failed to pay the said amount and that son of the defendant filed suit. However, no evidence is brought on record to support the said assertion of the defendant.

7. Except contending that there is a presumption in favour of the defendant that cheque issued by plaintiff was in discharge of liability under Section 139 of the N.I.Act, no other contention is urged.

8. Trial Court by referring to provision in Section 118 of the N.I.Act, held that defendant having admitted receiving of cheque failed to dis-prove the fact in issue. In the absence of any other material, the conclusions arrived at by the Court below based on evaluation of evidence on record holding that defendant borrowed the amount cannot be held as erroneous.

9. In view of the evidence brought on record and as assessed by Court below the said finding cannot be upset by merely relying on presumption under Section 139 of N.I.Act as contended by learned counsel for defendant. As noted above, no evidence was brought on record to disprove that the amount given to the defendant was not a loan extended to him, but was infact in discharge of the amount borrowed by the plaintiff as sought to be vaguely contended.

10. Thus, I do not see any error in the order of the Court below, warranting interference by this Court. Thus, the revision is liable to be dismissed and is accordingly dismissed. There shall be no order as to costs.

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

P.NAVEEN RAO,J

30th November 2017
Rds