

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.C.C.A.No.326 of 2018

JUDGMENT: (Per Hon'ble Sri Justice M. Satyanarayana Murthy)

The defendant in O.S.No.857 of 2012 on the file of the IX Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the trial Court'), has preferred this appeal aggrieved by the decree and judgment, dated 04.06.2018, passed in the Suit.

The appellant is the defendant and the respondents 1 to 4 herein are the plaintiffs 1 to 4 before the trial Court. For convenience sake, the parties to the appeal shall hereinafter be referred to as they are arrayed before the trial Court.

The plaintiff No.1 is the husband of the plaintiff No.2 and the plaintiff Nos.3 and 4 are the children of plaintiff Nos.1 and 2. All the plaintiffs filed the suit for recovery of an amount of Rs.90,82,364/- based on four promissory notes, marked as Exs.A-1, A-3, A-5 and A-7, contending that the defendant approached the plaintiff No.1 through one K.Nageswara Chowdary (PW.2), who is the friend of the defendant and relative of the plaintiffs, to extend financial help to a tune of Rs.50,00,000/- by way of hand-loan. The plaintiffs having agreed for the said request, the plaintiff No.1 lent an amount of Rs.15,00,000/- on 17.09.2008. Likewise, the plaintiff No.2 lent an amount of Rs.13,20,000/-, the plaintiff No.3 lent an amount of Rs.8,20,000/- and the plaintiff No.4 lent an amount of Rs.13,60,000/- on the same day. On receipt of the said amounts, the defendant executed four promissory notes in favour of the plaintiff Nos.1 to 4, agreeing to repay the same together with

interest as and when demanded by the plaintiffs and also deposited original title deeds, dated 29.10.1984, of half acre of agricultural land in Plot No.5A and half acre of land in Plot No.5B, situated in Bollaram Village, Narsapur Taluq, Medak District, as security for discharging the loan amount.

Despite repeated demands by the plaintiffs, the defendant did not repay the amount. Finally, on 14.09.2011, the plaintiffs demanded the defendant for repayment of the amount covered by the four promissory notes. The defendant paid only Rs.10,000/- towards principal amount under each promissory note, thus, paid an amount of Rs.40,000/- under the four promissory notes, endorsed the same with his own handwriting on the reverse of the promissory notes, which are marked as Exs.A-2, A-4, A-6 and A-8. Thus, the defendant acknowledged the debt due to the plaintiffs.

As the defendant failed to discharge the debt due, the plaintiffs got issued a legal notice, dated 18.02.2011, calling upon the defendant to pay the debt due under the suit promissory notes, but no purpose was served. Hence, the suit is filed for recovery of the due amount together with interest and costs.

The defendant filed his written statement denying the very execution of the promissory notes, while contending that he had no acquaintance with the plaintiffs. The defendant is a Managing Director of M/s. Victorian Granites (P) Ltd and absolute owner and possessor of one acre of land in Survey Nos.174 and 186, situated at Bollaram village, Narsapur Taluq, Medak District, having purchased the same from Adusumalli Rajyalakshmi through her G.P.A. holder Patibandla Koteswara Rao, under two registered sale deeds, dated 29.10.1984 and 13.11.1984, as such, he is the

absolute owner of the property covered by the two registered sale deeds.

The defendant's specific contention before the trial Court is that K.Nageswara Chowdary (PW.2) and the defendant are friends. K.Nageswara Chowdary (PW.2) is a attestor on all the four promissory notes, which are the subject matter of the suit and that K.Nageswara Chowdary (PW.2) is carrying on construction business under the name and style of M/s. Mahalakshmi Builders and Developers, he approached the defendant and made a proposal in the month of February, 2008 to develop one acre of land at Bollaram village for construction of apartment in the said land and both have entered into an oral agreement with certain terms and conditions. K.Nageswara Chowdary (PW.2) had paid an amount of Rs.50,00,000/- towards goodwill and half of the same is refundable to K.Nageswara Chowdary (PW.2), after completion of construction. He took the original sale deeds from the defendant for the purpose of bank loan and to obtain permissions from the concerned authorities to develop the said land. At the time of payment of Rs.50,00,000/- towards goodwill, K.Nageswara Chowdary (PW.2) obtained four blank singed promissory notes and also signatures on the reverse of the promissory notes towards security for repayment of the amount i.e. half of the goodwill i.e. Rs.25,00,000/-. K.Nageswara Chowdary (PW.2) had not taken steps to develop the property despite several reminders. The said K.Nageswara Chowdary (PW.2) did not return the promissory notes and other documents. Therefore, K.Nageswara Chowdary (PW.2) is the person, who in collusion with the plaintiffs, created the suit documents and got filed the suit. It is further contended that he never received any consideration from the plaintiffs and never

executed any promissory notes in their favour.. But, admitted at the end of the written statement that K.Nageswara Chowdary (PW.2), colluding with the plaintiffs 1 to 4, who are his close relatives, misused the signed blank promissory notes and original registered sale deeds, and got filed the present suit with an ulterior motive to gain wrongfully and to cause wrongful loss to the defendant.

The defendant also contended that as the alleged part payment endorsements are not true, the claim of the plaintiffs, based on the said promissory notes, is barred by limitation and prayed to dismiss the suit.

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

- 1. Whether the plaintiffs are entitled for the suit claim?**
- 2. To what relief?**

Later, the following additional issue was framed:

- 1. Whether the suit claim is barred by limitation as pleaded by the defendant?**

During course of trial, on behalf of the plaintiffs, PWs.1 to 3 were examined and marked Exs.A-1 to A-13. The defendant got himself examined as DW.1 and marked Ex.B-1 on his behalf.

Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court observed that the suit promissory notes were executed by the defendant and he is under obligation to pay the debt due under the said promissory notes and decreed the suit for Rs.90,82,364/- with interest at 12% p.a. from the date of suit till the date of decree

and at 6% p.a. from the date of decree till the date of realization on the principle sum adjudged at Rs.50,00,000/-

Aggrieved by the decree and judgment of the trial Court, the appellant-defendant preferred the present appeal challenging the judgment on various grounds.

The main grounds urged before this Court are that, the plaintiff Nos.2 to 4 were not examined as witnesses before the trial Court. Except the plaintiff No.1, who is the husband of plaintiff No.2 and father of plaintiff Nos.3 and 4, the other plaintiff Nos.2 to 4 did not enter into the witness box to depose their evidence to prove their claim and in such a case, decreeing the suit by the trial Court is an error apparent on the face of record. The trial Court also utterly failed to consider the defence set up by the defendant as to what circumstances prompted him to execute promissory notes and to make endorsements thereon and failed to take note of the discrepancies in the evidence of PWs.1 to 3 regarding passing of consideration, committed an error in decreeing the suit.

During hearing, the learned counsel for the appellant-defendant contended that PW.1 was not a power of attorney holder of other plaintiffs and in the absence of any authorization, he is not a competent witness and apart from that, non-examination of the plaintiff Nos.2 to 4 is fatal to the case of the plaintiffs and that in the cross-examination of PWs.1 and 2, there is a little discrepancy regarding passing of consideration.

Finally, it is contended by the learned counsel for the appellant that the suit is barred for multi-fariousness of cause of action and prayed to set aside the decree and judgment passed by the trial Court and dismiss the suit in-toto.

Considering the rival contentions and perusing the material available on record, the points that arise for consideration are:

- 1. Whether the plaintiffs proved the execution of promissory notes-Exs.A-1, A-3, A-5 and A-7 and part payment endorsements-Exs.A-2, A-4, A-6 and A-8? And whether non-examination of other plaintiff Nos.2 to 4, is fatal to the case of the plaintiffs?***
- 2. Whether the suit claim is barred by limitation?***
- 3. Whether the suit is hit by multi-fariousness of cause of action?***

POINT No.1:

It is an undisputed fact that the plaintiffs filed the suit based on four promissory notes, marked as Exs.A-1, A-3, A-5 and A-7, for recovery of amount due. But the defence set up by the defendant is that he never executed any promissory notes in favour of the plaintiffs, but handed over signed blank promissory notes to K.Nageswara Chowdary (PW.2) as a security for repayment of the 50% of the goodwill that he paid i.e. an amount of Rs.50,00,000/-, after completion of development of the land. But, the said K.Nageswara Chowdary (PW.2) did not return those promissory notes and title deeds, as such, the defendant denied the very execution of the promissory notes. No doubt, the defendant denied the transactions between the plaintiffs and himself i.e. execution of Exs.A-1 to A-8. If it is the case of the defendant that he handed over blank signed promissory notes to K.Nageswara Chowdary (PW.2), it is for him to establish the said fact by producing satisfactory and cogent evidence. Even otherwise, the blank signed promissory notes are only inchoate stamped

documents falls under Section 20 of the Negotiable Instruments Act, 1881, and the holder of the said documents is entitled to use the documents to sue the defendant being the holder of the instruments, in view of the law declared by the Division Bench of this Court in **Duggineni Seshagiri Rao v. Kothapalli Venkateswara Rao**¹.

In **Duggineni Seshagiri Rao**¹, a Division Bench of this Court held that, four things are necessary for an instrument to be a promissory note: (1) It should be in writing; (2) it should have an unconditional undertaking; (3) It should be signed by the maker; and (4) It should be in favour of certain person or to a bearer. Section 20 of the N.I. Act makes inchoate stamped instruments legal instruments. The dictionary meaning of 'inchoate' is 'incomplete'. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the 'promissory note' under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 this is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20 lays down

¹ 2001 (6) ALT 95 (D.B.)

that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions.

In **Sukhminder Singh v. Nirbhai Singh**², the High Court of Punjab & Haryana also laid down the same principle as held in **Duggineni Seshagiri Rao**¹ case.

In this regard, we are persuaded by the judgment of the High Court of Karnataka in **H.Maregowda v. Thippamma**³, wherein it was held as follows:

“A reading of Section 20 of the Negotiable Instruments Act which is extracted above will reveal that the words used are either wholly blank or having written thereon an incomplete negotiable instrument. Thus, even if a blank promissory note is given, it cannot be taken as a defence to avoid a decree based on such instrument, once it is found that the document produced before the Court satisfies the requirements of a promissory note within the meaning of the Negotiable Instruments Act. The instrument may be wholly blank or incomplete in particular; in either case, the holder has the authority to make or complete the instrument as a negotiable one.”

In view of the law declared by the Division Bench of this Court in **Duggineni Seshagiri Rao**¹, the judgment of the High

² AIR 2013 Punjab and Haryana 77

³ AIR 2000 Karnataka 169

Court of Punjab and Haryana in **Sukhminder Singh**², and the judgment of the High Court of Karnataka in **H.Maregowda**³, the documents are valid even assuming that the defence set up by the defendant is true and the said K.Nageswara Chowdary (PW.2), being the holder of instruments, took advantage, basing on the said documents, he can sue the defendant. Therefore, the defence set-up by the defendant is worthless with regard to the handing over of the blank signed promissory notes to K.Nageswara Chowdary (PW.2).

Though the learned counsel for the appellant-defendant drawn the attention of this Court to the discrepancies in the evidence of PWs.1 and 2 regarding passing of consideration, but, this discrepancy with regard to payment of amount, under the promissory notes-Exs.A-1, A-3, A-5 and A-7, is insignificant as the amount paid under the suit promissory notes is only relevant and significant to decide whether the suit promissory notes are supported by consideration or not. The discrepancy is only a circumstantial discrepancy, which can be ignored, since it would not go to the root of the case. Moreover, though the defendant contended that there was an agreement for development of one acre of land by PW.2, who is carrying on real estate business, such agreement is not placed on record to substantiate his contention that under what circumstances, he executed Exs.A-1 to A-8 and deposited the title deeds as security for due payment of the amount as alleged in the written statement. In the absence of any material regarding the circumstances which compelled him to execute Exs.A-1 to A-8 being a B.Tech graduate, the defence set-up by the defendant is imaginary and not based on any substantive evidence.

The other contention raised by the learned counsel for the appellant before this Court is that, the plaintiff No.1 (PW.1) is not the power of attorney holder of the other plaintiff Nos.2 to 4 and incompetent to testify on behalf of the other plaintiffs. The relationship between the plaintiffs is not in dispute and they are closely related. Plaintiff No.2 is the wife and plaintiff Nos.3 and 4 are the children of plaintiff Nos.1 and 2. According to Section 120 of the Indian Evidence Act, 1872, a spouse is the competent witness in a civil proceeding and this view is fortified by the judgment of the Madras High Court in **K.Saroja v. Valliammal**⁴. In view of the law declared by the Madras High Court and the rule of evidence under Section 120 of the Indian Evidence Act, PW.1 is a competent witness to speak on behalf of the plaintiff No.2. But, as far as other two plaintiffs viz., plaintiff Nos.3 and 4 are concerned, they are daughters, but father is not the competent witness. Moreover, it is stated in the long cause-title that PW.1 is the general power of attorney holder of plaintiff Nos.2 to 4 and referred the registered general power of attorney, dated 29.07.2006. But, it is not placed on record. In fact, it was not denied by the defendant in the suit in the entire written statement. Even otherwise, the document can be proved in different modes as stated below.

A document can be proved in different ways. Just as English Law, the Indian Evidence Act recognizes two direct methods of proving the handwriting of a person:

(1) By an admission of the person who wrote it; and

(2) By the evidence of some witness who saw it written. These are the best methods of proof.

⁴ LAWS(MAD)-1996-3-114

These apart, there are three modes of proof by opinion. They are:

(1) By the evidence of handwriting expert (Section 45);

(2) By the evidence of a witness acquainted with the handwriting of the person who is said to have written the writing in question (Section 47); and

(3) Opinion formed by the Court on comparison made by itself (Section 73).

All these three cognate modes of proof involve a process of comparison. (**State (Delhi Admn.) v. Pali Ram**⁵).

In the facts of the present case, PW.1 is the competent witness to testify on behalf of his wife (plaintiff No.2) being the husband and he being the power of attorney holder is competent to testify on behalf of the other plaintiffs (plaintiff Nos.3 and 4). Since the power of attorney is not questioned, non-production of the power of attorney and failure to mark the same as an exhibit before the trial Court is not fatal. Therefore, marking of a document and proof of it by different modes of proof referred in the earlier paragraph, by examining PWs.1 to 3, is suffice to prove execution of the promissory notes in favour of the plaintiffs. Apart from that, the defendant did not deny the signatures on the promissory notes and acknowledgements on the reverse of the promissory notes, but contended that he handed over the blank signed promissory notes to K.Nageswara Chowdary (PW.2), which he is not substantiated by adducing any evidence. In the oral evidence of DW.1, he admitted about signing on the blank promissory notes and on the reverse of the said promissory notes and handed over the same as a security for due payment of the amount. In the examination-in-chief, he

⁵ AIR 1979 SC 14

supported the same. But, in the cross-examination, the defence of the defendant was shattered. The defendant is a B.Tech. graduate, who is running a granite industry, knows the consequences of signing on promissory notes and moreover, in the first sentence of his cross-examination, dated 31.01.2018, he admitted that the signatures on Exs.A-1 to A-8 are his signatures and he signed those documents. This admission itself is sufficient to prove the execution of the documents as held by the Apex Court in **Sita Ram Bhau Patil v. Ramachandra Nago Patil**⁶.

Admissions are two types, one is judicial admission and another is evidentiary admission. In the instant case, the defendant made the qualified judicial admission in the written statement and in the cross-examination of the defendant as DW.1, made it clear that the defendant himself executed Exs.A-1-to A-8. Admissions are not conclusive proof, but the admissions estop the person who made such admission under Section 18 of the Indian Evidence Act. Moreover, the judicial admission is on different footing than the evidentiary admission. When the judicial admission is made in the pleadings or in any document regarding a particular fact in issue, such fact need not be proved by adducing any amount of evidence in view of Section 58 of the Indian Evidence Act. It is settled law that admission is best piece of evidence in view of the principle laid down in **Sita Ram Bhau Patil**⁷, wherein it was held that:

“Admission is the best piece of substantive evidence that an opposite party can rely upon, though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Admission may in certain circumstances, operate as an estoppel. The question which is needed to be considered is what weight is to

⁶ AIR 1977 SC 1712

be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission.”

In view of the above, the law on the admissions can be summarised to the effect that admission made by a party though not conclusive, is a decisive factor in a case unless the other party successfully withdraws the same or proves it to be erroneous. Even if the admission is not conclusive it may operate as an estoppel. Law requires that an opportunity be given to the person who has made admission under cross-examination to tender his explanation and clarify the point on the question of admission. Failure of a party to prove its defence does not amount to admission, nor it can reverse or discharge the burden of proof of the Plaintiff.”

In another case in **Nagubai Ammal v. B. Shama Rao**⁷, the Apex Court held that the “admission made by a party is admissible and best evidence, unless it is proved that it had been made under a mistaken belief. While deciding the said case reliance has been placed upon the judgment in *Slatterie v. Pooley* : (1840) 6 M. & W. 664), wherein it had been observed “What a party himself admits to be true, may reasonably be presumed to be so.”

In view of the law declared by the Apex Court and in view of the judicial and evidentiary admissions of DW.1 about the signatures on the suit promissory notes and signing of the said documents and in view of the law declared by the Division Bench of this Court, the plaintiffs were able to prove the execution of suit promissory notes, marked as Exs.A-1, A-3, A-5 and A-7, and acknowledgements, marked as Exs.A-2, A-4, A-6 and A-8, by examining PW.1 to PW.3.

⁷ AIR 1956 SC 593

When the defendant admitted execution of documents or when the plaintiffs proved the execution of promissory notes, the burden of proof that the promissory notes were not supported by consideration will be on the defendant in view of presumption under Section 118 of the Negotiable Instruments Act, it is rebuttable presumption, since the language used in the Section itself indicates that the court shall draw a presumption until the contrary is proved. Therefore, it is the obligation of the defendant to prove that Exs.A-1, A-3, A-5 and A-7 were not supported by consideration to dispel the legal rebuttable presumption contained under Section 118 of the Negotiable Instruments Act. The admissions made by the defendant at the end of the written statement and in the first sentence of the cross-examination of DW.1, are suffice to conclude that the suit promissory notes are supported by consideration. Added to that the defendant miserably failed to adduce evidence to rebut or dispel the legal presumption by examining any witnesses independently or by eliciting anything in the cross examination of P.Ws.1 to 3.

The law is well settled on this point and it is summarized as follows:

In **G.Vasu v. Syed Yaseen Sifuddin Quadri**⁸, this High Court discussed the scope of Section 118 of Negotiable Instruments Act and the view expressed by this Court was approved by the Apex Court in **Bharat Barrel and Drum Manufacturing Company v. Amin Chand Payrelal**⁹, wherein it was held as follows:

“Once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is

⁸ AIR 1987 A.P. 139

⁹ AIR 1999 S.C. 1008

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 disentitle 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.”

In **K.Prakashnan v. Surenderan**¹⁰, it was held as follows:

“Whether presumption stood rebutted or not, would depend upon the facts and circumstances of each case.”

Similar view is reiterated in **Kumar Exports v. Sharma Carpets**¹¹ and in another decision **Krishna Janardhan Bhat v. Dattatraya G.Hedge**¹², the Apex Court held as follows:

“Defendant can prove non-existence of a 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 disentitle him to the grant of relief on the basis of the negotiable instrument. 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 he relies”.

Similar view is expressed in **Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm**¹³ wherein Their Lordships Justice Tarun Chatterjee and Justice H.S.Bedi held as follows:

“Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until contrary is proved, that promissory note was made for consideration. Initial burden in this regard lies on the defendant to prove non-existence of consideration by bringing on record such facts and circumstances which would lead the court to believe non-existence of consideration either by direct evidence or by preponderance of probabilities showing that existence

¹⁰ (2008) 1 SCC 258

¹¹ AIR 2009 SC 1518

¹² AIR 2008 SC 1325

¹³ (2008) 7 SCC 655

of consideration was improbable, doubtful or illegal. 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 would be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of negotiable instrument. If 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”.

In view of the law declared by this Court and reiterated by the Apex Court in various judgments referred above, and since the defendant admitted his signatures on Exs.A-1 to A-8 and execution of the promissory notes is proved by the plaintiffs by examining PWs.1 to 3, who are the plaintiff No.1, the attester and the scribe of the documents, it is for the defendant to establish that the promissory notes are not supported by consideration. But, he failed to rebut the legal presumption under Section 118 of the Negotiable Instruments Act. Hence, the judicial and evidentiary admissions, both in the written statement and the evidence of DW.1, are suffice to conclude that the promissory notes and the endorsements thereon are supported by consideration. Therefore, we hold that Exs.A-1, A-3, A-5 and A-7 are supported by consideration and payment of Rs.10,000/- under each promissory note, marked as Exs.A-2, A-4, A-6 and A-8, acknowledging the liability to repay the amount due under the promissory notes, which would fall under Section 19 of the Limitation Act.

Accordingly, the point No.1 is answered in favour of the plaintiffs and against the defendant.

POINT No.2:

The second ground urged before this Court is that the suit claim is barred by limitation. But, this contention is without any substance, since the defendant himself admitted his signatures on Exs.A-2, A-4, A-6 and A-8 i.e. part payment endorsements, acknowledging the liability of the defendant to pay the amount due under the suit promissory notes. When the defendant paid part payments towards the amount due under the suit promissory notes and endorsed the same on the reverse of the promissory notes, it amounts to acknowledgement of debt and the limitation starts from the date of such acknowledgement. (Section 19 of the Limitation Act). Therefore, we hold that the suit claim is within the time. Accordingly, the point No.2 is answered in favour of the plaintiffs and against the defendant.

POINT No.3:

The third contention raised before this Court is that the suit is hit by multifariousness of cause of action. No doubt the four promissory notes were executed in favour of the plaintiff Nos.1 to 4 by the defendant for the amount he received under each promissory notes and each plaintiff is independent. But, a suit is filed for recovery of amount based on four promissory notes executed on the same day for different amounts and in favour of different persons i.e. plaintiff Nos.1 to 4. But, such plea is not raised either in the written statement filed by the defendant or in the grounds of appeal. For the first time, such a plea was raised

during the arguments. Therefore, such a plea cannot be entertained at this stage in the absence of any pleadings or affording any opportunity to the plaintiffs to substantiate their claim. Hence, this contention is unfounded, not based on any pleadings. Hence, we find no merit in the contention urged by the appellant's counsel regarding multifariousness of cause of action and on the basis of this contention, the appeal cannot be allowed, dismissing the suit and consequently, this point is held in favour of the plaintiffs and against the defendant.

In view of our findings on point Nos. 1 to 3, we find no merit in the appeal and the appeal deserves to be dismissed.

In the result, the appeal is dismissed with costs throughout. The Miscellaneous Petitions, if any pending, shall also stand dismissed.



RAGHVENDRA SINGH CHAUHAN, J.

M.SATYANARAYANA MURTHY, J.

Date:26.12. 2018.
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