
(2001) 08 AP CK 0123
In the Andhra Pradesh High Court
Case No : A. No. 340 of 1997

Duggineni Seshagiri Rao	Vs	APPELLANT
Kothapalli Venkateswara Rao		RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118, 20, 4, 42

Citation : (2001) 6 ALT 95 : (2002) 1 CivCC 35

Hon'ble Judges : E. Dharma Rao, J; Bilal Nazki, J

Bench : Division Bench

Advocate : A. Anantha Reddy, for the Appellant; T. Veerabhadraiah, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—A short point is involved in this appeal. The appellant filed a regular suit for recovery of Rs. 1,54,100/- being the principal amount and interest due on it. The basis for the suit was promissory note allegedly executed by the defendant on 7.9.1994 in favour of the plaintiff. The defendant in his written statement denied the liability and contended that the plaintiff as well as the marginal witness were strangers to him. He termed the promissory note as "rank forgery". The following issues were framed for trial.

- (1) Whether the suit pronote dated 7.9.1984 for Rs. 1,00,000/- (one lakh) is true, valid, supported by consideration and binding on the defendant ?
- (2) Whether the defendant is an agriculturist entitling to the benefits under Act IV of 1938 ?
- (3) To what relief ?

On two different occasions two more written statements were filed and two additional issues were framed on 9.2.1995 :

"Additional issues dated 9.2.1995 :

(1) Whether the suit pronote is vitiated by material alteration ?

(2) To what relief ?"

The Trial Court found that the execution of the document i.e., pronote was not proved, therefore, dismissed the suit.

2. There are certain admitted facts and certain disputed facts. It may not be necessary for us to go into the disputed facts because what we are going to state hereinafter would show that the case can be finally decided on the basis of the admitted facts.

3. The learned Counsel for the appellant-plaintiff submits that forgery was taken as a defence but when the appellant made an application to send the document for comparison of signatures to an expert it was rejected by the Court. The learned Counsel for the respondent however submits that, in view of the evidence recorded by the Trial Court the decree could have not been passed as the pronote itself was not a legal tender. We are confining ourselves to the questions as to whether the pronote was a legal tender and whether on the facts the execution of the document was proved.

4. The plaintiff in his statement recorded before the Court submitted : "The contents of Ex. A-1 are not read over to me after it was filled up. I also did not ask to read over the contents of Ex. A1 to me. The defendant took and counted the amount. Then the defendant took over a printed pronote from his bag and filled it in his own handwriting. He affixed the stamps and signed on it. The pronote was handed over to P.W. 2. P.W. 2 after going through the contents of Ex. A1 attested it. One Narasayya came there at the time when I put the money on the table of P.W. 2. Narasayya is also an employee in the office of P.W. 2. P.W. 2 after Ex. A1, delivered it to the defendant. Then the defendant gave Ex. A1 to the said Narasayya and Narasayya attested it and gave it to defendant. I cannot say whether the Narasayya has verified the contents of Ex. A1 before attesting. The defendant delivered the pronote to me. I have gone through the contents of Ex. A1 at that time, and found some columns of Ex. A1 were not filled up. Ex. A1 was not filled up in respect of the columns of my name, my father's name and my village. But I did not return the pronote to the defendant for complying the above objections. I simply asked the defendant about the blank columns, but the defendant told me to fill up the columns myself, but I did not. Later I filled up the blank columns, i.e., my name and address particulars ten days before filing of the case. At another stage, P.W. 1 stated that he gave the amount under Ex. A1 in the office of P.W. 2, but he did not know the locality where the office was situated. P.W. 2 who is the marginal witness, in whose office allegedly the document was executed and consideration was paid also stated : "The plaintiff asked the defendant as to why his name, etc, particulars in Ex. A1 were not filled up. The defendant informed him that he could fill up whenever he wants. When the plaintiff looked at me I confirmed the same. Thereafter the defendant left the place. After some time the plaintiff came to me four or five times to ask the

defendant for repayment of the amount, I was asking the defendant for repayment, but the defendant postponed the same for several times." Another marginal witness was not examined.

5. So, it is crystal clear from the evidence of the plaintiff and P.W. 2 that when the pronote was executed, even according to them, the name of the person who advanced the loan was not mentioned in the pronote. The learned Counsel for the appellant submits that this name though was inserted later it will not make the pronote an illegal instrument. He also submits that the plaintiff had been honest, he could have said that the particulars of name, etc., were filled up on the date of execution but he fairly conceded that the particulars were filled up ten days before filing of the suit.

6. The learned Counsel for the respondents submits that u/s 4 of the Negotiable Instruments Act a promissory note has been defined as:

"4. Promissory note--A "promissory note" is an instrument in writing (not being a bank-note or a currency note) containing unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

According to him four things are necessary for an instrument to be a promissory note : (1) It should be in writing, (2) it should have an unconditional undertaking, (3) It should be signed by the maker, and (4) it should be in favour of certain person or to a bearer. Admittedly the promissory note which is subject matter of the suit did not bear the name of the plaintiff at the time of execution. Therefore, it cannot be termed as a promissory note. In this connection he relies on a judgment of Orissa High Court in *Lingam Narayan Das Vs. Punia Das*, , In this case the name of the payee had not been given in the body of the document but he had been described as "you". The Orissa High Court found that the document was not a promissory note within the meaning of Section 4 of the Negotiable Instruments Act, The following observations were made :

"What the Legislature intends in unmistakable terms is that not only that the money advanced is a certain sum of money, but it is advanced by a person who is certain. In the present case it cannot be held that the person who advanced the money is a person certain. Therefore, it cannot be held that the suit document is a promissory note within the meaning of Section 4 of the Negotiable Instruments Act."

With respects, we do not agree with the view of the Orissa High Court. On the other hand, there are judgments from other High Courts which have taken a contrary view. What the Orissa High Court had missed was that, it had not considered the effect of Sections 20 and 42 of the Negotiable Instruments Act. Section 20 lays down :

"20. Inchoate stamped instruments--Where one person signs and delivers to another a paper stamped in accordance with law relating to negotiable

instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount : Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

Section 42 lays down :

"42. Acceptance of bill drawn in fictitious name--An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer."

Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of "inchoate" is "incomplete". So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the "promissory note" u/s 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 this is the only interpretation that can be placed on the meaning of "promissory note" u/s 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions. We are fortified in our view by judgments of various High Courts, one such judgment being M.P. RM. Irulandi Mudaliar Vs. Syed Ibrahi and Others, . In this case a person had filed a document before the Court which did not bear the name of the payee. He prayed for return of the document so that he could fill up the name of the payee. The Court made the following observations:

"Section 20 of the Negotiable Instruments Act says that where a promissory note

is signed and delivered to another person on a paper, properly stamped, leaving blanks the person to whom the promissory note is delivered will prima facie have authority to make the document complete. If the section were to be applied to this case, the petitioner will have authority to fill in his name and what he wants now to do is simply to exercise his power under that provision. It is not contended that if the petitioner had the authority of putting his name the death of Muhammad Ibrahim would put an end to that right; the authority is a statutory one and also one coupled with an interest. The death of the person giving the authority cannot affect the right."

Similarly a judgment of Madras High Court in Sesharal Bajna Vs. V.C. Subramanian, , held that the payee can fill up the blank instrument before its presentation and if at the time of presentation the document is complete then it would be a legal instrument. The Court held that, where a hand-note does not mention the name of the payee at all no decree can be passed on the instrument, but the payee can fill up the blank instrument and unless he does so he is not entitled to bring a suit and obtain a decree. Similarly, Calcutta High Court in Harkishore Barua Vs. Gura Mia Chowdhry and Another, , held that holder of the instrument becomes a bearer of the instrument.

7. For all these reasons, we hold that the instrument was a legal instrument and can be enforced. Therefore, the finding of the Trial Court on this issue was not correct.

8. The second contention on which the plaintiff was non-suited was that the plaintiff had not proved that he had capacity to advance Rs. 1,00,000/-. This plea had not been taken at all by the defendant in his written statement. Questions were only put to the plaintiff and his witness with respect to his income. Therefore, the argument advanced that the plaintiff had not the capacity cannot be accepted. It is true that the plaintiff had moved an application I.A. No. 5661/96 to send Ex. A1 to handwriting expert for comparison of signatures with admitted signatures and the Court had dismissed that application on merits by order dated 8-8-1996, This is a circumstance which the Trial Court had used against the plaintiff. We feel that this circumstance could not be used against the plaintiff. He moved the application for sending the signature to expert because the signature had been denied and the defendant had contended that it was forgery. That shows the bona fide of the plaintiff. We have also found that the execution was proved through the evidence of plaintiff and the marginal witness. The defendant had continuously stated that P.W. 1 as well as P.W. 2 were strangers to him and he had disputed the signature on the pronote. P.W. 2 stated in his statement that defendant was his relative and he was the elder brother of the husband of his niece. On this assertion no question was put to the witness by the defendant's Counsel. Therefore, we feel that the plaintiff had been able to prove the execution of the document. On the other hand, if the document was disputed or doubted the onus was on the defendant to show that the document was a forgery because a presumption is in favour of plaintiff u/s 118 of the

Negotiable Instruments Act. In this connection the Patna High Court in Bhagwati Prasad Bhagat and Others Vs. Mt. Pahil Sundari and Others, , held:

"It is only a case of an incomplete negotiable instrument and the borrower is liable to pay to the holder in due course. The hand-note being a negotiable instrument, a presumption will arise u/s 118 of the Negotiable Instruments Act that it was made or drawn for consideration. Therefore, the burden in this case lies on the defendants to rebut that presumption. Of course, the onus that the amount was borrowed for family necessity will be on the plaintiffs."

9. For these reasons, we allow the appeal, set aside the judgment of the Trial Court and decree the suit of the plaintiff for an amount of Rs. 1,00,000/- (Rupees one lakh only). Though the instrument discloses that the interest has to be charged at Rs. 1.50 Ps per Rs. 100/- per month we allow simple interest @ 6% per annum from the date of execution of the document till the recovery. The decree be drawn accordingly.