

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.1199 OF 2012

JUDGMENT:

The present Second Appeal is preferred by the defendant in O.S.No.16 of 2004 on the file of Junior Civil Judge, Bantumilli, aggrieved over the judgment and decree, dated 28.01.2011, rendered in A.S.No.189 of 2008 by the VI Additional District Judge (Fast Tract Court), Krishna at Machilipatnam, confirming the judgment and decree, dated 30.08.2008, rendered in the aforesaid Original Suit.

2. A few facts are relevant for the purpose of adjudication of the present Second Appeal.

3. At the out set, it is to be stated that no substantial question of law is involved, though, the appellant – defendant has projected, whether the lower Court has correctly drawn the presumption under Section 118 of the Negotiable Instruments Act in the light of evidence on record and non-exercise of jurisdiction under Section 73 of the Indian Evidence Act to examine the correctness of Ex.A1 - Promissory Note vitiated the decree and judgment of the Court below?

4. The facts are very simple. The respondent - plaintiff's case has been that the appellant - defendant has borrowed an amount of Rs.20,000/- from him for the purpose of agricultural investment and for construction of house agreeing to repay the same with interest at 18% per annum and executed a Promissory Note in his favour on

16.01.2001, and despite repeated demands, the appellant - defendant failed to discharge the debt.

5. On the other hand, the appellant - defendant has taken a plea that the Promissory Note is rank forgery, that he never visited the Village of respondent – plaintiff and he does not know the scribe, but he knows the attesor, who is a close friend of the respondent – plaintiff.

6. Basing on the said pleadings, the trial Court framed two issues, thus:

“(1) Whether the plaintiff is entitled to recover the suit amount?

(2) To what relief?”

7. Later, the issues were recast, thus:

“(1) Whether the suit promissory note is true, valid supported by consideration and binding on the defendant?

2) To what relief?”

8. Before the trial Court, the respondent - plaintiff examined himself as PW.1 and examined the attesor of the Promissory Note as PW.2 and marked Ex.A1. On behalf of the appellant - defendant, he himself got examined as DW.1, but no documents were marked.

9. The trial Court, basing on the evidence on record, more particularly, the evidence of the attesor, who was examined as PW.2,

has arrived at the conclusion that the respondent - plaintiff proved due execution of the Promissory Note by the appellant - defendant and accordingly, decreed the Suit with costs. The trial Court has also drawn the presumption under Section 118 (2) of the Negotiable Instruments Act, in support of the finding recorded by it.

10. Being aggrieved, the appellant - defendant preferred A.S.No.189 of 2008 before the VI Additional District Judge (Fast Track Court), Krishna at Machilipatnam. The learned VI Additional District Judge, by the judgment and decree, dated 28.01.2011, which is now under challenge, dismissed the appeal, confirming the judgment and decree passed by the trial Court. In the process, the first appellate Court has formulated the following three points in accordance with Order XLI Rule 31 C.P.C.:

“i) Whether the suit promissory note is true, valid, supported by consideration and binding on the Defendant?

ii) Whether the Judgment and Decree passed by the learned Junior Civil Judge Court's Bantumilli in O.S.No.16/04 dt.30.08.2008 is sustainable under law?

iii) To what relief?”

11. A perusal of the judgment under challenge rendered by the first appellate Court would show that there has been reappraisal of evidence independently. The appellate Court, even referred to the stand taken by the appellant - defendant as regards forging his signature in the suit Promissory Note and observed that mere plea therefor is not enough and something more is required on the part of

the appellant - defendant to prove the plea of forgery and also placed reliance on the judgment of Allahabad High Court in **Ch. Birbal Singh v. Harphool Khan**¹. In the context of presumption under Section 23 of the Indian Evidence Act, the first appellate Court has also placed reliance in **T.A. Ramanathan Chattieyar v. Rochanmul**², for the proposition that Section 118 of the Negotiable Instruments Act imposes a duty on the Court to raise a presumption in favour of the party that the said instrument was made for consideration. The first appellate Court also observed that the appellant - defendant having pleaded forgery, never made any attempt to refer Ex.A1 to a hand writing expert to get his opinion and, thus, opined that the appellant - defendant has not shown *bona fides* and thereafter, taking aid of the provisions of Section 73 of the Indian Evidence Act, compared the signatures occurring on the vakalat and written statement of the appellant - defendant with that of the signature occurring on Ex.A1, which was denied by the appellant – defendant, and arrived at the opinion that they are similar and identical. So far as the signature made by the appellant - defendant in his deposition is concerned, the first appellate Court has recorded a clear finding that the appellant - defendant having got alerted himself, deviated in scribing the signature and made it in a different way and thus, ignored the signature of the appellant - defendant on the deposition.

¹ AIR 1976 Allahabad 23

² AIR 1955 NUC 6035

12. Though, the learned counsel for appellant, Sri Sai Gangadhar Chamarty, mainly relies on the comparison made by the Court and contends that the appellant - defendant's signature on the deposition is not akin to the signature on the Promissory Note and as such, the first appellate Court ought to have set aside the judgment and decree passed by the trial Court, the substantial questions of law referred to in the above, certainly, does not merit acceptance, for the reason that the first appellate Court has clearly expressed its intention to take the aid of Section 73 of the Indian Evidence Act and made a comparison of the admitted signature of the appellant - defendant on the vakalat and written statement with that of the disputed signature occurring on Ex.A1.

13. In such an event, the finding recorded by the first appellate Court cannot be commented. The first appellate Court also referred to the provisions of Section 118 of the Negotiable Instruments Act and held that the presumption has to be invariably drawn in favour of the respondent - plaintiff, in which direction the appellant - defendant completely failed to rebut the same successfully. Therefore, viewed from any angle, there is absolutely nothing on record to view that the findings recorded by the first appellate Court and the trial Court are patently perverse, warranting interference giving rise to any substantial question of law.

14. Therefore, the Second Appeal is dismissed at the stage of admission. Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

June 23, 2017.
MD

