

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.640 OF 2013

JUDGMENT:

This Second Appeal is filed by the unsuccessful plaintiff assailing the decree and judgment dated 21.01.2013 in A.S.No.28 of 2011 on the file of the Court of the Senior Civil Judge, Nuzvid, reversing the decree and judgment dated 08.08.2011 in O.S.No.262 of 2008 on the file of the Court of the Principal Junior Civil Judge, Tiruvuru, granting decree in favour of the plaintiff.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The averments of the plaint are, in brief, as follows: The defendant borrowed an amount of Rs.15,000/- from the plaintiff on 02.11.1996 and executed a promissory note on the same date agreeing to repay the same with interest at the rate of 18% per annum. The defendant made part payments on 22.10.1999, 10.10.2002 and 27.08.2005. The defendant again borrowed an amount of Rs.15,000/- from the plaintiff on 03.03.1997 and executed a promissory note of the even date agreeing to repay the same with interest at the rate of 18% per annum. Again the defendant made part payments on 08.02.2000, 10.01.2003 and 27.08.2005. For one reason or other, the defendant did not choose to pay the remaining amount. Therefore, the plaintiff filed the suit for recovery of the said amount.

4. The defendant filed written statement admitting the execution of the promissory notes in favour of the plaintiff on

02.11.1996 and 03.03.1997 and made part payment endorsements. The case of the defendant is that he actually borrowed an amount of Rs.7,500/- from the plaintiff, however he executed Exs.A1 and A5 promissory notes in favour of plaintiff for Rs.15,000/- each. It is the further case of the defendant that he paid the entire amount to the plaintiff. It is also the case of the defendant that the plaintiff made material alteration so far as the endorsement dated 27.08.2005 is concerned.

5. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the suit pronotes are executed for double amount?
2. Whether the discharge as pleaded by defendant is true?
3. To what relief?

6. To substantiate the case, the plaintiff examined himself as PW.1 and got marked Exs.A.1 to A.8. To demolish the case of the plaintiff, the defendant examined himself as DW.1 and no documents were marked.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court decreed the suit. Feeling aggrieved by the decree and judgment of the trial Court, the defendant preferred A.S.No.28 of 2011 on the file of the Court of the Senior Civil Judge, Nuzvid. The first appellate Court, after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the plaintiff made material alteration in Ex.A.4 part payment endorsement and allowed the appeal by setting aside the decree and judgment dated 08.08.2011 in O.S.No.262 of 2008 on the file of the Court of the Principal Junior Civil Judge, Tiruvuru. Hence, the second appeal.

8. Smt. N.Revathi, Advocate, representing Sri Nimmagadda Satyanarayana, learned counsel for the appellant, strenuously submitted that the first appellate Court reversed the judgment of the trial Court on assumptions and presumptions, which is not permissible under law. She further submitted that the findings recorded by the first appellate Court are not supported by any material much less legally admissible material. She urged the following point as substantial question of law:

Whether the first appellate Court is justified while arriving at a conclusion that the plaintiff altered '6' (month) as '8' on the endorsement dated 27.08.2005 i.e., Ex.A.4 without sending the same to the expert under Section 45 of the Indian Evidence Act or not?

9. As seen from the testimony of PW.1, the defendant borrowed an amount of Rs.15,000/- on 02.11.1996 agreeing to repay the same with interest at the rate of 18% per annum and executed a promissory note-Ex.A.1. Exs.A.2, A.3 and A.4 are the part payment endorsements dated 22.10.1999, 10.10.2002 and 27.08.2005. It is the case of the defendant that he actually borrowed an amount of Rs.7,500/- from the plaintiff and repaid the entire amount. The defendant admitted the execution of Ex.A.1 – promissory note and Exs.A.2 and A.3 endorsements, however, disputed Ex.A.4 endorsement. It is a settled principle of law that an admitted fact need not be proved. The defendant, having admitted his signature on Ex.A.1 promissory note, failed to establish that he actually borrowed an amount of Rs.7,500/- only and discharged the said amount. The trial Court as well as the first appellate Court arrived at a conclusion that Ex.A.1 promissory note is executed by the

defendant. Both the Courts below arrived at a conclusion that Exs.A.2 and A.3 endorsements were made by the defendant.

10. The entire controversy revolves around Ex.A.4 endorsement dated 27.08.2005. The defendant has taken a specific plea in the written statement that there is a material alteration so far as Ex.A.4 endorsement is concerned. The trial Court simply arrived at a conclusion that there is no material alteration in Ex.A.4. The trial Court has not assigned reasons much less cogent and valid reasons to arrive at such a conclusion. The first appellate Court arrived at a conclusion that there is a material alteration in Ex.A.4 endorsement. Any finding recorded by the Court without assigning any reasons much less cogent and convincing reasons is not sustainable.

11. The crucial question that falls for consideration is whether the findings recorded by the first appellate Court are based on any material or not? If any findings are recorded by the Court without any evidence or basing on any evidence, which is not legally admissible, then those findings can be termed as perverse.

12. It is the case of the plaintiff that the defendant made part payment on 27.08.2005. Of course, the defendant is disputing Ex.A4 endorsement to that effect. A perusal of the record clearly reveals that the first appellate Court perused Ex.A.4 endorsement. The first appellate Court gave a specific finding that the plaintiff altered '6' (month) in Ex.A.4 as '8'. The first appellate Court also made an observation that the alteration was made with a different ink. Even assuming, but not conceding, that there is a correction in Ex.A4 at the time of making part payment by the defendant on

27.08.2005, what prevented the plaintiff to obtain the initial of the defendant indicating such a correction. It is not the case of the plaintiff that there are some corrections in Ex.A.4 endorsement. The findings recorded by the first appellate Court with regard to the material alteration in Ex.A4 are supported by material much less legally admissible material. Every alteration will not be a material alteration. If there is a material alteration on the negotiable instrument, the same is not legally enforceable in view of Section 87 of the Negotiable Instruments Act. The first appellate Court referred the decision in **Allampati Subbareddy v Neelapureddy Ramanareddy**¹, wherein it was held that when date is altered and plaintiff seeking to enforce promissory note must explain to the court as to when and how alteration was made. In the instant case, the plaintiff has not put forth any explanation for alteration in Ex.A.4.

13. The next question that falls for consideration is whether the plaintiff will get any benefit by making such alteration so as to treat it as material alteration?

14. Ex.A.4 endorsement was made on 27.08.2005. Suffice it to say, the period of limitation to file suit basing on promissory note is 3 years. Basing on Ex.A.1 – promissory note dated 02.11.1996, the plaintiff ought to have filed the suit on or before 02.11.1999. A perusal of the trial Court record clearly reveals that the present suit was filed on 27.08.2008, on the last date of the limitation, basing on Ex.A4 endorsement dated 27.8.2005. This Court is very much conscious that the plaintiff is entitled to file the suit on the

¹ AIR 1966 AP 267

last date of limitation. Merely because the suit was filed on the last date of limitation by itself is not a valid ground to dismiss the suit. As rightly observed by the first appellate Court, there is a material alternation in Ex.A4 endorsement. In the instant case, the plaintiff ought to have filed the suit on or before 27.06.2008, if no material alteration was made. For one reason or the other, he could not file the suit on or before 27.06.2008. On coming to know about the expiry of the period of limitation, the possibility of making material alteration in Ex.A.4, in order to save the period of limitation, is more probable and believable. Moreover, the material alteration made on Ex.A.4 is clearly visible even to a naked eye apart from colour of the ink. The first appellate Court has assigned reasons much less cogent and valid reasons for disbelieving Ex.A.4 endorsement, in such circumstances, there is no necessity to send Ex.A4 to an Expert for comparison and opinion.

15. In **Municipal Committee, Hoshiarpur v. Punjab SEB²**, while dealing with the scope of Section 100 of CPC, the Hon'ble apex Court held at paragraph No.16 as follows:

16. Thus, it is evident from the above that the right to appeal is a creation of statute and it cannot be created by acquiescence of the parties or by the order of the court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a court or authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance with the conditions mentioned in the provision that creates it. Therefore, the court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The

² (2010) 13 SCC 216

existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same. (Vide *Santosh Hazari v. Purshottam Tiwari*, (2001) 3 SCC 179; *Sarjas Rai v. Bakshi Inderjit Singh*, (2005) 1 SCC 598; *Manicka Poosali v. Anjalai Ammal*, (2005) 10 SCC 38; *Sugani v. Rameshwar Das*, (2006) 11 SCC 587; *Hero Vinoth v. Seshammal*, (2006) 5 SCC 545; *P. Chandrasekharan v. S. Kanakarajan*, (2007) 5 SCC 669; *Kashmir Singh v. Harnam Singh*, (2008) 12 SCC 796; *V. Ramaswamy v. Ramachandran*, (2009) 14 SCC 216 and *Bhag Singh v. Jaskirat Singh*, (2010) 2 SCC 250.)

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the point raised by the learned counsel for the plaintiff will not fall within the ambit of Section 100 of C.P.C. There is no question of law much less substantial question of law in this appeal.

17. In the result, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs.

18. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 31.10.2017

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