**(1990) 06 AP CK 0011**

**In the Andhra Pradesh High Court**

**Case No :** Appeal No. 45 of 1982

Andhra Bank, Suryapet APPELLANT

Vs

Anantnath Goel RESPONDENT

**Date of Decision :** 12-06-1990

**Acts Referred:**

Contract Act, 1872 — Section 127, 128, 2
Negotiable Instruments Act, 1881 (NI) — Section 4

**Citation :** AIR 1991 AP 245 : (1991) 70 CompCas 706

**Hon'ble Judges :** P.L.N. Sarma, J;K. Amareswari, J

**Bench :** Division Bench

**Advocate :** B.V. Subbaiah, for the Appellant; A. Satyanarayana Rao, for the Respondent

## Judgement

P.L.N. Sarma, J.—The plaintiff bank is the appellant in this appeal. The appeal is filed against the judgment and decree of the learned Chief Judge, City Civil Court, Hyderabad dismissing O.S. No.277 of 1980 in so far as the second defendant is concerned. The suit was decreed by the learned Judge as against the first defendant and it has become final.

2. The suit was filed against defendants 1 and 2, who are no other than father and son respectively, for the recovery of a sum of Rs. 3,08,452-74 ps. The basis of the suit, as stated in the plaint, was that the defendants are Abkari contractors, and the first defendant approached the plaintiff bank for certain facilities for the purpose of the Abkari contract. The plaintiff bank sanctioned and paid in the first instance a sum of Rupees 1,65,000/- which is to be paid with interest at 6% per annum over the bank rate of interest with a minimum of 15% per annum. First defendant deposited title deeds in respect of the immovable property situated at Hyderabad with the plaintiff bank on 18-9-1976 with an intention to create a mortgage, securing the payment of the loan amount. Subsequently, a memorandum stating that the title deeds were deposited with the bank at an anterior, date was executed on 23-9-1976. It was alleged in the

plaint that defendants 1 and 2 also executed a promissory note agreeing to repay the loan amount of Rs. 1,65,000/- with interest as mentioned above. Subsequently, 1st defendant, on his request, was granted another loan amount of Rs. 31,500/- on the same terms and conditions for which both the defendants executed another promissory note on 29-9-1976. In spite of repeated reminders, the loan amount was not repaid and the account was not regularised. It was further mentioned in the plaint that the second defendant is also personally liable to discharge the entire amount payable to the plaintiff bank in view of the fact that, he executed two promissory notes. Therefore, it is claimed that both the defendants are liable to pay the suit amount and the suit is liable, to be decreed.

3. The suit was resisted by both the defendants. A common written statement was filed on behalf of both the defendants. All conceivable pleas were raised which are not necessary to be stated here for the purpose of disposal of this appeal. The relevant pleas raised in defence by the defendants were that the Court had no territorial jurisdiction and that the first defendant did not sign the memorandum regarding the past transaction of mortgage and the defendants signed some printed forms only and that they have not executed any promissory notes. The more significant plea that was raised on behalf of the second defendant was that he was minor on the date of suit transactions and hence the suit liability cannot be fastened upon him.

4. On the above pleadings, the learned Chief Judge, City Civil Court, Hyderabad framed the necessary issues which are as follows:

1) Whether the plaintiff is entitled to the suit claim against the defendants?

2) Whether defendant No. 2 is the guarantor for defendant No.1?

3) Whether this Court has jurisdiction to try the suit?

4) Whether the statement of accounts maintained by the bank are true and correct?

5) To what relief?

5. The learned Judge held that the court has jurisdiction to try the suit and that the statement of accounts maintained by the bank are true and correct and that the promissory notes were executed by the defendants and that the second defendant was not minor on the date when the suit transactions were entered into. On issue No.2, the learned Judge held that no amount was paid to the second defendant under the promissory notes, Exs. A.3 and A.4 and the consideration was paid only to the first defendant and therefore, the promissory notes are without consideration insofar as the second defendant is concerned. The learned Judge also held that the second defendant did not sign the promissory notes, Exs.A.3 and A.4 as co-obligant and that the suit was not filed on the basis of promissory notes and therefore, the second defendant is not liable for the suit amount. On issue No.1, the learned Judge held that the plaintiff bank is entitled to the decree amount as against the first defendant. So holding,

 

the learned Judge dismissed the suit as against second defendant and decreed as against the first defendant.

6. Aggrieved at the dismissal of the suit as against the second defendant, the plaintiff bank has preferred this appeal.

7. The only point that has to be decided in this appeal is:

Whether the suit is filed on the basis of promissory notes, and if so when the consideration under the promissory notes was paid only to the first defendant and can it be said that the promissory notes are without consideration insofar as the second defendant is concerned and whether in any event, the second defendant can be treated as co-obligant for fastening the liability?

8. It is contended by Sri B.V. Subbaiah, learned counsel for the appellant-bank that the suit is based not only on the mortgage created by the 1st defendant, but also on the basis of the promissory notes, Exs.A.3 and A.4 executed by both the defendants. Therefore, it is contended that the reasoning of the learned Judge that the suit is not based on the promissory notes is incorrect. It is further contended by the learned counsel for the appellant-bank that where a promissory note is executed by several promisors and consideration was received only by one of the promisors, it is sufficient consideration insofar as the other promisors also who did not receive the consideration under the promissory note. Therefore, it cannot be said that the promissory notes are without consideration insofar as the other promisors are concerned who have not received any consideration. He further contended that, in any event, the second defendant should be treated as co-obligant and on that count also, he is liable for the suit amount and the suit ought to have been decreed against the second defendant also.

9. The learned counsel for the respondent-second defendant raised the self same contentions which are mentioned in the judgment which is impugned in this appeal.

10. In this case, the second defendant himself examined as D.W.1 and he did not say in his evidence that at the time of the suit transactions he was a minor. The learned trial Judge also rejected the contention that the second defendant was a minor at the time of execution of the promissory notes, Exs.A.3 and A.4. In view of the evidence of the second defendant as D.W.1 and on the basis of the evidence on record, we hold, agreeing with the learned trial Judge that the second defendant was not a minor at the time of execution of the promissory notes. Therefore, it is clear that the second defendant was major on the date he executed the. promissory notes, Exs.A.3 and A.4.

11. The second defendant as D.W.1 admitted that he signed the promissory notes. Therefore, execution of the promissory notes is admitted. The only contention that survives insofar as the second defendant is concerned is, whether the promissory notes are supported by consideration and whether the

 

suit is filed on the basis of the promissory notes and whether he is liable for the suit amount as a co-obligant.

12. On a reading of the plaint, we find that the suit is also based on the promissory notes. In para 9 of the plaint, it is clearly mentioned that the defendants are also personally liable to discharge the suit debt and that the second defendant has also executed the promissory notes and therefore, he is also personally liable to discharge the same. In view of the above, it is clear that the suit is also based on the promissory notes, Exs.A.3 and A.4 executed by 2nd defendant also.

13. The contention on behalf of the second defendant simply stated is as follows: In a case where two promisors executed a promissory note and one of the promisors alone received the consideration thereunder, the other promisor who has not received the consideration is not liable to pay the amount. In that case, it should be held that the promissory note is not supported by consideration in so far as the promisor who did not receive the consideration. This contention is wholly unsustainable and it is no longer res integra. S.2(d) of the Contract Act is as follows:

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, somethings, such act or abstinence or promise is called a consideration for the promise."

There is noting to show, in the said definition, that the benefit of any act or abstinence as contained in that section must ''directly'' go to the promisor. The definition indicates that the consideration, to sustain a contract, may be received even by a third party or received by one of the promisors. That will be the sufficient consideration for the other promisor who has not received the consideration under the contract. In similar circumstances, a Division Bench of Madras High Court in Sornalinga Mudali v. Pachai Naickan alias Pachaiyappa Naicken, ILR (1915) 38 Mad 680 : (AIR 1914 Mad 41) repelled a similar argument. The learned Judges clearly held that the consideration paid to any one of several joint promisors is legally sufficient to support the promise of all the joint promisors in a case where the promissory note was executed jointly. Justice Sadasiva Ayyar held a follows:

"The District Munsiff is in error in holding that, where several persons make a joint promise in consideration of money paid to some of them, the others are entitled to contend that, because no portion of the consideration was received by them, there was no legal consideration for their own joint promise. The consideration paid to any of the joint promisors, is legally sufficient to support the promise of all the joint promissors."

The learned Judge also referred to the fact that in a case of joint executants, they cannot be permitted even to prove that one of them is a mere surety. For the above mentioned proposition, the learned Judge referred to a case in

 

Narasimha v. Ramaswami (1913) 24 Mad LJ 91. The other learned Judge constituting the Bench, Justice Spencer, also agreed with this view and further stated that S. 127 of the Contract Act read with S. 128 makes, even if the other co-executant is to be treated as surety and it makes his liability co-extensive with that of the principal debtor. This decision directly covers the point in issue in the present case and concludes the matter.

14. Even in the case of a mortgage executed by four members of a family, the Calcutta High Court in a case reported in Fanindra v. Kachhemen Bibi, AIR 1918 Cal 816, repelled a similar contention. In the Calcutta case, four persons executed a mortgage. The defence raised on behalf of two of mortgagors was that they have not received any consideration thereunder. The trial Court, in the said case, held that those two persons are not bound by the mortgage in view of the fact that no benefit under the mortgage transaction was received by them. The learned Judges of the Calcutta High Court rejected the said contention and held that all the mortgagors under the mortgage are all equally bound by the transaction, although two of them might have not been benefitted by the transaction. In coming to the said conclusion, the learned Judges relied upon S.2(d) of the Contract Act. Therefore, it was held that-under the said mortgage, the two mortgagors also are liable, though they have not received any direct benefit for executing the contract. In view of the above, we hold that the second defendant who is one of the promisors of the promissory notes, Exs. A.3 and A.4 is also equally liable for the amounts thereunder, even though he has not received directly any consideration.

15. Further, even assuming for a minute that the second defendant is treated as a co-obligant, even then, in view of Ss. 127 and 128 of the Contract Act, his liability is coextensive with that of the principal debtor and therefore, the second defendant is also liable on that account.

16. No other contention is raised before us. Hence, the judgment of the trial Court, in so far as it dismissed the suit against the second defendant is concerned, is unsustainable and it is liable to be set aside. We hold that the promissory notes Exs.A.3 and A.4 are supported by consideration even in so far as the second defendant is concerned and he is liable for the suit amount.

17. We accordingly allow the appeal and set aside the judgment of the trial Court in so far as it dismissed the suit as against the second defendant. The suit O.S. No. 277 of 1980 is decreed even as against the second defendant. In the circumstances, no order as to costs.

18. Appeal allowed.

 