NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 1-4-2019

Judgment delivered on 26-04-2019

FA No. 165 of 2007

- Vishwanath Sahu S/o Shri Late Amar Singh Sahu R/o. House No. 1-B, Street No. 1, Sector, 7, Bhilainagar, Tah And Distt Durg.C.G.

---- Appellant/plaintiff

Versus

- Smt. Kunjbai W/o Late Umend, Industrial Relation Department, Contract Labour Section Shed No. 61, Old Administrative Building Bhilai Steel Pant, R/o Vill And Post Khopli, P.S. Utai Distt Drug. C.G.

---- Respondent/defendant

For appellant : Mr. Vishwanath Sahu, Advocate

For respondent : Mr. Suryakant Mishra, Advocate

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 25-9-2007 passed by 4th Additional District Judge, Durg (CG) in Civil Suit No.1-B/2007 wherein the said court dismissed the suit filed by the respondents/plaintiffs against the respondent/defendant for recovery of Rs.1,94,000/- with interest.

2) Appellant/plaintiff instituted a civil suit before the trial Court against the respondent on the basis of promissory note Ex. P/1 and

agreement dated 19-8-2000 and 19-7-2002 (Ex.P/3) respectively on the ground that the defendant had taken Rs.81,000/- from him for loan for personal requirement on 19-8-2000. At the time of disbursement of loan amount the respondent had executed a promissory note (Ex.P/1) in favour of the appellant and thereafter on 19-7-2002 defendant executed an agreement in favour of the appellant. By the said agreement, the respondent had sought further four months time to repay the loan amount and respondent could not honour the terms and conditions of the promissory note (Ex.P/1) and agreement (Ex.P/3) then the appellant constrained a demand legal notice (Ex.P/2) to the respondent and called upon to repay the loan amount of Rs.81,000/- with interest @ 4% per month. Despite the legal notice, when the respondents failed to repay the loan amount suit was filed before the trial Court court which dismissed the suit after hearing the parties.

3) Learned counsel for the appellant would submit as under:

i) Appellant proved the execution of the promissory note (Ex.P/1 but the trial Court wrongly disbelieved the said promissory note which is bad-in-law.

ii) Appellant has also proved the execution of agreement between the parties vide Ex.P/3 but the trial court has wrongly disbelieved the execution of agreement (Ex.P/3) which is contrary to the factual matrix of the case.

iii) The trial court has wrongly taken the presumption regarding fraudulently execution of the documents which is not substantiated by evidence.

iv) Finding of the trial court is not based on oral and documentary evidence adduced by both sides, but it is based on conjectures which is liable to be set aside.

4) On the other hand, learned counsel for the respondent would submit that the the appellant is an employee of Bhilai Steel Plant and is also working as LIC agent and fraudulently took her signatures on blank papers and used old documents in his favour. therefore, finding of the trial Court is not liable to be reversed. The respondent has rebutted presumption available under Negotiable Instruments Act, 1881, therefore, the trial court is right in dismissing the suit of the appellant.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) Appellant adduced evidence of himself as PW/1 and produced documents Ex.P/1 to P/4 whereas respondent adduced evidence of herself as DW/1, Ramkrishna (DW/2)and Mandhir Das (DW/3) and produced documents Ex.D/1 to D/11. From the evidence of appellant PW/1), it is established that respondent borrowed a sum of Rs.81,000/- from him and executed a

promissory note (Ex.P/1) in his favour. Document Ex.P/1 goes to show that it is executed on 19-8-2000 and suit was filed on 11-8-2003 within three years of the execution of promissory note. Document Ex.P/12 is notice served on respondent which is acknowledged by the respondent. Again, one agreement was executed by the respondent in favour of the appellant acknowledging the debt as mentioned above as per Ex.P/3. Promissory note is an instrument within Negotiable Instruments Act, 1881 (for short, "the Act, 1881").

7. As per provisions of Section 118 of the Negotiable Instruments Act, 1881 following presumption is drawn 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 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:

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".

8. Respondent was under obligation to rebut the presumption available under Sections 139 and 118 of the Act 1881. To rebut the presumption, respondent and his witnesses deposed before the trial court that respondent opened the LIC account which was

opened by the appellant and at that time appellant took signatures of the respondent in more than one paper and now he is using same for filing the suit that is why she made a complaint to Police authorities.

9. From the evidence of respondent Smt. Kunjbai (DW.1), it is clearly established that she is working in Bhilai Steel Plant and she is not an illiterate, therefore, it cannot be held that she signed in promissory note without knowing the consequences of the said document, therefore, version of the respondent that she signed in papers of LIC account is not sufficient to rebut the presumption available in favour of the appellant. The document regarding LIC and report of the respondent is not sufficient to rebut the presumption and these documents are not sufficient to reject the case of the appellant. The result of such presumption proves existence of legally enforceable debt in favour of the appellant. The trial court has not evaluated the evidence in its true perspective and interference by this court is inevitable. Argument advanced on behalf of the respondent is not acceptable. The respondent was under obligation to pay the amount borrowed by her from the appellant. Though the appellant claimed interest @ 4% per month, but the same is on higher side, therefore, interest @ 6% per annum can be awarded to the appellant from the respondent. The appeal deserves to be allowed.

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

(i) The appeal is allowed. Respondent shall pay Rs.81,000/- to t he appellant with interest @ 6% per annum from 19-8-2000 (date of execution of promissory note) till realisation of the full amount.

(ii) Respondent to bear the cost of the appellant through out.

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

(iv) A decree be drawn up accordingly.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju