

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

A.S.No.2217 of 2004

JUDGMENT :

The appellant in this suit is defendant in O.S.No.68 of 2002 on the file of Senior Civil Judge, Karimnagar and the present appeal is preferred by the appellant/defendant against the Judgment and Decree dated 04-11-2003 by which the suit of the respondent/plaintiff was decreed for a sum of Rs.5,15,000/- with costs and interest @ 12% per annum from the date of promissory note till the date of decree and further interest @ 6% per annum from the date of decree till the amount is realized.

2. The appellant has challenged the Judgment of the trial Court on the ground that the trial Court committed an error by passing decree in favour of the plaintiff inspite of the fact that the respondent/plaintiff himself stated in the plaint that he has no money and he has borrowed the same from his relatives without specifying their names. The respondent/plaintiff failed to produce any evidence in support of the plea that he borrowed the money from his friends and relatives. The appellant has pleaded before the trial Court that he is not due to pay any amount to the respondent and also pleaded that the promissory notes are devoid

of consideration, for that reason only no receipt was obtained by the respondent. The appellant further pleaded that he filed a written statement stating that the respondent has no capacity to lend such a huge amount but the respondent could not produce any record or material to show that he arranged money through his relatives. But the trial Court did not consider his claims and passed a decree in favour of the respondent/plaintiff.

3. The appellant further pleaded that the trial Court failed to appreciate the fact that the respondent/plaintiff has not filed one promissory note dated 24-06-1999 for Rs.1,00,000/- but filed a certified copy of complaint registered in Crime No.43 of 2001 of Karimnagar, II Town police station. The said document was marked as Ex.A5 but it was not proved by way of examining Sub-Inspector of police. Therefore, the trial Court ought not to have granted decree for the said amount.

4. The appellant find fault with the observations made by the trial Court with regard to the contention raised by the respondent/plaintiff that the appellant herein snatched away the promissory note dated 24-06-1999 when the subject matter of the case is pending before the Tribunal Court.

5. He has also claimed that the trial Court committed an error in granting decree on the basis of alleged promissory notes

which are not admissible in evidence as they were not sufficiently stamped as per the amended Stamp Act. Thereby, the Judgment and Decree suffers from legal lacunae and unsustainable under law.

6. The appellant further contended that the trial Court failed to appreciate the facts in a correct way. There is no plea by the respondent that the payment of money under the alleged promissory notes has been made through cheques and demand drafts nor it was his case that the money has been paid by the relatives of the respondent directly to the appellant herein. In the absence of any receipt from the appellant, the suit of the respondent ought not to have been decreed. The trial Court having found that there is no agreement between the parties for payment of interest ought not to have awarded interest @ 12% per annum. The Court below observed that there is no evidence by the respondent/plaintiff to the effect that the appellant agreed to pay interest on the amount borrowed as such, the trial Court ought not to have awarded interest. The appellant has also claimed that the trial Court committed an error in believing the evidence of PWs.2 to 4. There was no evidence from PW.2 about the passing of consideration of Rs.2,05,000/- to the appellant. The respondent did not explain either in the pleadings or in the

evidence as to why he has obtained two (2) promissory notes separately on 10-06-1999 and three (3) promissory notes on 24-06-1999, when it is his case that he paid Rs.2,05,000/- on 10-06-1999 and Rs.3,15,000/- on 24-06-1999.

7. The appellant has claimed that he has filed his evidence in the form of affidavit before the Court below. He could not attend the Court for cross-examination as the criminal case was posted for Judgment on the same day. Thereby, he sought for an adjournment in this suit but the trial Court without giving any adjournment, posted the suit for judgment. Thereafter, he filed an application for recalling him, but his application was dismissed on 04-11-2003. Therefore, his evidence affidavit remained unchallenged, there was no cross-examination. The respondent did not take steps to procure the presence of appellant as such, his evidence is admissible under Sections 137 and 138 of Evidence Act.

8. The appellant has further submitted that the trial Court wrongly put the burden of proof of consideration on the appellant inspite of the failure of respondent to discharge his initial burden of showing that he brought money from his relatives and paid the same to the appellant. According to the appellant, the document marked as Ex.A5 is certified copy and secondary evidence is not

permissible since the original is not a public document. The Court below did not give any opportunity to the appellant for producing his evidence thereby, he prayed for setting aside the Judgment and Decree passed in favour of the respondent.

9. The suit vide O.S.No.68 of 2002 was filed by the respondent/plaintiff on the ground that the appellant herein borrowed Rs.5,15,000/- as hand loan and executed five (5) different promissory notes for Rs.1,00,000/- each. The appellant executed five (5) different promissory notes on the ground that he want to discharge the promissory notes as and when he got the money and for the purpose of easy discharge, he has executed five different promissory notes. It is also averred in the plaint that during the course of time on 19-12-2000, the appellant called the respondent/plaintiff over phone and asked him to bring one promissory note since he wanted to discharge the said promissory note. The respondent along with his friend went to Mukkarampura but the appellant herein without payment snatched the bag containing the promissory note, abused the respondent/plaintiff. The respondent filed a complaint before police which was registered as a case against the appellant herein. Subsequently, the respondent filed the suit for recovery of money.

10. The appellant filed a written statement admitting his friendship with the respondent but denied the other averments including the borrowing of money, execution of promissory notes and other averments made by the respondent. The trial Court framed five (5) issues as follows :

1. Whether the defendant had borrowed an amount of Rs.2,05,000/- on 10-06-1999 and Rs.3,10,000/- on 24-06-1999 and executed five pronotes?
2. Whether the defendant snatched away a pronote dated 24-06-1999 for Rs.1,00,000?
3. Whether the pronotes are devoid of consideration?
4. Whether the plaintiff is entitled to suit claim?
5. To what relief?

11. During trial, the respondent/plaintiff himself was examined as PW.1. He has examined PWs.2 to 4 and marked Exs.A1 to A5. The appellant herein filed his evidence affidavit before the trial Court but did not attend the Court for cross-examination thereby, his affidavit was not considered and having heard both parties and considering the oral and documentary evidence, the trial court passed a decree in favour of the respondent/plaintiff directing the appellant herein to pay Rs.5,15,000/- with interest @ 12% per annum from the date of promissory notes till the date of decree and interest @ 6% per annum from the date of decree till the amount is realized.

12. The learned counsel for the appellant has submitted that even as per the plaint averments, it is very clear that the respondent/plaintiff has no capacity to lend such huge amount to the appellant herein. The respondent has claimed that he has arranged the money by borrowing the same from his relatives but he could not substantiate the said plea. Both the parties to the suit are Advocates by Profession. The appellant herein has no necessity to borrow money from the respondent. The Court below did not consider the cross-examination of witnesses examined by the respondent/plaintiff and plea taken by the appellant herein and passed a decree in favour of the respondent thereby, it is liable to be set aside.

13. Now the points arose for consideration are :

1. Whether the appellant herein borrowed money from the plaintiff as claimed by the respondent ?
2. Whether the appellant executed promissory notes in favour of the respondent/plaintiff :
3. Whether the respondent is entitled to recover the suit amount ?
4. Whether the Judgment and Decree passed by the trial Court are liable to be set aside as prayed for ?

Points :

14. The appeal has been filed mainly on the ground that the plaint averments would show that the plaintiff was not having

sufficient funds, he has borrowed money from his relatives and friends and arranged the sum to the defendant i.e., appellant herein. Therefore, according to the learned Advocate for the appellant such a claim is highly unbelievable. He has also argued that the evidence placed before the Court may not establish the execution of promissory notes by the appellant but the Court below came to a wrong conclusion and granted decree in favour of the respondent/plaintiff.

15. It is true in the plaint and in the evidence, it is stated that when the appellant herein sought for loan, the plaintiff arranged the amount with the help of his friends and relatives from whom he received money. The discussion in the plaint and evidence on record would show that both the appellant and respondent are practicing Advocates. Therefore, the respondent considering the Profession and acquaintance with the appellant might have arranged the loan. Simply because it is averred in the plaint that he borrowed money from friends and relatives, it does not mean that he has no capacity to arrange the loan and the execution of promissory notes can be disbelieved. As per the material averments of the plaint and evidence of both parties, the respondent/plaintiff has claimed that the appellant herein borrowed Rs.2,05,000/- on 10-06-1999, Rs.3,10,000/- on

24-06-1999 and executed different promissory notes i.e., one pro-note for Rs.1,00,000/- and another promissory note for Rs.1,05,000/- which was marked as Exs.A1 and A2 in the trial. The appellant herein having disputed the execution of promissory notes, pleaded that Exs.A1 and A2 are invalid and he need not pay any amount to the respondent.

16. In order to prove his claim, the respondent was examined as PW.1 and he has examined two more witnesses. PW.2 is an independent witness, PW.3 is another Advocate, both these witnesses have deposed about the money transaction between the appellant and respondent. According to the evidence of PW.2, he has categorically stated that the appellant herein filled up the promissory notes in his own hand writing and subscribed his signature on the Revenue stamps. Therefore, there is no necessity to obtain separate receipt from the appellant. The evidence of PW.1 is corroborated by these two independent witnesses. The appellant has claimed that the suit promissory notes were not executed on proper stamp papers thereby inadmissible. However, as rightly observed by the trial Court in issues No.3 and 4, the appellant could not produce any proof in support of his claim. The contention of the appellant that suit promissory notes are devoid of consideration is not established.

The signatures of the appellant on the suit promissory notes are proved through the evidence of PWs.1 to 3. The appellant, who is a practicing Advocate cannot claim that the suit promissory notes are not supported by consideration because once the execution of promissory notes is proved, unless the contrary is established, it shall be presumed that the pro-notes are supported by consideration. PWs.1 to 3 categorically stated the circumstances under which Exs.A1 to A4 were executed. The appellant, who was filed his evidence affidavit did not enter the witness box for cross-examination. Therefore, the trial Court rightly discarded the said affidavit. It is true the respondent did not produce any promissory note and filed a copy of his complaint against the appellant, wherein it is alleged that the respondent snatched one pronote. The appellant was not able to substantiate his contentions as he was not ready to face the cross-examination. There is no evidence in support of his claim. Whereas, the evidence of respondent/plaintiff who was examined as PW.1 and his other witnesses proved the execution of pro-notes by the appellant and there is no proof that he has discharged the loan. The trial Court considered all the claims of appellant and passed a reasoned order. Therefore, the appellant is not able to establish that the

Judgment of the trial Court is liable to be set aside. Therefore, the appeal is liable to be dismissed.

17. In the result, the appeal is dismissed.

Consequently, Miscellaneous applications if any, are closed.
There shall be no order as to costs.

JUSTICE SAMBASIVA RAO NAIDU

Date: 05.09.2022
PLV

