

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

A.S.No.2690 OF 2001

JUDGMENT:

Heard Sri K. Sai Rama Murthy, learned counsel, representing Sri K.V. Subrahmanya Narusu, learned counsel for the appellant, and Sri M. Adinarayana Raju, learned counsel for the respondent.

2. The present appeal is directed against the judgment and decree, dated 31.07.2001, in O.S.No.81 of 1996 on the file of Senior Civil Judge, Vizianagaram, whereby and whereunder, the suit filed for recovery of a sum of Rs.1,08,187.50 ps. was decreed with interest at 6% per annum on the principal amount of Rs.75,000/- from the date of suit till payment.

3. The aforesaid suit is based on a promissory note marked as Ex.A1 said to have executed by the appellant – defendant in favour of the respondent – plaintiff for a sum of Rs.75,000/- on 02.01.1994. In spite of repeated demands, since, the debt was not discharged, the respondent – plaintiff got issued a legal notice to the appellant – defendant on 18.11.1995, marked as Ex.A2, for which, a reply was also given by the appellant – defendant, marked as Ex.A4.

4. The only defence taken by the appellant – defendant in his written statement is that the suit promissory note was executed as collateral security. In other words, it indicates that the appellant – defendant is denying passing of consideration under Ex.A1 –

promissory note. The appellant – defendant, somehow, did not adduce any evidence before the Court below, despite affording opportunity to him. The Court below did not believe the plea taken by the appellant – defendant and on the other hand, basing on the evidence of PW.1 and the contents of Exs.A1 to A4, arrived at the conclusion that Ex.A1 is supported by consideration and accordingly, held issue Nos.1 and 2 in favour of the respondent – plaintiff. On issue No.3, which relates to whether the Court below has jurisdiction or not, the Court below held it against the appellant – defendant and consequently, decreed the suit as mentioned in the above.

5. Learned counsel for the appellant would fairly agree that, though, pleas were put forth in the written statement, the said pleas remain as pleas without any proof on account of non-examination of the appellant or any witness on his behalf.

6. Learned counsel for the respondent would submit that the presumption under Section 118 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), which is a statutory presumption, stood un-rebutted on account of the appellant - defendant not proving the defence he placed before the Court below by way of written statement.

7. There is nothing much to appreciate, in view of the fact that the appellant has not stepped into the witness box to prove the plea put forth by him in the written statement. The presumption that arises in

favour of the respondent – plaintiff, as envisaged by the provisions of Section 118 of the Act, stood un-rebutted. Therefore, it has to be held that the present appeal is devoid of merit and is liable to be dismissed.

8. Accordingly, the present appeal is dismissed confirming the judgment and decree, dated 31.07.2001, in O.S.No.81 of 1996 on the file of Senior Civil Judge, Vizianagaram. The parties shall bear their respective costs.

9. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

September 14, 2017.
MD

A. SHANKAR NARAYANA, J

