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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 03.4.2019

Judgment delivered on 02.5.2019

First Appeal No.55 of 2019

- Jai Narayan Kadam S/o Late Abaji Kadam Aged About 64 Years Caste Maharashtriyan, R/o Rukhmani Kunj, In- Front Of Home Of Shri Jeevan Lal Dewangan, Advocate, Karma Chowk, Ganpati Nagar, Changora Bhata, Raipur, Police Station D D Nagar Raipur, District Raipur Chhattisgarh.. (No Need To Mentioned Through Chief Manager State Bank Of India, Kachacheri Branch, In Front Of District Court Raipur, Police Station Gole Bazar Raipur, Tahsil And District Raipur Chhattisgarh, Because The Applicant Has Retired From Service.)

---- Petitioner

Versus

- Narayan Soni S/o Late Laxman Soni Aged About 37 Years R/o Bajrang Chowk, Dudhadhari Mathpara, Raipur, Police Station Tikrapara, District Raipur Chhattisgarh.

---Respondent

For Appellant	: Shri Akhilesh Mishra, Advocate
For respondent	: None

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against judgment and decree dated 30.10.2018 passed by Additional District Judge, Raipur (CG) in Civil Suit No.69B/2016 wherein the said Court decreed the suit filed by the respondent/plaintiffs to the tune of Rs.1 lakh.

2. As per the version of the respondent, the appellant borrowed a sum of Rs. 1 lakh from him and executed promissory note in favour of him and put signature in the loan register. He made his sister and cousin as guarantor and interest @ 2% per annum was to be charged. When the amount was not refunded, the respondent issued notice on 15.01. 2016 but the amount was not repaid. Therefore, suit was filed which was decreed as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Documents of promissory note, loan register and account book has been falsely prepared.

(ii) The trial Court awarded decree against principle of law.

(iii) The appellant never refused to take notice issued by the respondent, therefore, finding of the trial Court is liable to be set aside.

(iv) There is overwriting on the promissory note, therefore, promissory note is not to be acted upon.

(v) Vimla who signed in the promissory note has not been examined.

(vi) The person who drafted the promissory note has not been examined.

(vii) Ex-P/7 is carbon copy and it is not proved according to the law.

(viii) Promissory note is doubtful and not liable to be acted upon.

4. Respondent Narayan Soni (PW-1) deposed before the trial Court that appellant borrowed a sum of Rs.1 lakh on 15.9.2013 and executed promissory note in his favour. He issued notice to the respondent when he failed to repay the amount on 15.01.2016 but he refused to take the same therefore, the suit was filed. Version of this witness is supported by promissory note (Ex-P/2) in which the appellant has signed, money lending licence (Ex-P/1), notice issued to the appellant (Ex-P/4) and loan account register (Ex-P/3). Version of this witness is supported by documents Ex-P/1 to Ex-P/6.

5. In rebuttal the appellant deposed before the trial Court that he did not borrow any sum from the respondent but mere denial is not sufficient to rebut the presumption enacted in section 118 of the Negotiable Instruments Act, 1881 which may be read 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 exchage 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.

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

6. There is legal presumption against the respondent that he signed the promissory note after receiving money from the respondent and there is no cogent evidence in rebuttal of promissory note and other documents. Therefore, the trial Court opined that the appellant is liable to pay the sum borrowed by him. Again the trial Court awarded interest @ 7% per annum which cannot be termed as on higher side. Therefore, interest part is also not liable to be interfered with.

7. It is not necessary for other persons to sign on the promissory note and ascribe to be examined. Therefore, promissory note is not under cloud as argued on behalf of the appellant. Arguments advanced on behalf of the appellant is not acceptable and the same is not sustainable.

8. Accordingly, the decree is passed in favour of the respondent and against the appellant as under:

(i) The appeal is dismissed with cost.

(ii) The appellant to bear cost of the respondent throughout.

(iii) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.

(iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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