

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

SECOND APPEAL No.121 of 2017

JUDGMENT:

Aggrieved by the concurrent judgments of the Courts below, granting a decree for recovery of money in favour of the respondent, the appellant has come up with the present second appeal.

2. Heard Mr. Sai Gangadhar Chamarty, learned counsel for the appellant. Mr. Kowturu Pavan Kumar, learned counsel takes notice for the respondent.

3. The respondent filed a suit in O.S.No.890 of 2005 for recovery of money on the basis of a promissory note marked as Ex.A.1. The appellant/defendant claimed that the suit promissory note was materially altered, by changing the date 01.10.2002 as 21.10.2002 for the purpose of saving limitation. However, the appellant/defendant admitted that he borrowed certain amounts in March, 1997 and that he made part payments on various dates in the years 1999, 2000 and 2002. It was claimed by the appellant/defendant that the suit promissory note was executed on 01.10.2002 for a sum of Rs.35,000/- representing the balance payable on the amounts borrowed earlier.

4. The defendant also claimed that after receiving the legal notice he paid the entire amount to the plaintiff.

5. In other words, the appellant/defendant made contrary pleas, first contending that there was material alteration in the pro-note, next contending that he never saw the plaintiff and thereafter contending that the entire amount due under the promissory note was paid.

6. Once the defendant pleaded discharge, it was for him to prove the discharge. Before the trial Court, the plaintiff was examined as PW.1

and her husband was examined as PW.2. The defendant was examined as DW.1 and a third party was examined as DW.2. The defendant relied upon a payment endorsement filed as Ex.B.2 and the writings in Ex.B.4 and Ex.B.5.

7. After analyzing the evidence on record, the trial Court found that there was no material alteration and that the amount was not discharged. As a matter of fact, the defendant is a practicing advocate. He had professional experience from 1985. Therefore, the trial Court belied the plea of discharge and decreed the suit.

8. The appellate Court independently framed issues for consideration under Order XLI Rule 31 and upon consideration of the pleadings and evidence, came to the conclusion that the judgment of the trial Court did not warrant any interference. It is against this judgment that the defendant is before this Court.

9. I find no question of law much less a substantial question of law arising in this second appeal. The Courts below rightly pointed out that the person, who pleaded discharge should have proved the same. But it was not proved. The allegation of material alteration was not believed by the Court below. Therefore I find no reason to interfere with the concurrent judgments. However, the appellant is granted four months time to discharge the entire dues. Till such time the decree shall not be executed.

10. As sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

3rd March, 2017
Js.

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Date: 03-03-2017

Js.