
(2001) 12 AP CK 0050
In the Andhra Pradesh High Court
Case No : CCCA No. 43 of 1998

Atluri Usha Swamy

APPELLANT

Vs

Vijay Prestessed Products (P) Limited and Others

RESPONDENT

Date of Decision : 28-12-2001

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118

Citation : (2002) 2 ALD 843 : (2002) 5 ALT 68

Hon'ble Judges : L. Narasimha Reddy, J; Bilal Nazki, J

Bench : Division Bench

Advocate : J. Prabhakar, for the Appellant; Prabhakar Sripada, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This is an appeal by the unsuccessful plaintiff in OS No. 1021 of 1987 on the file of the 1st Additional Judge, City Civil Courts, Hyderabad.

2. The appellant filed the suit against the respondents for recovery of a sum of Rs. 3,47,850/- together with interest. It was pleaded by the appellant that herself, the 2nd respondent, the wife of the 3rd respondent and another constituted a partnership firm on 21-6-1982 to carry on the business of manufacture and sale of cement concrete sleepers and poles and other products. The 1st respondent, which is a private limited company, took over the assets and liabilities of the partnership firm referred to above. The 2nd respondent acted as the Managing Director of the 1st respondent-Company. Acting on behalf of the 1st respondent, the 2nd respondent executed a promissory note in favour of the appellant undertaking to pay an amount of Rs. 2,25,000/- with interest at 18% per annum. The 3rd respondent figured as a witness to the same. Since the amount was not paid inspite of several demands, the appellant got issued a legal notice calling upon the respondents to pay the amount covered by the promissory note. She had also filed a Company Application No.2 of 1986 under Sections 433 and 434 of the Companies Act. However, she withdrew the same

and filed the suit for recovery of the amount

3. The 1st respondent filed a written statement mainly referring to the various modalities, which have been adopted while taking over the assets and liabilities of the partnership firm. So far as the promissory note is concerned, the plea of the 1st respondent was that the 2nd respondent was authorised only to raise loans by mortgaging the assets of the Company and since promissory note does not fall into that category of transaction, it is not binding on it (1st respondent). The 2nd respondent, in his written statement, admitted the execution of the promissory note on behalf of the 1st respondent. His only plea was that it was executed only as a security and is not supported by consideration. The 3rd respondent in his written statement denied any liability on his part as regards the said transaction.

4. On the basis of the pleadings, the trial Court framed the following issues:

"1. Whether the suit pro-note is hue, valid, supported by consideration and binding on the defendants?

2. Whether the third defendant is entitled to compensatory costs and if so, to what extent?

3. To what relief?"

On behalf of the appellant, PWs.1 and 2 were examined and documents Exs.A1 to A4 were marked. On behalf of the respondents. DWs.1 and 2 were examined and documents Exs.B1 to B18 were marked. The trial Court, through its judgment dated 15-7-1996 dismissed the suit on the ground that the promissory note was not supported by consideration. Hence, the appeal.

5. Sri. J. Prabhakar, the learned Counsel for the appellant, submits that the very approach of the trial Court to the issues framed in the suit was contrary to the settled principles of law. He submits that once the 2nd respondent admitted the execution of Ex.A1 i.e., the promissory note, in his oral evidence, the trial Court was not justified in requiring the appellant herein to prove the aspect relating to passing of consideration. He submits that once the execution of the promissory note is proved, it is for the respondents to plead and establish as to how it is not supported by consideration.

6. The learned Counsel for the 1st respondent, on the other hand, submits that though the execution of the promissory note was proved, the appellant was not able to establish the fact that consideration was passed on by her. He further submits that there appears to be collusion between the appellant on one hand, and the 2nd respondent on the other, in bringing about the suit promissory note. According to him, the 2nd respondent was permitted to borrow the amounts only by mortgaging the assets of the 1st respondent-Company and there was no authority for the 2nd respondent to execute a promissory note in favour of the appellant.

7. In view of the rival submissions, the only question that falls for consideration in this appeal is whether the promissory note under Ex.A1 is valid and enforceable in law,

8. The question as to the execution of the promissory note under Ex.A1 is not much in dispute. The 2nd respondent, in his written statement as well as in his deposition as DW2, categorically admitted the execution of Ex.A1 in his capacity as the Managing Director of the 1st respondent-Company. The only defence put-forward by the respondents and, which weighed with the trial Court was that Ex.A1 was not supported by consideration. In this regard, it is necessary to note that it is not in dispute that Ex.A1 is a negotiable instrument as defined u/s 13 of the Negotiable Instruments Act (for short "the Act"). Once the execution of the negotiable instrument is admitted or proved, Section 118 of the Act steps in as to the existence of consideration of the same. Section 118(a) of the Act, which is relevant, reads as under:

"Presumption as to negotiable instrument.--Until the contrary is proved, the following presumptions shall be made:--

(a) of consideration.--that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration."

From a reading of this section, it is clear that once the execution of the document is admitted or proved, a presumption arises as to the existence of consideration. It is well settled that presumption by itself is not a proof. However, where the law provides for a presumption as to certain circumstances, if the party who disputes the same does not discharge his burden in rebutting it, the presumption gets transformed into almost a proven fact.

9. The trial Court, though, had noticed the legal position, has refused to presume the existence of consideration even in the absence of any rebuttal by the respondents herein. The only ground on which the trial Court refused to give effect to the legal presumption was that PW2 in his deposition is said to have admitted that no cash was paid under Ex.A1. The relevant portion of deposition of PW2 in that regard is as under:

"It is true, on the date of promissory note, no cash was paid, but the promissory note was in respect of the amounts paid earlier under receipts."

The trial Court had taken only one portion of the sentence and ignored the other. It was not in dispute that the assets and liabilities of the partnership firm in which the appellant had substantial stake and interest were taken over by the respondents and that Ex.A1 was executed promising to pay her the amounts specified therein. It is well settled that the consideration for any contract need not be contemporaneous to the document itself. Consideration can be past, present and future. The same is valid in law as long as law does not prohibit it.

The presumption u/s 118 of the Act may not necessarily be as to the amounts specified in the promissory note itself. The presumption can be as to the existence of consideration as such, but not the quantum of it and that is what is needed in law for giving effect to the transaction.

10. The trial Court has also undertaken certain discussion as to the adequacy of the consideration by referring to the values of shares, etc. That was not at all in the scope and ambit of the subject-matter of the suit. Once the execution of the document is proved and the legal presumption as to the existence of consideration remained un rebutted, the trial Court was left with no alternative except to give effect to the same. It was not the case of the respondents that the transaction witnessed by Ex.A1 is prohibited in law. The adequacy or otherwise of the consideration is not at all justiciable in such suits.

11. The plea of the 1st respondent was that the 2nd respondent did not have the authority to execute Ex.A1. It was not in dispute that at the relevant point of time, the 2nd respondent acted as the Managing Director of the 1st respondent. The allegation that he was entitled to raise loans only by mortgaging the assets of the 1st respondent-Company does not in any way affect the validity of Ex.A1. It was an internal affair of the respondents.

12. In view of the foregoing discussion, we hold that the appellant has proved the execution of Ex.A1 and the legal presumption as to the execution of consideration was not rebutted by the respondents and the trial Court was not correct in concluding that the document was not supported by consideration. We, therefore, set aside the judgment and decree of the trial Court in OS No. 1021 of 1987 and decree the suit. We, however, award interest at the rate of 12% per annum.

13. In the result, there shall be a decree in favour of the appellant for a sum of Rs. 3,47,850/- with interest at the rate of 12% per annum from the date of the suit. The appeal is accordingly allowed, but in the circumstances of the case, there shall be no order as to costs.