

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

SECOND APPEAL NO.981 OF 2016

DATED:30-12-2016

Between:

Syed Rabbani ... Appellant

And

Mahpathruni Adinarayana ... Respondent

COUNSEL FOR THE PETITIONER: Mr. T.D. Phani Kumar

COUNSEL FOR THE RESPONDENT: -



THE COURT MADE THE FOLLOWING:

JUDGMENT:

This second appeal arises out of concurrent findings of both the Courts below whereby the suit filed by the respondent is decreed and the appeal filed by the appellant against the said decree was dismissed.

The respondent has filed the suit against the appellant for recovery of money based on Ex.A.1 - promissory note dt.11.11.2010 executed for a sum of Rs.2,50,000/- undertaking to pay interest at the rate of 24% per annum. Though the respondent has caused Ex.A.2 – legal notice issued on 30.9.2011, the same was not received by the appellant and the postal cover was returned to the respondent vide Ex.A.3. The respondent was therefore constrained to file the aforementioned suit.

The appellant has filed a written statement wherein he has averred that on one occasion he has taken hand loan of Rs.9,000/- from the respondent in the year 2010 and put the signature on a printed form on two stamps and that thereafter he has repaid the amount with Rs.1,000/- interest within five months and asked the respondent to return the said promissory note. That the respondent has informed the appellant that the said promissory note is with one financier, that thereafter the appellant went to Delhi on his employment and that he has not received any information from the respondent who has created the suit promissory note.

Based on the respective pleadings of the parties, the trial Court has framed the following issues.

1. *“Whether the suit promissory note is supported by consideration?*
2. *Whether the plaintiff is entitled for the suit claim as prayed for?*
3. *To what relief?”*

In support of his plea, the respondent examined himself as P.W.1, and also examined the first attesor and the scribe of the suit promissory

note as P.Ws.2 and 3 respectively. He has also got marked Ex.A.1 – promissory note, Ex.A.2 - copy of the legal notice issued by the respondent to the appellant, and Ex.A.3 – returned postal cover of the said legal notice. The appellant examined himself as D.W.1, but has not adduced any documentary evidence.

On consideration of the oral and documentary evidence, the trial Court has decreed the suit with costs for a sum of Rs.3,60,820/- with subsequent interest at the rate of 12% per annum on the principal amount of Rs.2,50,000/- from the date of the suit till the date of decree and with subsequent interest at the rate of 6% per annum on the principal amount of Rs.2,50,000/- from the date of the decree till the date of realization.

The only submission made by Mr. T.D. Phani Kumar, learned counsel for the appellant, during the hearing is that though his client has not filed the receipt evidencing repayment of Rs.9,000/-, the appellant has handed over the same to him and that if he is permitted he will file the said receipt as additional evidence.

I am not inclined to accept this request for more reasons than one. Firstly, the appellant has failed to plead that in spite of due diligence he was unable to produce the said receipt before the lower Court. Secondly, even assuming that he has a receipt evidencing repayment of Rs.9,000/-, the same cannot be conclusive proof of his defence that he did not execute Ex.A.1. It could well be that the sum of Rs.9,000/- might have been borrowed by the appellant under a different transaction. Once the appellant has admitted the signatures on the promissory note, presumption arises in favour of the respondent plaintiff and the burden lies on the appellant to show that consideration has not passed. Under

Section 118(a) of the Negotiable Instruments Act, 1881, burden lies on the appellant to prove that consideration under Ex.A.1 has not passed. Except his ipsi dixit the appellant has not adduced any evidence to discharge his burden.

In the premises as above, I do not find any substantial question of law for consideration in this second appeal and the same is accordingly dismissed.

As a sequel to dismissal of the second appeal, S.A.M.P. No.2542 of 2016 shall stand disposed of as infructuous.

30-12-2016

bnr



C.V. NAGARJUNA REDDY, J