

**HIGH COURT OF ANDHRA PRADESH**  
**Bench: The Honourable Sri Justice A.V. Ravindra Babu**  
**Date of Decision: 19th April 2024**

APPEAL SUIT NO: 797/2019

**GUDE HARI BABU ...APPELLANT**

**VS**

**POTLA VENKATESHWARULU ...RESPONDENT**

**Legislation:**

Indian Contract Act, 1872

**Subject:** This appeal suit concerns a promissory note wherein the respondent (defendant at trial) allegedly borrowed Rs.13,00,000 from the appellant (plaintiff at trial) with interest stipulations, leading to a civil suit for recovery of the due amount including interest after partial repayment was acknowledged through an endorsement on the promissory note.

**Headnotes:**

Promissory Note Validation and Dispute – Plaintiff claimed that the defendant borrowed Rs.13,00,000 for business purposes, repaying only Rs.25,000 - Defendant argued the amount was for a joint real estate venture, claiming fraud by the plaintiff - Trial court sided with plaintiff, leading to this appeal. [Paras 3-5, 7, 9, 11]

Trial Court Findings Affirmed – High Court agreed with trial court's decision, noting the consistent evidence from plaintiff's witnesses (P.W.1 and P.W.2) and the acknowledged execution of the promissory note by defendant - Discrepancies and improbabilities in defendant's narrative undermined his defence. [Paras 11-15]

Repayment Terms – On appeal, High Court dismissed the appeal but permitted the defendant to repay the remaining amount in three installments by 31.07.2024, considering prior partial payments acknowledged by the court. [Paras 16-18]

Decision: The appeal is dismissed with costs - Defendant is allowed to clear the remaining decretal amount in three installments by 31.07.2024. Failure to comply will allow the plaintiff to execute the decree for the remaining amount. [Para 19]

Referred Cases: None cited.

Representing Advocates:

Sri K. Jyothi Prasad for the appellant  
Sri Venkateswarlu Gadipudi for the respondent

**JUDGMENT:-**

The challenge in this appeal suit is to the judgment, dated

31.08.2019 in O.S.No.3 of 2018, on the file of X Additional District Judge, Gurazala (“Additional District Judge” for short), whereunder the learned Additional District Judge decreed the suit of the plaintiff for a sum of Rs.22,09,433/- with interest at 12% per annum on Rs.13,00,000/- from the date of suit till the date of decree and thereafter at 6% per annum till the date of realization.

2) The parties to this Appeal Suit will hereinafter be referred to as described before the learned Additional District Judge for the sake of convenience.

3) The case of the plaintiff, in brief, according to the averments set out in the plaint is that the defendant borrowed a sum of Rs.13,00,000/- from the plaintiff on 11.01.2015 for his business purpose and executed a promissory note on the same day, agreeing to repay the same with interest at 24% per annum either to the plaintiff or his order on demand. Later, the defendant paid a sum of Rs.25,000/- on 16.08.2017 towards part payment and made an endorsement with his own hand writing on the back of the promissory note. He did not mention the date while scribing the part payment. Later, the plaintiff requested the defendant for discharge of the balance promissory note amount, but the defendant postponed the same on one pretext or the other. Hence, the suit.

4) The defendant got filed written statement denying the case of the plaintiff and contending in substance that both the plaintiff and defendant belong to same community. They are close friends and relatives. The defendant is an agriculturist. He is residing at Sarur Nagar, Hyderabad, for the sake of his daughter's education. The plaintiff is residing at Piduguralla. The plaintiff proposed to do real estate business with the defendant at Capital City at Amaravati and made him to believe his words. The defendant adjusted an amount of Rs.10,00,000/- and paid the same to the plaintiff towards his share at Sarur Nagar, Hyderabad. The plaintiff stated that he invested more amount than Rs.10,00,000/- given by the defendant and asked him to execute a promissory note for security purpose. He also requested the defendant to make an endorsement of part payment on the back side of the promissory note. The defendant did the same accordingly. The plaintiff did not do any business with the amount given by the defendant. He played fraud on the defendant. The defendant demanded several times the plaintiff to return the amount of Rs.10,00,000/- given by him. The plaintiff postponed the same on one pretext or the other. Without giving prior notice, the plaintiff filed the suit. The defendant placed the matter before the village elders, who advised the plaintiff to return the invested amount of defendant and the suit promissory note. The plaintiff gave evasive reply and he did not follow the advice of the elders. Ultimately, the plaintiff filed a false suit. Hence, the suit is liable to be dismissed.

5) Basing on the above pleadings, the learned Additional District Judge settled the following issues for trial:

- (1) Whether the suit promissory note, dated 11.01.2015 is true, valid and binding on the defendant?
  - (2) Whether the suit promissory note is fabricated by the plaintiff as contended by the defendant?
  - (3) Whether the plaintiff is entitled for the suit amount as prayed for?
- (4) To what relief?

6) During the course of trial, on behalf of the plaintiff, P.W.1 and P.W.2 were examined and Ex.A.1 and Ex.A.2 were marked. On behalf of the defendant, D.W.1 was examined.

7) The learned Additional District Judge on conclusion of trial and on considering the oral evidence as well as the documentary evidence decreed the suit of the plaintiff. Felt aggrieved of the same, the unsuccessful defendant filed the present appeal suit.

8) Now, in deciding the present appeal suit, the point for determination is that whether the judgment, dated 31.08.2019 in O.S.No.3 of 2018, on the file of X Additional District Judge, Gurazala, is sustainable under law and facts and whether there are any grounds to interfere with the same?

**Point:**

9) Sri K. Jyothi Prasad, learned counsel for the appellant, would contend in accordance with the defence of the defendant in the written statement. He would submit that P.W.2 was close friend of P.W.1, who supported the case of the plaintiff for obvious reasons known to him. Without issuing any prior notice the suit was laid by the plaintiff. It is improbable to assume that after two years, a meager amount of Rs.25,000/- was paid by the defendant towards part consideration. All these facts would show that the manner in which Ex.A.1 was executed as claimed by the plaintiff is false. The learned Additional District Judge erroneously decreed the suit of the plaintiff. Hence, the judgment and decree of the learned Additional District Judge is liable to be interfered with. Alternatively, he would canvass a contention that in the event of confirmation of the judgment of the learned Additional District Judge with

any valid reasons, this Court may consider to allow the appellant to pay the rest of the amount due to the respondent/plaintiff in reasonable installments.

10) Sri Venkateswarlu Gadipudi, learned counsel for the respondent, would submit that the evidence of P.W.1 has corroboration from the evidence of P.W.2. There are certain improbabilities in the case of the defendant and the defendant failed to establish his case. The learned Additional District Judge elaborately dealt with these issues. He would seek to support the judgment of the learned Additional District Judge. He would submit that insofar as the contention of the learned counsel for the appellant that the appellant may be allowed installment facility to pay the rest of the amount he is leaving the matter to the discretion of the Court.

11) As the defendant denied execution of promissory note in the manner as claimed, it is no doubt true that the initial burden is on the plaintiff to discharge the execution of the suit promissory note. Literally, Ex.A.1 whispers that it is a promissory note executed by the defendant on 11.01.2015 having borrowed a sum of Rs.13,00,000/- with interest at 24% per annum. The signature of the defendant on Ex.A.1 is not in dispute. There is also no dispute about the hand writing made by the defendant under Ex.A.2.

12) As seen from the evidence of P.W.1 and P.W.2, their evidence is consistent with each other. According to Ex.A.1, P.W.2 was an attester. P.W.1 in his chief examination affidavit put forth the facts in tune with the pleadings. Through his examination Ex.A.1 and Ex.A.2 were marked.

13) According to the evidence of P.W.2, the defendant having borrowed a sum of Rs.13,00,000/- executed Ex.A.1 in favour of the plaintiff, agreeing to repay the same with interest at 24% per annum.

14) Virtually, the evidence of P.W.2 supports the evidence of P.W.1. Though both P.W.1 and P.W.2 were subjected to cross examination, nothing could be found in favour of the defendant in their cross examination to disbelieve their testimony. P.W.1 was not able to say the colour of ink with which the defendant signed. These things were not supposed to be spoken by P.W.1. The learned Additional District Judge held that such things would be occurred when the witness was tutored. Absolutely,

execution of Ex.A.1 by the defendant is not in dispute. But, the case of the defendant is that to do some real estate business, he parted with a sum of Rs.10,00,000/- to the plaintiff and at a later point of time, the plaintiff canvassed that he invested more than Rs.10,00,000/- given by the defendant and compelled him to execute the suit promissory note, as such, he executed the suit promissory note and further he was compelled to made endorsement under Ex.A.2. Though D.W.1 adhered to his defence in the written statement, but, it is admitted fact that he has no proof whatsoever to show that he allegedly handed over a sum of Rs.10,00,000/- to the plaintiff for real estate business.

15) Apart from this, when D.W.1 had alleged knowledge that he parted with Rs.10,00,000/- to the plaintiff to do real estate business, it is quite improbable that he could execute Ex.A.1 additionally. The conduct of the defendant is not that of a man of reasonable prudence. Though he claimed that he placed the matter before the village elders, who advised the plaintiff to return Rs.10,00,000/- to the defendant with promissory note, but he did not choose to examine any elders. The evidence of D.W.1 is self-serving. The defence and the evidence of D.W.1 is nothing but improbable. The defence of the defendant and the evidence of D.W.1 are against the probabilities. The case of the defendant suffers with inherent improbabilities which he failed to probabilize. He would not have kept quiet without issuing any legal notice to the plaintiff with a demand to return the so-called Rs.10,00,000/- with the promissory note which he executed. On the other hand, he admitted the fact that Ex.A.1 was executed by him. When he admitted the execution of Ex.A.1 and when the plaintiff discharged his burden by examining himself as P.W.1 and examined P.W.2, the burden shifts on to the defendant. The self-serving evidence of D.W.1 is not sufficient to disbelieve the case of the plaintiff. Hence, in the considered view of this Court, the learned X Additional District Judge rightly decreed the suit.

16) Turning to the submissions made by the learned counsel for the appellant to allow the appellant to pay the rest of the amount in reasonable installments, it is born out from the record that initially the stay was granted by this Court on deposit of 1/4<sup>th</sup> of the decretal amount. Later, when the appellant did not comply the order, dated 16.08.2022 in I.A.No.1 of 2022, the appellant made a request to grant extension of time and this Court passed an order on 28.04.2023 extending time on further condition of rest of the deposit amount towards

50% of the decretal amount. Even the stay order is said to be not complied properly. However, the fact remained is that pursuant to the orders some amounts were deposited by the appellant to the credit of the suit. Even according to the calculations filed by the respondent vide memo, dated 22.08.2023 a sum of Rs.6,45,443/- was deposited as per the order, dated 16.08.2022. Further a sum of Rs.4,59,283/- was deposited on 25.05.2023. The amounts that were deposited before the learned X Additional District Judge, appears to be born out by the record. So, it is a case where the appellant pursuant to the orders of this Court made some deposits before the learned X Additional District Judge. The exact amounts that are deposited before the learned X Additional District Judge are not known to this Court in the set of circumstances.

17) Now the contention of the appellant is that in the event of dismissal of the appeal, reasonable opportunity may be given to the appellant to comply the terms of the decree in reasonable installments. There is no opposition from the respondent counsel in this regard because he left the matter to the discretion of the Court.

18) Having regard to the overall facts and circumstances, while dismissing the appeal, appellant can be afforded a reasonable facility to clear the decretal amount in reasonable installments.

19) In the result, the appeal suit is dismissed with costs. The appellant/defendant is permitted to pay the rest of the decretal amount in three (03) installments on or before 31.07.2024. The appellant shall file a calculation memo before the learned X Additional District Judge, Gurazala showing the amounts deposited so far and showing the amounts due with up to date interest and then to clear off the rest of the decretal amount as directed above. If the appellant/ defendant fails to comply the direction of this Court in clearing the decretal amount within three installments on or before 31.07.2024, the respondent/plaintiff is at liberty to go ahead with the execution of decree for the rest of the amount.

Consequently, miscellaneous applications pending, if any, shall stand closed.

\*Disclaimer: Always compare with the original copy of judgment from the official website.