NC: 2023:KHC:41807
RSA No. 151 of 2016

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 151 OF 2016 (MON)

BETWEEN:

SRI D. L. RAMESH,

...APPELLANT

(BY SRI. VENKATARAMI REDDY E, ADVOCATE)

AND:

SRI. MARILINGAIAH,

...RESPONDENT

(BY SRI. G.M. ANANDA, ADVOCATE)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 08.10.2015 PASSED IN RA.NO.74/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE AND J.M.F.C, MALAVALLI, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED

08.03.2013 PASSED IN OS.NO.96/2012 ON THE FILE OF THE IST ADDL. CIVIL JUDGE, MALLAVALLI.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The captioned Second Appeal is filed by the unsuccessful defendant questioning the judgment and decree rendered by the Appellate Court in R.A.No.74/2014, wherein the Appellate Court has reversed the decree of the Trial Court and plaintiff's suit, seeking recovery of Rs.66,000/-, based on a promissory note, is decreed.

2. For the sake of brevity, the rank of the parties are referred as they are ranked before the Trial Court.

3. Facts leading to the case are as under:

The plaintiff has instituted the present suit seeking recovery of Rs.1,13,520/- based on a demand promissory note. The plaintiff contended that defendant approached him on 03.04.2009 and requested a hand loan of

Rs.66,000/-. The plaintiff claimed that he has lent the money to the defendant in the presence of witnesses and the defendant, on receipt of a hand loan of Rs.66,000/-, has executed a promissory note in the presence of two witnesses. The present suit is filed alleging that the defendant having availed hand loan has inspite of repeated requests, failed to repay the amount as agreed by him under the promissory note.

4. Defendant, on receipt of summons, tendered appearance, filed written statement and stoutly denied the entire averments made in the plaint. The defendant seriously disputed the alleged promissory note and contended that the plaintiff has misused the signatures obtained by him on blank papers by giving a false assurance that he would help him secure bail in C.C.No.70/2010. The defendant claimed that his signatures on blank papers were given to accused No.1 in C.C.No.70/2010 and accused No.1 in collusion with the present plaintiff, concocted the documents styled as

promissory note. The defendant stoutly denied the claim of the plaintiff that he had availed hand loan from plaintiff. On these grounds, sought for dismissal of the suit.

5. Plaintiff to substantiate his respective claim has examined himself as P.W.1 and both the witnesses as P.Ws.2 and 3 and produced a demand promissory note, which was marked as Ex.P.1. The defendant's signature was identified and marked as Ex.P.1(a) while the signatures of both witnesses were identified and marked as Ex.P.1(b) and (c). The defendant, to support his defence, placed reliance on the chargesheet filed in C.C.No.70/2010, which is marked as Ex.D.1.

6. The Trial Court dismissed the suit on the ground that the demand promissory note relied on by the plaintiff is found in conflict with Section 4 of the Negotiable Instruments Act, 1881 (for short, 'Act'). While reproducing the relevant portion of the demand promissory note at paragraph No.14, the Trial Court held that, in terms of

definition and explanation to Section 4, the undertaking given by the payer should be unconditional, and since the pronote contemplates right to seek recovery in the event the defendant/maker failed to repay the hand loan of Rs.66,000/-, the Trial Court was of the view that Ex.P.1 cannot be treated as a demand promissory note. On these set of reasonings, the Trial court dismissed the suit.

7. Plaintiff feeling aggrieved by the judgment and decree of the Trial Court, preferred an appeal before the appellate Court. The Appellate Court has independently assessed the entire material on record. The Appellate Court has also given anxious consideration to the definition of Section 4 of the Act and has also examined the recitals found in the pronote. On re-assessing the recitals in the pronote and having examined Section 4 of the Act, the Appellate Court was of the view that the undertaking given by the defendant/maker is not in any way contrary to Section 4 of the N.I.Act. It is in this background, the Appellate Court was not inclined to concur

with the reasons assigned by the Trial Court while applying Section 4 of the Act in the present case on hand. The Appellate Court also held that the reasons assigned by the Trial Court are patently erroneous and accordingly reversed the reasonings as well as the decree passed by the Trial Court. Consequently, the Appellate Court has allowed the appeal and decreed the suit.

8. Heard learned counsel appearing for the defendant and learned counsel appearing for the plaintiff. Perused the divergent findings of the Courts below.

9. On examining the material on record, this Court would find that the plaintiff, to substantiate his claim, has placed reliance on a demand promissory note executed by the defendant. To prove the due execution, the plaintiff has examined two witnesses, who have identified the defendant's signature on the pronote.

10. Before a document can be treated as a promissory note, the recitals of the promissory note

should demonstrate, both in form and in intent, an express undertaking on the face of the instrument to pay the money before it can be held to be a promissory note. Section 4 of the Act defines a "Promissory note" as under:

> *"Section 4 of the Act defines, "A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments."*

11. An instrument to be a promissory note must possess the following elements:

> *1. It must be in writing: A mere verbal promise to pay is not a promissory note. The method of writing (either in ink or pencil or printing etc.) is unimportant, but it must be in any form that cannot be altered easily.*
>
> *2. It must certainly an express promise or clear understanding to pay: There must be an express undertaking to pay. A mere acknowledgement is not enough. The following are not promissory notes as there is no promise to pay."*

12. On reading the definition and the elements to constitute a promissory note, it can be gathered that an instrument to constitute a promissory note should contain

a promise at the hands of a maker to pay the amount unconditionally. A conditional undertaking destroys the character of an otherwise negotiable instrument. What can be inferred from the wordings in Section 4 of the Act is that there should be an "unconditional undertaking"; the promise must not depend upon the happening of some outside contingency or events. It must be payable absolutely and the maker must be certain. The note itself must show clearly who is the person agreeing to undertake the liability to pay the amount. The promise should be to pay money and money only and the amount should be certain.

13. The trial Court though has culled out the relevant portion of the promissory note, but however, has misread the provisions of Section 4 of Act and has also misread and misunderstood the object of securing an unconditional undertaking from the maker. I deem it fit to cull out the undertaking given by the defendant/maker, which reads as under:

"ಸದರಿ ಮೊಬಲಗಿಗೆ ಮಾಹೆಯಾನ ಶೇಕಡ ಎರಡು ರೂ. ಬಡ್ಡಿ ಸೇರಿಸಿ ಕೊಡಲು ಬದ್ಧನಾಗಿದ್ದು ಕಾಲಕಾಲಕ್ಕೆ ನಿಮಗೆ ಬಡ್ಡಿ ಪಾವತಿ ಮಾಡುತ್ತ ಬಂದು ಸದರಿ ಹಣವನ್ನು ನೀವು ನನ್ನಿಂದ ವಾಪಸ್ಸು ಪಡೆಯಲು ಅಪೇಕ್ಷೆ ಪಡುವ ವೇಳೆ ನಿಮಗಾಗಲೀ ನಿಮ್ಮಿಂದ ಅನುಮತಿ ಹೊಂದಿದವರಿಗಾಗಲೀ ಯಾವ ವಿಧವಾದ ಸಬೂಬು ಹೇಳದೇ ತಕರಾರು ಮಾಡದೇ ನಿಮ್ಮ ಹಣವನ್ನು ಮರು ಪಾವತಿ ಮಾಡಲು ಬದ್ಧರಾಗಿರುತ್ತೇನೆ. ಹಾಗೇನಾದರೂ ಪಾವತಿ ಮಾಡದೇ ಇದ್ದ ಪಕ್ಷದಲ್ಲಿ ನೀವು ನನ್ನಿಂದಲೂ ನನ್ನ ಚರಸ್ಥಿರ ಆಸ್ತಿಗಳ ಮೂಲಕ ಕಾನೂನು ರೀತ್ಯಾ ವಿಲೇ ಮಾಡಿಕೊಳ್ಳಲು ನನ್ನದಾದ ತಂಟೆ ತರಕಾರುಗಳಿರುವುದಿಲ್ಲಾವೆಂದು ಒಪ್ಪಿ ಬರೆಸಿಕೊಟ್ಟ ಪ್ರಾಂಸರಿಪತ್ರ."

14. On reading the undertaking, it nowhere indicates that it contravenes the provisions of Section 4 of the Act. What the maker has stated while offering an undertaking is in the event he fails to pay the amount, the payer is at liberty to proceed against his property. This latter part of the undertaking does not alter the express undertaking given by him. The latter part of the undertaking even otherwise is available to the payer in the event the maker of the instrument fails to honour the undertaking given under the instrument. The term "unconditional undertaking" conveys the absolute nature of promise, emphasizing the absence of any contingencies or

conditions that might impede or alter the payment obligations.

15. In the context of Section 4 of the Negotiable Instruments Act, the incorporation of an "unconditional undertaking" within a promissory note is intricately designed to afford paramount protection to the payer, as opposed to conferring undue advantage upon the maker of the note. The term "unconditional undertaking" epitomizes the absolute commitment of the maker to honor the specified payment without contingent qualifiers or hindrances.

16. The emphasis on an unconditional commitment serves as a shield for the payer by fostering certainty and predictability in financial transactions. It ensures that the payer, whether an individual or entity, can rely upon the unequivocal promise made by the note's creator. This legal construction mitigates the risk of arbitrary revocation or

alteration of the payment obligation, thereby safeguarding the interests of the payer.

17. The pronote culled out supra clearly reveals that the defendant has given an unconditional undertaking that he would repay the amount without raising any objections and failure to make the payment, discretion is given to the payer to recover it by initiating proceedings against the properties held by the defendant/maker. The Trial Court, referring to this latter part of the condition, has come to the conclusion that the right conferred on the payer to recover by initiating proceedings is found to be in conflict with Section 4 of the Act. The said contention of the defendant cannot be acceded to. What Section 4 contemplates is that the promissory note should contain an unconditional undertaking signed by the maker to pay a certain sum of money. This unconditional undertaking is found in the present promissory note, marked as Ex.P.1. However, the maker, i.e., the defendant herein, has further indicated that the payer is at liberty to proceed

against the property in the event he fails to repay the amount. This additional condition, which is found in the latter part of the document, does not, in my view, contravene the provisions of Section 4 of the Act. What defines a promissory note is that there must be an express undertaking on the part of the maker to pay the money before it can be held to be a promissory note. Such an unconditional undertaking is found in Ex.P.1. The latter part of the undertaking given by the maker himself will not take away the character of the promissory note as contemplated under Section 4 of the Act. The latter part of the undertaking found in the pronote, vide Ex.P.1, infact gives additional protection to the payer to recover the amount in the manner known to law in the event defendant fails to repay the hand loan. The right conferred on the payer to recover in accordance with law does not in any way dilute the requisite unconditional undertaking, which is requisite to constitute a document as a pronote.

18. On examining the reasons assigned by the Trial Court, this Court is more than satisfied that the Trial Court not only misread Section 4 of the Act but also misread the recitals found in Ex.P.1/promissory note. What an unconditional undertaking means is an unconditional undertaking given by the maker that he would repay the amount availed by him under the document. Therefore, I am of the view that the findings and conclusions recorded by the Trial Court suffer from serious perversity. The Appellate Court has rightly reassessed the entire material on record and there is proper appreciation of the material on record. The Appellate Court has also rightly interpreted and applied Section 4 of the Act while decreeing the plaintiff's suit.

19. In the light of discussion made supra, I do not find that any substantial question of law would arise for consideration. The regular second appeal is devoid of merits and accordingly stands **dismissed**.

19. In view of dismissal of second appeal, all pending applications, if any, do not survive for consideration and stand disposed of.

Sd/-
JUDGE

hdk