Mohammed Ali Vs. Abdul Sinab

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SooperKanoon Citation : sooperkanoon.com/776408

Court : Chennai

Decided On : Nov-03-2000

Reported in : AIR2001Mad216; (2001)1MLJ371

Judge : M. Karpagavinayagam, J.

Acts : Negotiable Instruments Act, 1881 - Sections 20 and 118; Evidence Act, 1872 - Sections 101 to 103; Code of Civil Procedure (CPC), 1908 - Sections 100

Appeal No. : S.A. No. 1445 of 1999 and C.M.P. No. 15505 of 1999

Appellant : Mohammed Ali

Respondent : Abdul Sinab

Advocate for Def. : Mr. K. Kannan, Adv.

Advocate for Pet/Ap. : Mr. V. Raghavachari, Adv.

Judgement :
ORDER

1. Mohamed Ali, the appellant herein, is the defendant in the suit for recovery of money on promissory notes.

2. Abdul Sinab, the respondent herein, filed a suit against the appellant contending that he had advanced money by himself to the appellant and he had also got the promissory notes assigned from third parties and those assignors had also

advanced money to the defendant/appellant. The trial Court dismissed the suit. However, the lower appellate Court decreed the suit in favour of the plaintiff/respondent. Hence, the present second appeal by the defendant/appellant.

3. The case of the plaintiff is this:-

'The defendant obtained a loan of Rs.9,000 on 2.10.1988 and another loan of Rs.9,000 on 7.10.1988 and executed promissory notes in favour of one Abdul Rafi. On 11.9.1989, the said Abdul Rafi assigned the right of collecting the same on the promissory notes in favour of the plaintiff. The defendant obtained a loan of Rs.9,000 on 1.12.1988 and another Rs.9,000 on 25.12.1988 from one Mohammed Gani and executed promissory notes. These promissory notes were assigned by the said Mohammed Gani on 23.12.1989 in favour of the plaintiff. Besides these amounts, the defendant received Rs.9,000 each on various dates, namely, 14.1.1989, 21.1.1989, 25.1.1989 and 29.1.1989 and executed promissory notes in favour of the plaintiff. Since these amounts were not paid, the appellant/plaintiff issued a notice on 26.12.1990. The defendant sent a reply stating that he gave 10 signed blank promissory notes to one Basheer Ahmed on 7.1.1989, since as a subscriber of chits conducted by the said Basheer Ahmed, being the successful bider, he took chit for Rs.45,000 and by way of security to discharge the balance amount, he signed in those promissory notes and there is no relationship as creditor and debtor between them and as such, the plaintiff would not be entitled to the recovery of money, as there is no consideration passed on to the defendant either by the plaintiff or by the assignors.' Hence, the suit.'

4. The case of the defendant is this:-

'The defendant never received money either from the plaintiff or from the assignors. He was one of the subscribers of the chits conducted by Basheer Ahmed, who was the tenant under the defendant. He joined in 3 chits for a value of Rs.30,000 each on 7.1.1989. Being successful bidder in the auction, he took the chit for Rs.45,000. In order to get the security from him for payment of the balance chit amount periodically, the said Basheer Ahmed obtained his signature in the blank promissory notes containing Rs.9,000 each, After payment of the chit amount, he requested Basheer Ahmed to give back the promissory notes. But, the

said Basheer Ahmed evaded from handing over the said promissory notes. Subsequently, the said Basheer Ahmed informed him that he handed over the promissory notes to the plaintiff. To this effect, he had also given a written note to the defendant. Therefore, the suit is liable to be dismissed.'

5. On the basis of these pleadings, necessary issues were framed by the trial Court. On plaintiffs side, the plaintiff examined himself as P.W.1 andtwo others as P.Ws.2 and 3 and Exs.A-1 to A-14 were marked. On the side of the defendant, the defendant was examined as D.W. 1 and Ex.B-1 was marked. As noted above, the trial Court dismissed the suit. But, the lower appellate Court allowed the appeal filed by the respondent/plaintiff and decreed the suit.

6. In this second appeal, the following substantial questions of law have been raised in the Grounds of Appeal:-

(i) Whether the lower appellate Court is right in drawing presumption under Section 118 of the Negotiable Instruments Act, which the facts of the case disproves the existence of debtor and creditor relationship

(ii) Whether the lower appellate Court ought not to have dismissed the suit when the plaintiff had failed to produce the books of accounts to establish the suit transaction

(iii) When the plaintiff's witnesses themselves were unable to speak of the advancement of loan and have feigned ignorance of the transactions, whether the lower appellate Court was right in decreeing the suit drawing presumption under Section 118 of the Negotiable Instruments Act

7. The learned counsel appearing for the appellant, while elaborating these questions of law, would contend that the lower appellate Court would simply disbelieve the evidence of D.W.1 and decreed the suit merely by drawing presumption under Section 118 of the Negotiable Instruments Act without going into the materials to show that there is no consideration passed on to the defendant and there is no existence of debtor and creditor relationship between the appellant and the respondent.

8. In reply to the above submission, the learned counsel for the respondent, in justification of the reasonings given by the lower appellate Court in decreeing the suit, would contend that the lower appellate Court had considered the materials placed by both the parties in the proper perspective and therefore, in this second appeal, the factual findings rendered by the lower appellate Court may not be disturbed.

9. In the light of the respective pleas, let us now consider the question posed in this case.

10. At the outset, I shall take note of the fact that the judgment in question is a reversing judgment. The trial Court, on fact, dismissed the suit, but the lower appellate Court decreed the suit on the basis of the very same materials.

11. It is settled law that Section 100, C.P.C. does not refer to error or defect in appreciation of evidence adduced by the parties on merits. This Court as well as the Apex Court, time and again, would hold that even if the appreciation of the evidence made by the lower appellate Court is erroneous, that cannot be the reason to interfere with the conclusion recorded by the lower appellate Court.

12. In Arumugham v. Sundarambal, , it is held as follows:-

'The second appellate Court cannot interfere with the judgment of the first appellate Court on the ground that the first appellate Court had not come to close grips with the reasoning of the trial Court. It is open to the first appellate Court to consider the evidence adduced by the parties and give its own reasons for accepting the evidence on one side or rejecting the evidence on the other side. It is not permissible for the second appellate Court to interfere with such findings of the first appellate Court only on the ground that the first appellate Court had not come to grips with the reasoning given by the trial Court.'

While appreciating the grounds urged by the respective parties, this Court has to bear in mind the above principles laid down by the Apex Court.

13. The main thrust of the attack by the learned counsel for the appellant is that there is no material to show that these promissory notes were executed by the

defendant either in favour of the assignors or in favour of the plaintiff on considerations and in such an event, Section 118 of the Negotiable Instruments Act would not arise. He would further submit that the defendant had established the same by examining himself as D.W.1 and by producing Ex.B-1 that the promissory notes in question were originally with Basheer Ahmed, who was running chit business and the said Basheer Ahmed alone obtained his signature in the promissory notes in order to make further payments to him and as such, there is no consideration passed on to him by the plaintiff or the assignors.

14. One going through the judgments of both the Courts below and other records, I am not able to subscribe to the submission made by the counsel for the appellant. On the side of the plaintiff, three witnesses were examined. P.W.1 is the plaintiff. P.W.3 is one of the assignors. P.W.2 is the attesting witness. It is true that P.W.2 would admit in cross examination that he has not present when the money was passed on to him and he did not witness the defendant putting signature in the promissory notes. But, this admission does not mean that the entire case of the plaintiff is not true.

15. As correctly pointed out by the lower appellate Court, the evidence of P.Ws.1 and 3 would clearly show that the plaintiff had made out a case that the promissory notes were signed by the defendant and considerations were passed on to the defendant. Once those materials are available, naturally, the presumption under Section 118 of the Negotiable Instruments Act would come to play, especially when the defendant would admit that he put the signature in the promissory notes in question and he only wrote the figures in those documents.

16. Though the learned counsel for the respondent would cite several authorities, it would be sufficient to refer to one judgment of the Supreme Court.

17. It is relevant to quote para 14 of the decision in Bharat Barrel and Drum Manufacturing Company v. Amin Chand Payrelal, , wherein it is held as follows:-

'Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118 (a) would arise that it is supported by a

consideration. Such a presumption is rebuttable. The defendant can prove thenon-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118 (a) in his favour. The Court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the Court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.'

18. It is also relevant to note Section 20 of the Negotiable Instruments Act which reads as under:-

'Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall

be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.'

Further, the learned authors of the Negotiable Instruments Act comment as follows:-

'The instrument may be wholly blank or incomplete in any particular, in either case, the holder has the authority to make or complete the instrument as a negotiable one.'

'The authority implied by a signature to a blank instrument is so wide that the party so signing is bound to be a holder in due course even though the holder was authorised to fill for a certain amount, and he in fact inserts a greater amount, but it is necessary that the sum ought not to exceed the amount covered by the stamp.'

19. From the reading of the above Section, it is clear that Section 20 of the Negotiable Instruments Act is itself authority to the holder of the signed instrument to fill up the blanks and to negotiate the instrument. Thus, once itis admitted that the defendant has signed in the promissory notes, his liability cannot be denied. These principles have been held in Chidambaram v. P.T. Ponnuswamy, 1995 (2) LW 719 and P. Talamalai Chetty v. Rathinasamy, AIR 1998 Mad. 23.

20. In the light of the above decisions, it becomes obvious that once it is pleaded and proved that these promissory notes have been signed by the defendant on receiving the considerations, the presumption would arise and the same has to be rebutted by the defendant. Even this rebuttal could be given by direct evidence or by bringing on record the preponderance of probabilities also. In the instant case, the presumption has not been rebutted by the defendant even by the preponderance of probabilities.

21. According to the defendant, he signed the promissory notes and handed over the same to Basheer Ahmed. In the reply notice sent by the defendant to the plaintiff before filing the suit, he stated that Basheer Ahmed informed him that he

had misplaced the promissory notes and he would hand over the same to the defendant after tracing them out. In the written statement, he would state that Basheer Ahmed had handed over the same to the plaintiff. During the course of trial, he had produced Ex.B-1 written note given by Basheer Ahmed. It is relevant to note that the reply notice was sent by the defendant on 10.1.1991. The written note (Ex.B-1) given by Basheer Ahmed was dated 11.2.1991. After receipt of Ex.B1 written note, the defendant did not care to send a second reply intimating the same. On the other hand, the defendant had come forward with this explanation only when he filed the written statement on 30.12.1991. Furthermore, the said Basheer Ahmed was not examined. These things would show that the defendant had projected inconsistent pleas with reference to the promissory notes.

22. In this situation, I am not inclined to hold that the presumption under Section 118 of the Negotiable Instruments Act had been rebutted.

23. Even otherwise, in my view, as pointed out by the lower appellate Court, P.Ws.1 and 3 on the basis of the documentary evidence produced by them, would clearly give the details of fact regarding the passing of considerations and the execution of the promissory notes in their favour. On the other hand, the defendant had not come forward with consistent plea and the said plea had also not been proved by examining the witnesses concerned.

24. In view of what is stated above, I am not able to find any error of law nor any substantial question of law which would warrant this Court to interfere with the findings of fact rendered by the lower appellate Court under Section 100, C.P.C. in this Second Appeal and as such, the second appeal is liable to be dismissed.

25. In the result, the second appeal is dismissed. Consequently, C.M.P.No.15505 of 1999 stands dismissed. No costs.