ORDER SHEET

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Ist Appeal No. 37 of 2003

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA 297/2022.
2. For hearing of CMA 237/2003.
3. For hearing of main case.

Date of hearing: 25.04.2022.
Date of order: 25.04.2022.

Mr. Muhammad Sulleman Unar, Advocate for appellant.
Mr. D. M. Madhwani, Advocate for respondent.
Mr. Wali Muhammad Jamari, Assistant A.G.

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Zulfiqar Ahmad Khan, J: This 1st Appeal is preferred against the judgment and decree dated 3.03.2003 passed by learned Vth Additional District Judge, Hyderabad, whereby the suit filed by the respondent / plaintiff was decreed.

2. Concisely, relevant facts of the case as disclosed in the judgment of the trial court reads as under:-

> ***"Dr. Suhail filed a suit for recovery of Rs.3,50,000/- against the appellant / defendant based on a promissory Note dated 20.04.1999 and defendant executed such receipt of acknowledgment in presence of two witnesses viz. Dr. Tarique Iqbal and Iqbal Hussain Shah. The plaintiff is seeking a decree of above amount plus mark-up at the Bank rate of 46 paisa per thousand per day from the date of institution of this suit as the defendant failed to return the above amount as per date of promise.***
>
> ***The defendant filed written statement. Her contention is that she never dam ended Rs.3,50,000/- from the plaintiff. There was a loan of ADBP for more than Rs.4,00,000/- over the father of defendant (Syed Akhtar Hussain Shah) and her uncle (Syed Iqbal Hussain Shah). They were not in a position to adjust the said loan of ADBP. At that time, defendant's uncle Syed Iqbal Hussain Shah offered defendant's father that he could make arrangement for the amount by***

obtaining friendly loan from his old and close friend namely Dr. Suhail (Plaintiff). It was orally decided that repayment of such loan would be the joint equal responsibility of the both the co-sharers viz. Akhtar Hussain Shah and Syed Iqbal Hussain Shah. Prior to obtaining such loan, defendant's uncle Syed Iqbal Shah came to her alongwith blank pronote and asked her to stand surety for her father to the extent of 50% of the loan. The defendant in a bonafide manner and under influence of her uncle and at his instance put her signature on a blank pronote. After obtaining defendant's signature in the blank pronote, Syed Iqbal Shah contacted plaintiff and obtained a Bearer cheque dated 27.3.1999 in favour of ADBP for Rs.3,41,726/- drawn on MCB, Tower Branch, Hyderabad. Syed Iqbal Shah deposited Rs.3,00,231/- in the ADBP Latifabad Hyderabad. Hence her father Akhtar Hussain Shah and her uncle Syed Iqbal Shah jointly utilized an amount of Rs.3,00,231/- out of total amount of Rs.3,41,726/- Hence her father Akhtar Hussain Shah is liable to repay 50% of 3,30,231/-. The defendant has not taken any Loan directly from plaintiff, hence his suit is liable to be dismissed."

3. Thereafter, the learned trial Court, after framing of issues and hearing both the respective parties, decreed the suit of plaintiff / respondent No.1 vide judgment dated 31.03.2003. Being aggrieved by the said judgment and decree, instant 1st has been filed has been preferred by the appellant / defendant.

4. Learned counsel for the appellant while placing reliance on the judgment passed in case of Mst. Sughran Begum and 11 others v. Haji Mir Qadir Bakhsh and 2 others (PLD 1986 Quetta 232), states that in similar circumstances where execution of the ProNote has been denied, the Honourable High Court while dilating on Section 118 of the Evidence Act, 1978 currently under the Qanoon-e-Shahdat held that if the suit is based on a Pronote, burden of proof of execution shifts to the defendant, if want of consideration is denied, and that under such cases, burden has to be discharged by leading evidence by party denying the consideration or relying upon the evidence of adversary on record which was contrary to presumption in favour of consideration. Counsel has taken a position that once, notwithstanding that the appellant has signed a promissory note, however, once she denied it

for the want of consideration, it was the duty of respondent to bring on record evidence of the marginal witnesses to prove authenticity of the pronote. Learned counsel states that in case where the defendant on oath denies having received consideration, burden tilts towards the plaintiff to bring on record some evidence to prove that such consideration was paid. Counsel submits that since there was no relationship between the appellant and the respondent, the said promissory note was only signed to save the skin of the father and uncle of the appellant who were facing claims from the ADBP. He stated that the trial court has committed gross error in passing the impugned judgment and decree.

5. On the other hand, counsel for the respondent has placed reliance on the judgment of the Honourable Supreme Court in the case reported as Muhammad Azizur Rehman v. Liaquat Ali (2007 CLD 1542), where the Honourable Supreme Court was pleased to held that with regards the Negotiable Instrument Act, in the matter of suit for recovery of loan amount on the basis of a Pronote, execution of such document even having been denied by the respondent in the written statement but having admitted it been executed, the burden of proof of non-payment of consideration would lie on its executant. Section 118 of the Negotiable Instrument Act, 1881, provided that until contrary was proved, presumption would be that negotiable instrument was made or drawn for consideration.

6. I have considered the submissions of both the learned counsel and have gone through the case file. The following points are framed for determination:-

1. Whether the impugned judgment and decree requires any interference?

2. What should the decree be?

My findings on the above points are as under:-

Point No.1…….. In negative.

Point No.2……Appeal dismissed.

R E A S O N S.

Point No.1: In the case at hand there is no cavil that appellant has admitted the execution of promissory note original of which was brought to the court through the plaintiff. A perusal of which reflects that she has signed the said instrument for more than a dozen time therefore, document has acquired sanctity under the Negotiable Instrument Act, 1881. Section 118 of the said Act is reproduced hereunder:-

> ***"118. Presumptions as to negotiable instruments. Until the contrary is proved the following presumptions shall be made:***
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> ***(a) of consideration; that every negotiate 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;***
>
> ***(b) as to date; that every negotiable instrument bearing a date was made or drawn on such date;***
>
> ***(c) as to time of acceptance; that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;***
>
> ***(d) as to time of transfer; that every transfer of a negotiable instrument was made before its maturity;***
>
> ***(e) as to order of indorsement; that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;***
>
> ***(f) as to stamp; that a lost promissory note, bill of exchange or cheque was duly stamped;***
>
> (g) ***that holder is a holder in due course; that the holder of a negotiable instrument is a holder in due course; provided that, where instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful***

consideration, the burden of proving that the holder is a holder in due course lies upon him."

This section, as evident is couched in the negative language as it requires that unless contrary is proved, presumption would be that negotiable instrument was made or drawn for consideration. In the case at hand, the defendant has not come to the court for herself rather has appointed her husband as an attorney who admitted to the execution of the pronote. No witnesses were produced by her, thus no evidence was led by her in this regard to satisfy the requirements of Section 118 which provide sanctity to "Promissory Note" defined to mean "an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker to pay on demand or at a fixed or determined future time a certain sum of money only to, or to the order of, a certain person, or the bearer of the instrument under Section 4. The Honourable Supreme Court in the case reported as 2014 SCMR 1562 (Sheikh MUHAMMAD SHAKEEL v. Sheikh Hafiz MUHAMMAD ASLAM) has held that if an instrument that fulfills these conditions, it to be given sanctity as such. In the case reported as PLD 2004 Lahore 95 (MUHAMMAD ASHIQ and another v. NIAZ AHMED and another), the Honourable Lahore High Court has held that making of payment in connection with a Pronote does not require to be proved. It is also an established legal position that with regards proof of genuineness of promissory note, a party seeking to prove a promissory note need not to go behind the promissory note, as he has only to prove due execution of the note. PLD 1964 (W.P) Karachi 172 (K. M. MUNEER v. Mirza ARSHAD AHMED) required that where several adhesive stamps are affixed to a Pronote, all such stamps should be cancelled in an effective manner. It can be observed that the appellant has cancelled each and every such stamp with her signature, which shows active application of mind that she promised to make the payment upon demand. Also under Section 91 of the

Evidence Act (Now superseded as Qanoon-e-Shahadat Order, 1984) a pronote itself is the best evidence of the contract hence there is no need for brining any evidence on the contract. In the given circumstances, I see that the trial court has formulated appropriate issues and after placing reliance on the evidence adduced, has decided these issues very eliquently. Contention of the learned counsel for the appellant that it was the duty of the respondent to adduce evidence by bringing any marginal witness to prove that consideration has been paid, in fact is not even supported by the case law cited by him which suggests that the onus falls on the party denying the consideration, which view is strengthen by the judgment of Honourable Supreme Court referred by the counsel for the respondent.

Point No.2: In the given circumstances, I do not see any occasion for interfering in the judgment and decree passed by the trial court which is hereby upheld and the instant appeal is dismissed.

JUDGE

Tufail