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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

S.A.NO.455 OF 2021

AND

C.M.P.NO.8782 OF 2021

P.Piarajohn

... Appellant/Appellant/
Defendant

Vs.

P.Ramu

... Respondent/Respondent/
Plaintiff

PRAYER:-

Second Appeal has been filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree of the Sub-Judge at Uthangarai dated 30.09.2019 made in A.S.No.10 of 2018, confirming the Judgement and Decree of the District Munsif-cum-Judicial Magistrate at Pochampalli dated 22.12.2017 made in O.S.No.2 of 2014.

For Appellant : Mr.A.Manikandan

J U D G M E N T

Captioned second appeal arises out of a suit on a promissory note.

2. Mr.A.Manikandan, learned counsel on record for the appellant in captioned Second Appeal brought to the notice of this Court that there were five promissory notes in all leading to five suits between same parties. Two Second Appeals being S.A.Nos.372 of 2021 and 374 of 2021 were dismissed on 16.04.2021 and 17.04.2021 respectively.

3. Learned counsel submits that sole respondent herein filed a suit in O.S.No.2 of 2014 before 'District Munsif-cum-Judicial Magistrate, Pochampalli' ['trial Court' for brevity]. This suit was resisted on several pleadings, but after full contest, it was decreed vide judgment and decree dated 22.12.2017. It is also submitted that this was carried in appeal by way of a regular First Appeal under Section 96 of 'The Code of Civil Procedure, 1908' [hereinafter 'CPC' for brevity] to the 'Sub Judge's Court, Uthangarai' ['First Appellate Court' for brevity] vide A.S.No.10 of 2018, which



came to be dismissed after full contest on 30.09.2019.

4. Notwithstanding very many grounds raised and notwithstanding two questions proposed as substantial questions of law in the Memorandum of Grounds of Appeal, learned counsel for appellant in arguing for admission raises a simple point on limitation (though not raised in the grounds). Learned counsel submits that suit promissory note for Rs.20,000/- [Ex.A1] is dated 15.09.2011 and the suit claim is for Rs.24,913.22 with future interest and it is a promissory note payable on demand. It is pointed out that the suit was presented in the trial Court on 17.12.2013. Limitation was not raised in the trial Court or in the First Appellate Court but this is not an embargo as Section 3 of The Limitation Act, 1963 makes it clear that a suit is liable to be dismissed if it is barred by limitation although limitation has not been set up as a defence. Therefore, this Court deems it appropriate to look into this aspect. The relevant article is Article 35 of The Limitation Act, 1963. Limitation is three years from the date of the promissory note. Date of promissory note is 15.09.2011 and the suit was presented on 17.12.2013 itself i.e., within three years and therefore, this limitation plea does not carry the appellant any further in this matter. However, learned counsel submitted that Ex.B4-legal notice dated 21.02.2011 was issued by a counsel, who deposed as DW2 and if this exhibit and deposition had been considered, it would have come to light that the suit is barred by limitation as pronote pertains to a transaction of the year 2009.

5. A perusal of the case file, more particularly, judgments of trial Court and the First Appellate Court make it clear that the burden of song qua the defendant is denial of execution of pronote, whereas execution of pronote as well as passing of consideration have been established on the basis of oral and documentary evidence. This is captured neatly by the First Appellate Court in paragraph 11, which reads as follows:

'11.Point No.2 and 3.

In order to prove the execution of promissory note and passing of consideration plaintiff examined himself as PW1 and attesting witness has been examined as PW2. Both have spoken about execution and passing of consideration. Apart from that, defendant had in the written statement itself admitted the signature in the Ex.A1 promissory note, but unfilled promissory notes were given to brother of plaintiff. When the signature of the defendant in the promissory note is admitted and the burden shifts upon the defendant that he has not borrowed the amount shown in the suit promissory note. According to DW1, he had an earlier chit transaction



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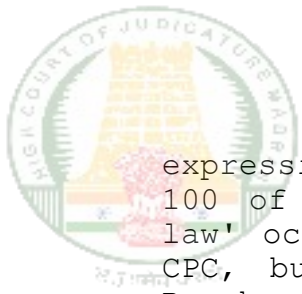
with the brother of plaintiff, for that chit transaction, the defendant executed a blank promissory note. To evidence the earlier chit transaction the defendant did not produce any documentary evidence or independent evidence to prove that there was an earlier chit transaction. Hence, this Court holds the defendant failed to prove the earlier chit transaction. Even assuming for a moment unfilled promissory note was given, Section 20 of the Negotiable Instruments Act, empowers the holder in due course to fill up the blanks and to negotiate the instrument. In such event the plaintiff is the "holder in due course" and the same was not in dispute. As such, the defendant had given prima facie authority to the plaintiff to fill the blanks and complete the instrument for negotiation. Thus, plaintiff is entitled to fill up the blanks to negotiate the instrument. The only limitation is that the holder in due course' can recover any amount specified the render and not exceeding the amount covered by the stamp. All the points arises is answer accordingly. Hence, this Court does not see any infirmity in the judgment of the trial Court and it does not require any interference.'

6. Though the First Appellate Court has used the term 'burden', it is actually 'onus', as burden does not shift and only onus swings like a pendulum from one end of the lis to other.

7. Therefore, his argument that Ex.B4-legal notice in the light of deposition of its author (counsel), who deposed as DW2 pales into insignificance. There is no ground for re-appreciation of evidence and in any event, going by Article 35 of the Limitation Act, it is three years from the date written on the promissory note and that cannot be altered much less by re-appreciation of evidence in a legal drill in Second Appeal under Section 100 CPC.

8. In the light of Kanailal case being Kanailal and others Vs. Ram Chandra Singh and others reported in (2018) 13 SCC 715 and Kirpa Ram case being Kirpa Ram Vs. Surendra Deo Gaur reported in 2020 SCC OnLine SC 935, this Court deems it appropriate to set out that the sole point for determination that arises in the case on hand is whether a substantial question of law arises in the captioned Second Appeal.

9. For examining this point of determination and giving this Court's decision thereon together with reasons for decision, it is necessary to remind itself of what the



expression 'substantial question of law' occurring in Section 100 of CPC means. The expression 'substantial question of law' occurring in Section 100 of CPC has not been defined in CPC, but it was described elucidatively by a Hon'ble Full Bench of this Court in Rimmalapudi Subba Rao's case [Rimmalapudi Subba Rao Vs. Noony Veeraju And Others reported in AIR 1951 Madras 969 (FB)]. This Rimmalapudi Subba Rao's principle was subsequently set out with affirmation by Hon'ble Supreme Court in the celebrated judgement i.e., Sir Chunilal V.Mehta and Sons Ltd., Vs. Century Spinning and Manufacturing Co. Ltd., reported in AIR 1962 SC 1314. To be noted, Chunilal V.Mehta's case was rendered by a Constitution Bench of Supreme Court, it is therefore declaration of law, relevant paragraph is Paragraph No.6 and the same reads as follows:

'6. We are in general agreement with the view taken by the Madras High Court and we think that while the view taken by the Bombay High Court is rather narrow the one taken by the former High Court of Nagpur is too wide. The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.'

10. This Rimmalapudi Subba Rao case which elucidatively describes the expression substantial question of law as affirmed by Hon'ble Supreme Court in Chunilal's Mehta's case has been neatly and nicely captured in Santosh Hazari case [Santosh Hazari Vs. Purushottam Tiwari (deceased) by Lrs., reported in (2001) 3 SCC 179], relevant paragraph is paragraph 12 and the same reads as follows:

'12. The phrase "substantial question of law", as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means – of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in



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contradistinction with – technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance” as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. T. Ram Ditta* [AIR 1928 PC 172 : 55 IA 235] , the phrase “substantial question of law” as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case as between the parties. In *Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.* [AIR 1962 SC 1314 : 1962 Supp (3) SCR 549] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju* [ILR 1952 Mad 264 : AIR 1951 Mad 969] :

“[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law.”

and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether



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it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."'

11. This Court has no difficulty in coming to the conclusion that no substantial question of law arises in the captioned Second Appeal owing to the facts, trajectory, contentions captured supra as nothing debatable, res integra or disregarding of settled principles arise. Therefore, this Court deems it appropriate to dismiss the captioned Second Appeal at the admission stage by holding that no substantial question of law arises. Accordingly, this second appeal is dismissed. Owing to the nature of the matter and the submissions made before this Court, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kmi/vvk

To

1. The Subordinate Judge,
Uthangarai.
2. The District Munsif-cum-Judicial Magistrate,
Pochampalli.

S.A.NO.455 OF 2021 AND
C.M.P.NO.8782 OF 2021

GPL (CO)
PBS/08/10/2021