

S. Nagaraja Vs. Ediwin Barnes

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Court : Karnataka

Decided On : Apr-04-2017

Judge : K.N. Phaneendra

Appeal No. : R.S.A. No. 1232 of 2016 (MON)

Appellant : S. Nagaraja

Respondent : Ediwin Barnes

Judgement :

(Prayer: This RSA is filed U/s 100 of CPC against the judgment and decree dated 18.01.2016 passed in RA No.103/2013 on the file of the 1st Addl. District Judge, Shivamogga, dismissing the appeal and confirming the judgment and decree dated 10.04.2013 passed in O.S.No.147/2011 on the file of the II Addl. Sr. Civil Judge, Shivamogga.)

1. Heard the learned counsel for the appellant and the respondent. Perused the judgment of the trial Court and the First Appellate Court, and also the copy of the depositions of the respective parties furnished by the appellant s counsel.

2. The brief factual matrix that emanate from the records are that, the plaintiff has filed a suit for recovery of a sum of Rs.5,50,000/- along with interest at 18% pa. The plaintiff has filed a suit on the ground that the defendant, in the month of August 2009 has borrowed a sum of Rs.4,50,000/- precisely on 04.08.2009 at Shivamogga and executed an on demand promissory note agreeing to repay the

same along with interest at 18% pa. It is the further case of the plaintiff that, on 12.08.2009 by executing another on demand promissory note, the defendant further borrowed a sum of Rs.1,00,000/- agreeing to repay the same along with interest at 18% pa.; In spite of repeated requests and demand, the defendant has not repaid the said amount. On the other hand, it is alleged that he has issued two cheques dated 04.02.2011 drawn on Indian Bank, Banashankari II Stage and State Bank of Mysore at Vikram Nagar, Bengaluru, for a sum of Rs.4,50,000/- towards the repayment of the said amount. But, those cheques were also bounced on presentation, due to insufficiency of funds. Therefore, the plaintiff got issued legal notice on 23.02.2011 asking the defendant to pay the said amount. But, the defendant neither complied with the notice nor he has made any arrangements to reply the said notice. Therefore, the plaintiff has filed a suit before the trial Court.

3. The defendant in pursuance of the summons, appeared before the Court and taken contention that, he was a close friend of the plaintiff and the defendant was in financial difficulties, and taking advantage of the situation, the plaintiff himself has come forward to provide loan facility to the defendant. It is the specific case of the defendant that, he has applied for grant of huge loan before the J.C. Finance at Jalandhar in Punjab during August 2009 and he has to pay a sum of Rs.4,42,000/- as initial payment for the purpose of releasing of the said loan. As the defendant had no such money, but with the assurance that he would pay back the amount immediately after releasing of the said loan from the said Financial Company, he requested the plaintiff to deposit the amount of Rs.4,42,000/- to the Bengaluru account of the said J.C. Finance at Jalandhar. As security for repayment of the said amount, the defendant has executed an on demand promissory note for a sum of Rs.4,50,000/- on 04.08.2009 and on the same day he also issued two cheques as security for the repayment of the said amount.

4. It is the further case of the defendant that, in fact the plaintiff has deposited the said amount of Rs.4,42,000/- in the said Bank Account of the J.C. Finance at Jalandhar. But, the plaintiff has taken back that money through RTGS and thereafter the plaintiff demanded the defendant to pay another sum of Rs.1,00,000/- towards the expenses. Though the defendant told him that he has no funds with him, the plaintiff forced him to execute another on demand

promissory note on 12.08.2009 and obtained one more cheque for Rs.1,00,000/- as security till repayment of the above said amounts. It is the specific contention of the defendant in the written statement that, the plaintiff has concocted the promissory notes and the cheques etc., though the defendant has not borrowed any amount from the plaintiff at any point of time. It is the specific case of the defendant that no consideration has been passed on the basis of the above two promissory notes and cheques were not issued for repayment of any debt or liability of the defendant.

5. On the basis of the above rival contentions, the trial Court has framed the following issues:-

i) Whether the plaintiff proves that the defendant has borrowed a sum of Rs.4,50,000/- for development of Nursing Home, on 04.08.2009 by executing on demand pronote agreeing to repay the same along with interest at 16% pa.

ii) Whether the plaintiff further proves that on 12.08.2009 again the defendant has borrowed another sum of Rs.1,00,000/- by executing on demand pronote agreeing to repay the same along with interest at 18% p.a.?

iii) Whether the plaintiff further proves that for repayment of said amount the defendant has issued two cheques for Rs.4,50,000/- and Rs.1,00,000/- on 04.02.2011 and the said cheques have not been encashed for want of sufficient amount?

iv) Whether the defendant proves that the plaintiff got created and concocted the suit documents as in the manner as contended in Para-7 of the written statement?

v) Whether the plaintiff is entitled for the reliefs?

vi) What Order or Decree?

6. The plaintiff in order to prove his case, examined himself as PW.1 and got marked Exs.P1 to P14 and also examined two more witnesses, who are the contesting witnesses to the promissory notes as PW.2-Lokesh and PW.3-Elumalai. The defendant in order to prove his defence, examined himself as DW.1

and got marked Ex.D1.

7. The Court after thorough appreciation of the oral and documentary evidence placed for its consideration, it has answered the Issue Nos.1 to 3 and 5 in the affirmative and Issue No.4 in the negative, and ultimately decreed the suit of the plaintiff. Being aggrieved by the said judgment and decree passed by the trial Court, the defendant has preferred an appeal before the First Additional District Judge at Shivamogga in R.A.No.103/2013.

8. The First Appellate Court has also, on appreciating the pleadings and evidence of the parties and also after going through the judgment of the trial Court, has framed two points for its consideration, which are as follows:-

i) Whether the appellant proves that there was any transaction between the appellant/defendant and plaintiff/respondent?

ii) Whether appellant proves that the judgment and decree passed by the trial Court in OS No.147/2011 dated 10.04.2013 is erroneous and require interference at the hands of Appellate Court?

iii) What order?

9. The appellate Court has concurred with the judgment of the trial Court by answering points 1 and 2 in the negative and confirmed the judgment of the trial Court by dismissing the appeal.

10. Learned counsel for the appellant strenuously contends before this Court that, both the courts have not properly appreciated the oral and documentary evidence with regard to passing of the consideration in respect of two promissory notes as claimed by the plaintiff. The learned counsel has submitted that, the trial Court and the First Appellate Court have mainly concentrated on the defence taken up by the defendant and not bestowed the attention to the plaintiff's case and failed to hold that the plaintiff himself has not proved the passing of the consideration. Therefore, no presumption, even available in favour of the plaintiff under Section 118 of the Negotiable Instruments Act, is rebutted by the defendant. As there is no evidence from the plaintiff's side and during the course of cross-examination, the

plaintiff has not properly stated as to actually on what date, time and place the said amount has been passed on to the defendant. The discrepancy forthcoming with regard to passing of the consideration in the evidence of PW.2 and PW.3, has not been properly appreciated by both the courts below. Therefore, he claims that there arises a substantial question of law with reference to appreciation of the evidence by both the courts below.

11. The crux of the matter is with reference to passing of consideration under the promissory notes. This Court has to see as to whether the trial Court and the First Appellate Court have considered the said aspect of the defence taken up by the defendant. When after appreciating the evidence of the plaintiff, reasons have been recorded by both the Courts below and recorded their finding on the basis of the factual aspects after appreciating the oral evidence of the parties, then normally this Court should not interfere with such finding on facts recorded by the trial Court or the Appellate Court. Even erroneous appreciation of facts would not give rise to frame any substantial question of law to be considered by this Court. In this background, let me see the reasons and findings recorded by the trial Court and the First Appellate Court with reference to passing of consideration.

12. The trial Court has considered elaborately the evidence of the plaintiff and found that he has paid money under two promissory notes. The same has also been affirmed by his evidence in the cross-examination. PW.2 and PW.3, the attestors to the promising notes have also substantiated the same with regard to passing of the consideration. The defendant though has taken-up a contention in the written statement that these documents are concocted and no consideration has been passed, but during the course of evidence, he has taken-up a defence that the amount has been paid by the plaintiff to the JC Finance at Jalandhar with an understanding that, if the loan is sanctioned, the defendant would pay back the said amount to the plaintiff. That shows that some transaction has been taken place between the plaintiff and the defendant, which has not been properly explained by the defendant in the written statement. But, he has taken-up a contention that those documents are concocted and the plaintiff has not at all paid the consideration in any manner. Further added to the above, though the plaintiff has stated in the cross-examination that though he has paid amount, but he does

not explain the same, particularly about the date and time of payment. But, the plaintiff reiterates that at 4.00 p.m. on the date of incident, on which day the amount has been paid, he has drawn Rs.4,42,000/- from his account and he kept that amount with him at 4.00 p.m. and by adjusting the remaining amount in his office, he paid the same to the defendant. This has been fortified by the suggestion put to the plaintiff by the defendant himself during the course of cross-examination that the said amount has been paid to the account of JC Finance on the previous date and thereafter, the same has been taken back by the plaintiff. That shows plaintiff had so much of money with him. Further the defendant has not produced any iota of material to show that he had any financial or loan transaction with the said JC Finance, so that he made requests to the plaintiff to deposit that amount to the JC Finance a sum of Rs.4,42,000/- and that the said amount had been paid to the plaintiff. According to the plaintiff, though there is some discrepancy as observed by the trial Court also with reference to passing of the consideration in the evidence of PWs.1, 2 and 3, but ultimately, the Court has come to the conclusion that by way of suggestions made by the defendant himself, the financial capacity that particular day by the plaintiff has been established. Therefore, the Court has drawn an inference that the amount must have been paid to the defendant on that particular date.

13. The same factual aspects have been re-appreciated by the First Appellate Court and it has come to the conclusion that, as on the date of the transaction as alleged by the plaintiff, the plaintiff was shown to have possessed such money with him and by virtue of the divergent defence taken by the defendant and that further the defendant has admitted the execution of the promissory notes and he has only stated that he has executed the promissory notes and issued cheques as security for repayment of the debt, all those story was not believed. So, once he admits that he has issued promissory notes for repayment of the debt, it is the burden upon him to explain as to what was the nature of the debt taken by him. The defence taken by the defendant explaining the nature of the debt to be payable to the plaintiff is falsified by his own evidence. The defendant in support of his defence would have produced some documents to prove the loan transaction between himself and JC Finance and on the basis of his request, the said amount has been paid to the JC Finance by the plaintiff. Though those records, which

must have been maintained by JC Finance has not been produced before the Court, and defendant has also not made any attempts to secure those documents before the Court. Therefore, on over all reanalysis of the materials on record, the First Appellate Court has also come to the conclusion that, in all probabilities, the plaintiff has established that he has paid the said amount to the defendant and by virtue of the same, the promissory notes have been executed and consideration amount has been passed.

14. The appreciation of the evidence by the trial Court and the First Appellate Court is in detail and meticulous by considering the cross examination of PWs.1 to 3. As I have already noted, it is not that the trial Court and the First Appellate Court have not at all considered the evidence of PWs.1 and 2 though it is there in any manner, nevertheless, they considered the evidence on record. Therefore, the trial Court and the First Appellate Court have rightly come to the conclusion that the plaintiff has proved his case.

15. In the above facts and circumstances of the case, it is only the appreciation of factual aspects of the trial Court and the First Appellate Court is called in question before this Court, which raises no substantial question of law to be considered. Hence, I do not find any strong reason to frame any substantial question of law. Hence, the appeal is liable to be dismissed at the stage of admission itself. Accordingly, the appeal is dismissed, with costs.

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