

THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

A.S.No.472 OF 2019

JUDGMENT:

Aggrieved by the judgment and decree dated 26.07.2019 in O.S.No.224 of 2013 (hereinafter will be referred as 'impugned judgment') passed by the learned Principal Senior Civil Judge, Kothagudem (hereinafter will be referred as 'trial Court'), the defendant preferred the present appeal to set aside the impugned judgment.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the trial Court.

3. The brief facts of the case, which necessitated the appellant to file the present appeal are that the defendant is closely acquainted with the plaintiff and out of such acquaintance the defendant borrowed Rs.7,00,000/- for his family necessities from the plaintiff on 05.09.2011 at Palvoncha and executed promissory note in favour of the plaintiff on the same day promising to repay the same together with agreed interest @ 24% per annum either to plaintiff or to her order on demand. Thereafter, the plaintiff made several oral demands for payment of amount but the defendant did not come forward. Hence, the plaintiff filed the suit for recovery of Rs.9,94,000/-

with subsequent interest 24% per annum on the principle amount of Rs.7,00,000/- from the date of suit till realisation of the suit claim:

4. In reply, the defendant filed written statement contenting that he has not borrowed any amount and did not execute any promissory note in favour of the plaintiff. The cause of action is only a created one for the purpose of fling the suit to gain wrongfully. It is further contended that the defendant is working as Assistant Branch Manager, Andhra Bank, Paloncha Branch at the time of filing of the suit and getting attractive salary and thus, there is no necessity to take huge hand loan from the plaintiff. One Kodali Narmada, who is the daughter of the plaintiff, is doing illegal finance business at Paloncha town and filing false suits in the name of her mother and daughter by name Mounika and harassing employees by filing various money suits and cheque bounce cases under Negotiable Instruments Act. It is further contended that the defendant filed a complaint before the Station House Officer, Paloncha Police Station on 17.08.2013 stating that Kodali Narmada, who is the daughter of the plaintiff herein is doing illegal finance business without any valid license from the authorities

concerned and filed a false suit against him so as to harass him and to cause mental agony. Based on the said complaint, a case in Crime No.302 of 2013 dated 17.08.2013 was registered for the offence under Section 420 of the Indian Penal Code and Section 3 (5)(a)(b)(c) of A.P. Telangana Area Money Lending Act, 1349 Fasli against Kodali Narmada, Kodali Mounika and Medarametla Vanajakshi and took investigation and the case is pending before the II Additional JFCM< Kothagudem. Hence, prayed to dismiss the suit.

5. Based on the pleadings of both the sides, the trial Court has framed the following issues:

1. *Whether plaintiff is entitled to suit amount?*
2. *To what relief?*

6. On the application filed by the defendant under Order XIV Rule 1 and 2 of CPC, the following additional issue was framed:

Whether the suit is tenable under Section 9 of the A.AP. (T.A.) Money Lenders ACT, 1349 Fasli?

7. The plaintiff, in support of her contentions, examined PWs 1 and 2 and got marked Ex.A1. On the other hand, the defendant got examined DWs 1 to 6 and got marked Exs.B1 to B3. The trial Court on appreciating the evidence on record, has

decreed the suit against the defendant for an amount of Rs.9,94,000/- with subsequent interest @ 12% per annum from the date of filing of the suit till date the of decree and thereafter interest @ 6% per annum from the date of decree till the date of realization on the principal amount of Rs.7,00,000/-.

8. Aggrieved by the judgment and decree, the defendant filed the present appeal.

9. Heard both sides and perused the record including the grounds of appeal.

10. The first and foremost contention of the learned counsel for the defendant is that the provisions of Money Lenders Act are applicable and in the absence of any license obtained by the plaintiff, the suit is not maintainable. As seen from the record, the defendant in his written statement furnished the list of cases alleged to have been filed by plaintiff, her daughter and granddaughter. It is pertinent to note that the defendant is asserting that the daughter of the plaintiff by name Kodali Narmada is doing illegal finance business at Paloncha town and filing false suits in the name of her mother and her daughter name Kodali Mounika. But Kodali Narmada and Kodali

Mounika are not parties to the suit. It is not the case of the defendant that the plaintiff is doing money lending business. It is the specific contention of the defendant that the learned Judge ought to have seen that the defendant has shown number of suits got filed by the daughter of the plaintiff which was extracted in the impugned judgment at page No.5 but trial Court failed to appreciate the same. When the daughter of the plaintiff is filing suits against others, it is nothing to do with the plaintiff, more particularly, when the grievance of the defendant is with the plaintiff. As can be seen from the list of cases furnished by the defendant, the plaintiff herein alleged to have filed O.S.No.226 of 2013 and O.S.No.85 of 2012 on the file of learned Senior Civil Judge against one Gandham Nageswara Rao and A. Kushalava Reddy respectively. Merely because the plaintiff has filed two suits against the others, she cannot be declared as money lender. Moreover, there is no material filed before the trial Court or before this appellate Court to substantiate that the those suits as mentioned by the defendant in his written statement are related to money recovery. Furthermore, mere furnishing of case numbers between the plaintiff or her family members and other third parties, will not be sufficient to establish that the plaintiff or her family

members are money lenders. The defendant, who is examined as DW1, admitted in his cross examination that he has not mentioned in his written statement that plaintiff is doing money lending business. It is settled law that without pleadings any amount of evidence to establish a contention is futile exercise. The Honourable Supreme Court in **Srinivas Raghavendraro Desai (Dead) By LRs. vs. V. Kumar Vamanrao @ Alok and Others**¹ observed that there is no quarrel with the proposition of law that no evidence could be led beyond pleadings.

11. The defendant in order to substantiate that the plaintiff is doing money lending business got examined DWs 4 to 6. DW4 deposed in his chief examination that he LW5 in C.C.No.112 of 2014 of Palvancha Town Police Station in which plaintiff is one of the accused. When coming to the cross examination, he admitted that he do not know plaintiff Vanajakshi. DW4 gone to the extent of deposing that he is not aware of the facts of the case. DW4 admitted that he did not file any receipts in the court to show that he paid interest @ 10% per month to Naramada. He further admitted that he has not lodged complaint against Narmada and Vanajakshi about their illegal

¹ (Civil Appeal Nos. 7293-7294 of 2010) decided on 04 March 2024

money lending business. Now coming to the evidence of DW5, he deposed in his chief examination affidavit that there is no transaction in between the plaintiff and defendant as alleged by the plaintiff in the suit. In the cross examination he admitted that he do not who fled the suit but he came to know about the facts of the case through defendant. Thus, it is clear that the evidence of DW5 is hearsay, which is inadmissible. Furthermore, DW5 is a farmer and he admitted in his cross examination that in the year 1985 the defendant cooperated and instrumental in sanction of agricultural loan from Andhra Bank at Vadalgudem branch in the name of his wife. He deposed that he came to the court at the request of defendant. Though DW6 also deposed in similar lines to that of DWs 4 and 5, no material is adduced to say that the plaintiff is doing money lending business. Hence, the evidence of DWs 4 to 6 is not creditworthy to establish that the plaintiff is doing money lending business.

12. It is pertinent to note that though the defendant has mentioned the name of Vanajakshi in the written statement and also the cases alleged to have been filed by her against others, during his cross examination he pleaded ignorance as to who is

Vanajakshi i.e., the plaintiff herein. In the complaint annexed to Ex.B1 the defendant has clearly mentioned the name of Vanajakshi as mother of Kodali Narmada along with surname of Vanjakshi i.e., 'Medarametla'.

13. It is the specific case of the defendant that he has not issued any promissory note and that the signature in Ex.A1 does not belongs to him and thus, contended that the burden lies on the plaintiff to establish that defendant got issued Ex.A1 promissory note. In support of above said contention, the learned counsel for the defendant relied upon a decision in **Bonala Raju and others v. Sarupuru Sreenivasulu**², wherein the erstwhile State of Andhra Pradesh observed that the burden of proof in a suit or proceeding lies on that person, who would fail if no evidence at all were given on either side and in view thereof when the defence of forgery is taken by the defendant in a suit based on a promissory note, the burden of proof will always be on the plaintiff to establish that the suit promissory note is executed by the defendant because he will have to fail if no evidence is adduced on either side. There is absolute no doubt that the burden initially rests on the plaintiff, who has to

² MANU/AP/0925/2005

prove that the promissory note was executed by the defendant and on its proof, the rule of presumption under Section 118 [a] of the Evidence Act helps him to shift the burden on the defendant. In the above said decision it is clearly mentioned that when the defence of forgery is taken by the defendant in a suit based on a promissory note, the burden of proof will always be on the plaintiff to establish that the suit promissory note is executed by the defendant because he would fail if no evidence is adduced on either side. But in the case on hand, the plaintiff discharged the initial burden by adducing necessary oral and documentary evidence to establish that the defendant has executed Ex.A1 promissory note. Accordingly, the burden shifted on to the defendant to rebut the evidence adduced by the plaintiff. In order to discharge the burden, the defendant also adduced oral and documentary evidence to substantiate that he has not executed promissory note. When both the sides have adduced oral and documentary evidence, the principle laid down in the above said decision cannot be made applicable to the facts of the case on hand. Apart from that the evidence adduced on behalf of the defendant is filled with omissions and contradictions, as such, as stated supra, the evidence of DWs 4 to 6 is not trustworthy and unrealistic.

14. It is contended by the learned counsel for the defendant that when there is a specific denial, no steps were taken by the plaintiff to send Ex.A1 for expert opinion. It is to be seen that DW1 admitted in his cross examination that there is a difference in his signatures when compared to written statement with his chief affidavit. DW1 after going through promissory note and written statement deposed that there is a difference in his signature. DW1 further deposed that there is difference in his signature in his chief affidavit and complaint attached to Ex.B1. The learned trial Court rightly observed in the impugned judgment that the defendant is in the habit of subscribing his signature in different style and he often changes his signature from time to time. After going through the signatures on written statement and promissory note, DW1 deposed that there is a difference in his signature. Though the defendant is contending that Ex.A1 is forged by defendant, he admitted in his cross examination that Ex.B2 does not recite that plaintiff forged his signature and filed the suit. But there is no such instance in the case on hand. The defendant lodged a complaint against plaintiff, his daughter and granddaughter and the said complaint was registered as case in Crime No.302 of 2013 for Palvancha Town Police Station for the offence under

Section 3 (5) (a) of A.P.T.A.M.L Act. DW1 admitted that after receipt of summons through court in the suit, he filed complaint annexed to Ex.B1 in Police Station. Thus, it is a clear case, wherein the defendant intended to take escape from the civil liability by filing criminal case against the plaintiff. DW1 specifically admitted that he did not mention in the complaint annexed to Ex.B1 that his signature on Ex.A1 was forged. In view of the above facts and circumstances, the defendant cannot contend that the signature available on Ex.A1 promissory note does not belong to him. When the defendant himself admitted that there is difference or variation in his signatures subscribed by him in his complaint, chief affidavit, written statement and promissory note, no useful purpose would be served even if the plaintiff is successful in sending the disputed documents to expert for an opinion. Moreover, expert opinion is not conclusive proof and it is only a corroborated piece of evidence. Hence, the above contention of the defendant is untenable.

15. DWs 2 and 3 are the attestors of Ex.A1 promissory note. They admitted in their cross examination that they do not know the plaintiff but they knew the defendant. However,

surprisingly, the defendant deposed that he does not know DWs 2 and 3. Even as per the cross examination of DWs 2 and 3, they came to the Court at the request of counsel for the defendant. They further admitted that they have subscribed their signature after ascertaining that the contents of Ex.A1 as true and correct. DWs 2 and 3 admitted that Ex.A1 is disclosing that the plaintiff advanced loan of Rs.7,00,000/- on 05.09.2011.

16. Further, DWs 2 and 3 admitted in their cross examination that they will not subscribe their signatures on any document on mere request. Though DWs 2 and 3 deposed that when they subscribed their signature on Ex.A1, it was blank document, they did not assign any specific reason as to why they subscribed their signatures that too at the request of daughter of plaintiff on Ex.A1, which was alleged to be blank at the time of subscribing signature. DWs 2 and 3 deposed that they signed as attestors in blank promissory note in the year 2010 at the request of Smt. Kodali Naramada, which was written on 05.09.2011. But even as per contents of complaint annexed to Ex.B1 it is the contention of the defendant that he has borrowed loan from Kodali Naramada and issued blank

negotiable instruments in the month of March, 2013. On one hand, DWs 2 and 3 are deposing that Ex.A1 is not blank promissory note and on the other hand deposing that Ex.A1 is filled up promissory note. Moreover, as per the evidence of DWs 2 and 3, they have subscribed their signatures in the year 2010 and whereas Ex.A1 was scribed on 05.09.2011 and whereas, DW1 deposed that Kodali Narmada misused the blank negotiable instruments obtained by her from him in the year 2013. Hence, there is no corroboration between the evidence of DW1 and DWs 2 and 3 and thus, lot of ambiguity is involved in the evidence of DWs 1 to 3 and thereby their evidence is appearing not to be trustworthy and cannot be acted upon.

17. It is the specific contention of the defendant that on 01.06.2013 he went to Warangal Zonal Office by applying leave but no material is placed before the Court to substantiate the same. The defendant in his written statement contended that he has not executed any promissory note and he has not taken any money as he is working as Assistant Branch Manager, Andhra Bank, Paloncha Branch at the time of filing of the suit and getting attractive salary and thus, there is no necessity to take huge hand loan from the plaintiff. But in the complaint

annexed to Ex.B1, it is clearly stated that on 14.03.2013 for his family necessities obtained loan of Rs.20,000/- from Kodali Narmada and as a security he has issued blank cheque and promissory note. It is further stated by defendant in complaint annexed to Ex.B1 that on 10.05.2013 he has returned the money to Kodali Narmada, who stated that she would return the blank cheque and promissory note later but the said documents were misused by Kodali Narmada by filing the present suit. If at all Kodali Narmada has not returned the blank documents got issued by the defendant towards security, certainly the defendant ought to have issued legal notice but there is no such instance. On one hand, the defendant contended that he has not executed any promissory note and on the other hand he changed his version and contending that the blank documents that were issued by him to Kodali Narmada were misused by her by filing false suit against him through her mother i.e., the plaintiff. The defendant is not expected to change his versions by blowing hot and cold at a time. It is pertinent to note that a man of ordinary prudence will not dare to issue negotiable instruments to others, more particularly, the defendant, who is working as a bank employee is not expected to commit such a mistake. Thus, the

contentions of the defendant that he has not executed promissory note or that he has no necessity to borrow loan are unsustainable and that those contentions are introduced only to escape the liability to discharge the hand loan obtained by him from the plaintiff.

18. It is contended by the learned counsel for the defendant that plaintiff has no capacity even to lend said huge amount and there is no explanation in the evidence adduced by the plaintiff. As stated supra, the defendant in the complaint annexed to Ex.B1 has clearly admitted that plaintiff, her daughter and granddaughter have been carrying on money lending business without any valid license and that they have been giving finance to government employees in the surrounding localities of Palvancha Mandal. In view of the above statement, the above said contention of the defendant is unsustainable.

19. Except filing FIR and Charge sheet, the defendant has not filed any other material to show that the plaintiff is carrying on the business of money lending without proper and valid license. When the defendant has not raised this plea in his written statement, he cannot be permitted to lead any evidence in that

regard. When the defendant failed to establish that the plaintiff is doing money lending business, it is immaterial as to whether the plaintiff is having valid licence or not. Hence, the contention of the defendant that in the absence of any license obtained by the plaintiff, the suit is not maintainable, is untenable.

20. On the other hand, the plaintiff has not only examined herself as PW1 but also examined the scribe of Ex.A1. It is the contention of the plaintiff that Ex.A1 was scribed by one T.V. Krishna Rao, who is examined as PW2 and he supported the case of the plaintiff by stating that Ex.A1 contains signature of the defendant. In the cross examination PW2 identified his signature as scribe in Ex.A1 and also identified the signature of defendant and other attestors in Ex.A1. However, PW2 could not turn up for cross examination for the reasons best known to him. But, the attestors, who were examined on behalf of defendant, admitted in their cross examination that the scribe of Ex.A1 is PW2. Hence, PW2 not turning up for his cross examination is not fatal to the case of the plaintiff. Thus, the oral evidence adduced on behalf of plaintiff coupled with documentary evidence in the form of Ex.A1 amply establishes

the case of the plaintiff that defendant borrowed the amount from the plaintiff and failed to repay the same. The learned trial Court has rightly decreed the suit in favour of the plaintiff against defendant.

21. In view of the above facts and circumstances, this Court is of the considered view that the trial Court has elaborately considered all the aspects and arrived to an appropriate conclusion and thereby there are no merits in the appeal to set aside the impugned Judgment. Thus, the appeal is liable to be dismissed.

22. In the result, this appeal is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

Date: 07.06.2024

Note: LR copy to be marked.
B/o. AS