

1 (Fair)
IN THE COURT OF THE PRINCIPAL JUNIOR CIVIL JUDGE: ELURU

Present:- Sri K.Ratna Prasad,
Principal Junior Civil Judge, Eluru.

Wednesday, this the 20th day of September, 2023.

O.S.NO.451 of 2022

Between:-

Boorlagadda China Subba Rao, S/o. Late Nageswara Rao, Hindu,
Male, Aged about 57 years, Business, R/o. Door NO.3A-15-1/3, 10th
Division, Near Perugu Chettu, Eluru, Eluru District.

:: Plaintiff

Versus.

Cherukuri Srinivasa Babu, S/o. Raju, Hindu, Male, Aged about 53
years, Mandal Parishad Development Officer, O/o. MPDO Office,
Polavaram, Eluru District.

::

Defendant

This suit is coming on 12.09.2023 for final hearing before me in the presence of Sri B.V.Appa Rao, Advocate for plaintiff and of Sri D.Showri, Advocate for defendant and the matter having stood over to this day for consideration, this Court delivered the following:

J U D G M E N T

01. The present suit is filed by the plaintiff/B.China Subba Rao for recovery of suit debt based on promissory note dated 15.12.2019.

02. The averments of plaint state that the defendant had borrowed a sum of Rs.4,00,000/- from plaintiff on 15.12.2019 for his family necessities and executed promissory note in favour of plaintiff agreeing to repay the same with interest at the rate of 24% per annum and inspite of demands made by the plaintiff, defendant failed to repay the suit debt and as such the plaintiff got issued legal notice dated 08.08.2022 and defendant after receipt of the same kept quiet and did not pay any amount. Hence, the suit.

03. On receipt of suit summons defendant appeared before this court and filed written-statement. In the written-statement defendant denied the averments of plaint and contended that he never borrowed any amount from the plaintiff and never executed any promissory note in favour of plaintiff and no consideration was passed between them and that the suit promissory note is a forged one. It is further averred that plaintiff never issued notice to defendant and with a view to file false suit the plaintiff did not issue notice and that there is no cause of action for filing the suit.

04. Based on the pleadings of both parties the following issues are framed for trial:-

1. Whether the suit promissory note is true, valid and binding on the defendant ?

2. Whether the consideration was passed under suit pronote

3. Whether the suit promissory note is forged document?

4. Whether the plaintiff is entitled to recover suit amount as prayed for?

5. To what relief ?

05. In order to prove respective contentions of both parties on behalf of plaintiff, P.Ws.1 and 2 are examined and Exs.A.1 to 3 are marked. On behalf of defendant, defendant himself is examined as D.W.1 and no documents are marked through him.

06. Heard and perused the record.

07. Now the issues are answered as under:

08. Issues Nos.1 to 3:-

Since issue Nos.1 to 3 are interdependent and to avoid repetition of pleadings and evidence, they are taken up together for discussion.

9. While it is case of the plaintiff that the defendant borrowed a sum of Rs.4,00,000/- from plaintiff for the purpose of his family necessities and executed Ex.A.1 suit promissory note in his favour and later inspite of demands made by plaintiff, the defendant did not choose to repay the suit debt as such plaintiff got issued legal notice and defendant did not comply the said notice, as such constrained to file the present suit, it is the case of defendant that he never borrowed any amount from the plaintiff and never executed any promissory note in favour of plaintiff and the suit promissory note is a fabricated document, that no consideration was passed under suit document and that there is no cause of action for filing the suit.

10. Since the case of defendant is of total denial, the initial burden is on the plaintiff to prove the suit pronote in all aspects i.e., its execution and passing of consideration thereunder to the defendant. Only after plaintiff discharges his legal burden the onus shifts on to the defendant to prove that suit pronote is a fabricated document. Till the plaintiff discharges the legal burden, the onus does not shift to the defendant to discharge the burden castes on him. Plaintiff/B.China Subba Rao is examined as P.W.1. In his chief-examination evidence, P.W.1 reiterated the same facts stated by him in the plaint. Through P.W.1, Promissory note dated 15.12.2019, office copy of legal notice dated 08.08.2022 and Postal acknowledgment are marked as Exs.A.1 to A.3. In his cross-examination evidence, P.W.1 deposed that he did not file any documentary evidence to show that by the date of 15.12.2019 he got Rs.4,00,000/- in his bank account and that he is not doing money lending business. P.W.1 denied suggestion that defendant never borrowed Ex.A.1 amount in the presence of attestors and never executed Ex.A.1 and that he is deposing false. P.W.1 further

denied suggestion that he obtained signature of defendant on empty promissory note and he has no capacity to lend Ex.A.1 amount.

11. The 1st attesor of Ex.A.1/T.L.V.Gangadhara Rao is examined as P.W.2. According to P.W.2, on 15.12.2019 defendant borrowed a sum of Rs.4,00,000/- from plaintiff and executed promissory note in favour of plaintiff. In his cross-examination evidence, P.W.2 deposed that he has seen defendant on the date of Ex.A.1, that Ex.A.1 transaction took place at the house of plaintiff in the year 2019 at about 12.00 noon and at that time he, defendant, scribe/Venkata Ramana were present. It is further evidence of P.W.2 that at request of plaintiff he stood as attesor in Ex.A.1, that consideration of Ex.A.1 amount is in bundle form and that after putting signature of defendant he, scribe put their signatures in Ex.A.1. P.W.2 denied suggestion that he is deposing false at the instance of plaintiff.

12. Nothing is elicited from the cross-examination evidence of P.Ws.1 and 2 so as to disbelieve their chief-examination evidence. Thus, the plaintiff by adducing direct evidence by examining himself as P.W.1 and P.W.2 the 1st attesor of Ex.A.1 is able to prove the contents of Ex.A.1, borrowal of amount by defendant from plaintiff and passing of consideration thereunder. Now the burden shifts on to the defendant to prove that Ex.A.1 is a forged document and to gain unlawfully promissory note was fabricated and no consideration was passed under suit pronote or that it came into existence in the circumstances stated by him in the written statement.

13. In order to prove the averments of written statement, defendant/Ch.Srinivasa Babu is examined as D.W.1. In his chief-examination affidavit, D.W.1 reiterated the averments of written statement. In his cross examination evidence, when D.W.1 was

confronted with Ex.A.3 D.W.1 deposed that address mentioned in Ex.A.3 is same as mentioned in his affidavit, that previous suits filed against him were settled and only the present suit is pending against him at present. D.W.1 denied suggestion that to evade suit debt he treated false averments in written statement.

14. Though it is pleading in the written statement, that defendant never borrowed Ex.A.1 amount and Ex.A.1 was fabricated document to gain unlawfully, no other witness has been examined to establish that Ex.A.1 is fabricated document. It is noted that though defendant contended that the suit promissory note/Ex.A.1 is a fabricated document and the plaintiff forged suit promissory note, nothing is elicited from the cross examination evidence of P.Ws.1 and 2 to establish written statement pleadings. No explanation offered as to what prevented the defendant in filing any application for sending Ex.A.1 to expert opinion along with the admitted signatures of defendant.

15. There is one strong circumstance which goes against the defendant ie., prior to filing of the suit, plaintiff got issued Ex.A.2 notice to defendant, and the defendant admitted that he received Ex.A.2 legal notice and did not issue reply to Ex.A.2. Though non issuance of reply notice is not a fatal to the case of the defendant, the conduct on the part of the defendant is highly improbable and unnatural having regard to the defence taken by defendant in the suit. Because, if the contention of defendant that the suit pronote is a rank forged one were to be true or correct, he would not have kept quiet without issuing any reply notice to the plaintiff setting forth the circumstances under which the suit pronote came in to existence, because no man of ordinary prudence in such circumstances would keep quiet. Thus, the defendant failed to prove that the suit pronote is a fabricated document and no consideration was

passed on it or it came into existence in the circumstances stated by him in the written-statement. I therefore, hold on these issues that the suit pronote is not a fabricated document and consideration was passed under suit pronote and that Ex.A.1 is true, valid and binding on the defendant. Accordingly issue Nos.1 to 3 are answered in favour of plaintiff.

16. Issue No.4:

In view of my findings on issue Nos.1 to 3, I hold on this issue that the plaintiff is entitled to recover the suit amount from the defendant. Accordingly, Issue No.4 is answered in favour of plaintiff.

17. Issue No.5:

To what relief?

In the result, the suit is decreed with costs for an amount of Rs.6,64,000/- with subsequent interest at the rate of 12% per annum from the date of filing of the suit to till the date of decree and at the rate of 6% per annum from the date of decree to till the date of realization on principal amount of Rs.4,00,000/-.

Typed to my dictation by Personal Assistant, corrected and pronounced by me in the open court, on this the 20th day of September, 2023.

Sd/- K.Ratna Prasad
Principal Junior Civil Judge,
Eluru.

Appendix of Evidence
Witnesses examined on behalf of:

Plaintiff:

PW.1: Borlagadda China Subba Rao
PW.2: Tata Leela Venkata Gangadhara Rao

Defendant:

DW.1: Cherukuri Srinivasa Babu

Exhibits marked on behalf of Plaintiff :

Ex.A1: Promissory note dated 15.12.2019

Ex.A2: Legal notice dated 08.08.2022

Ex.A.3: Postal acknowledgment

Exhibits marked on behalf of Defendant:-

NIL

Sd/- K.Ratna Prasad
Principal Junior Civil Judge,
Eluru.