

(2011) 12 AP CK 0033

Andhra Pradesh High Court

Case No: Second Appeal No. 1532 of 2011

Yadika Venkata Reddy

APPELLANT

Vs

Gujjula China Rami Reddy

RESPONDENT

Date of Decision: Dec. 7, 2011

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 4, 79

Citation: (2012) 4 ALT 705 : (2012) 3 BC 226

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L. Narasimha Reddy

1. The respondent filed O.S. No. 331 of 2008 in the Court of the Junior Civil Judge, Darsi against the appellant for recovery of amount on the basis of a promissory note, dated 21.04.2008. He pleaded that the appellant is due a sum of Rs. 61,332/- under the promissory note and in spite of demands, he did not pay the amount. In his written statement, the appellant pleaded that a sum of Rs. 30,000/- was initially borrowed on 21.04.2002 under a promissory note (marked as Ex. B1), that he paid a sum of Rs. 16,000/- and thereafter, executed another promissory note for a sum of Rs. 35,600/- on 21.04.2005 (marked as Ex. B2). According to him, the suit promissory note, dated 21.04.2008 (marked as Ex. A1) is only a document, acknowledging the earlier debt covered by Ex. B1. He pleaded that what becomes payable is only a sum of Rs. 30,000/- with interest thereon and not the one covered by Ex. A1.

2. The trial Court decreed the suit for a sum of Rs. 61,332/-, with interest at the rate of 6% per annum on a sum of Rs. 30,000/- from the date of decree till the date of realization. Feeling aggrieved by that, the appellant filed A.S. No. 9 of 2010 in the Court of the Senior Civil Judge, Darsi. The appeal was dismissed on 09.02.2011. Hence, this second appeal.

3. Sri Venkateswarlu, learned counsel for the appellant, submits that the view taken by the trial Court and the lower appellate Court is untenable and contrary to Section 79 of the Negotiable Instruments Act, 1881 (for short "the Act"). He contends that once the principal amount is mentioned in a promissory note, interest becomes payable on that and not with reference to the amounts mentioned in the subsequent promissory notes, if any, relating to the same transaction. He further submits that the trial Court has, on the one hand, proceeded as though Ex. A1 is without any consideration, and on the other hand, passed a decree in favour of the respondent.

4. Sri Koti Reddy Idamakanti, learned counsel for the respondent, submits that the appellant did not dispute the execution of Ex. A1 and the principal amount mentioned in the said promissory note i.e. Rs. 61,332/-. He submits that the amount borrowed in the year 2002 remained unpaid till the year 2008, except for a sum of Rs. 16,000/- and that unable to pay the amount due, the appellant has chosen to execute Ex. A1. He contends that the said promissory note is fully supported by consideration in the form of the amount due and the appellant failed to pay the same. He contends that though the appellant was liable to pay interest on Rs. 61,332/- from the date of Ex.A1 or from the date of decree, the trial Court decreed the suit awarding interest only on a sum of Rs. 30,000/- and with a view to avoid further litigation, his client did not prefer any appeal or Cross-Objections.

4. The respondent based his claim on Ex. A1. The appellant did not dispute the execution thereof. On behalf of the respondent, P.Ws. 1 and 2 were examined and Ex. A1 was filed. The appellant deposed as D.W.1 and Exs.B1 and B2 were filed. The trial Court framed two issues for its consideration and decreed the suit directing that the appellant shall be under obligation to pay a sum of Rs. 61,332/- and with interest at the rate of 6% on Rs. 30,000/- from the date of decree. In A.S. No. 9 of 2010 filed by the appellant, the lower appellate Court framed only one point for its consideration, namely whether the judgment and decree of the learned Junior Civil Judge, Darsi requires interference of this Court and the appeal was dismissed.

5. Two contentions are advanced before this Court. The first is that Ex.A1 cannot be said to be a document, supported by consideration. For this propose, it becomes necessary to refer to the definition of a "promissory note" as defined u/s 4 of the Act. It reads as under:

Promissory note: A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an 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." A signs instruments in the following terms:

(a) "I promise to pay B or order Rs. 500."

(b) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(c) "Mr.B, I.O.U. Rs. 1000/-."

(d) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(e) "I promise to pay B Rs. 500 first deducting there out any money which he may owe me."

(f) I promise to pay B Rs. 500/- seven days after my marriage with C."

(g) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(h) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next." The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

6. The definition does not insist that a promissory note can be executed only if any amount is received there under. The consideration for the document can be the acknowledgement of the existing liability also. What becomes material is the promise made by the executant of the document, to repay the amount. Important connotations are (a) specification of a definite amount and (b) a clear promise to repay as held out by the executant. Illustrations (a) and (b) of Section 4 of the Act make this aspect clear.

7. In the instant case, the amount was clearly specified and the appellant has made a clear promise to pay the amount, on demand. Therefore, Ex. A1 certainly answers the description of a "promissory note".

8. The other aspect urged by the appellant is that interest becomes payable on the principal amount, and reliance is placed on Section 79 of the Act. The purport of the contention is that the actual borrowing has taken place under Ex. B1, dated 21.04.2002, and interest ought to have been awarded only on that amount, throughout. Had the transaction rested with Ex. B1, the contention could certainly have been accepted. Unable to pay the amount borrowed under Ex. B1, the appellant executed Ex. A1 independently. By that time, the amount payable became Rs. 35,600/-. For about three years after execution of this document, nothing was paid. Acknowledging that the amount specified in Ex. B2, together with interest has become Rs. 61,332/-, the appellant executed an independent promissory note marked as Ex. A1. Section 79 of the Act reads as under:

Interest when rate specified: When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

9. The Section mandates that the interest would become payable on the amount of principal due from the date of instrument. In the present case, the instrument is Ex. A1. Exs. B1 and B2 virtually lost their significance once the transaction merged into the one covered by Ex.A1.

10. The appellant could have been happy in the sense that the trial Court awarded interest on Rs. 30,000/-. If at all any one, it is in fact, the respondent that should have felt aggrieved by the non-award of interest on the amount specified in Ex. A1. The appellant had troubled the respondent and it is on account of such acts that the sympathy towards a person in need is made to disappear. Hence, the second appeal is dismissed with costs throughout.