

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2057 OF 2011
(Arising out of SLP(C) No.30951 of 2008)

●TATIPAMULA NAGA RAJUAPPELLANT .

VERSUS

PATTEM



PADMAVATHIRESPONDENT .

● J U D G M E N T

●ANIL R. DAVE, J.

1. Leave granted.

2. Being aggrieved by the dismissal of Second Appeal

No.587 of 2008 by the High Court of Andhra Pradesh, the defendant (appellant herein) has filed this appeal.

3. For the sake of convenience, parties to the litigation have been described as arrayed in the trial court.

4. The suit had been filed by the plaintiff (respondent herein)

for

recovery

of



Rs.1,90,000/- from the defendant, who is the appellant herein, with interest and the claim was based on a promissory note, which was alleged to have been executed by the defendant for Rs.1,25,000/-.

5. The trial court dismissed the suit in the circumstances stated hereinbelow:

6. The case of the plaintiff was that a sum of Rs.1,25,000/- had been borrowed by the defendant and the defendant had, therefore, executed a Promissory note for Rs.1,25,000/- on 18th September, 2001. In spite of demand, as the amount was not repaid, the plaintiff was constraint to file Original Suit No.933 of 2003 for recovery of the said amount along with interest thereon.



7. The case of the defendant was that though the Promissory note had been executed by him, no amount was payable by the defendant to the plaintiff. According to the defendant, he had borrowed Rs.1,25,000/- from the son of the plaintiff, namely Pattem Nanaji Sanker @ Nanaji. According to the defendant, four Promissory

notes had been executed by him. One Promissory note was for Rs.50,000/- and three Promissory notes were for Rs. 25,000/- each. The defendant was having financial difficulties and, therefore, he could not pay the said amount to Nanaji but with the help of certain mediators, he had settled the dues with Nanaji for Rs.90,000/- and paid the same to him.

8. Upon
payment
of



Rs.90,000/- by the defendant in full settlement of his dues, Nanaji ought to have returned the aforestated four Promissory notes to the defendant but he returned only three Promissory notes and did not return one Promissory note for Rs.25,000/-, as he had misplaced the same and he promised that he would return the said promissory note for Rs. 25,000/- as and when he would find it.

9. According to the defendant, the plaintiff had used the said fourth Promissory note of Rs.25,000/- which had been given by the defendant to Nanaji. According to the defendant, by adding a figure '1' before 'Rs.25,000/-' the plaintiff had made an amount of Rs.1,25,000/- from Rs.25,000/-. The plaintiff had taken undue advantage by



interpolating figure '1' before '25,000/-' because Rs.25,000/- had not been written in words.

10. Thus, according to the case of the defendant, no amount was payable by him to the plaintiff but the plaintiff had misused the Promissory note given by him to Nanaji by interpolating figure '1' before figure

'25,000'.

11. At the time of trial, hand-writing expert, DW-4 had been examined, who stated that figure '1' had been interpolated in the Promissory note whereby figure '25,000/-' was made '1,25,000/-'.

12. The
hand-
writing
expert
was of
the said
opinion
for the
reason



that he could show that space between figure '1' and '2' was not regular and the entire figure of Rs.1,25,000/- was not written in one line. Figure '1', which was added subsequently was not in the same line of Rs. 25,000/-. His report was accepted by the trial court and after considering the evidence, more particularly

the evidence of the hand-writing expert, the trial court came to the conclusion that the Promissory note, which had been executed for Rs.25,000/- was tampered with by the plaintiff by adding figure '1' so as to make Rs.1,25,000/- .

13. The trial court also discussed the evidence led by the



mediators i.e. DW-2 and DW-3, in whose presence the defendant had settled his dues with Nanaji, the son of the plaintiff. The suit was, therefore, dismissed.

14. Being aggrieved by the dismissal of the suit, the plaintiff had filed an appeal, being Appeal Suit No.346 of 2006 which had been allowed by the learned Additional District and Sessions Judge (Fast Track Court)

Vijayawada. The appeal was allowed because the lower appellate court put more stress on the execution of the Promissory note which had been admitted by the defendant. Moreover, the lower appellate court was of the view that if the dues had been settled, the defendant would not have permitted Nanaji to retain one Promissory note for Rs.25,000/- In the circumstances,

the

appeal

was

allowed

and the

suit was

decreed

with

costs

for Rs.1,90,000/- with interest thereon.



15. Being aggrieved by the order passed in the appeal, the defendant filed Second Appeal No. 587 of 2008 in the High Court of Andhra Pradesh and the said appeal was dismissed by the High Court because no substantial

question of law was involved in the appeal.

16. We have heard the learned counsel and have considered the judgments of all the three courts.

17. After careful consideration, we are of the view that the trial court had properly appreciated the



evidence, especially the evidence of the hand-writing expert - DW-4. Upon perusal of the discussion of evidence in the judgment, it is clear that in the opinion of the expert, figure '1' had been written subsequently before '25,000/-' in the Promissory note. The trial court rightly appreciated the evidence of the mediators, in whose presence the dues of the defendant

had been settled and Nanaji, son of the plaintiff was paid Rs.90,000/- in full settlement of Rs.1,25,000/- borrowed by the defendant from Nanaji. The defendant had admitted the earlier transactions which he had with the son of the plaintiff. In our opinion, the evidence of the mediators and hand-writing expert was duly considered and appreciated by the trial court and the trial

court

had come

to a

right



conclusion. There was absolutely no reason for the lower appellate court to arrive at a different conclusion than the one arrived at by the trial court. We are, therefore, of the opinion that the findings arrived at by the trial court are absolutely correct and no justifiable reasons have been given by the lower appellate court for arriving at a different conclusion.

18. In our opinion, simply because the defendant had fairly admitted his signature, the court should not have come to the conclusion that the amount was payable by the defendant especially when there was an expert's evidence that figure '1' was added so as to make the figure 1,25,000/- from figure 25,000/- and when the



mediators had deposed to the effect that there were transactions between the defendant and the son of the plaintiff and in pursuance of the said transaction, Promissory notes were executed by the defendant and one of the Promissory notes was not returned to the defendant. The explanation given by the defendant, which was supported by ample evidence, ought to have

considered by the lower appellate court and the lower appellate court should not have been guided by a mere fact that the defendant had admitted execution of the Promissory note. In our opinion, in such a set of circumstances, the defendant ought not to have been saddled with a liability to pay the amount in pursuance of the tampered Promissory note for which no



consideration had ever passed from the plaintiff to the defendant.

19. As the High Court did not find any substantial question of law, it did not entertain the second appeal.

20. For the aforestated reasons, we are in agreement with the conclusion arrived at by the trial court and, therefore, we set aside the order passed by the High Court as well as the order passed by the lower appellate court and restore the order passed by the trial court whereby the suit had been dismissed.

21. The
appeal
is
allowed



accordingly but without any order as to costs.

.....J.
(Dr. MUKUNDAKAM SHARMA)

.....J.
(ANIL R. DAVE)

New Delhi
February 24, 2011

