

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF MARCH, 2000

BEFORE

THE HON'BLE MR.JUSTICE HARI NATH TILHARI

REGULAR FIRST APPEAL NO. 101/1997

Between

M/s Prasanna & Co.,
Bankers,
Registered Firm under
the Money Lenders Act,
No.890, 4th Cross,
13th Main, Hanumanthanagar,
Bangalore - 560 019
represented by its
Proprietor
Sri. Uttamchand Jain

... APPELLANT

(By Adv.Sri.K.Suryanarayana
Rao)

And

1. Sri. Prasanna Kumar,
S/o Krishnappa,
Major,
117, Kabir Mutt Road,
Sunkenahalli,
Bangalore - 560 019.

2. The Asst.Regional
Transport Officer,
Office of the Regional
Transport Authority,
Jayanagar Complex,
Bangalore - 560 011.

... RESPONDENTS

(By Adv.Sri.R.Mahesh for
Sri. M.C.Ravi Kumar,Adv.)
for R-1 & Sri.M.Remaiah,
G.A for R-2)

-000-

Hari Nath Tilhari

This is a Regular First Appeal filed under Section 96 of the Code of Civil Procedure, praying to set aside the judgment and decree dated 2-1-1997 passed by the II Additional City Civil Judge, Bangalore, in O.S.No. 421/89 and grant such other reliefs.

The appeal coming on for hearing this day and the same having been reserved for judgment, the Court delivered the following ;

JUDGMENT

This is a Regular First Appeal filed by the plaintiff-appellant arises from the judgment and decree dated 2nd January 1997 passed by the II Additional City Civil Judge, Bangalore City, (Mr.A.V.Chandrashekar) in O.S.No. 421/1989 dismissing the suit of the plaintiff-appellant for the recovery of a sum of Rs.43,783/-.

The facts of the case in Nut'shell are ;
That the plaintiff filed the above suit against the defendants claiming decree for a sum of Rs. 43,783/- with interest at the rate of 20% per annum from 22-2-1988 till the date of payment and for a direction to seize the auto-rikshaw bearing No. CAM 125 and for its being handedover to the custody of the plaintiff.

As per the plaint allegations, the plaintiff

Hari Nath Tilhari

claimed to be a private money lending firm registered with the Registrar of Money Lenders, Bangalore and carrying on the business of financing loans on the basis of security and hypothecation of goods and vehicles. The plaintiff alleged that he ^{is} a valid money lender having the licence for this purpose i.e., on the date of the suit transaction as well as on the date of filing of the suit. The plaintiff alleged that defendant-1 (respondent-1 herein) has been a hirer of autorikshaw bearing no. CAM 125 and that the plaintiff-appellant is its owner as per the hire purchase agreement dated 22-2-1988. The case of the plaintiff-appellant is that during the second week of January 1988 first defendant (respondent-1 herein) approached the plaintiff-appellant and requested for a sum of Rs.37,000/- as loan, so that he could purchase the autorikshaw bearing No. CAM 125. The plaintiff alleged that defendant-1 informed the plaintiff that the said autorikshaw belonged to one Sri.T.Mahadev. According to the plaintiff, the first defendant informed him that he had paid the initial advance

Hari Nath Telhari

amount to Sri.T.Mahadev and entered into the agreement of sale, where^{under} ~~the~~ Sri.T.Mahadev has agreed to transfer by sale of the said auto-rikshaw in favour of defendant-1 (respondent-1 herein) and the first defendant had agreed to purchase it from Sri.T.Mahadev for a sum of Rs.40,000/-. The plaintiff averred that the first defendant was asked to come in the third week of February 1988. So on 22-2-1988 the first defendant approached the plaintiff and the plaintiff has given a sum of Rs.37,000/- to the first defendant as loan and the first defendant has executed the hire purchase agreement of even date and alongwith that he executed the promissory note and consideration receipt both dated 22-2-1988. Thus, the hire purchase agreement, promissory note and consideration receipt were all executed on 22-2-1988. According to the plaintiff, the amount of Rs.37,000/- was repayable with interest at the rate of 18% per annum in 40 monthly instalments. The first 30 instalments were to be of Rs.1,500/- each, the latter monthly instalments 31 to 39 were to be at the rate of Rs. 1448/- each and

Hari Nath Jilhari

the last and final monthly instalment was to be of Rs. 1443/-. The plaintiff alleged that as per the hire purchase agreement, it was stipulated that in case of failure to pay two consecutive monthly instalments, the first defendant was liable to pay penal interest at the rate of 2% per annum and in case of breach or default of either of the conditions stipulated by the hirer, the plaintiff as owner was at liberty to institute proper legal proceedings for the recovery of the amount due from the hirer as well as to institute proceedings for the seizure of the autorikshaw as well. The plaintiff alleged that ever since the first defendant borrowed the said amount, he did not care to pay single pai towards hire charges. On being approached by the plaintiff, the defendant started giving evasive replies. The plaintiff alleged that in view of wilful default by the first defendant, the plaintiff-appellant had no other remedy but to determine the high purchase agreement and to file this suit. The plaintiff alleged that the first defendant is also liable to pay penal interest at the rate of 2% per annum in

Hari Nath Telhari

view of wilful default in making the payment of monthly instalment on more than two occasions. According to the plaintiff-appellant the cause of action accrued on 22-2-1988 and subsequently when the first defendant failed to make payment. The plaintiff claims himself to be entitled to get a decree for the recovery of a sum of Rs. 43,783 with interest at the rate of 20% per annum from 22-2-1988 till the date of payment and for direction for the seizure of the autorikshaw bearing no. CAM 125 and for its being handed over to the custody of the plaintiff-appellant.

The first defendant has filed his written statement under Order VIII Rule 1 of the Code of Civil Procedure and he has denied the case of the plaintiff and the plaint averments.

The first defendant asserted that the plaintiff-appellant had no right, nor had any licence to advance the money on vehicles. The first defendant asserted that ^{the plaintiff's allegation that} he has borrowed a sum of Rs. 37,000/- from the plaintiff-appellant as loan and entered into hire purchase agreement dated 22-2-1988 or that he agreed to pay interest

Hari Nath Jelhari

at the rate of 18% per annum and penal interest at the rate of 2% per annum is completely false. The first defendant asserted that he had not borrowed any money from the plaintiff on 22-2-1988. The first defendant asserted that it is the plaintiff who informed the first defendant that he will become the owner of the said autorikshaw on payment of the amount due by Sri.T.Mahadev as the plaintiff had advanced loan to Sri.T.Mahadev and had received substantial amount from him. The case of the first defendant is that he had not entered into any transaction of loan on the hypothecation of autorikshaw and he had not taken any loan from the plaintiff-appellant. He alleged that Sri. T.Mahadev was a necessary and ^{at least} property party and the suit was bad for non-joinder of necessary and proper party. The first defendant alleged that the suit of the plaintiff is not maintainable and he has no cause of action against the first defendant. The first defendant has denied the entire case of the plaintiff-appellant.

On the basis of the pleadings of the parties, the trial Court has framed the follow-

Hari Nath Telhari'

ing five issues ;

- 1) Whether the plaintiff proves that defendant no.1 had borrowed a sum of Rs.37,000/- from the plaintiff on 22-2-1988 ?
- 2) Does the plaintiff further proves the alleged execution of hire purchase agreement dated 22-2-1988, on demand promissory note and consideration receipt dated 22-2-88 by the first defendant ?
- 3) Is the plaintiff entitled to recover penal interest as claimed ?
- 4) Is the suit not maintainable ?
- 5) What decree or order ?

The trial Court also framed the additional issues, which reads as under ;

- 1) Whether the plaintiff proves that he holds the licence even on the date of filing of suit ?
- 2) Whether the plaintiff proves that he complied with Sections 20 and 21 of the Karnataka Money Lenders Act 1961 ?

After consideration of the material placed on record, the trial Court held and recorded the findings as under ;

Hari Nath Pillare

1) That admittedly the suit was filed by the plaintiff on 19-1-1989 and the plaintiff and the plaintiff being a money lender, he had to prove that he had money lending licence on the date of filing of the suit, but the plaintiff has not produced any documentary evidence before the Court to show that he had valid licence even on the date of filing of the suit. Therefore, there is non-compliance with the mandatory requirement of Section 11 of the Karnataka Money Lenders Act, 1961.

2) That there is clear non-compliance of Sections 20 and 21 of the Karnataka Money Lenders Act, 1961 on expiry of the year ending 31-12-1988 the plaintiff being a money lender should have intimated the same under Section 21 of the Karnataka Money Lenders Act, 1961 and it was the statutory duty on the part of the money lender to have furnish all the information in writing under Sections 20 and 21 of the Karnataka Money Lenders Act, 1961 which he has not done and thus there has been breach and non-compliance of Sections 20 and 21 of the Act.

3) That the plaintiff has failed to prove

Hari Nath Silhari

that defendant-1 had borrowed a sum of Rs.37,000/- on 22-2-1988 and that he had executed the hire purchase agreement in question, on demand promissory note and consideration receipt on 22-2-1988. That the plaintiff is not and has not been entitled to recover any interest as penal interest, More so, when he has thoroughly failed to prove the loan transaction or taking of loan of Rs.37,000/- by the first defendant on 22-2-1988, and has further failed to prove that defendant-1 had executed the documents in question viz., hire purchase agreement, on demand promissory note and consideration receipt on 22-2-1988.

4) That the suit of the plaintiff is not maintainable even on account of the fact that the plaintiff has failed to prove that he has issued notice to the first defendant prior to the filing of the suit. In view of these findings, the trial Court dismissed ~~the suit~~ the plaintiff's suit.

Feeling aggrieved from the judgment and decree of the trial Court, the plaintiff-appellant

Hari Nath Jullana

has come up in appeal before this Court under Section 96 of the Code of Civil Procedure.

I have heard Sri. K.Suryanarayana Rao, learned Counsel for the appellant and Sri.R. Mahesh holding brief for Sri.M.C. Ravi Kumar, learned Counsel for the respondent-1.

The learned Counsel for the appellant contended that the trial Court erred in holding that the plaintiff-appellant was not entitled to the decree firstly that the appellant-plaintiff did not have licence under the Karnataka Money Lenders Act, 1961 on the date when the suit was admittedly filed i.e., on 19-1-1989. He submitted that the appellant-plaintiff has clearly stated in the plaint and in his deposition that he holds licence properly renewed and the said evidence has not been rebutted and this assestion of the appellant-plaintiff that he had a valid licence on both dates, and its non-rebuttal goes to prove that there was no dispute regarding ^{the license on the} currency of the date of the filing of the suit. He further submitted that the finding of the Court below that the appellant-plaintiff has failed to prove the advance sum of Rs.37,000/-

Hari Nath Tilmare

by the plaintiff to the defendant as well as execution of the hire purchase agreement dated 22-2-1988 and the execution of the on demand promissory note and consideration receipt i.e., Exts. P-2, P-3 and P-4. The learned Counsel further contended that the Court below illegally ignored first defendant's admission to the effect that the defendant had taken the loan amount for purchase of the autorikshaw as contained in Ext.P-15 at page 101 of the paper book, which is the affidavit of the appellant ^{## which ##} had been filed in the matter of application for vacation of the order of attachment. He submitted that the evidence of D.W.1 finds corroboration from Ext.P-15 and the finding on question if the plaintiff had advanced loan to the defendant is vitiated by error of fact and law. The learned Counsel for the appellant has also invited the attention of the Court to Ext.P-10 the proposal form.

The above contentions of the learned Counsel for the appellant-plaintiff have hotly been contested by the learned Counsel for the respondent-defendant.

Hari Nath Tuhari

The learned Counsel for the respondent-defendant contended that in view of the provisions of Sections 61 and 64 of the Indian Evidence Act, the document had to be proved by the primary evidence viz., by production of the document itself for inspection of the Court, unless a case is made out or shown to come within the frame work of Section 65 of the Indian Evidence Act, in which case secondary evidence relating to the documents may be given. The learned Counsel contended that neither any original, nor anything in the form of certified copy of the document i.e., the licence granted under Section 7 of the Karnataka Money Lenders Act, 1961 has been produced to show and establish that the appellant-plaintiff had valid money lending licence on the day when he had filed the suit. The learned Counsel contended that oral evidence was not admissible on this aspect. In this view of the matter, the learned Counsel for the first respondent-Defendant-1 that the Court below was justified in dismissing the suit of the appellant-plaintiff on this ground. In addition to failure

Hari Nath Sehara

of the appellant-plaintiff to prove the transaction of loan and the execution of Exts.P-2 to P-2 on record. The learned Counsel for the first respondent contended that the appellant-plaintiff had not produced any witness of the deeds i.e., Exts.P-2 to P-4 to prove the execution of the deeds by the first respondent, nor has proved by any reliable evidence ~~f.e.~~, the transaction of loan. The learned Counsel for the first respondent further contended that if Ext.P-15 is read, then the entire statement in Ext.P-15 particularly paragraph 2 has to be read and ^{is not to} ~~(not be read)~~ in piece meal or in part. He submitted that if Ext.P-15 is taken into consideration, it leads that whatever monetary transaction between the plaintiff and defendant-1 and whatever money the first defendant has received from the appellant-plaintiff that amount has been settled. Therefore, the appellant-plaintiff had no cause of action or right to file the suit. The learned Counsel for the first respondent in support of his contentions has made reference to the decisions of ^{their Lordships of} ~~the~~ Supreme Court in the case of Hanumant Govind Nargundkar and another v. State of Madhya Pradesh (A.I.R. 1952 S.C. 343)

Hari Nath Jilhari

and in the case of DADARAO v. THE STATE OF MAHARASHTRA (A.I.R. 1974 S.C. 388).

I have applied my mind to the contentions raised by the learned Counsels appearing for the parties.

The first question that emerges for consideration is whether the suit could be dismissed under Section 11 of the Karnataka Money Lenders Act, 1961. Section 11 of the Karnataka Money Lenders Act, 1961 provides as under ;

"11. Suits by money-lenders not holding licence -

- (1) After the expiry of six months from the date on which this Act came into force, no Court shall pass a decree in favour of a money-lender in any suit to which this Act applies, filed by a money-lender, unless the Court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced and on the date such suit was filed the money-lender held a valid licence."

Hari Nath Jilhari

As per the requirement of this section, the money-lender must have a valid licence and he should satisfy the Court that he has got a valid money-lenders licence under the Act at the time of advancing of the loan or part of the loan to which the suit relates and also he must establish that he held a valid licence on the date when he filed the suit, that unless and until it is established to the satisfaction of the Court that on both occasions viz., the time and date on which the loan or any part thereof was advanced which is the subject matter of the suit and on the date of filing of the suit, The money-lender did have a valid money lending licence under the Act, the mandate of law to the Court is that no decree shall be passed by it in favour of a money-lender in any suit to which this Act applies.

In the present case, Ext.P-1 which has been filed by the appellant-plaintiff in proof of the licence reveals that the appellant-plaintiff held a valid licence which was valid upto 31st December 1987. The transaction of loan as alleged by the appellant-plaintiff had taken place on 22-2-1988. No doubt, Ext. P-11 which

Hari Nath Tullhari

is on record reveals that the appellant-plaintiff had moved the application for the renewal of licence before the expiry of the term mentioned in Ext.P-1. Under the law as operative under Section 10 of the Karnataka Money Lenders Act, 1961 in the year 1988-~~1989~~^{HP} vide proviso to Section 10 of the Act and the legal fiction contained thereunder, he shall be deemed to have a valid licence until orders are received by him on his application for the fresh licence and he will be deemed to have been carrying on the business of money-lending under a valid licence during the succeeding year and till the receipt of a fresh licence. Applying this legal fiction, in my opinion, the trial Court rightly held that as on the date of alleged transaction of loan and hire purchase agreement, the appellant-plaintiff *is to be* deemed to have a valid licence and that was valid only for the period i.e., upto 31-12-1988. But so far as on the date of the filing of the suit i.e., 19-1-1989 is concerned, the appellant-plaintiff did not and could not produce the

Hari Nath Tilkari

documentary evidence before the Court to show that he held a valid licence even on the date of filing of the suit. There is nothing on record to establish or show that on the date of filing of the suit, the appellant-plaintiff had a valid money-lenders licence issued under Section 7 of the Karnataka Money-Lenders Act, 1961. This being the factual position and no valid licence or no documentary evidence of a valid licence on the date of the suit i.e., 19-1-1989 having been established, In my opinion, the trial Court rightly held that there has been non-compliance with the provisions of Section 11 of the Karnataka Money Lenders Act, 1961. As the appellant-plaintiff had failed to prove that he had a valid money-lenders licence on the date of the suit being filed, the Court below had to follow the mandate of law which he did and the mandate has been that no Court shall pass a decree in favour of a money lender in any suit to which this Act applies. There is no dispute ^{"to the position"} that the Karnataka Money Lenders Act, 1961 was applicable. In this view of the matter, in my opinion, the

Hari Nath Jilhari

trial Court did not commit any error either on fact or law in dismissing the suit as per the language of Section 11 of the Karnataka Money Lenders Act, 1961.

As regards the merits of the claim, it may be observed that the appellant-plaintiff has not examined any witness of Ext.P-4 the alleged hire purchase agreement to prove the execution of Ext.P-3 by the first defendant (respondent-1 herein) in favour of the appellant-plaintiff, nor has he examined any witness to prove the ^{the execution of the} alleged consideration receipt Ext.P-3 dated 22-2-1988, nor any witness to prove the ^{the execution of} demand promissory note Ext.P-2. No expert evidence has been produced as well to prove the execution of the demand promissory note or consideration receipt by the respondent-1 (defendant-1) or to prove due execution of these documents. The evidence of the appellant-plaintiff is an interested one, while the evidence of the first defendant finds support from the deposition/statement of D.W.2 at page no.68 of the paper book as well as from Ext.D-2. The evidence of D.W.2 and Ext.D-2

Hari Nath Tulkarni

fully supports the case of the first defendant.

As regards Ext. P-15 the affidavit of the first defendant Prasanna Kumar is of no assistance to the appellant-plaintiff and if at all it has to be read in evidence, then it has to be read in entirety as per the law laid down by their Lordships of the Supreme Court in the case of Hanumant Govind Nargundkar v. State of Madhya Pradesh (A.I.R. 1952 S.C. 343) wherein Their Lordships have laid down the law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him and an admission must be used either as a whole or not at all. Similar principle has been laid down in another decision of their Lordships of the Supreme Court as well as in the case of DADARAO v. THE STATE OF MAHARASHTRA (A.I.R. 1974 S.C. 388). Their Lordships in paragraph 8 of the report observed as under ;

" It may not however be overlooked that the admission made by the appellant must be read as a whole, for what he has stated is that he had made his signature in the account books of the branch

Hari Nath Puri

office after an audit objection was raised that he ought to have signed the books at the end of every day in his managerial capacity. The statement of the appellant on this aspect is not capable of dissection because the particular part thereof on which the High Court relies is inextricably connected with the other part which the High Court has not taken into consideration."

Keeping the above principles in view, when I read the contents in paragraph 2 of the affidavit Ext.P-15 of the first defendant together it dislodges the case of the appellant-plaintiff and if it read as a whole it indicates that there has been no amount due on the first defendant.

In this view of the matter, in my opinion, the Court below has rightly held that the appellant-plaintiff has failed to prove his case and has rightly dismissed the suit of the appellant-plaintiff in toto.

In my opinion, the evidence of P.W.1 - Uttamchand is not reliable and is not supported by any admissible evidence. Thus considered the appellant-plaintiff's appeal is devoid of

Hari Nath Juhari

merit. As such, the Regular First Appeal is liable to be dismissed and is hereby dismissed with costs.

The judgment and decree dated 2-1-1997 passed by the II Additional City Civil Judge, Bangalore, in O.S.No. 421/1989 are maintained.

Sd/-
Judge

OVP*