HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.1026 OF 2012

ORDER:

The defendant in the original suit is the present appellant viz., Kallu Konda Reddy and the respondent is the plaintiff viz., Medam Ranga Reddy.

2. For the sake of convenience, the parties are hereinafter referred as arrayed in the original suit.

3. The defendant suffered decree both in the hands of the trial Court as well as the first appellate Court.

4. The plaintiff filed regular suit in O.S. No.158 of 2007 on the file of Principal Senior Civil Judge, Vijayawada, for recovery of Rs.2,75,320/- on the basis of two (2) promissory notes dated 01.01.2001 and 06.01.2001, respectively, under which, the defendant alleged to have borrowed a sum of Rs.45,000/- agreeing to repay the same with interest at 24% per annum. The claim in the suit includes interest computed on the borrowed/suit amount till the date of filing of the suit. Part payments were also pleaded, under the promissory notes, of Rs.100/- each by the defendant on 29.12.2003. The notices sent by the plaintiff on 19.06.2005 were got managed by the defendant, according to the plaintiff, and got returned with an incorrect endorsement thereon.

5. The defence put-forth by the defendant is one of discharge. According to him, he has executed only one promissory note, but not the other and even under the promissory note (first), he has cleared the amount, but the plaintiff representing him that they were kept in bank locker and that they would return them at subsequent point of time, but taking undue advantage of the same and also advantage of possession thereof, filed the present suit.

6. The trial Court, based on the said pleadings, framed the following three (3) issues:

> "1) Whether the suit promissory note, dated 6-1-2001 is devoid of consideration?
>
> 2) Whether the discharge of debt under earlier promissory note is true and correct?
>
> 3) To what relief?"

7. Before the trial Court, the plaintiff, besides examining himself as PW.1, has examined an attestor as PW.2 and marked Exs.A-1 to A-7. On behalf of the defendant, besides himself examining as DW.1, has also examined one M. Kashaiah as DW.2, in whose presence, he said to have paid the amount covered by the promissory note.

8. The trial Court, on appreciation of evidence on record, on the grounds that there was no receipt evidencing payment of the

amount covered by the promissory note by the defendant and on the basis of the admission made by him as DW.1 as to part payment endorsement made on both the promissory notes, held, it was not open for him to plead discharge and also to plead that the second promissory note was executed by him as security for the amount covered by the promissory note under Ex.A-1, and, that the trial Court has also taken the circumstance of non-issuance of notice to the defendant despite pleading discharge into consideration and, thereby, decreed the suit with interest at 12% per annum *pendente lite* and 6% per annum from the date of decree till payment. The said judgment and decree were assailed by the defendant in A.S. No.232 of 2008 on the file of VII Additional District and Sessions Judge (Fast Track Court), Vijayawada.

9. The first appellate Court, having formulated the following three points;

> "1. Whether the suit promissory note dated 6-1-01 is supported by consideration?
>
> 2. Whether the discharge of the debt under the promissory note dated 1-1-01 is true and correct?
>
> 3. Whether the interest claimed by the plaintiff is highly excessive?"

and, having referred to the case projected by the plaintiff and the defence advanced by the defendant and on re-appraisal, opined that the answer given by the defendant in his cross-examination that he has discharged the amount covered by the promissory note four years after its execution is nothing but a make believe story for the reason that no prudent person would keep quite since the remedy to file a suit to recover the amount would get extinguished on expiry of three years from the date of execution of the promissory note. The first appellate Court also observed that the endorsements as regards payment of Rs.100/- by the defendant towards partial discharge of the promissory note debts, cannot be ignored and that admission would certainly condemn the defence set out by the defendant. The so-called collateral security was not agreed to by the first appellate Court. Concerning the evidence of DW.2, the appellate Court, observing that when DW.2 was keen in speaking to that payment was made before him and the defendant was so careful and cautious in securing the presence of DW.2 for the said purpose, still, not obtaining receipt for the alleged payment of promissory note amount towards discharge of the debt held the stand taken by him (defendant) is totally improbable. These have been the main observations made by the first appellate Court and certain other observations touching return of notice under Ex.A-5 envelop, got issued by the plaintiff and dismissed the appeal. The defendant is thus, before this Court in the present second appeal.

10. The present Second Appeal is coming up for admission. In fact, concurrent findings recorded by the Court below, since based on process of reasoning on appreciation of evidence let in by the parties, do not suffer from any legal infirmity nor the defendant is able

to show that any of the findings recorded by the Courts below are tainted with illegality and patently perverse.

11. The grounds agitated in the present appeal are without there being any significance in pointing out that the findings recorded by the Courts below are perverse. There is no substantial question of law involved in the present appeal.

12. The defendant attempted to show ground Nos.2, 3 and 7 in the grounds of appeal as substantial questions of law that arise for consideration in the present second appeal, but, certainly, they cannot be construed as questions of law for rendering a decision in the fact scenario of the present case. Even looking from the point of merits, absolutely there is no merit.

13. Therefore, the Second Appeal fails and is dismissed, at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the Second Appeal stand disposed of.

A. SHANKAR NARAYANA

June 23, 2017.
PV