THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.299 of 2013

JUDGMENT:

This appeal is filed by the defendant, under section 100 CPC, assailing the judgment and decree dated 17.09.2012 passed in A.S.No.186 of 2009 on the file of I Additional District Court, West Godavari at Eluru, wherein whereby the decree and judgment dated 16.03.2009 passed in O.S.No.172 of 2005 on the file of Additional Senior Civil Judge Court, Eluru, decreeing the suit filed by the plaintiff for recovery of the suit amount, was confirmed.

2. Heard the learned counsel for the appellant and perused the record.

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

4. The facts leading to filing of the second appeal in brief are as follows: It is the case of the plaintiff that on 10.02.2003, the defendant borrowed an amount of Rs.1.00 lakh from him and executed a promissory note on even date agreeing to repay the same with interest at 24% per annum. On 19.02.2005, the plaintiff got issued a notice directing the defendant to repay the amount. The notice sent to the defendant was returned. Having no other alternative, the plaintiff filed the suit for recovery of the suit amount.

5. The defendant filed written statement denying all the averments made in the plaint including the execution of the

promissory note dated 10.02.2003 in favour of the plaintiff *inter alia* contending that the plaintiff, in connivance with the managing partner of M/s. Sri Vijaya Chit Funds, fabricated the promissory note. The defendant joined in the chit run by M/s. Sri Vijaya Chit Fund Company, Eluru and he transferred his share certificates worth of Rs.2,00,000/- in favour of one Subba Rao, who is the partner of chit fund company. The suit promissory note is not supported by consideration. Hence, the suit is liable to be dismissed.

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

1. Whether the suit pronote is true valid and binding upon the defendant?
2. Whether the plaintiff is entitled for suit amount as prayed for?
3. To what relief?

7. Before the trial Court, to substantiate the case, the plaintiff examined himself as P.W.1 and got marked Exs.A1 to A3. P.Ws.2 and 3 were examined, who are attestor and scribe of Ex.A1 respectively, to prove the execution of Ex.A1 promissory note. To demolish the case of the plaintiff, the defendant examined himself as D.W.1 and got marked Exs.B1 and B2.

8. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that Ex.A1 promissory note was executed by the defendant in favour of the plaintiff and consequently decreed the suit. Feeling aggrieved by the judgment and decree of the trial Court, the defendant preferred A.S.No.186 of 2009 on the file of the I Additional District Court, Eluru, and the same was dismissed, confirming the findings

of the trial Court. The unsuccessful defendant preferred this second appeal.

9. Now, the question of law urged by the appellant is as follows:

> "Whether the Courts below misconstrued Section 118 of the Negotiable Act?"

10. It is needless to say that the plaintiff has to establish his case in order to succeed the suit. In the present case the plaintiff has to establish the execution of Ex.A1 promissory note in his favour by the defendant. As seen from the testimony of P.W.1, on 10.02.2003 the defendant borrowed an amount of Rs.1,00,000/- from him and executed Ex.A1 promissory note agreeing to repay the same with interest at 24% per annum. P.W.2 is one of the attestors and P.W.3 is the scribe of Ex.A1 promissory note. As per the testimony of P.Ws.2 and 3, the defendant borrowed an amount of Rs.1,00,000/- from the plaintiff and executed Ex.A1 promissory note. In the cross-examination of P.Ws.2 and 3, nothing is elicited to shake their testimony so far as execution of Ex.A1 promissory note is concerned. The defendant put suggestions to P.Ws.2 and 3 that Ex.A1 promissory note is fabricated by the Managing Partner of M/s. Sri Vijaya Chit Fund Company, Eluru. Merely because P.W.3 happens to be an employee of Chit Fund Company that itself is not a valid ground to discard his testimony. Except putting formal suggestions, nothing is elicited from the testimony of P.Ws.2 and 3 to discard their evidence. It is not the case of the defendant that Ex.A1 promissory note does not bear his signature. The plaintiff got issued Ex.A2 legal notice directing the defendant to pay the amount borrowed by him. A perusal of Ex.A3 reveals that

the legal notice sent to the defendant was returned. By examining P.Ws.1 to 3 and marking Exs.A1 to A3, the plaintiff clearly established that the defendant borrowed an amount of Rs.1,00,000/- from him and executed Ex.A1 promissory note in his favour. Once the execution of promissory note is proved by the plaintiff, the onus of proof shifts to the defendant to establish the stand taken by him. It is the case of the defendant that Ex.A1 is not supported by consideration. To substantiate his case, the defendant placed much reliance on Ex.B1 letter dated 31.03.2004 addressed by integrated enterprise, Chennai to the wife of the defendant and Ex.B2 letter dated 19.10.2005 addressed by Apollo Hospitals to the defendant. A perusal of the same reveals that the defendant transferred the share certificates in favour of one Subba Rao. The defendant failed to establish that the said Subba Rao is one of the partners of M/s.Sri Vijaya Chit Fund Company. There is no nexus between Exs.B1 and B2 and Ex.A1 promissory note. Once the execution of promissory note is proved by the plaintiff, the Court can draw presumption under Section 118 of the Negotiable Instruments Act. The defendant failed to rebut the presumption drawn under Section 118 of the Negotiable Instruments Act. The defendant has not adduced evidence much less cogent and convincing evidence to establish that Ex.A1 promissory note is not supported by consideration. The contention of the defendant, that Ex.A1 promissory note is not supported by consideration, is not sustainable either on facts or in law. The trial Court as well as the appellate Court considered the oral and documentary evidence in right perspective and arrived at a conclusion that the defendant executed Ex.A1 promissory note in favour of the plaintiff after receiving of an amount of Rs.1.00 lakh. Therefore, the plaintiff is entitled to recover the suit amount. This Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below, unless those findings are perverse. The findings recorded by the trial Court as well as the appellate Court are based on evidence much less legally admissible evidence. I am fully endorsing with the findings recorded by the Courts below.

11. This Court is placing reliance on the judgment in **Municipal Committee, Hoshiarpur v. Punjab SEB**[1], wherein, while dealing with the scope of Section 100 of CPC, the Hon'ble Apex Court held at paragraph No.16 as follows:

> 16. ... ... 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 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. ... ...

12. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that there is no question of law much less substantial question of law involved in this appeal. Hence, the appeal is liable to be dismissed.

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[1] (2010) 13 SCC 216

13. In the result, the second appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

01.11.2018
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