

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.299 OF 2008

JUDGMENT:

It is a regular Appeal Suit, under Section 96 of the Code of Civil Procedure, 1908, directed against the judgment and decree dated 25.02.2008 in O.S. No.256 of 2007 passed by the learned Principal Senior Civil Judge, Vijayawada, preferred by the defendant therein.

2. The learned Principal Senior Civil Judge, in the above suit for recovery, filed by the respondent herein (plaintiff) against the appellant herein (defendant), decreed the suit for Rs.5,98,698/- with interest at 12% per annum from the date of suit till the date of decree, and, thereafter, at 6% per annum, till realisation, on the principal sum of Rs.3,50,000/-.

3. For the sake of convenience, the parties are referred to as they are arrayed before the trial Court.

4. It is not in dispute that the plaintiff is holder in due course, as the promissory notes were transferred in his favour for consideration.

5. Referring to the relevant details as to the amounts borrowed by the defendant from G. Appa Rao and the endorsements on the promissory notes, transferring them in favour of the plaintiff viz., Manchala Venkateswarlu, referred to the written statement averments specifically; the plea put-forth by the defendant viz., Siripurapu Nehru

was, plea of discharge under Ex.B-1. The stand taken by the defendant has been that he along with DWs.2 to 4 viz., G.B.G. Tilak, M. Raghu Babu and D. Krishnam Raju, respectively, went to the house of the said G. Appa Rao and paid the entire amount of Rs.5,30,000/-, which includes interest and principal on 15.09.2003, and DW.4 scribed the contents of Ex.B-1 whereas, DWs.2 and 3 attested it, and, thus, it is one of discharge pleaded by the defendant, in which case, the whole burden rests on the defendant to prove the said discharge and if he fails in that endeavour, certainly, there is no need to examine anything except to decree the suit and this Court being an appellate Court, if it is found that the plea of discharge pleaded by the defendant is untrue and incorrect, there cannot be any hesitation in affirming the decree passed by the Court below.

6. Based on the pleadings put-forth by the respective parties, the trial Court settled the following four issues in order to substantiate their respective stands.

- “1. Whether the plaintiff is a holder in due course?
2. Whether the discharge receipt, dated 15-9-2003 executed by transferor is true and genuine?
3. Whether the plaintiff is entitled to recover the suit amount?
4. To what relief?”

7. The plaintiff himself examined as PW.2 besides examining G. Appa Rao as PW.1, who is transferor of Exs.A-1 and A-2, and exhibited Exs.A-1 to A-4, which are promissory notes and two endorsements on the suit promissory notes, respectively, whereas the defendant besides examining himself as DW.1, has also examined DWs.2 to 4, the attestors and scribe, respectively, of Ex.B-1 and marked Exs.B-1 to B-14.

8. The learned trial Judge evaluated the evidence on record and derived probability in regard to delay in getting the reply issued by the plaintiff mentioning that the plaintiff has got issued the notice in the month of July, 2004, i.e., 27.07.2004, whereas the defendant answered it by his reply dated 16.09.2004 and the latitude of time that occurred in issuing reply notice was taken note of and thereby observing that there was no need for the defendant to take such long time to get the reply issued having waited till 16.09.2004, by which date, even the suit was filed by the plaintiff, drawn inference adverse to the case of the defendant.

9. Concerning the plea of discharge, the trial Court observed that the defendant is not a layman, but, a lawman, that he is graduated in Master of Business Administration (MBA) and further graduated in Law and enrolled as an Advocate on the rolls of Bezawada Bar Association and this has been mainly projected in viewing suspicious circumstances so far as Ex.B-1 is concerned. At one stage, the trial Court observed that the plaintiff is also an educated person and the

defendant is an advocate by practice and thus, there was no reason for the defendant to take DWs.2 to 4, Ex.B-1 scribed through DW.4 by him personally or by the plaintiff when the alleged amount was repaid or the loan was discharged. This apart, the learned trial Judge, on an intrinsic analysis of evidence of DWs.1 to 4 found inconsistencies, and thereby disbelieved the version of DWs.2 to 4 in regard to passing of the alleged receipt under Ex.B-1 by G. Appa Rao.

10. The three important reasons assigned by the learned trial Judge have been that Ex.B-1 is bereft of all relevant particulars. It is not in conformity with what ought to have been under the circumstances occurring herein, as narrated by the defendant in his written statement, in an attempt to explain away, why he failed to get back the promissory notes under Exs.A-1 and A-2 stating that the said G. Appa Rao having gone inside the house after receiving the amount of Rs.5,30,000/-, came back and told them that the promissory notes were misplaced and assured that they will send back at a later point of time. The learned trial Judge observed that Ex.B-1 does not indicate what was the amount towards principal and what was the interest that accumulated or computed and even went to the extent of calculating the interest at 24% per annum simple, and arrived at that, in such an event, the amount so calculated would be less than the amount of Rs.5,30,000/- alleged to have been paid by the defendant. Thus, viewed the stand taken by the defendant as wholly impermissible.

11. The second reason is, failure on the part of the defendant to issue a reply immediately, in regard to which already adverted to in the above, which according to the trial Court is a probability that Ex.B-1 is not a genuine document and it was got up at a subsequent point of time that too after the notice was served by him got issued by the plaintiff.

12. The third reason assigned by the Court below is that it has compared the signatures of Said G. Appa Rao, who lent the amount originally to the defendant and whose signatures are available on Exs.A-3 and A-4, with that of the purported signatures on Ex.B-1 and found that they are similar and identical and even referred to one of the letters which was in complete variance with the admitted signatures occurring on Exs.A-3 and A-4. Thus, the Court held that Ex.B-1 is not a genuine document and thereby rejecting the plea of the defendant, decreed the suit.

13. Sri N. Subba Rao, learned counsel for the respondent (plaintiff), tendered arguments.

14. The present appeal suit being of the year 2008, taken up for disposal on merits, as, though, the appeal was taken up at 4.00 p.m., there was no representation for the defendant (appellant).

15. Now the following points would arise for determination:

1. Whether the discharge pleaded by the defendant is true and correct, and binds the plaintiff?
2. Whether the plaintiff is entitled to the suit claim, in which case, whether the endorsements on Exs.A-1 and A-2 are proved, marked as Exs.A-3 and A-4 respectively?
3. Whether the findings recorded by the Court below are in accordance with the evidentiary rule?
4. Whether the judgment and decree under challenge cannot be sustained?
5. To what other relief, if any?

Point Nos.1 to 5:

16. Not much discussion is required in arriving at that the defendant completely failed to prove the plea in regard to discharge of the suit claim.

17. Now, a perusal of the evidence of DWs.2 to 4 leaving the evidence of DW.1, DWs.3 and 4, though, attested Ex.B-1, they were unable to say what was the interest calculated and what was the principal amount when Ex.B-1 was attested by them. This particular aspect cannot be sidelined when the plea of discharge was put-forth by the defendant. Certainly, these details ought to be mentioned in the

receipt. Even the evidence of DW.4, who said to be the scribe of Ex.B-1 is of no use as it would not improve the case of the defendant in proving the plea of discharge, raised. He is also unable to state what constituted the principal amount, out of Rs.5,30,000/- mentioned in Ex.B-1 and the amount that was arrived at having calculated the interest at 24% per annum. When these two components are not finding place in Ex.B-1, certainly, it is difficult to agree with the defendant's case, and, on the other hand, the inconsistency in the evidence of DWs.2 to 4 pointed out by the trial Court, as the same is to be found true, when examined the evidence of DWs.2 to 4, certainly, requires exclusion of their evidence and when their evidence is excluded, what remains is the evidence of DW.1 alone and Ex.B-1. DW.1 being an interested party, certainly, his evidence cannot be believed, more particularly, when the reply got issued by him under Ex.B-3, dated 16.09.2004 was almost more than one-and-half-months after he received Ex.B-2 notice. There is no explanation on his behalf as to why he waited till 16.09.2004, as rightly observed by the trial Court and issued Ex.B-3 notice setting out the plea of discharge. As observed by the Court below, the reply was given only after the suit was instituted by the plaintiff and thus, it is clear that only with a view to get over the liability under Exs.A-1 to A-4, more particularly, under Exs.A-3 and A-4, it appears, Ex.B-1 was brought into existence. The comparison made by the Court below cannot be lightly be thrown away, for the reason Section 73 of the Evidence Act, 1872, permits a

Court to compare disputed signatures with that of the admitted signatures.

18. Viewed from any angle, absolutely there is no merit, and, therefore, it has to be held that the defendant failed to prove discharge of the loan amount and, therefore, the plaintiff is entitled to suit amount with interest.

19. In view of the observations made in the above, there is no legal infirmity in the findings recorded by the Court below warranting interference by this Court since on an independent analysis of evidence on record, it is to be held that the trial Court did not deviate in appreciating the evidence on record in accordance with the evidentiary rule.

20. Thus, all the points are held against the defendant.

21. Therefore, the Appeal Suit is dismissed with costs confirming the judgment and decree passed by the Court below. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present appeal suit stand dismissed.

A. SHANKAR NARAYANA, J

January 30, 2018.

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