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Court : Karnataka

Decided On : Mar-17-2009

Reported in : 2009(6)KarLJ75

Judge : Ajit J. Gunjal, J.

Acts : [Partnership Act, 1932](#) - Sections 48; [Negotiable Instruments Act, 1881](#)

Appeal No. : Writ Petition No. 11981 of 2007

Appellant : Papayya

Respondent : Dundappa

Advocate for Def. : Service of notice

Advocate for Pet/Ap. : A.T. Savanur and; Ashok B. Patil, Advs.

Disposition : Petition allowed

Judgement :

ORDER

Ajit J. Gunjal, J.

1. The petitioner, who is the plaintiff, is questioning the order passed by the learned Trial Judge declining to admit the suit document on the ground that it is a promissory note and not a debt of acknowledgment.

2. The matter arises in the following manner.:

The petitioner, it appears that, had opted to retire from the firm on 25-3-1995, Hence, a settlement was arrived at between the plaintiff and the defendant-respondent and a document was drawn up on the same day i.e., on 25-3-1995. A copy of which is produced at Annexure-B indicates that the respondent is liable to pay a sum of Rs. 1,50,000/-. Since, the respondent did not come forward to pay the said amount, the petitioner has filed a suit in O.S. No. 141 of 1997 for recovery of the said amount on the basis of Annexure-B, During the course of trial, when the document was put in evidence, it appears, an objection was taken by the respondent to the effect that the suit document. would amount to promissory note and since it is insufficiently stamped, the same is inadmissible. The said objection by the respondent was accepted by the learned Trial Judge and declined to admit the said document on the ground that it amounts to promissory note and it is insufficiently stamped.

3. The learned Counsel appearing for the plaintiff-petitioner submits that a perusal of the said document does not disclose that it would amount to promissory note. He further submits that the petitioner as well as the respondent were partners of a firm and the petitioner proposed to retire from the firm, hence, towards payment of amount, an acknowledgment of debt was signed. He further submits that the said document does not satisfy the requirement of promissory note. He would refer to Section 48 of the Indian [Partnership Act, 1932](#) to buttress the contention regarding Settlement of account inter se between the partners.

4. The respondent is served but unrepresented.

5. A perusal of Annexure-B does not disclose that the said document could be classified as a promissory note. Indeed the definition of promissory note as defined in the [Negotiable Instruments Act, 1881](#) is that it would be a instrument which is required to be in writing containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

6. The said document is made available at Annexure-B. A perusal of the same does not satisfy the requirement of promissory note, inasmuch as, something more is written in the said document which would reflect that the petitioner and the respondent were partners of the firm and the petitioner proposes to retire and after the settlement of accounts, an account of Rs. 1,50,000/- has to be paid by the respondent in favour of the plaintiff. Certainly, this cannot be classified as a promissory note. Indeed even under the Indian [Partnership Act, 1932](#), Section 48 would speak about the mode of settlement of the accounts between the partners of a firm after dissolution. Indeed the said document could be in furtherance of Section 48 of the Partnership Act. Having bestowed my attention, the learned Trial Judge was clearly in error in holding that the said document is a promissory note and since it is insufficiently stamped, the same is not admissible in evidence. Consequently, I am of the view that the petitioner is entitled to succeed.

7. The petition is allowed. The impugned order at Annexure-E stands quashed. The learned Trial Judge shall admit the said document in evidence, if otherwise satisfies the requirement.

Rule is issued and made absolute.

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