IN THE COURT OF FOURTH ADDITIONAL CIVIL JUDGE (JUNIOR DIVISION): KAKINADA

Present: **Ms. Nirupa Bhanj Deo,**
IV Additional Civil Judge (Junior Division), Kakinada.

Tuesday, this the 30th (Thirtieth) day of April, 2024.

ORIGINAL SUIT No.902 of 2022.

Between:

Nallamilli Bhaskara Reddy,
S/o. Atchi Reddy, Aged 55 years,
Cultivation, D.No.16-6-17/10,
Nimmathota, Samalkota,
Kakinada Junior Civil Judge Court Limits. **...Plaintiff**

AND

Medisetty Srinivasa Rao,
S/o. Suryanarayana, Aged 52 years,
Business, D.No.2-5-37/1,
Manuguladibba Road,
Samalkota, Samalkota Mandal,
Kakinada Junior Civil Judge Court Limits. **...Defendant**

* * *

This Suit coming on 26.04.2024, for final hearing before me in the presence of Sri N.S.R.N.Chowdary, Advocate for the Plaintiff and of Sri A.Muralidhar, Advocate for the defendant and upon hearing arguments, upon considering the material available on record and the matter having stood over for consideration, till this day, the Court delivered the following:

JUDGMENT

01. This Suit is filed for recovery of Rs.3,35,333/- being the Principal and Interest due on Promissory note, dated 14.12.2019 said to be executed by the Defendant in favour of the Plaintiff for Rs.2,00,000/- agreeing to repay the same with interest at the rate of 24% p.a., and for costs.

02. Case of the Plaintiff in brief:

The brief averments of the Plaint are that the Defendant borrowed an amount of Rs.2,00,000/- from the Plaintiff on 14.12.2019 for family expenses and to discharge debts and received the consideration at Samalkota and that the Defendant executed a demand Promissory note on even date in Plaintiff's favour agreeing to repay the same with interest at 24% p.a., to the Plaintiff or his order on demand. It is contended that the Defendant failed to pay any amount towards the Suit Promissory note debt even after several demands made by the Plaintiff and kept postponing the same on one pretext or the other. It is further submitted that the Plaintiff got issued a registered legal notice to the Defendant on 17.08.2022 to discharge the debt due under the Suit Promissory note. It is contended that though the Defendant received the same, but he did not pay anything till today. It is further submitted that the Defendant is not an agriculturist, so he is not entitled for the benefits of Act 4/1938 and Act 7/1977 and hence the Plaintiff is entitled to recover the Suit debt from the Defendant at contract rate of interest till the date of realization. Hence, the Plaintiff is constrained to file the Suit for recovery of money.

03. Case of the Defendant in brief:

The Defendant made his appearance through his learned Counsel and he filed written statement denying the allegations made against him. It is submitted that the Defendant is an Onion vendor at Vegetable market at Santha market at Samalkota and that the Plaintiff came and offered money to him asking to do business in good manner, as such the Defendant took Rs.20,000/- from one Reddy and that the amount has to be repaid @ Rs.1,000/- per week for 24 weeks on every Wednesday and that at that time, the Plaintiff obtained signatures as well as thumb impressions of the Defendant on two blank Promissory notes as security. It is further submitted that the Defendant has paid without any default in the month of August 2019, but the said Reddy did not return the two blank signed Promissory notes. It is further submitted that even after repeated demands, as the Plaintiff did not return the Promissory notes, he raised the dispute before the elders at weekly santha market at Samalkota by name Anasuri Prasad who is also a vendor in the market. It is further contended that though said Reddy agreed to return the blank signed Promissory notes, but the Defendant received summons from the Court. It is further submitted that he do not know whether the person who lend the amount of Rs.20,000/- to him as well as Plaintiff are one and the same because in Reddy community every one will be called as Reddy only. It is further contended that the person who lent the money to the Defendant has no capacity to lend Rs.2,00,000/- at any point of time and that there is no cause of action for the Suit and the value of the Suit is incorrect and the Plaintiff cannot seek any relief against the Defendant. Hence he prayed the Court to dismiss the Suit with costs.

04. Basing on the Pleadings of both sides, my learned Predecessor framed the following Issues for Trial.

1. **Whether the Suit Promissory note is true, valid and executed by the Defendant, in favour of the Plaintiff ?**
2. **Whether one Reddy obtained the signatures and Thumb impressions of the Defendant on two blank Promissory notes, in the circumstances, as pleaded by the Defendant?**
3. **Whether the Plaintiff is entitled for recovery of the Suit claim from the Defendant, as prayed for ?**
4. **To what relief ?**

05. During the course of Trial, the Plaintiff got examined himself as PW.1 and got marked Exs. A.1 to A.3. He also got examined the scribe as PW.2. To contradict the version of Plaintiff, the Defendant examined himself as DW.1. He also got examined one 3rd party to the Suit as DW.2. The Defendant did not adduce any documentary evidence.

06. Heard arguments of learned Counsels. Perused the record.

07. **Evidence adduced by the Plaintiff:**

Plaintiff to prove the Suit transaction and the Suit Promissory note is supported by consideration, examined himself as PW.1 and got marked Exs. A.1 to A.3. He reiterated the contents of Plaint in his examination-in-chief and got marked Ex.A.1 to A.3. Ex.A.1 is the Promissory note, Ex.A.2 is the Office copy of the registered legal notice dt.17.08.2022 and Ex.A.3 is the Online Track consignment with regard to the legal notice sent to the Defendant. The Plaintiff contended that as the Defendant failed to pay the debt even after receiving of legal notice, hence he was constrained to file the Suit and hence prayed to pass a Decree and Judgment in his favour. During cross examination, when the learned Counsel for the Defendant questioned about avocation of PW.1 and the Defendant then PW.1 stated that at present he is doing cultivation in his fields and that the Defendant is doing whole sale business in onions and at times the Defendant also puts shop in santha. When the learned Counsel questioned about giving debts to others, then PW.1 stated that he gave debts to people at Samalkota and further stated that he gives debt to known persons. He denied to the suggestion that he obtains cheques along with Promissory notes when a person borrows amount from him. To which he stated that he obtains Promissory notes only. PW.1 denied to the suggestion that he is doing money lending business.

08. The Plaintiff also examined the scribe namely V.Mohana Rao as PW.2 and he deposed in the same lines of the Plaintiff with regard to the Defendant borrowing amount from the Plaintiff, executing Ex.A.1 Promissory note. He further deposed that at the time of lending the amount, he was the scribe and K.Venkata Krishna Reddy and one M.Kannababu were the attestors. During cross examination, when the learned counsel questioned about his and Plaintiff’s avocation, PW.2 stated that he is doing real estate business at Samalkot and that he is not working under P.W.1 and that PW.1 is doing cultivation. When the learned Counsel questioned about his acquaintance with the Plaintiff and the Defendant, PW.2 stated that he knows PW.1 for the past 13 to 14 years and that he knows the Defendant, who is aged about 54 or 55 years, as he is doing whole sale business of onion in sandy market and that he purchases onions from him.

09. Evidence adduced by the Defendant:

To disprove the case of Plaintiff, the Defendant examined himself as DW.1. His chief-examination affidavit is nothing but replica of contents of written statement. The Defendant also got examined one third party namely A.Prasad as DW.2. He deposed that he is a Vegetable vendor at Sandy market, Samalkota and he used to act as elder in case of disturbances which occur in between the parties. He further deposed that the Plaintiff used to do finance business at Sandy market, Samalkota by giving Rs.10,000/- and used to obtain one blank Promissory note for each Rs.10,000/- from his debtors and used to collect Rs.500/- per week. He further deposed that the Defendant borrowed Rs.20,000/- from the Plaintiff for which the Defendant paid Rs.25,000/- to the Plaintiff. He corroborated the version of DW.1 with regard to Plaintiff not having financial capacity to lend the amount of Rs. 2,00,000/-, Plaintiff obtaining two blank Promissory notes at the time of borrowing of debt, Plaintiff not returning the said Promissory notes though the Defendant cleared the debt and the dispute being placed before him. He further deposed that though the Plaintiff agreed that the Defendant discharged the debt, he claimed excess interest and then agreed to return the Promissory notes, but subsequently, the Plaintiff changed his attitude and got filed the present Suit against the Defendant by filling up the blank Promissory note with a malafide intention to get wrongful gain.

10. Arguments:

The learned Counsel for the Plaintiff argued that the Plaintiff by entering into witness box as PW.1 and by examining PW.2 and by marking Exs. A.1 to A.3 successfully proved that the Defendant borrowed a sum of Rs.2,00,000/- on 14.12.2019 and executed Ex.A.1 Promissory note in favour of the Plaintiff. He further argued that though PW.1 and PW.2 were subjected to cross-examination, nothing useful could be elicited to show that Ex.A.1 Promissory note was fabricated by the Plaintiff as alleged by the Defendant and therefore, the Defendant is liable to pay the Suit amount with future interest and costs. Hence he prayed to decree the Suit with costs.

11. The learned Counsel for the Defendant contended that the Defendant never borrowed the amount of Rs. 2,00,000/- as alleged by the Plaintiff and that he did not execute Ex.A.1 Promissory note in favour of the Plaintiff for Rs.2,00,000/-. He contended that the Plaintiff is not having financial capacity to lend the said debt. He further contended that though the Defendant paid the debt of Rs.20,000/- along with interest to the Plaintiff but the Plaintiff instead of returning the blank signed Promissory notes which he obtained at the time of borrowing debt, claimed more interest and refused to return the said Promissory notes. He further contended that though the Plaintiff agreed to return the said Promissory notes when the dispute was placed before DW.2, the elder of the Santha market, but instead, the Plaintiff filed this false Suit by fabricating the Suit Promissory note. Hence prayed to dismiss the Suit with costs.

12. Discussion:

In order to avoid repetition of evidence, Issue no.1 and Issue no.2 are dealt simultaneously.

Issue No.1: Whether the Suit Promissory note is true, valid and executed by the Defendant, in favour of the Plaintiff ?

Issue No.2: Whether one Reddy obtained the signatures and thumb impressions of the Defendant on two blank Promissory notes, in the circumstances, as pleaded by the Defendant ?

As already stated above, the Plaintiff filed the Suit against the Defendant for recovery of money on the foot of Ex.A.1 Promissory note. But the Defendant specifically denied the execution of the Suit Promissory note under the circumstances alleged by the Plaintiff. Therefore the initial burden lies upon the Plaintiff to prove the execution of Ex.A.1 Promissory note by the Defendant and only thereafter a presumption under Section 118(a) of Negotiable Instruments Act, 1881 would come into operation.

13. To prove the execution of Ex.A.1 Promissory note by the Defendant, the Plaintiff examined himself as PW.1 and examined PW.2, the Scribe of Ex.A.1. PW.1 and PW.2. in one voice deposed that on

14.12.2019, the Defendant borrowed a sum of Rs.2,00,000/- from Plaintiff and in consideration thereof, the Defendant executed Ex.A.1 Promissory note in favour of the Plaintiff agreeing to repay the same with interest at 24% per annum. A perusal of Ex.A.1 Promissory note shows that an amount of Rs.2,00,000/- was borrowed for interest at the rate of Rs.2/- per one hundred rupees per month on yearly compound which means 24% per annum on yearly compound on 14.12.2019. PW.1 further deposed that as the Defendant kept prolonging to repay the debt, hence he issued Ex.A.2 legal notice. A perusal of Ex.A.2 legal notice shows that it was issued on 17.08.2022 and the Plaintiff demanded the Defendant to pay the debt due under the Ex.A.1 Promissory note along with interest or else he will be constrained to file a Suit against the Defendant. Ex.A.3 Online track consignment shows that the item was delivered on 18.08.2022, which means the Defendant received the legal notice of the Plaintiff.

14. It is the contention of the Defendant that no such transaction took place and that the Ex.A.1 Promissory note was fabricated. In order to prove the same, the Defendant cross examined PW.1 and PW.2 at length. When the learned Counsel for the Defendant questioned about the details of the transaction, then PW.1 stated that he gave the debt at his house at Samalkota between 9.00 a.m to 10.00 a.m and that at the time of alleged transaction he, the Defendant, the scribe V.Mohan Rao (PW.2), M.Kanna Babu and K.Venkata Krishna Reddy were present. PW.1 denied to the suggestion that though the Defendant borrowed an amount of Rs.20,000/- from him and repaid the same along with interest but boring grudge, a false case is filed stating that the Defendant borrowed Rs.2,00,000/-. PW.1 denied to the suggestion that he do not have the financial capacity to lent an amount of Rs.2,00,000/- to the defendant. When the learned Counsel for Defendant questioned about the transaction, PW.2 stated that when he went to the house of PW.1 for asking him whether he was interested to purchase the property then PW.1 told that the Defendant intends to borrow debt from him and hence requested him to act as scribe and that he scribed Ex.A.1 Promissory note as per instructions of the Defendant and that the transaction took place between 9.00 a.m to 10.00 a.m. When PW.2 was questioned about the avocation of the attestors, he stated that the first attestor K.Venkata Krishna Reddy, who is resident of Samalkot, is aged about 42 to 45 years and that he do not know about his avocation and that the 2nd attestor Kannababu is aged about 38 to 42 year and is having apparels at Meher complex, Samalkot. PW.2 denied to the suggestion that as Plaintiff and he are friends, hence they colluded and created the Ex.A.1 Promissory note.

15. The learned Counsel contended that PW.1 is not having financial capacity to lend the amount of Rs. 2,00,000/- and failed to show that he was in possession of the said amount. To prove the same, he brought the attention of the Court, wherein PW.1 admitted that he did not file any bank statement to show that he had Rs.2,00,000/- in his account. It was elicited from PW.1 that he did not withdraw the amount from the bank.

16. The learned Counsel for the Plaintiff contended that DW.1 and DW.2 are deposing false that PW.1 is not having financial capacity to lend the amount of Rs. 2,00,000/-. To prove the same, he brought the attention of the Court, wherein it was elicited from DW.1 that he do not know the details of the property of PW.1 and that he do not know the monthly income of PW.1. It was elicited from DW.2 that he do not know the avocation of PW.1 and his financial status and that he never borrowed any debt from him and that he did not affix his signature as an attestor relating to any transaction of PW.1 and that he do not know the names of the persons to whom PW.1 lend the amount.

17. It is the contention of DW.1 that PW.1 is not having financial capacity to lend the amount of Rs. 2,00,000/-. But it is pertinent to note that during cross examination, DW.1 stated that he do not know the details of the property of PW.1 and that he do not know the monthly income of PW.1 and even DW.2 stated that he do not know about the financial status of PW.1, hence it is clear that DW.1 and DW.2 are deposing false about the financial capacity of PW.1 and they made name sake allegations against PW.1.

18. The learned Counsel for the Plaintiff contended that DW.1 and DW.2 are deposing false that DW.1 borrowed amount of Rs. 20,000/- only from PW.1 and he repaid the same with interest. To prove the same, he brought the attention of the Court, wherein it was elicited from DW.1 that on 11.10.2019, PW.1 came to him and offered amount to do business in good manner. DW.1 admitted that he did not mention about the said date in his written statement. It was elicited from DW.1 that he do not have any documentary proof to show that he paid amount given by PW.1 for carrying the business and that he did not issue any notice to PW.1 to return the two blank Promissory notes. The learned Counsel brought the attention of the Court, wherein it was elicited from DW.2 that he cannot remember the day on which the Ex.A.1 transaction took place between PW.1 and DW.1 and that he did not affix his signature as an attestor and that he did not see the document relating to the said transaction. The learned Counsel further contended that DW.2 do not know any thing about the case and he was falsely deposing in order to help DW.1, who is his neighbouring shop keeper. To prove the same, he brought the attention of the Court, wherein DW.2 admitted that in his chief examination affidavit, he did not mention about the date on which DW.1 borrowed amount from PW.1 and that he did not mention about the date on which DW.1 repaid the debt along with interest for Rs.25,000/- to PW.1. In view of above things elicited from DW.1 and DW.2 by the learned Counsel for the Plaintiff, it is clear that they are deposing false about DW.1 borrowing Rs. 20,000/- only and repaying the debt with interest to the Plaintiff.

19. The learned Counsel for Plaintiff contended that DW.1 and DW.2 are deposing false that the issue between PW.1 and DW.1 was placed before DW.2 and PW.1 agreed to settle the matter. To prove the same he brought the attention before the Court, where in it was elicited from DW.1 that he did not mention the date on which the dispute between him and the Plaintiff was placed before the elders. It was elicited from DW.2 that no agreement was executed when the issue between PW.1 and DW.1 was settled. It is to be appreciated here that it is the evidence of DW.2 that he settles disputes that arose at santha, if such is the case, in general if any issue is settled before elders then an agreement is executed to that effect in order to bind both the parties. But here it is the evidence of DW.2 that no such agreement is executed and further both DW.1 and DW.2 failed to mention the date on which the settlement took place, hence in view of above discussion, the version of DW.1 and DW.2 with regard to matter being placed for settlement before DW.2 is not believable.

20. It is pertinent to note that when the learned Counsel for the Plaintiff questioned about receiving of legal notice and giving reply, then DW.1 admitted that he received notice from the Plaintiff prior to filing of the Suit. He stated that he issued reply for the said legal notice and has filed the same and he denied to the suggestion that he did not file any reply notice before the Court. It will not be out of place to mention that during cross examination, DW.2 stated that DW.1 informed him about PW.1 issuing legal notice and that DW.1 did not take any steps against PW.1 even though PW.1 promised to return the Promissory notes before him. Further it is pertinent to note that DW.1 did not produce the reply notice before the Court. Hence, it is clear that DW.1 is deposing false about issuance of reply notice. It is to be appreciated here that any prudent man in the shoes of DW.1 would have taken steps for return of two Promissory notes if one receives legal notice for payment of Rs. 2,00,000/- with 24% of yearly compound interest when one borrowed only Rs. 20,000/- and already paid the same with interest. Further it is pertinent to note that though in the written statement and while deposing before the Court, Defendant stated that he borrowed Rs. 20,000/- from one Reddy and he paid the said debt with interest, but suggestions were made to PW.1 and PW.2 that the Defendant borrowed amount from the Plaintiff and there was no suggestion about said Reddy, this inconsistency clearly shows that DW.1 is deposing false.

21. It is to be appreciated here that the oral evidence of PW.1 and PW.2 coupled with Exs.A.1 to A.3 proved the borrowing transaction and execution of Ex.A.1 Promissory note by the Defendant. Nothing material could be elicited from PW.1 and PW.2 during cross to show that they are deposing false. When execution is duly proved, this Court is duty bound to invoke legal presumption under Section 118 of the Negotiable Instruments Act and the Defendant failed to rebut the said Presumption and he failed to prove his defence that he borrowed Rs. 20,000/- only and cleared the same with interest and that Ex.A.1 is a fabricated document. The Defendant did not place any scrap of evidence before this Court to prove the same except pleading that Ex.A.1 is a fabricated document and PW.1 and PW.2 are deposing false. The Plaintiff by examining himself and PW.2 and by marking Exs.A.1 to A.3 proved the Suit transaction. Therefore, in view of above discussion, this Court believes that the Defendant executed Ex.A.1 Promissory note. In the light of above discussion, issue Nos. 1 is answered in favour of Plaintiff that Suit promissory note is true, valid and is executed by the Defendant is supported by consideration. Issue no.2 is answered against the Defendant as he failed to prove that one Reddy obtained his signatures and thumb impressions on the two blank Promissory notes, in the circumstances, as pleaded by the Defendant.

22. **Issue no.3:** Whether the Plaintiff is entitled for recovery of the Suit claim from the Defendant, as prayed for?

In view of Issue no.1 and Issue no.2 being answered in favour of the Plaintiff and as Defendant is not an agriculturist, hence he is not entitled for any benefits. The Plaintiff has claimed interest at 24% p.a., as agreed by the Defendant in Ex.A.1 Promissory note. In view of my discussion and findings in Issue nos. 1 and 2, where it is held that the Suit Promissory note Ex.A.1 is binding on the Defendant and the Defendant is not entitled for any debt relief acts, the Defendant is liable to pay amount of Rs. 3,35,333/- and future interest at 6% p.a., from the date of filing of the Suit till the date of realization on the principal sum of Rs.2,00,000/- due under Ex.A.1 Promissory note with costs. Accordingly, this issue is answered in favour of the Plaintiff and against the Defendant.

23. **Issue no.4:** To what relief ?

In view of my findings on Issue nos. 1 to 2, the Suit is to be decreed.

In the result, the Suit is decreed with costs in favour of the plaintiff. Accordingly the defendant is directed to pay Rs.3,35,333/- (Rs. Three Lakhs, Thirty Five Thousand, Three Hundred and Thirty Three only) to the Plaintiff with subsequent interest @ 6% per annum on principal amount of Rs.2,00,000/- (Rs. Two Lakhs only) from the date of filing of the suit till date of realization.

Typed to my dictation to the Stenographer on my laptop, corrected and pronounced by me in the open court, this the 30th day of April, 2024.

SD/-MS.NIRUPA BHANJ DEO
IV Additional Civil Judge
(Junior Division), Kakinada.

APPENDIX OF EVIDENCE:-

Witnesses Examined for:

For Plaintiff:	For Defendant:
PW.1: N.Bhaskara Reddy.	DW.1: M.Srinivasa Rao.
PW.2: V.Mohana Rao.	DW.2: A.Prasad

No. of Exhibits Marked on behalf of:

For Plaintiff:

Ex.A1 : Original Suit Promissory Note, dated 14.12.2019, executed by the Defendant, in favour of the Plaintiff, for a sum of Rs.2,00,000/-.

Ex.A2 : Office Copy of the Registered Legal Notice, dated 17.08.2022, got issued by the Plaintiff, to the Defendant.

Ex.A3 : On-line track consignment, with regard to Ex.A.2.

For Defendant:

-Nil-

SD/-MS.NIRUPA BHANJ DEO
IV Additional Civil Judge
(Junior Division), Kakinada.