HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.7 OF 2008

JUDGMENT:

The present appeal is preferred by the defendant under Section 96 of the Code of Civil Procedure, 1908, aggrieved over the judgment and decree, dated 16.04.2007, passed in O.S. No.2305 of 2003, by the learned VIII Additional Senior Civil Judge (Fast Track Court), City Civil Court, Hyderabad, whereby and where-under, the suit was decreed for a sum of Rs.8,52,742/- with costs and interest at the rate of 6% per annum from the date of suit till realization.

2. Though, the appellant got filed the present appeal through Sri M.S. Chandresh, learned counsel, there was no representation in the fore-noon session when the case was called and, therefore, it was kept aside, and it was called again in the after-noon session, still, there is no representation for the appellant. The respondent herein appearing as party-in-person is also not present.

3. The appellant herein is the defendant in the aforesaid suit, while respondent is the plaintiff.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid suit.

5. The relevant facts for the purpose of adjudication of the controversy herein are:

i) The defendant being a family friend of plaintiff, initially, borrowed a sum of Rs.2,50,000/- on 09.01.2001 and, thereafter, borrowed another sum of Rs.2,50,000/- on 10.01.2001 to meet his business expenses and executed promissory notes there-for agreeing to repay the same with interest at the rate of 24% per annum.

ii) Since the defendant failed to repay the due amounts, the plaintiff got issued legal notice, dated 23.11.2003, requiring him to discharge the dues. But, the notice stood unanswered despite service nor the defendant did pay the amounts due under the promissory notes. Hence, the aforesaid suit.

6. The defendant contested the suit by filing written statement. He has set out the case that the plaintiff made some investments in the Films and Tele serials, which the defendant has directed. He has taken yet another plea that, to secure the investments made by the plaintiff, the plaintiff obtained signed blank cheques and promissory notes from him (defendant).

i) It is also according to the defendant that the plaintiff, though, shared the profits derived from the film business, did not return the blank promissory notes and cheques obtained from him and got filled them in his name and in the names of his family members, filed the present suit and criminal cases in order to harass him. Thus, the defendant denied the execution of promissory notes in connection with the alleged borrowals. Further, plea was that the promissory notes were devoid of consideration.

ii) Yet another plea raised by the defendant is that the plaintiff is a moneylender, doing money lending business and collecting high rate of interest without having a valid license under Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 Fasli (For short 'Act 1349 F') and, therefore, claimed that he is not liable to pay suit amount and sought to dismiss the suit.

7. The Court below basing on the pleadings has settled the following five (5) issues for trial:

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1. Whether the suit pronote is not supported by consideration?
2. Whether the suit pronote is not legally binding the defendant under the provisions of N.I. Act?
3. Whether the suit is bad for plaintiff for not having money lending license?
4. Whether the plaintiff is entitled for the suit claim?
5. To what relief? "

8. During trial, the plaintiff, besides examining himself as PW.1 has also examined one P. Hanumantha Rao as PW.2, who is attestor to the suit promissory notes and exhibited Exs.A-1 to A-9. The defendant, on the other hand, examined himself as DW.1 but not filed any documents.

9. The Court below, on appraisal of evidence on record, both, oral and documentary, let in by the parties respectively, adverting to

the plea of the defendant that Exs.A-1 and A-2, which are suit promissory notes, are devoid of consideration, referred to the provisions of Section 118 (a) of the Negotiable Instruments Act, 1881 (for short 'Act, 1881') and drawn the presumption placing reliance in **K.P.O. Moideenkutty Hajee v. Pappu Manjooram and another**[1], rendered by the Hon'ble Supreme Court and observing that the presumption under Section 118 (a) of the Act, 1881 is a rebuttal presumption and though, the defendant is not required to adduce any evidence to rebut the presumption, but can rely on the acts and omissions of the plaintiff and evidence of the plaintiff including the suit documents and by referring to the ruling in **G. Vasu v. Syed Yaseen Saifuddin Quadri**[2] rendered by this Court and extracting the relevant expressions of the Hon'ble Apex Court as well as this Court and also referring to yet another plea of the defendant that he gave certain amounts/profits to the plaintiff towards his investment, holding that no evidence is forthcoming to substantiate it and acceding to the submission made by the learned counsel for the defendant that the plaintiff ventured to develop the case from stage to stage adding new things to the place of transaction, presence of the witness etc., but, however, disagreed to discard the case of the plaintiff, holding that the defendant made a categorical admission as to the execution of suit documents, and thereby opined that it did not wish to go in detail about the said improvements during the course of trial.

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1. AIR 1996 SC 3356
2. 1987 (1) ALT 1 FB

10. As regards means of plaintiff to lend such huge amount, the Court below referring to Exs.A-6 to A-9, which are acknowledgments of submission of Income Tax Returns and observing that the plaintiff did act as the Member, Andhra Pradesh Public Service Commission and drawn the salary and other emoluments including provident fund, opined that he was having capacity to lend money to the defendant. The Court below then drawn the probability from the proved facts as the defendant admitted his signatures on the suit documents and holding that the defendant failed to discharge the burden in rebutting the presumption as contemplated under the provisions of Section 118 of the Act, 1881, held issue Nos.1 and 2 in favour of the plaintiff and against the defendant.

11. On issue No.3, holding that the entire burden rests on the defendant to prove that the plaintiff is a moneylender and he is professing the said profession as defined under the Act, 1349 F, in which direction observing that the defendant completely failed, the Court below held the said issue against the defendant.

12. Thus, basing on the findings recorded by the Court below on issue Nos.1 to 3, held the issue No.4 in favour of the plaintiff and decreed the suit under issue No.5, holding that the plaintiff is entitled to recover the suit amount, and thereby directed the defendant to pay Rs.8,52,742/- with costs and interest at the rate of 6% per annum from the date of suit till realization.

13. The defendant, questioning the said judgment and the findings recorded by the Court below therein, preferred the present appeal, contending that in paragraph No.2, that he need not adduce evidence to rebut the presumption under Section 118 (a) of the Act, 1881, but he can rely on the acts and omissions and the evidence of the plaintiff including the suit documents, and though the Court below referred to this principle, but did not consider the same.

i) The second ground agitated by the appellant is, that though, the Court below observed that the plaintiff ventured to develop the case from stage to stage adding new facts so as to place of transaction, presence of witnesses etc., but observing that it did not wish to go into the details about the said improvements during the course of trial, on the mere ground that he admitted his signatures on the promissory notes and giving a goby to his plea that his signatures were obtained on blank promissory notes and no consideration was received by him under Exs.A-1 and A-2 is nothing but deviation in appreciation of evidence on record as per evidentiary rule.

ii) His further plea is that the plaintiff, his son and his wife filed several suits against the defendant for recovery of money and that they are doing money lending business without possessing valid license under the Act, 1349 F. He raised another ground that the plaintiff failed to place any evidence to substantiate the plea that he sold the agricultural lands and out of the funds derived and salary savings, he paid the amount to the defendant, which fact, the Court below, somehow, overlooked.

iii) The appellant also raised the ground that the plaintiff though, admitted that there is no signature of the defendant on Ex.A-5 - postal acknowledgment, the Court below, somehow, opined to view that there was no demand from the plaintiff at any point of time. He refers to certain other grounds in paragraph Nos.8, 9 and 10 in relation to evidence of PW.2, who answered that he attested four promissory notes obtained by the plaintiff and his family, and that Exs.A-6 to A-9 pertain to the years 1999 and 2000 and there is no reference with regard to Exs.A-6 to A-9 in the pleadings, but the Court below did not appreciate the same and, therefore, sought to set aside the judgment and decree passed by the Court below on these grounds.

14. As already mentioned in the above, there is no representation for the appellant - defendant. In view of the grounds raised by the appellant, the following points require determination:

i) Whether the suit promissory notes (Exs.A-1 and A-2) are true and valid? or whether they are devoid of consideration as contended by the defendant?

ii) Whether the plaintiff had sufficient means to lend the amounts?

iii) Whether the plaintiff is a moneylender as contended by the defendant?

iv) Whether the judgment and decree passed by the Court below cannot be sustained?

POINT No.(i)

15. A perusal of the evidence of PW.1, more particularly, the answers given by him in his cross-examination would clearly reveal that he volunteered that the defendant himself scribed the entire promissory notes in his own hand and denied the suggestion that Exs.A-1 and A-2 were brought into existence by forging the hand-writing of the defendant. When such was the answer given by the plaintiff as PW.1 in his cross-examination, when it was probed into by the learned counsel for the defendant attributing forging the hand-writing of the defendant by the plaintiff in filling the blanks in Exs. A-1 and A-2, certainly, the defendant maintaining a meaningful silence without even attempting to refer the promissory notes (Exs.A-1 and A-2) for the opinion of the hand-writing expert is sufficient to give an inescapable inference that the defendant got a reckless suggestion being put in order to wriggle himself out of the liability that arises under Exs.A-1 and A-2. The defendant never took the plea in his written statement that the blanks in Exs.A-1 and A-2 were filled in by the plaintiff by forging his hand-writing, is one circumstance, which is sufficient to completely belie the stand taken by the defendant that Exs.A-1 and A-2 are devoid of consideration and the plaintiff has obtained his signatures on blank promissory notes and

also cheques and utilized them for the purpose of making a wrongful gain.

i) This apart, the very admission by the defendant of his signatures on Exs.A-1 and A-2 would give rise the statutory presumption under Section 118 (a) of the Act, 1881. When his specific case is that Exs.A-1 and A-2 are devoid of consideration, much more is expected from him to substantiate that stand, and mere denial in the written statement and even in his chief-examination leads nowhere, more particularly, the presence of PW.2, one of the attestors to Exs.A-1 and A-2, where nothing is brought out in the cross-examination of PW.2 in the direction of giving rise to any suspicion as to the execution of Exs.A-1 and 2.

ii) This apart, yet another probability that occurs in the present case, which strongly substantiates the claim of the plaintiff and adversely affects the case of the defendant is that the defendant despite receipt of notice - Ex.A-3 sent under Ex.A-4, did not answer. In the grounds of appeal, no doubt, the defendant as appellant has raised a ground that Ex.A-5 - postal acknowledgment does not contain his signature, but when read the other answers given by him and the denial of suggestions made by him, it cannot be ruled out that the defendant is not aware of the notice sent to him. The plaintiff not only filed the postal acknowledgement, which bears the signature of the defendant above the addressee, but he has also filed the postal receipt indicating that notice was sent to the address of the defendant. Nothing is stated by the defendant so far as postal receipt marked as Ex.A-4 is concerned.

iii) It is no doubt true, the defendant need not rebut the presumption by leading adequate evidence and he can make use of the evidence let in by the plaintiff. But, in the present case, there is nothing favouring the defendant to rebut the statutory presumption that has automatically come into vogue. Therefore, this point is held against the appellant.

<u>POINT No.(ii)</u>

16. It is no doubt true, the defendant as appellant has raised a ground that the respondent - plaintiff has not placed any material to show that he had sold away the lands and lent the amount under Exs.A-1 and A-2, and even admitted in his cross-examination that he has not shown the sale consideration of his lands in the Income Tax Returns. But, he has given sufficient details when he was pursued further in his cross-examination as regards the landed property he is owning at his native village. Besides the same, the finding recorded by the Court below that the plaintiff even worked as Member of the Andhra Pradesh Public Service Commission, drawing the salary and submission of income tax returns marked as Exs.A-6 to A-9, though, not referred to in the plaint, still, cannot be brushed aside and also indicating that the plaintiff was affluent enough to lend the amounts.

When kept in view, the admissions made by the defendant as regards the signatures occurring on Exs.A-1 and A-2, they would negative the stand taken by the defendant. Therefore, point No.2 is also held against the appellant.

POINT No.(iii)

17. The Court below has given plausible reasons in arriving at the findings that the defendant failed to substantiate the stand that the plaintiff is a moneylender. In fact, the whole burden rests on him to prove affirmatively that the plaintiff is a moneylender. What all placed on record is, Exs.A-1 and A-2 and certain answers given by PW.1 that even there was yet another suit filed by the plaintiff against the defendant for recovery of money or initiation of criminal action against the defendant concerning the cheques, which were issued by him, dishonoured. It is no doubt true, PW.2 also admitted in his evidence that he has attested the promissory notes obtained by the plaintiff and his family, but by that itself, it cannot be said that the plaintiff and his family are moneylenders, doing money lending business as the defendant though, obligated with the duty to show the continuous course of conduct of the plaintiff and his family in lending the amounts, certainly, it has to be held that the appellant failed to prove even that plea taken by him. Hence, this point is also held against the appellant.

POINT No.(iv)

18. In view of the findings recorded on point Nos.1 to 3, it has to be held that there is absolutely no legal infirmity in the findings recorded by the Court below, nor the appellant is successful to project any patent illegality in the findings recorded by the Court below. Hence, this point is also held against the appellant affirming the judgment and decree passed by the Court below.

19. In the result, the appeal fails and, therefore, dismissed with costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal suit, stand closed.

A. SHANKAR NARAYANA, J

January 24, 2018.
Mgr