

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE: NELLORE

Present: **C.YAMINI**
Principal District Judge, Nellore

Thursday, the 25th day of March, 2021

APPEAL SUIT No.81/2017

Shaik Ayaz .. Appellant

Vs.

Mulla Kalesha .. Respondent

On appeal against the decree and judgment dated 28.2.2017 on the file of the Principal Junior Civil Judge, Nellore, in—

ORIGINAL SUIT No.78/2016

Mulla Kalesha .. Plaintiff

Vs.

Shaik Ayaz .. Defendant

This appeal coming on 17.3.2021 for final hearing before me in the presence of Sri Ch.Venkateswara Rao - advocate for the appellant, and of Ms G.V.L.Nagamani - Advocate for the respondent, and having stood over for consideration to this day, this Court delivered the following—

J U D G M E N T

Respondent herein filed suit to direct the defendant/appellant to pay the respondent/plaintiff the suit amount of Rs.2,08,500/- due under the suit promissory note dated 5.6.2014, along with subsequent interest on Rs.1,50,000/- from the date of filing of the suit, till the date of realization, by stating that the appellant/defendant borrowed Rs.1,50,000/- from the respondent/plaintiff for his necessities on 5.6.2014, at Nellore, and after receipt of the said consideration from the respondent/plaintiff, the appellant/defendant executed a promissory note

on even date for the said sum in favour of the respondent/plaintiff, undertaking to repay the same with interest at 24% per annum either to the plaintiff/respondent or to his order on demand. In spite of repeated demands, made by the respondent/plaintiff, the appellant/defendant did not choose to repay any portion of the said debt amount to the respondent/plaintiff, by postponing the same on one pretext or other. Finally, the respondent/defendant issued cheque for Rs.2,00,000/- on 15.12.2015. But the said cheque was bounced due to insufficient funds. Thereafter, the respondent issued notice and the appellant, on receiving the same, kept quiet. Hence the suit.

2. Appellant/defendant filed written statement denying the material plaint averments and further contended that the appellant do not aware about the Negotiable Instruments Act complaint, and notice was served on him as stated by the respondent in the plaint. The suit promissory note is materially altered one, and not supported by any consideration. The alterations clearly appeared at Year on the top of right side of the promissory note, and so also date is materially altered. It clearly appeared that the respondent/plaintiff prepared the promissory note in hurried manner. The suit is not maintainable, as the suit promissory note is materially altered one. The signature appeared on the revenue stamp and below the revenue stamp are not belongs to the appellant/defendant, and appellant/defendant never borrowed any amount from the respondent/plaintiff on 5.6.2014. The respondent filed the suit with the active connivance of the scribe and attestors with the forge signatures of the appellant/defendant. There is no cause of action to file the suit, and filed the same to harass the defendant, and claimed to dismiss the suit with costs.

3. Basing on the above averments, the following issues are settled for trial—

- (1) Whether the suit promissory note is materially altered, as pleaded by the defendant?
- (2) Whether the suit promissory note is true, valid and for consideration?
- (3) Whether the plaintiff is entitled for suit claim as prayed for?
- (4) To what relief?

5. On behalf of respondent/plaintiff, PWs 1 to 3 are examined, and got marked Exhibit A-1 promissory note. On behalf of appellant/defendant, DW-1 examined and no documents are marked.

6. After considering the oral and documentary evidence available on record, the trial court decreed the suit for an amount of Rs.2,08,500/- together with interest at 12% per annum from the date of the suit till the date of decree and at 6% per annum from the date of the decree till the date of realization on Rs.1,50,000/-.

7. Aggrieved by the said decree and judgment dated 28.2.2017 in O.S.No.78/2016 on the file of the Principal Junior Civil Judge, Nellore, the defendant preferred this appeal urging several grounds.

8. Now the points that arise for consideration are—

- (1) **Whether the signatures of appellant/defendant on Exhibit A-1 suit promissory note are forged one?**
- (2) **Whether Exhibit A-1 suit promissory note is materially altered as pleaded by the appellant/defendant?**
- (3) **Whether the respondent/plaintiff is entitled for suit claim as decreed by the trial court?**

9. **POINT No.(1)**: - Learned counsel for the appellant/defendant contended that the signatures of appellant on Exhibit A-1 suit promissory note are forged.

10. Learned counsel for the respondent/plaintiff contended that the appellant/defendant failed to prove his burden that signatures of appellant on suit promissory note as forged one. Respondent proved the execution of Exhibit A-1 suit promissory note by the appellant by filing Exhibit A-1 and so also by examining PWs 2 and 3.

11. Evidence of PW-1 reveals that appellant borrowed Rs.1,50,000/- on 5.6.2014 from the respondent for his necessities, and on receiving cash consideration, he executed Exhibit A-1 suit promissory note by agreeing to repay the same with interest at 24% per annum.

12. Evidence of PW-2, who is attestor to Exhibit A-1 suit promissory note, and PW-3 scribe of Exhibit A-1 promissory note, coupled with Exhibit A-1 suit promissory note, reveals that the appellant borrowed Rs.1,50,000/- from the respondent/plaintiff on 5.6.2014, and after scribing Exhibit A-1 by PW-3, the appellant/defendant signed on Exhibit A-1 suit promissory note, in the presence of PWs 2 and 3, and PW-2 attested on Exhibit A-1.

13. Evidence of DW-1 is that the signatures appeared on the revenue stamp and below the revenue stamp never belongs to me, and he never borrowed any amount from the respondent/plaintiff on 5.6.2014, and the plaintiff filed the suit with the active connivance of the scribe and attestors with forged signatures.

14. Since separate point is framed in respect of material alteration and entitlement of suit amount, in this point, the evidentiary value in respect of date of execution and passing consideration not found. But by examining himself as PW-1, and by examining PWs 2 and 3 – attestor and scribe of Exhibit A-1 suit promissory note, and by filing Exhibit A-1 suit promissory note, the respondent established that the signatures on Exhibit A-1 as that of appellant/defendant, and this Court

perused the signatures of appellant/ defendant, on his written statement, with the signatures found on Exhibit A-1 suit promissory note, and they appears to be similar. There is no contra evidence, except the oral evidence of DW-1.

15. Under the above circumstances, the appellant/defendant failed to rebutte that the signatures found on Exhibit A-1 are not that of him even after respondent/plaintiff established that the signatures on Exhibit A-1 promissory note as that of the appellant. Accordingly, Point No.1 is settled against the appellant/defendant.

16. **POINT No.(2):** - Learned counsel for the appellant argued and filed reply arguments, by stating that the appellant preferred appeal on the ground that the signatures appeared on Exhibit A-1 are not clear, and appeared in erased manner, and same is admitted by the plaintiff, and suit promissory note is materially altered, and the lower court erred in appreciating the cross of PWs 1 to 3, and PWs 2 and 3 admitted the alterations in their cross, and that Exhibit A-1 suit promissory note itself is defective, and the question of fact that signatures on the suit promissory note are visible or not, and which signatures are not fair signatures, and it is also come under purview of material alternation, and Exhibit A-1 itself is invalid one, and the respondent/plaintiff has to stand on his case, to prove the same, but not on the weaknesses of the appellant/defendant.

17. Learned counsel for the respondent argued and filed written arguments, and main gist apart from pleadings is that undisputedly the appellant/defendant failed to adduce any rebuttal evidence and oral evidence of PW-1 was unchallenged in his cross, coupled with Exhibit A-1, and thereby it can be safely concluded that appellant having borrowed the amount, intentionally failed to discharge the same, by issuing cheque

without sufficient funds in his account, and determination of legally enforceable debt was already made out by Special Judicial Magistrate of First Class, Nellore, under Section 138 Negotiable Instruments Act, and the same is ordered against the appellant herein, by imposing punishment. The prima-facie appearance of Exhibit A-1 promissory note proves, it was issued on 5.6.2014 for Rs.1,50,000/- in favour of the respondent by appellant, and appellant has no legs to stand that there is no legally recoverable debt, in view of unchallenged oral testimony of PW-1 coupled with Exhibit A-1, and the contentions taken in the cross of PW-1 by the appellant are not genuine, beyond the scope of record, and the documents filed on behalf of respondent and are based on surmises and conjectures. Therefore, no weight or evidentiary value can be given to the contentions of the appellant raised in the cross of PW-1. In view of Section 27 of the General Clauses Act, the burden of proof rebutting the presumptions lies on the appellant/defendant. In this case, the appellant/defendant failed to rebut the presumption by placing any contrary evidence. Therefore, the said plea is distinguishable on facts and also on legal point. As stated by the appellant there are no so many material alterations, and some water dropped on Exhibit A-1 and the same is accepted in the cross-examination itself. There is no proof to show that there are material alterations, and it is not the signature of the appellant. So also, there is no proof to show that the signature of defendant on promissory note is forged one, etc. If really there is any material alteration, why the appellant/defendant did not send the same to the Forensic Lab. The contentions are raised only to avoid the amount to the respondent. No person can fight against any person basing on Rs.1,50,000/- from 2014, if really there is no case, and claimed to dismiss the appeal, by confirming the judgment of the lower court.

18. Evidence of PW-1, PW-2 attestor of Exhibit A-1, PW-3 scribe of Exhibit A-1, coupled with Exhibit A-1 suit promissory note, reveals that the appellant/defendant borrowed Rs.1,50,000/- on 5.6.2014 from the respondent for his necessities and executed Exhibit A-1 suit promissory note, agreeing to repay the same with interest at 24% per annum.

19. Evidence of DW-1 is that he never borrowed any amount from the plaintiff on 5.6.2014, and he never issued cheque bearing No.085371 of Central Bank of India, Nellore, on 15.12.2015 for a sum of Rs.2,00,000/-, and no legal notice was serve on him at any point, in view of bouncing of cheque for insufficient funds, and he is not aware about Negotiable Instruments Act complaint, and no notice was served on him as stated by the respondent in the plaint, and the suit promissory note is materially altered one, and not supported by any consideration. The alterations clearly appeared on the 'year' and 'month' column, and the suit is not maintainable, as the suit promissory note is materially altered one.

20. Section 87 of the Negotiable Instruments Act, states about the effect of alteration as follows—

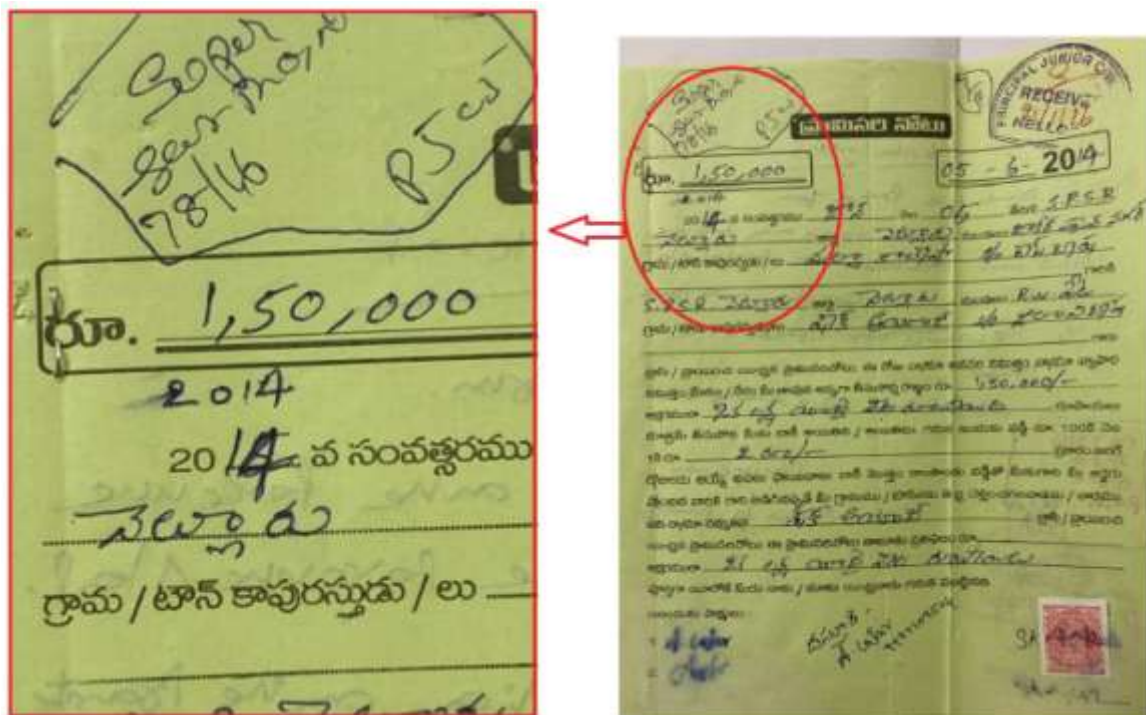
“87. Effect of material alteration—Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties; Alteration by indorsee—And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof. The provisions of this section are subject to those of sections 20, 49, 86 and 125.”

21. Thus, from Section 87 of Negotiable Instruments Act, it is clear that any material alteration of negotiable instrument renders the same as void, if it was made without the consent to a party thereto, and if it is made, discharges the indorser from all liability to him in respect of

the consideration thereof, subject to sections 20, 49, 86 and 125 of Negotiable Instruments Act.

22. Section 20 of Negotiable Instruments Act, relates to inchoate stamped instrument. Section 49 of Negotiable Instruments Act relates to conversion of endorsement in blank into endorsement in full. Section 86 of Negotiable Instruments Act relates to parties not consenting discharge by qualified or limited acceptance. Section 125 of Negotiable Instruments Act relates to crossing of cheque after issuance. The respondent/plaintiff is not taking any of the defences under Sections 20, 49, 86 and 125 of Negotiable Instruments Act, in respect of material alterations pleaded by the appellant.

23. For the proper appreciation, the promissory note is scanned hereunder-



24. Perused Exhibit A-1 suit promissory note. The handwriting of mobile number mentioned by the scribe underneath his signature and the amount and the dates mentioned on Exhibit A-1 are not similar. For instance, '15' mentioned at consideration column at the top is entirely different from the consideration in figures mentioned in middle of Exhibit

A-1 suit promissory note. So also the consideration '150' mentioned on the top of Exhibit A-1 promissory note is not similar with the mobile number mentioned by PW-3 scribe underneath his signature. So also, 'year' mentioned as '2014' at three places on the top of the promissory note, is entirely different from the number '4' mentioned by PW-3 underneath his signature. So also, date '5' mentioned on the 1st line of Exhibit A-1 is different from the date mentioned on the top of Exhibit A-1 suit promissory note, and so also dissimilar with the '5' mentioned in mobile number mentioned underneath the signature of PW-3, and so also the date '5' mentioned on the top of Exhibit A-1 suit promissory note is also appears to be dissimilar with his mobile number mentioned underneath his signature. For the naked eye itself it clearly reveals that '4' in '2014' at three places is materially altered, and at three places, it appears as '**4**' with material alteration, and underneath his signature, PW-3 scribe mentioned four as '**4**'. Moreover at two places it appears '1' is altered as '4' and at third place, out of year '2014', '1' is altered as '5' and '4'. Date of filing of the suit is 21.1.2016. If the year '2011' is altered as '2014' then the suit will be barred by limitation. The respondent/plaintiff herein did not file the bounced cheque and judgment in the Negotiable Instruments Act case. The general rule in English Law followed in India is that ***a party having custody or control of a document produced in evidence, must explain the alteration, when the instrument on its production appears to have altered etc. The party claiming under it should remove the suspicion.*** The said proposition is held by our Hon'ble High Court in ***Allampati Subba Reddy v. Neelapareddi Ramanareddi.***¹

¹ AIR 1966 AP 267

25. Under the above circumstances, the respondent/plaintiff herein failed to establish that the alteration made with the consent of the appellant and it does not effect the right of the appellant, and failed to explain properly about the suspicion on material alteration discussed as above. Thus, by virtue of Section 87 of Negotiable Instruments Act, the liability of appellant in respect of consideration under Exhibit A-1 is discharged, in view of above material alteration. Accordingly, Point No.2 is settled in favour of the appellant.

26. **POINT No.(3):** - In view of the observations in Point No.2 the respondent/plaintiff is not entitled to any amount basing on Exhibit A-1 suit promissory note.

27. In the result, the appeal is allowed, without costs, by setting aside the judgment and decree dated 28.2.2017 in O.S.No.78/2016 on the file of the Principal Junior Civil Judge, Nellore, by dismissing the suit.

Dictated to the Stenographer, transcribed by him, corrected and pronounced by me in the Open Court, this the 25th day of March, 2021.

Sd/- (C.YAMINI)
Principal District Judge
NELLORE

APPENDIX OF EVIDENCE

----NIL----

Sd/- (C.YAMINI)
Principal District Judge
NELLORE