

IN THE COURT OF THE PRL. CIVIL JUDGE (JUNIOR DIVISION) :: SATTENAPALLI
PRESENT: Sri. A. Thousheed Hussain
Prl. Civil Judge(Junior Division), Sattenapalli.

Friday, this the 8th day of November, 2024.
O.S.No.849/2022.

Between:-

Ginju Yesu Babu, S/o. Surya Narayana, Agriculture,
 35 years, R/o. Gadevari Palem Village, Krosuru Mandal,
 Sattenapalli DMC, Palnadu District.

.... Plaintiff.

AND

Shaik John Saida, S/o. Pakeer Ahmed, 40 years,
 Agriculture, R/o. Garikepadu Village, Krosuru Mandal,
 Sattenapalli DMC., Palnadu District

...Defendant.

This suit coming on 06.11.2024 before me for final hearing in the presence of Sri.B.Rami Reddy, Advocate for Plaintiff and of Sri. E. Ella Reddy, Advocate for the defendant and having stood over for consideration till this day, this court delivered the following :-

J U D G M E N T

1) The suit is filed for recovery of sum of Rs.1,22,400/- with costs and with future interest at 24% p.a against the defendant basing on the promissory note dated 19.03.2020 for an amount of Rs.75,000/-.

2) **The case of plaintiff as set out in the plaint as follows;**

The defendant borrowed an amount of Rs.75,000/- on 19.03.2020 from the plaintiff for his family expenses and the defendant executed a promissory note in favour of plaintiff on the same day, agreeing to repay the same with interest at 24% per annum either to the plaintiff or to his endorsee on demand. Subsequently, in spite of repeated oral demands made by the plaintiff, personally the defendant failed to discharge the debt with interest and postponed the same from time to time. The

plaintiff got issued registered notice to the defendant on 23.07.2022 demanding the defendant to discharge the suit promissory note debt. He received the same and kept quite. Hence plaintiff filed the suit for recovery of money due under the promissory note.

3. After receipt of summons, the defendant filed written statement by denied the allegations of the plaint are all false and untrue and interalia submitted that previously, he has borrowed an amount of Rs.25,000/- from the plaintiff about 6 years back and he has executed a promissory note in favour of plaintiff. Subsequently he has paid Rs.25,000/- to the plaintiff did not pay the interest. There arose some disputes in between the plaintiff and him. The plaintiff is doing money lending business. The plaintiff used to give small amounts and collecting huge amounts like him. He has no properties at all. He is an agricultural coolie and he is living on his little amounts. The plaintiff has got an intention to harass him and got created the suit promissory note that as if he borrowed an amount of Rs.75,000/- from the plaintiff on 19.03.2020 and executed the promissory note. He never borrowed the suit promissory note amount and he never executed the suit promissory note in favour of the plaintiff on 19.03.2020. So the plaintiff has created the promissory note and forge the signature of him with the help of his henchmen. There is no consideration is passed under the suit promissory note as mentioned above. After receiving the notice from the plaintiff, he has questioned the plaintiff why he has created the suit promissory note, then the plaintiff has reported to the police and they threatened him and the police stated to him to proceed before the court. Hence, prays to dismiss the suit with costs.

4. *Basing on the above pleadings, the following issues are framed for trial;*

- 1) Whether the suit pro note dt.19.03.2020 is true, valid and binding on the defendant and supported with consideration ?
- 2) Whether the plaintiff is entitled for suit amount as prayed for ?
- 3) To what relief?

5. On behalf of the plaintiff, plaintiff himself examined as PW.1 and Exs.A1 to A3 are marked on his behalf. He also examined 2nd attestor of suit promissory note by name Pidugu Ramanjaneyulu as PW.2. On the other hand, defendant himself examined as DW.1 and no documents marked on his behalf.

6. Heard both sides. Perused the pleadings of both parties and evidence and documents of the plaintiff.

7. ISSUE NO.1:

It is the contention of the plaintiff that the defendant borrowed the amount from him and executed Ex.A1. Whereas, it is the contention of the defendant that he never borrowed the suit promissory note amount and he never executed the suit promissory note in favour of the plaintiff on 19.03.2020 and plaintiff has created the promissory note and forged the signature of him with the help of his henchmen and there is no consideration is passed under the suit promissory note and prays to dismiss the suit. Since the defendant is denying the allegations of plaintiff, initial burden lies on the plaintiff to prove the execution of Ex.A1 promissory note by the defendant. To prove that plaintiff himself examined as PW.1. PW.1 categorically stated that the defendant borrowed an amount of Rs.75,000/- on 19.03.2020 from him for his family expenses and the defendant executed Ex.A1 suit promissory note in his favour, in the presence

of attestors and scribe, agreeing to repay the same with interest at 24% per annum either to him or to his endorsee on demand. Number of demands on the defendant orally and requested the defendant to repay the entire amount, but he did not pay anything towards principal or interest. In support to his contention he also examined 2nd attestor of Ex.A1 suit promissory note as PW.2. PW.2 who is the 2nd attestor of the suit promissory note categorically stated that the defendant borrowed an amount of Rs.75,000/- on 19.03.2020 from the plaintiff for his family expenses and the defendant executed Ex.A1 suit promissory note in favour of the plaintiff agreeing to repay the same with interest at 24% per annum either to the plaintiff or to his endorsee on demand. In his presence defendant received an amount of Rs.75,000/- from the plaintiff and signed on the suit promissory note and later he signed as 2nd attestor on the Ex.A1 suit promissory note. Nothing was elicited by the defendant during the cross examination of PW.1 and PW.2 to disbelieve their testimony with regard to the execution of Ex.A1 suit promissory note by the defendant after receiving cash consideration from the plaintiff.

8. Since the plaintiff discharged the initial burden, the burden shifts on the defendant to prove his contention. To prove his contention that defendant himself examined as DW.1 and reiterated the averments of his written statement in his chief examination affidavit as DW1. The main contention of DW.1 is that he never borrowed the suit promissory note amount and he never executed the suit promissory note in favour of the plaintiff on 19.03.2020 and plaintiff has created the promissory note and forged the signature of him with the help of his henchmen and there is no consideration is passed under the suit promissory note and prays to dismiss the suit. In his cross examination, he admitted that " He will send Ex.A1 to expert for

comparison purpose.” If really Ex.A1 suit promissory note is forged by the plaintiff, certainly the defendant would send the disputed signature along with admitted signature to expert for comparison purpose and would adduce the evidence to disprove the execution of Ex.A1. But he did not do so. From this it appears that the defendant must be sure that the signature on Ex.A1 is belongs to him that’s why the defendant did not taken any steps to send the Ex.A1 to expert for comparison purpose. When once the execution of Ex.A1 is proved, the presumption U/s.118 of Negotiable Instrument Act has to be drawn as to the existence of consideration under Ex.A1 until contra is proved. It is rebuttal presumption, except the defendant stating that no consideration was passed under Ex.A1, he did not adduce any evidence to rebut the presumption. So, by taking the presumption and by the direct evidence of PW.1, PW.2 and Ex.A1, it can be safely held that Ex.A1 is executed by the defendant having received the consideration under it. So the defendant failed to disprove the non passing of consideration under Ex.A1. On the above grounds, I am of the opinion that the plaintiff proved the execution as well as passing of consideration under Ex.A1 suit promissory note. Accordingly this issue is answered in favour of the plaintiff and against the defendant.

9. ISSUE NO.2 :

As stated supra in issue No.1, the plaintiff proved the execution of Ex.A1 by the defendant, when once the Ex.A1 has proved by the plaintiff certainly he is entitled to recover the suit promissory note amount from the defendant. Accordingly this issue is answered in favour of the plaintiff and against the defendant.

10. **ISSUE NO.3:**

In the result, the suit is decreed with costs, in favour of the plaintiff and against the defendant for an amount of **Rs.1,22,400/-(Rupees One Lakh Twenty Two Thousand Four Hundred Only)** together with subsequent interest at the rate of 12 percent per annum from the date of the suit till the date of decree and thereafter at 6 percent per annum from the date of decree till the date of realization on the principal amount of **Rs.75,000/-(Rupees Seventy Five Thousand Only).**

Typed to my dictation directly by the Stenographer, corrected and pronounced by me in the open court, this the 8th day of November, 2024.

Sd/- A. Thousheed Hussain
Prl. Civil Judge(Junior Division),
Sattenapalli.

Appendix of evidence
Witnesses examined for

PLAINTIFF:-

PW.1: Ginju Yesu Babu.
PW.2: Pidugu Ramanjaneyulu.

DEFENDANT:-

DW.1 :Shaik John Saida.

Exhibits marked for

PLAINTIFF:-

Ex.A1 : Promissory note, dt.19.03.2020.
Ex.A2 : Office copy of legal notice, dt.23.07.2022.
Ex.A3 : Postal receipt.

DEFENDANT: NIL

Sd/- A. Thousheed Hussain

PCJ(JD), SAP.