

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

S.A. No. 497 of 2017

JUDGMENT:-

This Second Appeal is directed against the judgment and decree dated 16.12.2010 passed in A.S.No. 238 of 2009 by the District Judge, Guntur, whereby the Appeal Suit filed by the defendant was dismissed confirming the judgment and decree dated 30.05.2009 in O.S.No. 384 of 2004 passed by III Additional Senior Civil Judge (FTC), Guntur.

The appellant herein is the defendant the respondent herein is the plaintiff in suit i.e. O.S.No. 384 of 2004.

The facts of the case in brief are that the respondent-plaintiff filed a suit for recovery of a sum of Rs.2,15,178.82 based on the promissory note executed by the appellant-defendant for Rs.1,00,000/- (Rupees One Lakh Only) on 20.06.2000 agreeing to repay the amount with interest at 24% p.a. Subsequently, the appellant-defendant paid Rs.10,000/- towards interest and the same was endorsed on the reverse of the promissory note. Later, as the appellant-defendant failed to discharge the debt, the respondent-plaintiff got issued a legal notice dated 08.04.2004 demanding him to repay the debt, but he failed to discharge the same.

The appellant-defendant filed written statement denying the entire transaction of borrowing and execution of the promissory note contending that the promissory note is a

forged document. He was never in need of borrowing the amount as he is working as an employee in a Bank. He neither made any part-payment nor endorsed the same on the reverse of the promissory note. The respondent-plaintiff himself, with the assistance of attestors so as to harass the appellant-defendant, created the promissory note and endorsed on the reverse of it due to disputes between them.

In normal course of events, the Court cannot play the role of a hand-writing expert, but when law permitted, such power can be exercised sparingly so as to do complete justice to both the parties. So, there is no error on the part of the trial Court in exercising powers under Section 73 of the Indian Evidence Act in the absence of reference of disputed and admitted signatures of the appellant-defendant to the expert. However, during pendency of the First Appeal, the appellant-defendant filed an application to refer his admitted and disputed signatures for opinion of the hand-writing expert for comparison.

It is pertinent to mention that the said petition was allowed and the documents particularly disputed signatures on Exs.A1 – promissory note and Ex.A2 – part-payment endorsement of the appellant-defendant, were referred to the expert but were returned by A.P. Forensic Science Laboratory, Hyderabad with a request to send admitted

signatures of D. Prem Kumar – appellant-defendant written in normal course of business during the year 2000-2001 for the purpose of comparison. The passport was issued on 22.01.1986 but the signatures appearing on the passport cannot be compared as per the Government expert. Therefore, insisted admitted signatures relating to the year 2000-2001 for comparison as there is a possibility of change in the handwriting due to passage of time. Thereupon, the appellant-defendant was directed to furnish his signatures pertaining to the year 2000-2001. But, for the reasons best known to him, he did not furnish any document containing the signatures as required by the Director, A.P. Forensic Science Laboratory, Hyderabad.

It is not in dispute that the appellant-defendant was an employee and his signatures are expected to be available on so many documents. But, for the reasons best known to the appellant-defendant, he did not come forward to furnish the documents containing his signatures pertaining to the year 2000-2001 apprehending that the opinion may go against him if documents are furnished. Therefore, the trial Court, having no option, closed the petition filed by the appellant-defendant.

In a decision reported in 2008 SC 1325 (Krishna Janardhan Bhat v. Dattatraya G. Hedge), the Supreme Court held as under:

“If the defendant is proved to have discharged the initial onus of proof showing that existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to grant relief on the basis of the negotiable instrument. The defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies.”

In view of the principle laid down by the Apex Court, when the respondent-plaintiff was able to prove the execution of Ex.A1- promissory note, it is the duty of the appellant-defendant to establish that it was not supported by consideration either by direct or indirect evidence, but no satisfactory evidence is produced to prove that the promissory note was not supported by consideration.

For the foregoing reasons, I find no ground whatsoever to interfere with the concurrent findings of fact recorded by the Courts below in its judgments under appeal, nor is there any question of law, much less substantial question of law involved in the second appeal, warranting interference by this Court, in exercise of its jurisdiction under Section 100 of the Code of C.P.C.

In the result, the Second Appeal is dismissed. No costs.

As a sequel, Miscellaneous Petitions, if any pending,
shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

16.06.2017

bcj

