(1994) 11 KAR CK 0008

In the Karnataka High Court

Case No : C.R.P. No. 1872 of 1990

Shree Mukambika Finance — APPELLANT

Vs

N. Shankaranarayana Acharya — RESPONDENT

Date of Decision : 28-11-1994

Acts Referred:

Citation : (1995) ILR (Kar) 536 : (1995) 4 KarLJ 603

Hon'ble Judges : M.M. Mirdhe, J

Bench : Single Bench

Advocate : P. Ganapathy Bhat, for the Appellant; R. Padmanabha, for R1, for the Respondent

Final Decision : Allowed

Judgement

Mirdhe, J.—This Civil Revision Petition is filed by the petitioner, who was the plaintiff in the trial Court against the judgment and decree dated 19.10.1989 passed by the Civil Judge and Additional C.J.M., Puttur in S.C.No. 22 of 1989 dismissing the suit filed by the petitioner for recovery of a sum of Rs. 2385.20. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondent remained absent at the time of hearing of this Petition.

2. Petitioner filed a suit for recovery of a sum of Rs. 2385.20 on the averments that defendant No. 1 took the loan of Rs. 3000/- from the petitioner for his business on 28.1.1986 after executing an On Demand Promissory Note agreeing to pay the said amount with interest at 21% per annum and the defendants 2 & 3 had acted as co-obligates and they did not discharge the debt of the petitioner, hence the suit. The defendant No. 1 filed a written statement. Defendants 2 & 3 adopted the written statement of defendant No. 1. The main defence that was taken by the defendants is that the defendant No. 1 paid the entire sum of the loan on 19.11.1987 to Sri Mohan Rao and obtained the receipt therefore. Both the sides led evidence. Plaintiff examined PW-1 and 2. The defendant himself examined as DW-1 and said Mohan Rao as DW-2. The defence taken by the defendants of the discharge of the loan carried weight with the trial Court and it

accepted it and it has also held that the defendants have proved that they have discharged the loan.

3. It is proved in this case that the defendants had obtained a loan by executing an On Demand Promissory Note. In view of the evidence led by the petitioner proving that the defendants had availed of the loan, the burden was on the defendants to prove that they have discharged the loan and for that the defendant No. 1 examined himself as DW-1 and also he examined one Mohanrao as DW-2. Mohan Rao has deposed that he was working as a Recovery Agent in the plaintiff''s Company and that he has signed Ex.D1 after receiving Rs. 1,700/- from defendant No. 1 under Ex.D1, But the perusal of Ex.D1 shows that it does not bear any name of a person from whom DW-2 received the amount. It does not bear the signature of the plaintiff Company also. DW-2 has admitted that he has not mentioned in Ex.D1 as to from whom he received the amount and on what account he has received the amount. He has further stated that he cannot say in what respect he received the amount as he has not maintained any separate accounts for having received money. He has clearly admitted that the plaintiff Company has not given any authority in writing to collect the money on their behalf. He further deposes that plaintiff issued printed receipt for having received the money by them. Admittedly, in this case there is no such printed receipt issued by the plaintiff to any of the defendants either directly or through DW-2. It is admitted that DW-2 was a Pigmy Collector for the plaintiff Company. The authority of a Pigmy Collector will be to collect pigmy amounts only. Whether there was any authority for DW-2 to collect the payments also from the debtors of the plaintiff Company, there is no evidence. It was for the defendants to prove that DW-2 had any such authority. The evidence of DW-2 does not that he has any such authority. What is the authority of an Agent to collect or receive payment is discussed by the learned Authors, SUBRAMANYAN AND SINGHAL in Indian Contract Act, 3rd Edition, Page 741 at para (e) as follows:

Authority to collect or receive payment. - Authority to collect is a broader and more comprehensive than authority to receive payment. An authority to make collections or receive payments, is an authority involving trust and confidence of the highest degree - much higher than is involved in the authority to receive goods - for goods can be more easily followed and therefore give the agent a lesser chance of misappropriation than money which practically is difficult to follow. Hence, where authority to make collections or receive payments is not conferred expressly, the law does not allow it to be inferred so easily as many other authorities, but requires a more strict rule before it extended protection to such payment or grants relief to such collections. To bind the principal, the collection must be made by one who is not only an agent but by the one who also has been clothed with an authority to make such collections......It is the duty of the person paying money to an agent to know that he has an authority to receive it.

In this case, DW-2 himself admitted that there was no authority given to him by the plaintiff Company to receive the payments. Ex.D1 a chit for having received the amount is signed by DW-2, but it does not give the particulars from whom he has received that amount and towards what account he had received the amount. The evidence is also not there to show that DW-2 subsequently took this amount and credited in the petitioner Company towards the account of the defendants. In view of these facts and circumstances, the trial Court was not justified on relying upon Ex.D1 and also the evidence of DW-2 to hold that the defendants have proved that discharge set-up by them. The defendants have failed to prove that they have discharged the ban as contended by them. Hence, the trial Court ought to have decreed the suit.

4. Now the next question is as to what should be the amount for which the suit should be decreed and what should be the rate of interest.

5. The amount that is claimed is Rs. 2385.20. This amount is inclusive of compound interest also. A perusal of Ex.P1 and P2 discloses that the petitioner is not justified in claiming the compound interest when there is no contract between the parties to that effect. The learned Counsel for the petitioner has calculated the compound interest which comes to Rs. 384.90 and he submits that the said amount may be deducted and the suit claim may be taken as Rs. 2000-20. In view of this submission, the suit will have to be decreed for a claim of Rs. 2000-20. The next question is about the payment of interest. The plaintiff has claimed interest at the rate of 21% per annum from the date of transaction till the date of suit. In view of the fact that there is an agreement between the parties to that effect, I think petitioner will be entitled to that rate of interest. But from the date of the suit till the date of recovery discretion lies with the Court to award the interest. Looking to the facts and circumstances of the case, I think it will be in the interest of Justice to award a simple interest of 6% per annum on Rs. 2000-20 from the date of suit till the date of decree and 6% interest on the principal amount of Rs. 1185/- from the date of decree till the date of recovery. Hence, I proceed to pass the following:

ORDER

Petition is allowed. The impugned judgment and decree are set aside and the suit of the petitioner is decreed for a sum of Rs. 2000-20. Petitioner will be entitled to interest at the rate of 6% per annum from the date of suit till the date of decree on Rs. 2000-20 and at 6% from the date of decree till the payment on principal amount of Rs. 1185/- only with proportionate costs.