

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.848 OF 2014

JUDGMENT:

Defendant in O.S. No.260 of 2004 on the file of the Principal Junior Civil Judge, Eluru, West Godavari District, State of Andhra Pradesh, is the appellant in the present second appeal. He suffered the decree, dated 13.06.2006, in the hands of the trial Court - Principal Junior Civil Judge, Eluru, in a suit for recovery of money filed by the respondent herein, who is plaintiff in the aforesaid suit. He was unsuccessful when he approached the learned I Additional District Judge, West Godavari at Eluru by filing Appeal Suit No.209 of 2006, and having got aggrieved over the same, he preferred the present second appeal.

2. For the sake of convenience, the parties herein are referred to as they were arrayed in the original suit, referred to in the above.

3. Turning to the facts, the plaintiff laid the suit for recovery of amount of Rs.86,000/- which includes principal amount of Rs.50,000/- and the rest is towards interest computed at 12% per annum based on a promissory note said to have executed by the defendant on 22.01.2001; despite repeated demands, the defendant did not discharge the debt; and having got issued legal notice, the suit was laid before the trial Court in O.S. No.260 of 2004.

4. The defence agitated by the defendant was one of denial, and he sets out that he originally borrowed Rs.10,000/- in 1998 and another sum of Rs.5,000/- and he discharged both the loans. But, when he demanded to return the pro-notes, the plaintiff failed to return it on the premise that his clerk was not available in the office, and when the plaintiff demanded to pay some more amount, the defendant was prepared to pay Rs.4,500/-, and in that connection, according to the defendant, on 15.08.1999, in the presence of Diwakar, Jacob Raju and others, he executed a blank promissory note towards balance amount of Rs.4,500/- and also as security for the loan obtained by the said Diwakar and a consent letter, dated 12.10.2000 was obtained from him. In paragraph No.10 of the judgment of the trial Court, it is forthcoming that the defendant after negotiations agreed to pay Rs.11,000/- and, accordingly, on 03.09.2001 he paid the said amount also. But, the plaintiff did not return the promissory note and only returned the consent letter and utilizing the said promissory note, the plaintiff laid the suit. This has been the specific case of the defendant.

5. The trial Court based on the pleadings, settled the following three issues for proceeding with trial.

“

- i) Whether the suit promissory note is not supported by consideration?
- ii) Whether the suit is barred by time?
- iii) To what relief? ”

6. During trial, the plaintiff examined himself as PW.1, besides examining the scribe as PW.2 and marked Exs.A-1 to A-5. Whereas, the defendant besides examining himself as DW.1, has examined DWs.2 to 7, who are his colleague teachers with an intention to show that they were all borrowers and the plaintiff lending money to various persons, and in that connection, according to the learned counsel for the defendant, there was a complaint referred to the Revenue Authorities and even Mandal Revenue Officer conducted an inquiry and submitted a report and that report was sought to be marked in the first appellate Court - I Additional District Judge, Eluru by filing I.A. No.1242 of 2010 under Order XLI Rule 27 of the Code of Civil Procedure, 1908 ('CPC') and, of course, the defendant was not successful as it was dismissed and even Exs.B-1 to B-10 were also marked on behalf of the defendant.

7. The trial Court, on appraisal of evidence, mainly on the ground that the said Ch. Jacob Raju was not examined by the defendant as the presumption under Section 114 of the Indian Evidence Act, 1872, and its illustration would come into vogue, treated it as main probability and disbelieved the defence set up by the defendant. Incidentally, the trial Court also observed that the evidence of DWs.2 to 7 is unconnected with the suit transaction and, in fact, they admitted that the plaintiff lent moneys to them also and they have not rebutted and, in that connection, similar suits have been filed by the plaintiff and pending. Basing on these answers, the trial

Court arrived at the finding that the evidence of DWs.2 to 7 is of no use to prove the stand taken by the defendant, and thereby rejected the stand of the defendant, consequently, decreed the suit with interest at 6% per annum from the date of decree till realization, by passing judgment and decree, dated 13.06.2006.

8. The said judgment and decree were challenged by the defendant before the appellate Court in A.S. No.209 of 2006. The learned appellate Court also reappraised the evidence on record, referring to what has been stated by DW.2, more particularly, in his cross-examination and appraised the documentary evidence in the light of answers given by DW.2 in his cross-examination, and though, observed that the evidence of DWs.1 and 4 to 7 and Exs.B-1 to B-3 show that they were prior to the transaction between the plaintiff and defendant, but the transactions between DWs.1 and 4 to 7 and the plaintiff have nothing to do with the loan transaction covered by Ex.A-1. The appellate Court also referred to the attempt made by the defendant in getting additional evidence on to file, by filing I.A. No.1242 of 2010 under Order XLI Rule 27 of CPC, but the same was dismissed by it, and the same was also referred to in paragraph No.14 of the judgment. The reason assigned by it is, that the additional evidence has no relevancy to decide the issues involved in the suit. With the aforesaid observation, the appellate Court dismissed the appeal confirming the judgment and decree passed by the trial Court, by judgment, dated 23.03.2011.

9. Aggrieved by the said judgment and decree, the present second appeal is preferred by the defendant formulating certain questions terming them as substantial questions of law in paragraph No.12.

10. In the light of the submissions made by the learned counsel for the appellant, Sri K.S.N. Murthy, and Sri Nimmagadda Satyanarayana, learned counsel for the respondent, it is now to be examined whether the question of law formulated would constitute substantial question of law or otherwise in paragraph No.12 of the memorandum of Grounds of Appeal, which reads thus:

“12. The substantial question of law raised in this appeal is that Ex.A.1 is not supported by any consideration, the respondent failed to adduce corroborative evidence on the above aspect. The P.W.2 who examined on his behalf as scribe is none other than the business partner of the respondent/plaintiff. Therefore his evidence cannot be taken into consideration.”

11. *Ex facie*, it is to be said that it does not constitute substantial question of law at all, as it touches merely the fact-situation and appreciation based on fact-situation occurring in the suit. Even going further, whether there is any perverse findings recorded by the Courts below, and whether the appellant is successful in exposing that the findings recorded by the Courts below are patently perverse, it has to be said that the findings recorded by the trial Court as well as the appellate Court on issues and the point formulated respectively cannot be construed as suffering from legal infirmity.

The fact remains is that the pro-note was proved through the evidence of PW.2, the scribe. It appears nothing is brought out in the cross-examination of PW.2 to show that the consideration there-under was not passed, and on the other hand, when statutory presumption arises, it is for the defendant to rebut the presumption successfully, in which direction, except the evidence of DWs.2 to 7, nothing-else is forthcoming.

12. Turning to the reappraisal made by the appellate Court, as already mentioned in the above, the appellate Court has taken independent exercise of reappraisal of evidence on record, more particularly, referring to the answers given by DW.2 in his cross-examination and the effect thereof on the documentary evidence Exs.A-5 and B9 and B10, more particularly, Exs.B1 to B3. Therefore, it cannot be said that the concurrent findings rendered by the Courts below suffer from any legal infirmity, nor there is any patent illegality warranting interference with the findings recorded and the conclusion arrived at by the Courts below. It is no doubt true, an attempt is made by the defendant to project that the plaintiff has been doing money lending business, but unfortunately, no plea to that effect was raised in the written statement, nor any issue was framed.

13. Therefore, the present second appeal fails for want of substantial questions of law and, consequently, the appeal is dismissed. There shall be no order as to costs.

14. While granting interim stay on 30.08.2011, this Court directed the defendant to deposit 50% of the decretal amount together with interest and costs, duly giving credit to the 1/4th amount which was already deposited. It is now represented that the said condition was complied with. Since the second appeal is dismissed, the plaintiff is permitted to withdraw the amount deposited and lying to the credit of the suit and can proceed with execution proceedings for recovery of balance amount.

As a sequel thereto, miscellaneous applications, if any pending in the second appeal, stand closed.

July 20, 2017.
Mgr

A. SHANKAR NARAYANA, J

