HC-KAR

NC: 2026:KHC:38388
RFA No. 2855 of 2024

CNR: KAHC010746612024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

REGULAR FIRST APPEAL NO. 2855 OF 2024 (MON)

BETWEEN:

K.N.HARITHIRTHA,
AGED ABOUT 44 YEARS,
R/AT NO.17D, CHANDANA RESIDENCY,
IST CROSS, 18TH MAIN ROAD,
MUNIREDDY LAYOUT,
CHIKKALASANDRA,
BANGALORE - 560 061.

...APPELLANT

(BY SRI. VIJAYA KUMAR T M., ADVOCATE)

AND:

SRI. RAMESHA R,
S/O RAMAKRISHNA,
AGED ABOUT 45 YEARS,
R/AT NO.9/1, BRUNDAVANA,
5TH CROSS, NETHRAVATHI ROAD,
MARUTHINAGAR, CHANDRALAYOUT,
NAGARABHAVI,
BANGALORE - 560 072.

...RESPONDENT

(BY SRI. P.P.HEGDE, SENIOR COUNSEL FOR
SRI. AKSHAY KUMAR JAIN., ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 06.10.2023

PASSED IN OS.NO.396/2020 ON THE FILE OF THE V ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, PARTLY DECREEING THE SUIT FOR RECOVERY OF MONEY.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

The present appeal is filed by the defendant challenging the judgment and decree dated 06.10.2023 passed in OS No.396 of 2020 by the V Additional City Civil and Sessions Judge, Bangalore (CCH-13) (for short the 'Trial Court'), thereby the suit filed by the plaintiff for recovery of money is decreed, directing the defendant to pay an amount of Rs.5,00,000/- to the plaintiff along with interest at the rate of 9% p.a. from the date of availment of the loan till filing of the suit.

2. For the sake of convenience and easy reference, ranking of the parties herein are referred to as per their status before the Trial Court.

3. It is the case of the plaintiff that he filed a suit for recovery of money of Rs.5,00,000/- along with interest. Plaintiff further contended that he and defendant were friends for ten years and were well known to each other. Plaintiff further contended that to meet the domestic urgency, the defendant borrowed a hand loan of Rs.5,00,000/- during July 2016. When the plaintiff demanded defendant for repayment of the said amount, the defendant kept on postponing to repay the same on several times. It is the specific case of the plaintiff that towards repayment of the loan amount, the defendant has issued a cheque bearing No.000047 dated 16.07.2019, drawn on HDFC Bank, Koramangala Branch. When the said cheque was presented for realization on 19th July 2019, it was bounced with an endorsement "insufficient funds". The plaintiff got issued a legal notice to the defendant through his advocate on 11.09.2019, but defendant did not comply the same. Therefore, plaintiff

was constrained to file a suit for recovery of money against the defendant and prayed to decree the suit as sought for.

3.1. On receipt of suit summons, the defendant appeared through his advocate and filed written statement, denying all the averments made in the plaint. It is the contention of the defendant that he has not received any amount from the plaintiff. There was no financial transaction between himself and the plaintiff including the request of Rs.5,00,000/-. Hence, there was no occasion for him to issue the alleged cheque in favour of the plaintiff. It is the specific case of the defendant that he has introduced the plaintiff to one "Goodwill Commodities Pvt. Ltd." (for short, 'Goodwill Company'), where he was investing the amount and earning interest. Accordingly, the plaintiff has also started investing the amount in the said company. It is further contended that at the time of investment, plaintiff approached the defendant for cheque as security to the amount, but not towards discharge of legally enforceable debt. Therefore, the defendant is not liable to pay any amount to the plaintiff. Hence, prayed to dismiss the suit.

3.2. Based on the rival contentions of the parties, the learned Trial Judge has framed the following issues:

> *"1.Whether the plaintiff proves that defendant has availed domestic loan of Rs.5,00,000/- on 16.07.2016 and has issued a cheque bearing No.000047 dated 16.07.2019 towards discharge of the said debt?*
>
> *2. Whether the plaintiff further proves that, defendant became defaulter, as such he is liable to pay outstanding amount of Rs.5,00,000/- along with interest @ 24% p.a.?*
>
> *3. Whether court fee paid by the plaintiff is not proper?*
>
> *4. Whether the plaintiff is entitled for the relief as sought for?*
>
> *5. What order or decree?*

3.3. In order to prove his case, the plaintiff examined himself as PW.1 and got marked 5 documents as per Ex.P1 to Ex.P5. The defendant examined himself as DW.1 and got marked 12 documents as per Ex.D1 to Ex.D12.

3.4. Upon consideration of evidence on record, the Trial Court by its judgment dated 06.10.2023, decreed the suit of the plaintiff in-part with interest at 9% p.a. The same is called in question in this appeal on the following grounds by the defendant.

4. The learned counsel for the defendant/appellant, reiterating the grounds urged in the appeal memorandum contended that the plaintiff had no source of income to mobilize such a huge amount. Therefore, the plaintiff has to discharge the burden about his financial capacity for lending loan to the defendant. The Trial Court has failed to consider this aspect of the matter while passing the judgment.

5. Further, it is contended that the defendant has introduced the plaintiff to the Goodwill Company for investing the money and at the time of investment in the said Company, the plaintiff has approached the defendant

for cheque for the purpose of security of the amount. Accordingly, the defendant had issued a cheque as a security to the investment by the plaintiff in the said company, but not towards discharge of the loan amount. Further, it is contended that the plaintiff might have transacted with the Goodwill Company and he has not averred such transaction in the plaint or in his evidence as PW.1. Considering all these evidence and preponderance of probabilities, it is clear that the defendant has not received any amount from the plaintiff and whatever the cheque being issued by the defendant is for security purpose only, but not towards discharge of legally enforceable debt. Under the circumstances, the defendant is not liable to pay any amount to the plaintiff and prays to allow the appeal.

6. On the other hand, learned Senior Counsel for the respondent/plaintiff justified the impugned judgment and decree of the Trial Court. With regard to source of income

of the plaintiff is concerned, learned senior counsel contended that the plaintiff was working in a Pharmacist's Company and getting handsome salary, as such he was able to lend such amount of Rs.5,00,000/- to the defendant. The defendant in order to discharge the said loan amount, has issued a cheque at Ex.P1. Therefore, he contended that when the cheque was issued in favour of the plaintiff, the presumption as per the provisions of Section 118 of N.I. Act accrues in favour of the plaintiff that defendant has issued the cheque towards discharge of legally enforceable debt and this presumption was not rebutted by the defendant by adducing evidence. Hence, prays to dismiss the appeal.

7. Upon hearing the learned counsel for the appellant/defendant and respondent/plaintiff and perusal of the trial Court records, the following points that arise for my consideration are as under:

a) Whether, under the facts and circumstances involved in the case, the respondent/plaintiff proves that he has *lent amount of Rs.5,00,000/- to the defendant and the defendant has issued a cheque-Ex.P1 towards discharge of the said loan amount?*

b) Whether, under the facts and circumstances involved in the case, the plaintiff is entitled benefit of Presumption under Section 118 of NI Act to prove that the defendant has issued a cheque-Ex.P1 towards discharge of legally enforceable debt?

c) Whether, the defendant proves that he has issued the cheque-Ex.P1 as a security for the investment made by the plaintiff in Goodwill company, but not towards discharge of the loan amount of Rs.5,00,000/-

d) Whether, the judgment and decree passed by the Trial Court requires any interference by this Court?

8. It is the simple case of the plaintiff that he and defendant were friends for ten years and were knowing each other very well. The defendant, in order to meet his domestic exigencies, borrowed a sum of Rs.5,00,000/- from the plaintiff. The defendant in order to discharge his burden, has issued a cheque-Ex.P1 in favour of the plaintiff and when the said cheque was presented to the bank for realization, the same was bounced with an endorsement "insufficient funds". Thereafter, the plaintiff had issued a legal notice calling upon the defendant to repay the said amount and when the defendant did not

repay the said amount, he filed a suit for recovery of money against the defendant.

9. It is contended by the defendant that he has introduced the plaintiff to the Goodwill Company to invest in the said company and at the time of investment, the plaintiff has demanded for cheque as security for the investment. Accordingly, the defendant had issued a cheque at Ex.P1 in favour of the plaintiff only for the purpose of security. Therefore, it is the case of the defendant that he has issued a cheque-Ex.P1 in favour of plaintiff only as a security, but not towards discharge of legally enforceable debt.

10. The Hon'ble Supreme Court in the case of **Mallavarapu Kasivisweswara Rao V/s Thadikonda Ramulu Firm and Others**[1] has held that in case, where the defendant fails to discharge the initial onus of proof by

[1] **2008 (7) SCC 655**

showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118 of the N.I. Act. The relevant paragraphs 16 and 17 of the said judgment reads as under:

> ***"16.*** *Section 118 of the Negotiable Instruments Act deals with presumptions as to negotiable instruments. One of such presumptions appearing in Section 118(a), with which we would be concerned in this appeal is reproduced as under:*
>
> *"118. Presumptions as to negotiable instruments.—****
>
> *… (a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration; * * *"*
>
> ***This extract is taken from Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm, (2008) 7 SCC 655 : 2008 SCC OnLine SC 936 at page 660***
>
> ***17.*** *Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal. In this connection, reference may be made to a decision of this Court in*

Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal [(1999) 3 SCC 35] . In para 12 of the said decision, this Court observed as under: (SCC pp. 50-51)

"12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist."

From the above decision of this Court, it is pellucid that if the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who would be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. It is also discernible from the above decision that if the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour".

(emphasis supplied)

11. From the above decision, it is clear that the initial burden to prove the existence of legally enforceable debt is on the plaintiff. The defendant has to lead evidence to rebut the same. In the present case, the question whether the plaintiff has lent a sum of Rs.5,00,000/- to the defendant for his domestic exigencies is a question for consideration.

12. According to the defendant, he introduced the plaintiff to the Goodwill company wherein the plaintiff has invested Rs.51,00,000/-. Therefore, there is no necessity for the defendant to issue cheque as security for the

amount invested by the plaintiff in the said company in favour of the plaintiff.

13. It is further submitted that the defendant is not a partner in the Goodwill Company. If the defendant is not a partner in the said Goodwill Company, then the defendant does not have any connection of transactions with the Goodwill Company.

14. It is simple case of the plaintiff that he had advanced loan of Rs.5,00,000/- to the defendant and to discharge the said amount, the defendant has issued cheque-Ex.P1 to the plaintiff. It is important to note that during the course of evidence and in the cross-examination, the defendant has admitted regarding issuance of cheque-Ex.P1 and the handwritings and the signature found on Ex.P1-cheque as belonging to him. Therefore, it is proved that cheque-Ex.P1 was issued by the defendant. When once the foundational facts of execution/signatures are shown or admitted, the initial

presumption operates in favour of the holder of the cheque and heavy burden of rebuttal will be on the disputing party.

15. In the instant case, when issuance of cheque is proved, then the presumption accrues in favour of the plaintiff as per the provisions of Section 118 of N.I. Act. Then onus lies on the defendant to prove as to under what circumstances he has issued a cheque-Ex.P1 in favour of the plaintiff. But in this regard, the defendant has not produced any rebuttal evidence to discharge his burden, except stating that the plaintiff has made investment of Rs.51,00,0000/- in the Goodwill Company and same does not amount to discharge of the burden. The plaintiff might have transacted with the Goodwill Company and that was nothing to do with the cheque at Ex.P1. The plaintiff also proved that there were several transactions between him and the defendant during the course of his evidence as PW.1 as well as in his cross-examination. Therefore, it is the conclusive proof that the defendant has issued a

cheque in favour of the plaintiff as above stated. But there is no rebuttal evidence by the defendant that he has issued cheque for security purpose only, but not towards discharge of legally enforceable debt.

16. Under such circumstances, this Court is of the considered opinion that the Trial Court was justified in decreeing the suit of the plaintiff holding that plaintiff has proved the suit claim with cogent and convincing evidence on record. The judgment and decree passed by the Trial Court is proper and correct and the same does not call for any interference by this Court. Accordingly, point Nos.1 and 2 are answered in affirmative and point Nos.3 and 4 in the negative and I proceed to pass the following:

ORDER

i. The appeal is ***dismissed with costs***.

ii. The judgment and decree dated 06.10.2023 passed in O.S.No.396/2020 on the file of the

V Additional City Civil and Sessions Judge, Bengaluru is hereby affirmed.

iii. Draw decree accordingly.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

MKM
List No.: 1 Sl No.: 38