NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 141 of 2002

Reserved on : 22.01.2019

Delivered on : 31.01.2019

Rajesh Kumar Valecha, aged about 35 years, S/o Shri Ghanshyam Valecha, R/o Jawahar Nagar, Raipur (C.G.)

---- Appellant

Versus

1. East India Glass, through: Its Proprietor R.S. Yuberai, Bottle House, Shankar Nagar, Raipur (C.G.)
2. R.S. Yuberai, aged about 45 years, S/o not known, Proprietor, East India Glass Bottle House, Shankar Nagar, Raipur (C.G.)

---- Respondents

For Appellant	:	Mr. P.K.C. Tiwari, Senior Advocate with
		Mr. Ashutosh Trivedi, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 25.07.2002 passed by Third Additional District Judge, Raipur (C.G.) in Civil Suit No. 9-B/2001, wherein the said court granted partial decree in favour of the appellant and against the respondents to the tune of Rs. 1,35,800/- and did not grant decree for remaining claim.

2. As per the appellant/ plaintiff, the appellant/ plaintiff filed a suit against the respondents/ defendants praying relief for a money decree for Rs. 2,62,500/- with interest of 2% per month from the date of decree till

realization on the decreetal amount. Though, the respondents have denied claim, but respondent No. 2 in his evidence admitted to have executed the documents, promissory notes, receipts etc. Rs. 1 lac was advanced by the plaintiff on 31.08.1995 and Rs. 1 lac was advanced on 05.06.1996. The trial court should have been viewed of Section 118 of the Negotiable Instrument Act, 1881 (for short "the Act, 1881") presuming that the instrument have been drawn for liability, but came to wrong conclusion that presumption has been rebutted, therefore, the finding arrived by the trial court be reversed for remaining part of claim and decree be passed for entire claim.

3. The trial court recorded finding that Rs. 1 lac was advanced on 31.08.1995 by the appellant for which promissory note has been executed. Finding recorded by the trial court regarding money advanced on the said date is not challenged, therefore, finding of that part is attained finality and same is not questioned in the present appeal. The only point for consideration before this Court is whether Rs. 1 lac was advanced by the appellant to the respondent on 05.06.1996 and respondents were under obligation to pay interest @ 1.5% per month for the said amount.

4. For deciding the issues between the parties, the trial court did not invoke Section 118 of the Act, 1881 which reads as under:-

> **118. Presumptions as to negotiable instruments** – Until the contrary is proved, the following presumptions shall be made:-
>
> (a) **of consideration** – 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.

(b) **as to date** – that every negotiable instrument bearing a date was made or drawn on such date;

(c) **as to time of acceptance** – that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) **as to time of transfer** – that every transfer of a negotiable instrument was made before its maturity;

(e) **as to order of indorsements** – that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) **as to stamps** – that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) **that holder is a holder in due course** – that the holder of a negotiable instrument is a holder in due course;

5. The finding recorded by the trial court that money advanced by the appellant was not disclosed in income tax scheme, is irrelevant. Income Tax payee files return of income of every financial year and tax is assessed in the assessment year. It is not the case that the loan cannot be advanced from earning of previous years. Anyone can advance loan from his earning of whole period right from year of his capability to earn.

6. When loan advanced in the year 1995 is accepted by the trial court, there was nothing on record to question the loan advanced in the year 1996. The document Ex.P/7 to P/12 shows that the promissory note has been signed by respondent No. 2 on behalf of respondent No. 1 and the same is unrebutted as per evidence of both sides, therefore, finding of the trial court regarding remaining claim is not liable to be sustained and the appellant is entitled to recover Rs. 2 lac as principal amount and Rs. 62,500/- as interest till the date of filing of suit and thereafter he is entitled to recover the interest @ 9% per year.

7. Accordingly, the judgment/decree passed by the trial court is set aside allowing the appeal. The decree is passed in favour of the appellant and against the respondents on the following terms and conditions:-

(i) The appeal is allowed. The respondents shall pay Rs. 2,62,500/- (Rs. Two Lac Sixty Two Thousand Five Hundred) to the appellant. The respondent shall also pay interest @ 9% from the date of filing the suit i.e. 16.02.1998 till realization of whole decreetal amount.

(iii) Respondents to bear cost of the suit throughout.

(iv) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.

(v) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun