The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Second Appeal No.955 of 2012

Dated 01.05.2015

Between:

Noor Ahmed

... Petitioner

and

Margadarsi Chit Fund Ltd and 5 others

...Respondents

Counsel for the petitioner: Party-in-person

Counsel for respondent No.1: Mr.P.Durga Prasad

The Court made the following:

Judgment:

This Second Appeal arises out of the judgment and decree, dated 23-02-2012, in AS.No.88 of 2008, on the file of the Court of the learned III Additional District Judge (Fast Track Court), Ranga Reddy District, whereby he has confirmed the judgment and decree, dated 27-06-2007, in OS.No.1298 of 2003, on the file of the Court of the learned V Additional Senior Civil Judge (FTC), Ranga Reddy District.

I have heard the appellant, who appeared as party-in-person, and Mr.P.Durga Prasad, learned Counsel for respondent No.1, and perused the record.

Respondent No.1 filed the above-mentioned suit for recovery of Rs.1,68,426/- with interest @ 12% p.a., against respondent Nos.2 to 6 and the appellant, who is none other than the father of respondent No.2.

It is the case of respondent No.1 that respondent No.2 is the principal borrower and the appellant is one of the guarantors.

The appellant has mainly raised two defences *viz*., (i) that he has not executed Ex.A.8- Guarantee Agreement; and (ii) that the bye-laws of respondent No.1 were not registered.

Both the Courts below in their concurrent judgments have rejected these contentions.

In Para 12 of the written statement filed in the suit by the appellant, he has raised the following objection:

> "That Clause No.19 (1) of Agreement says the registered bye laws shall form part of the agreement. The copy of the registered bye laws is not supplied to this Defendant. Hence, I reserved the right to submit additional written statement after the receipt of the bye laws, if necessary."

At the hearing, the party-in-person has not submitted that he has filed any additional written statement. Thus, going by his pleading, his objection was confined to non-supply of the registered bye-laws. In Paragraph 15 of its judgment, the trial Court has referred to the objection of the appellant with regard to the non-filing of Certificate for commencement of chit obtained from the Registrar by respondent No.1- plaintiff. While dealing with this objection, the trial Court has observed as under:

> “The contention of defendant No.4 is that there is no certificate of commencement of chit from the Registrar, therefore, the chit itself a void transaction in view of section 56 r/w sec.84 and that the suit itself is not maintainable. No doubt, the plaintiff has not filed the certificate of commencement of chit but Ex.A.7 shows that chit was registered with the Registrar of Chits, Ranga Reddy District, on 23-04-2002. Ex.A.7 also contain seal to that effect. The defendant is not disputing Ex.A.7, therefore, the Court can come to a conclusion that the chit is registered one with the Registrar of Chits, R.R.Dist. The chit becomes valid chit and non filing of other documents are curable defect and defendants cannot be taken (*sic* – defendant No.4 cannot take) advantage of the said fact as reported in ***United Bank of India VS. Naresh Kumar and others*** (AIR 1997 SC (3)). Their Lordship of Supreme Court held that:
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>> “Where the court came to conclusion that money had been taken by certain persons and certain persons had stood as guarantors and the claim is justified it will be travesty of justice if the plaintiff is to be non suited for technology reasons as which do not go to the root of the matter.”
>
> Therefore, I am of the view that defendant No.4 cannot be taken (*sic* - cannot take) advantage of situation.”

As regards the denial of execution of the guarantee agreement by the appellant, the trial Court has minutely scrutinized the oral and documentary evidence produced by the parties and rendered the following finding:

> “The evidence on record shows that defendant No.4 went to the office of the plaintiff. The defendant failed to prove that he went to Mumbai on 22-11-2002. Connecting these facts and more particularly the relationship of defendants 1 and 4, the probability leans in favour of the plaintiff. When the defendant had taken a specific plea that he did not sign on Exs.A.8 and A.9, he should have sought the help of the Court to send the disputed documents to the Expert to chisel the issue. He did not venture to send the documents to the expert to prove that

> he did not sign on Exs.A.8 and A.9. Therefore, I am of the view that defendant No.4 had executed Exs.A.8 and A.9."

The lower Appellate Court concurred with the findings of the trial Court and dismissed the appeal. Considering the father - son relationship between the appellant and respondent No.2, who is the principal borrower, and having regard to the findings on fact rendered by both the Courts below, I do not find any substantial question of law that arises for consideration in this Second Appeal for reversing the well-considered findings of the Courts below.

Hence, the Second Appeal is dismissed.

As a sequel to dismissal of the Second Appeal, SAMP.Nos.2216 of 2012 and 499 of 2015, filed by the appellant for interim relief, are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 1st May, 2015

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