

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Appeal Suit No.1006 of 1999

Between

Siram Srirama Murthy

....Appellant

And

Meka Suryanarayamma

... Respondent

JUDGMENT PRONOUNCED ON : 20.04.2018

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of local Newspapers may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : YES
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : YES

* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

+ Appeal Suit No. 1006 of 1999

% 20.04.2018

Siram Srirama Murthy

..Appellant

Vs.

\$ Meka Suryanarayanamma

... Respondent

!Counsel for the Appellant : Sri M.V. Suresh

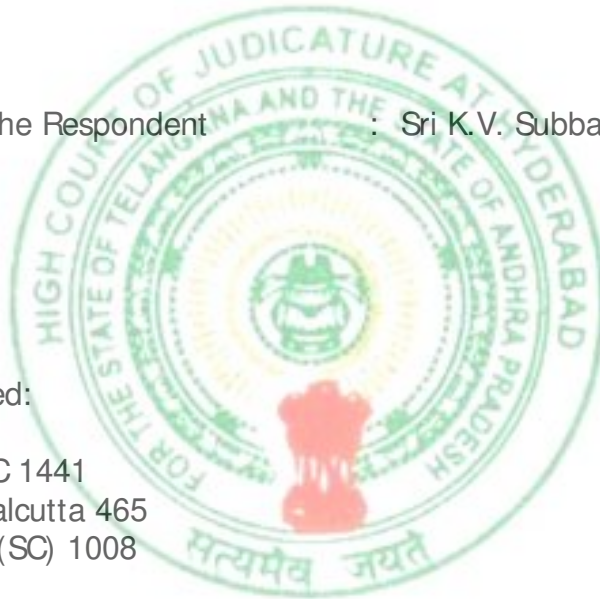
^ Counsel for the Respondent : Sri K.V. Subba Reddy

< Gist :

> Head Note :

? Cases referred:

1. AIR 1999 SC 1441
2. AIR 1973 Calcutta 465
3. (1999) AIR (SC) 1008



HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Appeal Suit No.1006 of 1999

Judgment:

This appeal is directed against the judgment and decree dated 22.01.1999 passed in O.S.No.27 of 1992 on the file of the learned Senior Civil Judge, Razole. The suit was filed for recovery of Rs.88,400/- being principal and interest due as on the date of filing of the suit with costs and future interest.

It was alleged in the plaint that the defendant borrowed an amount of Rs.65,000/- for the purpose of his necessities and executed a promissory note on 01.09.1989 in favour of the plaintiff undertaking to repay the same together with interest thereon at Rs.1.50 per mensem per hundred to her or her order on demand. The plaintiff issued a notice on 03.08.1992 and the defendant received the same. The defendant issued a reply notice on 08.08.1992 with false allegations. The suit was filed for Rs.88,400/- calculating interest at 12% p.a., on the original amount of Rs.65,000/-.

The defendant filed a written statement stating that the plaintiff is the sister of one Bolla Veera Venkata Rama Mohana Rao of Mondepulanka village, the plaintiff in O.S.No.37 of 1992 is the younger brother of the said B.V.V.R. Mohana Rao and the plaintiff in O.S.No.28 of 1992 is the mother of said B.V.V.R. Mohana Rao. All the pronotes were executed on the same date, but the date on the pronote in O.S.No.37 of 1992 was put as 26.10.1989. The plaint allegations are denied. The execution, passing of consideration under the promissory note and the validity of the same are specifically denied by the defendant. It was also stated that the suit promissory note was not true, valid and it is not supported by

consideration. The defendant denied the knowledge of the plaintiff and also stated that there are no transactions between him and the plaintiff, but admitted that one B.V.V.R. Mohana Rao has got some transactions with the defendant. The said B.V.V.R. Mohana Rao was stated to be an unscrupulous money lender. It was also stated that the defendant and the said B.V.V.R. Mohana Rao stored the paddy by purchasing with a view to sell the same for higher price and in that transaction the defendant has to pay an amount of Rs.33,900/- as on 01.09.1988 and interest accrued thereon up to 01.09.1989 came to Rs.8,136/-. The defendant also borrowed an amount of Rs.20,000/- on 29.05.1988 and the interest accrued thereon came to Rs.10,500/- calculated up to 31.08.1989. The defendant further stated that he borrowed an amount of Rs.10,000/- on 06.01.1989 and the interest came to Rs.3,134/- calculated up to 31.08.1989. He also borrowed an amount of Rs.5,000/- on 07.01.1989 and the interest came to Rs.1,564/- as on 31.08.1989. The defendant and the said B.V.V.R. Mohana Rao did business in fire works during Diwali season of 1988. In that connection the defendant borrowed Rs.8,600/- and the interest came to Rs.3,612/- calculated up to 31.08.1989. When the said Mohana Rao gave pressure, threatened and coerced the defendant to execute fresh promissory notes on 01.09.1989, he executed the promissory notes in the name of his mother, Bolla Sathemma, W/o Subba Rao for Rs.43,900/- by putting the excess amount of Rs.10,000/- and the plaintiff made a material alteration in the said promissory note. The said promissory note is the subject matter of O.S.No.28 of 1992. The promissory note in favour of the present plaintiff was made up of borrowings on different dates and the total interest came to Rs.26,946/-, out of which the defendant paid an amount of Rs.4,260/- and the balance interest amount of Rs.22,686/- remained. He stated that on 01.09.1989,

the promissory notes were obtained and the promissory notes in favour of the plaintiff herein and in favour of Bolla Sathemma, which is the subject matter of O.S.No.28 of 1992, are not supported by consideration. He also stated that he executed another promissory note in favour of younger brother of Mohana Rao which is the subject matter of O.S.No.37 of 1992. Thus, the promissory notes under three suits being O.S.Nos.27 of 1992, 28 of 1992 and 37 of 1992 were not supported by consideration, they were not executed, they were not valid and they were not enforceable under law. The alleged attesting witnesses were not present at the time of execution of the promissory notes and the attesting signatures were subsequently obtained without the knowledge of the defendant. So, the said promissory notes were vitiated by material alterations. The defendant is entitled to the benefit of Act 45 of 1987 and also Act 1 of 1990 and other enactments. The suit debt even if it is true was abated.

On the basis of the above pleadings, the following issues were framed by the trial court:

1. Whether the suit promissory note is true, valid and supported by consideration?
2. Whether the suit promissory note came into existence under the circumstances mentioned in the written statement/
3. Whether the defendant is a small farmer and whether he is entitled to the benefits of Act 45 of 1987 and Act 1 of 1990.
4. To what relief?

On behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A1 to A4 were marked. On behalf of the defendant, the defendant himself was examined as DW.1 besides examining three more witnesses as DWs.2 to 4 and Exs.B1 to B19 were marked.

The trial Court noticed that the defendant as DW.1 admitted the execution of Ex.A1 promissory note and held that in view of the said

admission, Section 118 of the Negotiable Instruments Act comes into operation and presumption could be drawn in favour of the promisee that the promissory note was supported by consideration. In view of the same, the oral evidence of DWs.2 to 4 to the effect that the said Mohana Rao was in the habit of getting promissory notes executed in favour of his family members for excess amount than lent was not taken into consideration. It was also observed that DWs.2 to 4 are well acquainted with the defendant and their oral evidence cannot be relied upon. Since the plaintiff proved the execution of Ex.A1 by examining one of the attestors, the trial Court came to the conclusion that the suit promissory note was proved, valid and supported by consideration. With regard to plea of small farmer and his entitlement to the benefit of Act 45 of 1987 and 1 of 1990, in view of the admission of the defendant that he is having one medical shop and two kirana shops at Gannavaram and in the absence of any evidence of ownership of agricultural lands by the defendant, the plea of small farmer was rejected. Accordingly, the suit was decreed, by judgment and decree dated 22.01.1999, for a sum of Rs.88,400/- with future interest at 12% p.a. Challenging the said judgment and decree, the above appeal was filed.

In the present appeal, the point that falls for consideration is whether, in the facts and circumstances of the case, the judgment and decree of the trial court is correct or not?

Learned counsel for the appellant/defendant submitted that in the absence of the plaintiff coming to the witness box, the suit should not have been decreed and he placed reliance on a decision of the Hon'ble Supreme Court reported in *Vidhyadhar v. Manikrao*¹.

¹ AIR 1999 SC 1441

Learned counsel for the respondent/plaintiff, on the other hand, by relying on the decision reported in *Bijoy Kumar Karnani v. Lahori Ram Prashe*², submitted that adverse inference under Section 114 of the Evidence Act cannot be drawn for mere non-examination of the plaintiff when other material witness is produced. He further submitted that when once execution of promissory note is admitted, presumption under Section 118(a) of the Negotiable Instruments Act would arise that it is supported by consideration and in support of the said contention he relied on a decision reported in *Bharat Barrel and Drum Manufacture Company Limited v. Amin Chand Payrelal*³.

It is no doubt true that the plaintiff did not enter the witness box. The said B.V.V.R. Mohana Rao @ Bolla Rama Rao was examined as PW.1 and he stated that the plaintiff is the daughter of his elder sister and he has been looking after her affairs. He spoke about the defendant borrowing an amount of Rs.65,000/- from the plaintiff and scribing the promissory note in favour of the plaintiff on 01.09.1989. He denied doing any business with the defendant jointly. The other averments made in the written statement were also denied by him. He further stated that DW.2 is a tailor by profession and close friend of DW.1. In the cross-examination he stated that himself, his mother and his brother are residing in the same house at Mondepulanka village and the plaintiff was not having any properties at Mondepulanka village. He further stated that except the amount lent under the promissory note, he did not lend any amount. He denied the other transactions alleged by the defendant in his cross-examination.

² AIR 1973 Calcutta 465

³ (1999) AIR (SC) 1008

On behalf of the plaintiff, PW.2 was also examined and he is one of the attestors of the pronote. He stated that he attested Ex.A1 pronote along with elder son of the defendant who attested Ex.A1.

The defendant as DW.1 spoke on the lines of his written statement. In the chief-examination he admitted that the said Rama Mohana Rao obtained a pronote for Rs.65,000/-, which includes Rs.43,600/- borrowed with interest at Rs.10,000/- and the balance amount of Rs.11,400/-. He admitted the execution of pronote in the name of the plaintiff.

DW.2 denied his presence at the time of negotiations between Bolla Rama Rao and the defendant. DW.3 who is the supplier of eggs stated that he used to borrow money from Bolla Rama Rao. He stated that himself, defendant and Bolla Rama Rao were only present at the time of execution of Exs.B15 and 16. Similarly, DW.4 stated that he borrowed the amount from B. Rama Rao and discharged the said amount. He is an agriculturist and doing fishing business.

Thus, the plaintiff did not enter the witness box and PW.1 who stated that he is acquainted with the facts of the case deposed on behalf of the plaintiff. One of the attestors was examined as PW.2. The defendant admitted the execution of the promissory note, but disputed the attestation and consideration.

In Vidhyadhar's case (supra) the plaintiff filed a suit against the defendants for redemption of the mortgage by conditional sale or in the alternative for a decree of specific performance of contract for repurchase. The property involved is 4.04 acres of land. The second defendant executed a document called 'kararkharedi' in favour of the first defendant for a sum of Rs.1500/- and delivered possession thereof to him. The document contained a stipulation that if the entire amount of Rs.1500/- was returned to the first defendant before 15th of March, 1973, the

property would be given back to the second defendant. The land was subsequently transferred by the second defendant in favour of the plaintiff for a sum of Rs.5,000/- by a registered sale deed dated 19.06.1973. After purchase of the property, the plaintiff filed the above suit stating that the second defendant had offered the entire amount to the first defendant but he did not accept the amount and since the document executed by the second defendant in favour of the first defendant was a mortgage by conditional sale the property was liable to be redeemed. It was also stated that if it was held by the Court that the document did not create a mortgage but was an out and out sale, the plaintiff as transferee of the second defendant was entitled to a decree for re-conveyance of the property as the second defendant already offered the entire amount of sale consideration to the first defendant which he refused and the plaintiff was still prepared to offer the said amount to the first defendant.

The second defendant admitted the case of the plaintiff, whereas the first defendant contested the suit and stated that the document was not a mortgage by conditional sale but an out and out sale and since the amount of consideration was not tendered within the time stipulated, the plaintiff could not claim re-conveyance of the property in question. The trial Court decreed the suit and was confirmed in appeal, but was reversed by the High Court in the Second Appeal.

In the said case, the Hon'ble Supreme Court noticed that the first defendant did not enter the witness box, did not state the facts pleaded in the written statement on oath in the trial Court and avoided the witness box so that he may not be cross-examined and that would itself be enough to reject the claim that the transaction of sale between the plaintiff and the second defendant was a bogus transaction. In that connection the Hon'ble Supreme Court observed as follows:

“16. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in *Sardar Gurbakhsh Singh v. Gurdial Singh* (AIR 1927 PC 230). This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh* (AIR 1930 Lahore 1) and the Bombay High Court in *Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh* (AIR 1931 Bombay 97). The Madhya Pradesh High Court in *Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat* (AIR 1970 Madh Pra 225), also followed the Privy Council decision in *Sardar Gurbakhsh Singh's case* (supra). The Allahabad High Court in *Arjun Singh v. Virender Nath* (AIR 1971 Allahabad 29) held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab and Haryana High Court in *Bhagwan Dass v. Bhishan Chand* (AIR 1974 Punj and Har 7), drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.

17. Defendant No. 1 himself was not a party to the transaction of sale between defendant No. 2 and the plaintiff. He himself had no personal knowledge of the terms settled between defendant No. 2 and the plaintiff. The transaction was not settled in his presence nor was any payment made in his presence. Nor, for that matter, was he a scribe or marginal witness of that sale deed. Could, in this situation, defendant No.1 have raised a plea as to the validity of the sale deed on the ground of inadequacy of consideration or part-payment thereof? Defendant No. 2 alone, who was the executant of the sale deed, could have raised an objection as to the validity of the sale deed on the ground that it was without consideration or that the consideration paid to him was highly inadequate. But he, as pointed out earlier, admitted the claim of the plaintiff whose claim in the suit was based on the sale deed, executed by defendant No. 2 in his favour. The property having been transferred to him, the plaintiff became entitled to all the reliefs which could have been claimed by defendant No. 2 against defendant No. 1 including redemption of the mortgaged property.”

The instant case is a converse case, where, though the plaintiff did not enter the witness box, but the facts were spoken by PW.1 on behalf of the plaintiff and the case of the plaintiff to the extent of execution of the document was admitted by the defendant, though he denied the consideration and attestation. The suit promissory note is not a compulsorily attestable document and there is no dispute with regard to execution of Ex.A1 promissory note. In such circumstances, as rightly pointed out by the learned counsel for the respondent/plaintiff, Section

118(a) of the Negotiable Instruments Act comes into operation and the decision in Vidhyadhar's case (supra) is not applicable to the facts of the present case.

The facts in Bijoy Kumar Karnani's case (supra) are identical to the facts of the present case. The case of the plaintiff was that the defendant executed two promissory notes for a sum of Rs.5,000/- and Rs.12,000/- respectively. He also executed two receipts on the dates of the promissory notes. In spite of giving notice, the defendant failed to pay the amount and accordingly the suit was filed. In the suit, the defendant admitted the execution of the promissory notes and the receipts of the monies under the said promissory notes. He also admitted the execution of two separate receipts/vouchers in favour of the plaintiff, but stated that the promissory notes and the receipts/vouchers were not executed at Calcutta within the jurisdiction of the Court but the same were executed out side the jurisdiction of the Court. He also pleaded that he repaid the sum covered by the promissory notes in due course and thus they were discharged. The plaintiff returned the promissory notes duly discharging it to the defendant. In the said suit, the plaintiff did not come to the witness box. The Accountant also was not called for evidence. He placed reliance on Section 114, illustration (g) of the Indian Evidence Act. In this connection, the Calcutta High Court observed as follows:

"10. I do not understand how this decision of the Privy Council establishes the proposition made by Dr. Das that under the facts of the instant case before me for non-calling of Bejoy Kumar Karnani and the Accountant Kundu I shall draw the adverse inference which the Privy Council was pleased to draw by non-calling the second widow of Jawalla Singh. In the instant case, Sanak Chandra Biswas an employee of Bejoy Kumar Karnani gave evidence before me, stating that two documents were executed before him by the defendant at No.17, Chowringhee Road, Calcutta, and he made payment of the money which he carried to the defendant at that place. He took the promissory notes and two vouchers were signed in his presence at No.17,

Chowringhee Road, Calcutta. When he took the money to the defendant No.17, Chowringhee Road, only the Darwan accompanied him. He did not remember the name of the Darwan. Apart from the Darwan, driver of the defendant drove the car. Therefore, at the time when the promissory notes were executed Bijoy Kumar Karnani was not present. There is no dispute with regard to making of the vouchers. The execution of the receipts in the vouchers is also admitted. Only the place of execution is disputed. In view of the evidence given on behalf of the plaintiff, I do not understand how the plaintiff was a material witness to prove the fact of the place of the execution of two promissory notes and why I should draw any adverse inference which the Privy Council was pleased to draw under entirely different facts and circumstances. It is true that the defendant made the case that the promissory notes were executed at 22/23, Gariahat Road, outside the said jurisdiction. But this was not the case of the plaintiff. In cross-examination it was suggested that paragraphs 1 and 2 of the plaint are verified by the plaintiff as true to his knowledge and it was suggested that the plaintiff should have come and deposed. But in view of the evidence given by the plaintiff's witness I do not think that the plaintiff himself was a material witness to prove the place of execution. The accountant Kundu is also not a material witness in this suit. The argument made by Dr. Das, if accepted, would mean that the plaintiff should have been called to disprove the defendant's case. In my view, there is no question of invoking presumption of Section 114, illustration (g) of the Indian Evidence Act and the principles laid down in the said Privy Council decision, cannot apply in this case."

In Bharat Barrel and Drum Manufacture Company Limited's case (supra) also the defendant admitted the execution of the promissory note. The Hon'ble Supreme Court, interpreting the scope of Section 118 of the Negotiable Instruments Act and the presumptions arising under it held as follows:

"11. Section 118 of the Act deals with the presumptions as to negotiable instruments. One of such presumptions is, that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. This presumption is based upon a principle and is not a mere technical provision. The principle incorporated being, inferring of a presumption of consideration in the case of a negotiable instrument. A Full Bench of the Rajasthan High Court in Heerachand v. Jeevraj (AIR 1959 Raj. 1) held that, presumption, therefore, as to consideration is the very ingredient of negotiability and in the case of negotiable instrument, presumption as to consideration has to be made. A Full Bench of the Andhra Pradesh High Court in G. Vasu v. Syed Yaseen Sifuddin Quadri (AIR 1987 Andhra Pradesh 139) while dealing with the words "until the contrary is proved" held that it was permissible for the Court to look into the preponderance of the probabilities and the entire circumstances of the particular case. After referring to Sections 3, 4 and 101 to 104 of the

Evidence Act, the Court held that while dealing with the absence of consideration, the Court shall have to consider not only whether it believed that consideration did not exist but also whether it considered the non-existence of the consideration so probable that a reasonable man would, under the circumstances of a particular case, could act upon the supposition that the consideration did not exist. Once the defendant showed either by direct evidence or circumstantial evidence or by use of the other presumptions of law or fact that the promissory note was not supported by consideration in the manner stated therein, the evidentiary burden would shift to the plaintiff and the legal burden reviving his legal burden to prove that the promissory note was supported by consideration and at that stage, the presumption of law covered by Section 118 of the Act would disappear. Merely because the plaintiff came forward with a case different from the one mentioned in the promissory note it would not be correct to say that the presumption under Section 118 did not apply at all. Such a presumption applies once the execution of the promissory note is accepted by the defendant. The circumstances that the plaintiff's case was at a variance with the one contained in the promissory note could be relied by the defendant for the purpose of rebutting the presumption of shifting the evidential burden to the plaintiff. After referring to the catena of authorities on the point, the Full Bench held:--

"Having referred to the method and manner in which the presumption under Section 118 is to be rebutted and as to how, it thereafter 'disappears' we shall also make reference to three principles which are relevant in the context. The first one is connected with the practical difficulties that beset the defendant for proving a negative, namely that no other conceivable consideration exists. We had occasion to refer to this aspect earlier. Negative evidence is always in some sort circumstantial or indirect, and the difficulty of proving a negative lies in discovering a fact or series of facts inconsistent with the fact which we seek to disprove (Gulson, Philosophy of Proof, 2nd Edition, p. 153 quoted in Cross on Evidence, 3rd Edition, page 78 Fn).

In such situations, a lesser amount of proof than is usually required may avail. In fact, such evidence as renders the existence of the negative probable may shift the burden on to the other party (Jones, quoted in A Sarkar on Evidence, 12th Edition, p. 870). The second principle which is relevant in the context is the one stated in S.106 of the Evidence Act. That section states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. It is very generally stated that, where the party who does not have the evidential burden, such as the plaintiff in this case, possesses positive and complete knowledge concerning the existence of fact which the party having the evidential burden, such as the defendant in this case, is called upon the negative or has peculiar knowledge or control of evidence as such matters, the burden rests on him to produce the evidence, the negative averment being taken as true unless disapproved by the party having such knowledge or control. The difficulty of proving a negative only relieves the party having the evidential burden from the necessity of creating a positive conviction entirely by his own

evidence so that, when he produces such evidence as it is in his power to produce, its probative effect is enhanced by the silence of the opponent (Corpus Juris, Vol. 31, Para 113). The third principle that has to be borne in mind is the one that when both parties have led evidence, the onus of proof loses all importance and becomes purely academic. Referring to this principles, the Supreme Court stated in Narayan v. Gopal (AIR 1960 SC 100) as follows:

“The burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail, where, however, parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic.”

We have referred to these three principles as they are important and have to be borne in mind by the Court while deciding whether the initial ‘evidential burden’ under Section 118 of the Negotiable Instruments Act has been discharged by the defendant and the presumption ‘disappeared’ and whether the burden has shifted and later whether the plaintiff has discharged the ‘legal burden’ after the same was restored.

For the aforesaid reasons, we are of the view that where, in a suit on a promissory note, the case of the defendant as to the circumstances under which the promissory note was executed is not accepted, it is open to the defendant to prove that the case set up by the plaintiff on the basis of the recitals in the promissory note, or the case set up in suit notice or in the plaint is not true and rebut the presumption under Section 118 by showing a preponderance of probabilities in his favour and against the plaintiff. He need not lead evidence on all conceivable modes of consideration for establishing that the promissory note is not supported by any consideration whatsoever. The words ‘until the contrary is proved’ in Section 118 do not mean that the defendant must necessarily show that the document is not supported by any form of consideration but the defendant has the option to ask the court to consider the non-existence of consideration so probable that a prudent man ought, under the circumstances of the case, to fact upon the supposition that consideration did not exist. Though the evidential burden is initially placed on the defendant by virtue of Section 118 it can be rebutted by the defendant by showing a preponderance of probabilities that such consideration as stated in the pronote, or in the suit notice or in the plaint does not exist and once the presumption is so rebutted, the said presumption ‘disappears’. For the purpose of rebutting the initial evidence burden, the defendant can rely on direct evidence on circumstantial evidence or on presumptions of law or fact. Once such convincing rebuttal evidence is adduced and accepted by the Court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the plaintiff who has also the legal burden. Thereafter, the presumption under Section 118 does not again come to the plaintiff’s rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance.....

12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would dis-entitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as existence of negative evidence is neither possible nor contemplated and even if led is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. We find ourselves in the close proximity of the view expressed by the Full Benches of the Rajasthan High Court and Andhra Pradesh High Court in this regard.”

Hence, in view of admission of execution of the Ex.A1 promissory note, the burden is on the defendant to prove his case. Besides himself, the defendant examined DWs.2 to 4 to show that the said Mohana Rao was in the habit of lending money, but did not speak of non-passing of consideration. On the other hand, it is the case of the defendant that he was borrowing amounts from Mohana Rao and the suit promissory note was executed for a much higher amount than the amount borrowed by him. That borrowing of higher amount was also not proved by the defendant in the instant case by producing any documentary evidence. In

view of the same, the judgment and decree passed by the trial Court cannot be set aside and accordingly it is affirmed.

Consequently, the Appeal Suit is dismissed with costs. The miscellaneous petitions, if any, pending in this appeal shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 20th April 2018
Nsr

