APHC010417602021

**IN THE HIGH COURT OF ANDHRA PRADESH**
**AT AMARAVATI** **[3397]**
**(Special Original Jurisdiction)**

MONDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

**PRESENT**

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO**

**<u>SECOND APPEAL NO: 41/2022</u>**

**Between:**

Kannebhaigari Jamal Basha @ Nalugada Jamal Basha **...APPELLANT**

**AND**

Y Vijaya Sekhara Reddy **...RESPONDENT**

**Counsel for the Appellant:**

1. J JANAKIRAMI REDDY

**Counsel for the Respondent:**

1. P NAGENDRA REDDY

**The Court made the following:**

**JUDGMENT:**

This second appeal is filed aggrieved against the decree and judgment dated 06-07-2021 in A.S.No. 66 of 2019 on the file of the Court of learned V Additional District Judge, Allagadda (for short, 'the first appellate Court'), reversing the decree and judgment dated 15-11-2019 in O.S.No. 13 of 2016 on the file of the Court of learned Senior Civil Judge, Allagadda (for short, 'the trial Court').

2. The appellant herein is the defendant and the respondent herein is the plaintiff in O.S.No. 13 of 2016 on the file of the trial Court.

3. The plaintiff initiated action in O.S.No. 13 of 2016 on the file of the trial Court for recovery of money from the defendant on the foot of a promissory note dated 05-05-2015.

4. The trial Court, after conclusion of trial, dismissed the suit. Felt aggrieved of the same, the unsuccessful plaintiff in the above said suit filed appeal in A.S.No. 66 of 2019 on the file of the appellate Court. The first appellate Court allowed the first appeal by reversing the decree and judgment passed by the trial Court. Aggrieved thereby, the respondent-defendant approached this Court by way of second appeal.

5. For the sake of convenience, both parties in the second appeal will be referred to as they were arrayed in the original suit.

6. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No. 13 of 2016, is as follows:

On 05-05-2015, the defendant approached the plaintiff and borrowed an amount of Rs.5,00,000/- from the plaintiff in cash for his family expenses and on the same day, he executed a promissory note in favour of the plaintiff agreeing to repay the debt with interest at the rate of 24% p.a. Thereafter, in spite of repeated demands made by the plaintiff, the defendant failed to repay the debt due under the promissory note. Hence, the plaintiff is constrained to file the suit.

7. The brief averments of the written statement filed by the defendant are as follows:

The suit promissory note filed by the plaintiff is not supported by cash consideration. Prior to filing of the suit, the plaintiff did not issue any legal notice demanding the defendant to discharge the debt under the promissory note dated 05-05-2015. There is no financial relationship of creditor and debtor in between the plaintiff and the defendant to lend such huge amount from the plaintiff. The defendant borrowed a sum of Rs.20,000/- from the plaintiff at about eight years back and towards security of the said loan, the plaintiff took a blank promissory note signed by the defendant at the time of lending the above amount. Though the plaintiff promised to claim interest at 12% p.a., he demanded interest at Rs.5/- per month on Rs.100/-. When the defendant is ready to pay the amount of Rs.20,000/- calculating the interest, the plaintiff did not agree for that and filed the above suit by way of filling the blank promissory note for Rs.5,00,000/- dated 05-05-2015 with the assistance of his friends *i.e.* the attesters and the scribe and the attesters and the scribe were not present on 05-05-2015 on the alleged promissory note dated 05-05-2015. After receipt of summons, the defendant went to the house of the plaintiff at Peddakambaluru Village and questioned his highhandedness in filing the suit against him with fabricated document dated 05-05-2015 but the plaintiff did not heed the words of the defendant. Later, the defendant filed complaint before the Station House Officer, Rudravaram, against the plaintiff under call money case but the police who received the complaint did not register the same. Meanwhile, the mediators intervened between the plaintiff and the defendant and in the said panchayat dated 16-06-2016, the plaintiff agreed to receive an amount of Rs.1,00,000/- towards full and final settlement of the above promissory note dated 05-05-2015 and that he received the said amount of Rs.1,00,000/- from the defendant on 16-06-2016 and executed an agreement in token of receipt on a stamped paper in favour of the plaintiff on the same day and also promised to withdraw the above case. It is therefore prayed to dismiss the suit with costs.

8. On the basis of the above pleadings, the trial Court framed the following issues for trial:

*"(i) Whether the suit promissory note is supported by consideration or not?*

*(ii) Whether the defendant discharged the suit promissory note transaction to the plaintiff or not?*

*(iii) Whether the interest claimed by the plaintiff has to be scaled down or not?*

*(iv) Whether the plaintiff is entitled to recovery of suit claim or not?*

*(v) To what relief?"*

9. During the course of trial before the trial Court, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Ex.A1 was marked. On behalf of the defendant, D.Ws.1 to 3 were examined and Ex.B1 was marked.

10. The trial Court, after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit. Felt aggrieved thereby, the unsuccessful plaintiff in the aforesaid suit filed the appeal suit in A.S.No. 66 of 2019 on the file of the first appellate Court, wherein the following points came up for consideration:

*"(i) Whether the appellant/plaintiff has established any ground for interfering with impugned decree and judgment in O.S.No. 13 of 2016 in SCJ, Allagadda?*

*(ii) To what relief?"*

11. The first appellate Court, after hearing the arguments, answered the points, as above, in favour of the appellant-plaintiff and allowed the appeal suit filed by the appellant-plaintiff. Felt aggrieved of the same, the defendant in O.S.No. 13 of 2016 filed the present second appeal before this Court.

12. The second appeal has been admitted by a learned judge of this Court on 27-01-2022 on the following substantial question of law:

*"Whether the judgment of the lower appellate Court is valid, when the initial burden of discharge was proved by Ex.B1 as P.W.1 did not deny the signature on Ex.B1 which is corroborated by the evidence of D.W.2 to prove the execution of Ex.B1 and thus the burden of proof shifted to the P.W.1-plaintiff?"*

13. Heard Sri J.Janaki Rami Reddy, learned counsel appearing for the appellant-defendant, and Sri P.Nagendra Reddy, learned counsel appearing for the respondent-plaintiff.

14. The law is well settled that under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the findings of fact arrived at by the first appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence. In ***Bhagwan Sharma Vs. Bani Ghosh***[1], the Apex Court held as follows:

*"The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the first appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature."*

In ***Kondira Dagudu Kadam Vs. Savitribai Sopan Gujar***[2], the Apex Court held as follows:

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[1] AIR 1993 SC 398
[2] AIR 1999 SC 471

*"The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court or was based upon inadmissible evidence or arrived at without evidence."*

15. Learned counsel for the appellant-defendant would contend that the respondent-plaintiff failed to prove the execution of Ex.A1 and that the respondent is not entitled to the suit claim. As could be seen from the written statement filed by the appellant-defendant, it was pleaded that the suit promissory note filed by the plaintiff is not supported by cash consideration of Rs.5,00,000/-. The defendant further pleaded that he borrowed a sum of Rs.20,000/- from the plaintiff at about eight years ago prior to filing of the suit and towards security of the said loan, the plaintiff took a blank promissory note singed by him at the time of lending the aforesaid amount. The defendant further pleaded in the written statement that the plaintiff promised to claim interest at 12% p.a. but he demanded interest at Rs.5/- per Rs.100/- per month and forced to discharge Rs.20,000/- with interest at Rs.5/- per month per Rs.100/-. The defendant further pleaded that when he was ready to repay the amount of Rs.20,000/- calculating the interest, the plaintiff did not agree for the same and got filled the blank promissory note for Rs.5,00,000/- dated 05-05-2015 with the assistance of his friends *i.e.* attesters and scribe and filed the present suit.

16. The defendant admitted the signature on Ex.A1 only and he is denying the contents in Ex.A1 promissory note. The specific contention of the defendant is that he borrowed an amount of Rs.20,000/- from the plaintiff at about eight years ago prior to filing of the suit. Towards security of the said amount of Rs.20,000/-, at that time, the plaintiff obtained blank promissory note signed by the defendant. The defendant further pleaded that though the plaintiff promised to claim interest at 12% p.a., he demanded interest at Rs.5/- per Rs.100/- per month and forced to discharge Rs.20,000/- with interest at Rs.5/- per Rs.100/- per month and the plaintiff got filled the columns in the blank promissory note and filed the present suit. The alleged Ex.A1 promissory note is dated 05-05-2015. To prove passing of consideration of Rs.5,00,000/- on the date of Ex.A1 promissory note *i.e.* on 05-05-2015, the plaintiff failed to examine the attesters or the scribe of the promissory note. The alleged Ex.A1 reveals that two attesters and scribe were present on 05-05-2015 at the time of the alleged Ex.A1 transaction. The plaintiff made an attempt to file chief affidavits of the scribe and the second attester of the promissory note as P.Ws.2 and 3 respectively but they did not enter into witness box and therefore their evidence was eschewed by the trial Court. Hence, the plaintiff failed to prove the recitals of Ex.A1 disputed promissory note through attesters and scribe of the promissory note. In cross-examination when elicited, the plaintiff admits that the defendant is having landed property of ten or twelve acres at Chinakambaluru and Pedakambaluru Villages.

17. Learned counsel for the respondent-plaintiff would contend that since the appellant-defendant admitted his signature on Ex.A1 promissory note, the initial burden lies on him to disprove Ex.A1 promissory note. It is the specific case of the defendant that he borrowed an amount of Rs.20,000/- only from the plaintiff at about eight years ago prior to filing of the suit and at that time, the plaintiff obtained blank signed promissory note and later, it was created a promissory note for Rs.5,00,000/-. The defendant himself was examined as D.W.1 to prove the defence put forth by him in the written statement. He asserted in his evidence that he borrowed an amount of Rs.20,000/- only from the plaintiff and when he offered to repay the same with interest, the plaintiff did not receive the said amount. The defendant further deposed that subsequently, mediation was held before mediators and in the mediation, it was settled that the defendant has to pay an amount of Rs.1,00,000/- to the plaintiff and in the presence of the mediators-D.Ws.2 and 3, the plaintiff acknowledged the same on 16-06-2016. In cross-examination, nothing was elicited from D.W.2 to discredit his testimony on material aspects. The defendant also relied on the evidence of D.W.3. His evidence testifies that he was present at the time of Ex.B1 transaction.

18. The material on record reveals that the defendant discharged his initial burden and proved that he borrowed Rs.20,000/- only at about eight years ago prior to filing of the suit and at that time, the plaintiff obtained an empty signed promissory note and subsequently, it was created a promissory note

for Rs.5,00,000/- and got filed the present suit. The defendant produced D.Ws.2 and 3 to prove the recitals in Ex.B1.

19. To disprove the defence produced by the defendant, the plaintiff did not take any steps to compare the signature on Ex.B1 by sending the same to an expert. Under the law, it is always open to the Court to compare the signature on Ex.B1 with the admitted signature of the plaintiff. The rule of preponderance and caution requires that in the first place an expert opinion should be obtained for assistance and if such an opinion is not available, the Court has to compare the disputed signature with the admitted signature and can come to a conclusion. In ***Murari Lal Vs. State of Madhyra Pradesh***[3], the Apex Court observed as follows:

> *"The duty of the Court to compare writings and come to its conclusion cannot be avoided by recourse to the statement that the Court is not an expert."*

As seen from the judgment of the trial Court in para No. 15, it is evident that the trial Court has taken a pain to compare the signature of the plaintiff on his chief affidavit as P.W.1 with the signature on Ex.B1 and came to the conclusion that the signature on Ex.B1 belongs to the plaintiff.

20. As stated *supra*, it is the specific case of the defendant that he borrowed an amount of Rs.20,000/- only from the plaintiff about eight years ago prior to filing of the suit and at that time, the plaintiff obtained a blank signed promissory note from the defendant and subsequently, the plaintiff got

[3] 1980 AIR 531

filled the columns in the promissory note and filed the present suit in the year 2016.

21. In ***Bharat Barrel and Drum Manufacturing Vs. Amin Chand Payrelal***[4], the Apex Court held as follows:

> *".........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………"*

22. The standard of proof evidentially is principles of preponderance of probabilities. Inference of preponderance of probabilities can be drawn from the materials on record and by reference to the circumstances upon which reliance is placed. In the case at hand, the defendant has discharged his initial burden by providing plausible evidence that raises doubt about the genuineness of Ex.A1 promissory note transaction for Rs.5,00,000/- on 05-05-2015. As a result, the presumption under Section 118 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), disappears and becomes *functus officio* and the evidential burden shifts to the plaintiff who has also the legal burden arising out of the pleading to prove consideration. In the present case, the plaintiff has not discharged the legal burden. As such, he cannot again rely on the presumption of Section 118 of the Act.

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[4] 1999 (3) SCC 35

23. In the case at hand, except examining himself as P.W.1, no other witnesses are examined by the plaintiff. Ex.A1 reveals that at the time of Ex.A1 alleged promissory note transaction on 05-05-2015, two attesters and scribe were present but none of them entered into witness box to prove the recitals in Ex.A1 promissory note and also about passing of consideration of Rs.5,00,000/- on 05-05-2015 under Ex.A1 promissory note.

24. After careful consideration, the trial Court adequately appreciated the entire evidence and came to the conclusion that the suit promissory note is not supported by consideration of Rs.5,00,000/- and the defendant borrowed an amount of Rs.20,000/- but the promissory note was prepared for excess amount. The trial Court further held that except examining the plaintiff as P.W.1, the attesters and the scribe were not examined by the plaintiff to prove that an amount of Rs.5,00,000/- was given to the defendant and on the other hand, the defendant relied on the evidence of the attesters in Ex.B1 to prove the alleged mediation happened in between him and the plaintiff but the first appellate Court without properly appreciating the evidence on record set aside the findings arrived at by the trial Court. Therefore, this Court is of the considered view that the findings arrived at by the trial Court are correct.

25. For the aforesaid reasons, I am of the considered view that the first appellate Court came to the wrong conclusion and set aside the findings arrived at by the trial Court and set aside the decree and judgment of the trial

Court. Therefore, the decree and judgment of the first appellate Court are liable to be set aside.

26. In the result, the second appeal is allowed and the decree and judgment dated 06-07-2021 in A.S.No. 66 of 2019 on the file of the Court of learned V Additional District Judge, Allagadda, is hereby set aside. Each party do bear their own costs in the second appeal. Pending miscellaneous applications, if any, shall stand disposed of in consequence. No costs.

**V. GOPALA KRISHNA RAO, J.**

Date: 22.06.2026

JSK

**HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO**

**SECOND APPEAL No. 41 OF 2022**

**DATE: 22ND JUNE, 2026**

JSK