

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.74 of 2017

ORDER:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, is filed by appellant/defendant, challenging the decree and judgment dated 02.09.2015 passed in A.S.No.26 of 2012 by the VI Additional District Judge, Siddipet, Medak District, whereby, the decree and judgment dated 30.06.2012 passed in O.S.No.48 of 2007 by the Junior Civil Judge, Gajwel, Medak District, was confirmed.

2. Appellant herein was defendant and respondent herein was plaintiff before the trial Court and for the sake of convenience, parties will be hereinafter referred to as arrayed before the trial Court for convenience and clarity.

3. Plaintiff filed suit for recovery of Rs.40,000/- on the foot of a promissory note dated 04.02.2004 executed by defendant in his favour, agreeing to repay the said amount with interest at the rate of 24% per annum, either to the plaintiff or to his order, as and when demanded by plaintiff. Defendant did not repay the said amount despite repeated demands. Then, plaintiff got issued a telegraphic notice to defendant demanding repayment of the amount covered by Ex.A.1 – Promissory Note. Despite such notice, defendant neither discharged the debt due nor made any part payment. Therefore, plaintiff filed the suit for recovery of Rs.69,000/-, i.e., Rs.40,000/-

towards principal and Rs.29,000/- towards interest at the rate of 24% per annum.

4. Defendant filed written statement denying material allegations *inter alia* contending that he worked as President of Citizens Club and that he never borrowed any amount from plaintiff and that one Y.Ravinder Rao, who is one of the attestors to Ex.A.1 – Promissory note, has misappropriated the funds of the club and the members of Club filed criminal as well as civil cases against him and that said Ravinder Rao hatched a plan and forged the signature of defendant and got filed the suit and prayed for dismissal of suit.

5. Based on above pleadings, trial Court framed only two issues for trial. During trial, on behalf of plaintiff, P.Ws.1 and 2 were examined and Exs.A.1 to A.3 were marked. On behalf of defendant, D.Ws.1 to 5 were examined and no documents were marked.

6. Upon hearing arguments and considering the material on record, trial Court decreed the suit holding that plaintiff is entitled for recovery of Rs.40,000/- under Ex.A.1 – Promissory Note with interest at the rate of 12% per annum from the date of suit till realisation.

7. Being aggrieved by the decree and judgment of the trial Court, defendant preferred first appeal before lower appellate Court, which also ended in dismissal by affirming the decree and judgment of trial Court.

8. Defendant preferred this Second Appeal raising a substantial question of law to the effect that there was no 'Noting' on Ex.A.1 – Promissory Note as required under Section 99 of the Negotiable Instruments Act, 1881, ('the Act', for brevity) and also a Certificate of Protest as required under Section 100 of the Act and that since there was no Noting or Protest on Ex.A.1 – Promissory Note, the suit is not maintainable and prayed for setting aside the decree and judgment passed by the trial Court and affirmed by the lower appellate Court.

9. Admittedly, the suit is a simple suit for recovery of money on the foot of Ex.A.1 – Promissory Note. The only defence set up before the trial Court by defendant is that one Y.Ravinder Reddy, who was one of the attestors of Ex.A.1 – Promissory Note and against whom both civil and criminal litigation is pending, forged the signatures of defendant and got filed the suit. In fact, no plea of 'Noting' and 'Protest' as required under Sections 99 and 100 of the Act respectively was raised either before the trial Court or before the first appellate Court and for the first time, the said plea is raised in this second appeal without any factual foundation, which cannot be countenanced.

10. Learned counsel for the appellant/defendant contended that when a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each and that such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or,

if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges. Learned counsel would further contend that when a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public.

11. There is no dispute about the law on 'Noting' and 'Protest'. But in the instant case, the question of Noting and Protest does not arise at all, since Ex.A.1 – Promissory Note was not dishonoured. In fact, the question of dishonour of Ex.A.1 – Promissory note does not arise in this matter since Ex.A.1 – Promissory note is defined under Section 4 of the Act, which stipulates that a promissory note is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. If Ex.A.1 – Promissory Note is a bill of exchange and when it is presented for collection and dishonoured, then the question of 'Noting' and 'Protest' would arise. In the absence of any plea before the trial Court regarding 'Noting' and 'Protest' which is purely a question of fact, such plea is impermissible to be raised for the first time in the second appeal. Accordingly, I find no substantial question of law in this second appeal.

12. For the foregoing reasons and in the light of the fact that defendant did not raise the plea of Noting and Protest before the trial Court as well as the lower appellate Court and as such, it is not open

for him to raise that plea for the first time before this Court, this Court is of the view that no question of law, much less substantial question of law, is involved, to admit the second appeal. The appeal is de void of merit and is liable to be dismissed *in limine*.

13. In the result, the second appeal is dismissed *in limine*. No costs. Miscellaneous petitions pending, if any, shall stand closed.

M. Satyanarayana Murthy, J

31st March, 2017
Bvv

