

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.C.C.A.No.247 of 2006

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JUDGMENT: (per Hon'ble Sri Justice M. Seetharama Murti)

The unsuccessful defendants had preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 ('the Code' for brevity) assailing the decree and judgment dated 19.06.2006 of the learned I Additional Chief Judge, City Civil Court, Secunderabad passed in OS.No.34 of 2001 for recovery of an amount of Rs.12,39,841/- with interest at the rate of 36% per annum simple on Rs.7,29,140/- from the date of the suit till the date of payment or realization and costs.

2. We have heard the submissions of the learned counsel for the appellants/defendants ('the defendants' for short) and the learned counsel for the respondent/plaintiff ('the plaintiff' for short). We have perused the material record.

3. The aforementioned suit for recovery of money filed by the sole plaintiff against the 1st defendant company and the 2nd defendant, who is the Managing Director of the 1st defendant company, was resisted by the said defendants by filing separate written statements.

4. Based on the pleadings, the trial Court had framed the following issues for trial.

1. Whether the plaintiff is entitled for the suit amount?
2. Whether the suit is bad for non-joinder of the Official Liquidator?
3. Whether the suit is bad for mis-joinder of the second defendant?
4. To what relief?

5. At trial, the plaintiff was examined as PW1 and exhibits A1 to A20 were marked on his side. The 2nd defendant and a supporting witness were examined as DWs1 and 2 and exhibits B1 to B3 and X1 were marked on the

side of the defendants.

6. On merits, the trial Court had decreed the suit of the plaintiff and had held that both the defendants are jointly and severally liable to pay the decretal amount to the plaintiff. Therefore, the aggrieved defendants are before this Court.

7. The summary of grounds urged in the grounds of appeal and the submissions of the learned counsel for the appellants, in brief, are as follows:

The suit claim insofar as the recovery of an amount of Rs.2,68,800/- comprising of an amount of Rs.2,40,000/- towards principal and Rs.26,800/- towards interest payable in relation to the agreement dated 21.11.1997 is barred under Order II Rule 2 of the Code. Insofar as the claim for recovery of the amount of Rs.4,89,140/- under two bills dated 16.07.1998 and 03.08.1998 together with interest at 36% per annum, the plaintiff had failed to prove the supplies made by him under the said two bills for the amounts of Rs.2,68,600/- and Rs.2,20,540/- respectively. The 2nd defendant in his personal capacity is not liable to pay the suit amount or any part thereof. Therefore, the suit is bad for mis-joinder of the 2nd defendant who is neither a necessary nor proper party. The 1st defendant company was under liquidation for some time. Therefore, the filing of the suit and continuation of the suit against the company is bad in law and the suit is liable to be dismissed as not maintainable. In any view of the matter, the Official Liquidator is a necessary and proper party and the suit is liable to be dismissed for non-joinder of the Official Liquidator who is a necessary party. Exhibit A2, the copy of the agreement and exhibits A3 to A6, the copies of the bills numbers 38 and 48 and the copies of the delivery challans are inadmissible in evidence, they being the Photostat copies. Mere marking of exhibits A3 to A6 being the bills and delivery challans in relation to claim no.2 is no proof in the eye of law and the 2nd claim based on the said documents is not proved in accordance with law by proving the contents of the same by producing the originals and by examining the persons connected with the transactions under the said documents. The suit is barred by law of

limitation. The trial Court did not accurately consider the facts pleaded in the defence and had failed to properly appreciate the material facts and the evidence and had mislead itself and had passed an erroneous judgment. The trial Court had brushed aside the most valuable admissions and had failed to answer the questions of law as well as the issues based on facts insofar as issues nos.2 and 3 and had failed to answer the questions in regard to the contractual obligations as between the parties. The trial Court had overlooked valid and clinching evidence on the side of the defendants and had miserably failed to consider the question as to how the 2nd defendant is responsible and liable to answer the plaintiff's claim when he has no personal liability either in the capacity of a principal borrower or a guarantor of the 1st defendant company. The trial Court ought to have seen that the principal amount allegedly lent by the plaintiff was Rs.2.40 Lakhs and that out of the said sum, an amount of Rs.1.50 Lakhs was admittedly received by the plaintiff and that towards the alleged supplies a sum of Rs.68,600/- and a further sum of Rs.2,20,540/- are allegedly due. Thus, the principal sum claimed is Rs.5,79,140/- according to the admitted pleadings of the plaintiff but the said material aspects and facts were not adverted to in the judgment of the trial Court. The trial Court had failed to discuss the plea of adjustment by the plaintiff. The trial Court ought to have seen that the plaintiff has not brought to the notice of the Court the receipt of Rs.17,20,000/- by 28.02.2005 as against the cheque for Rs.10 Lakhs which was referred to in para 5 of the plaint. Therefore, the pleading by itself being an admission operates as an estoppel and the plaintiff cannot have unjust enrichment. The plaintiff, in his affidavit filed before the Supreme Court in SLP (CrI).5869 of 2004, had admitted the receipt of Rs.17,20,000/- in respect of the amount covered under the cheque for Rs.10 Lakhs. The trial Court ought to have taken notice of the said fact. The plaintiff is a habitual money lender is clear from the plaint averments. Therefore, the suit is hit by the provisions of the Hyderabad Money Lenders Act.

8. On the other hand, the learned counsel for the plaintiff supported the decree and judgment of the trial Court in all respects and had contended that

most of the grounds urged in the first appeal do not have a foundation in the pleadings and that the trial Court had accurately considered the pleadings, the material facts and also the evidence and had answered the relevant issues in favour of the plaintiff while decreeing the suit and that none of the grounds urged merit consideration and that, therefore, the appeal is devoid of merit and is liable to be dismissed.

9. Now the points for determination in this appeal suit are:

1. **Whether the suit claim insofar as Rs.2,68,800/- which is part of the amount lent or advanced by the plaintiff to the 1st defendant under the agreement dated 21.11.1997 is barred under Order II Rule 2 of the Code?**
2. **Whether the plaintiff is entitled to recover from the defendants Rs.2,40,000/- principal with interest thereon?**
3. **Whether the plaintiff is entitled to recover Rs.2,68,600/- and Rs.2,20,540/- towards cost of material supplied on credit respectively under bills Nos.38 and 48 dated 16.07.1998 and 03.08.1998 along with interest? And, if so, with interest at what rate?**
4. **Whether the suit is not maintainable in view of the fact that the 1st defendant company was under liquidation for some time? Whether the Official Liquidator is a necessary and proper party? And, if so, whether the suit is liable to be dismissed for non joinder of the said necessary and proper party?**
5. **Whether the 2nd defendant is not a necessary and proper party and he has no personal liability in respect of the suit claims?**
6. **Whether the decree and judgment of the trial Court are unsustainable under facts and in law?**
7. **To what relief?**

10. **POINT No.1:**

10.1 To begin with, it is necessary to note that the suit claim consists of two parts. The first part of the claim is in respect of money borrowed and received by the defendants from the plaintiff. According to the plaintiff, the defendants had requested the plaintiff to pay Rs.21 Lakhs as refundable deposit carrying interest at 2% per month and that both the parties reduced the terms agreed to between them in the form of an agreement dated 21.11.1997 and that in pursuance of the said agreement, the plaintiff had advanced Rs.19,20,000/- on various dates and that in respect of the said amount advanced, the

defendants had executed four registered mortgages mortgaging the house property standing in the name of the 2nd defendant and that for recovery of the said amount, the plaintiff had already filed a suit in OS.No.23 of 2001 on the foot of mortgages and that suit was already decreed and had attained finality. The further case of the plaintiff as mentioned in paragraph 6 of the plaint is this: 'However, in addition to the said amount covered by the mortgages, the plaintiff had also lent and the defendants had taken from the plaintiff, under the aforementioned agreement, a sum of Rs.2,40,000/- towards their contract work with the railways. Thus, the defendants are liable to pay the said sum besides interest in a sum of Rs.28,800/- calculated at the rate of 2% per month from 31.10.2000 to 28.04.2001 and that the 2nd defendant having acknowledged the liability in respect of the said debt through a letter dated 27.02.1999 had also sought time *vide* letter dated 14.11.2000.' Thus, the first part of the claim in this suit is for recovery of this unsecured loan of Rs.2,40,000/- with interest amount of Rs.28,800/- i.e., in all Rs.2,68,800/-'.

10.2 In this factual milieu, the case of the defendants, which is relevant to the point, is as under: 'The cause of action for the recovery of this part of the suit claim in the instant suit and the cause of action for the former suit OS.No.23 of 2001, which is filed for recovery of Rs.19,20,000/- on the foot of mortgages, are one and the same. The instant relief for recovery of the amount allegedly advanced by the plaintiff to the defendants under the very same agreement dated 21.11.1997 in a sum of Rs.2,40,000/- with interest thereon ought to have been included and claimed in the former suit itself as the cause of action for both the claims i.e., the claim for recovery of the amount due under four mortgages and the instant claim for recovery of the aforementioned sum is one and the same and as the basis for both the claims is the agreement dated 21.11.1997. However, the former suit was confined only to the recovery of the part of the amount lent under the agreement namely Rs.19,20,000/- covered by four registered mortgages; further, in that former suit the relief for recovery of the amount of Rs.2,40,000/- advanced under the very same agreement was omitted from the suit claim. After the former suit was instituted, the instant suit was again filed for recovery of the

balance amount due under the very same agreement. The omission to sue for the relief now claimed in the instant suit in the former suit without the leave of the Court bars the remedy to recover the sum of Rs.2,68,800/- in the instant suit. Therefore, the omission to make a claim in regard to Rs.2,68,800/- in the former suit debars the plaintiff from claiming that omitted relief in the instant suit.'

10.3 On the other hand, the learned counsel for the plaintiff would contend as follows: - 'Though the two claims i.e., claim under the four mortgage transactions in the former suit and the claim for recovery of money in a sum of Rs.2,68,800/- in the instant suit relate to the transaction under the agreement dated 21.11.1997, admittedly the relief claimed in the former suit is in regard to the recovery of the debt due under four registered mortgages, which is a secured debt and that therefore, the said suit being a suit for a preliminary decree for recovery of money on the foot of four registered mortgages, the cause of action as well as the period of limitation for the said suit are different from the cause of action and the period of limitation for the claim in the instant suit for recovery of a simple money debt in a sum of Rs.2,68,800/-.'

10.4 It is an admitted fact that the plaintiff is making a claim in the instant suit for recovery of Rs.2,68,800/- from the defendants 1 and 2 on the basis of the transaction under the agreement dated 21.11.1997. Based on the transaction covered by the very same agreement, the plaintiff had filed the former suit for recovery of Rs.19,20,000/- along with interest on the foot of four registered mortgages. In the instant suit, in the paragraph dealing with cause of action, the plaintiff had stated that the cause of action arose at Secunderabad partly on 21.11.1997 when the agreement was entered into between the plaintiff and the defendants and on 29.11.1997 and on the other dates on which the amounts were advanced to the defendants by way of loans. Therefore, basing on this pleading in the plaint, the learned counsel for the defendants would contend that the causes of action for this suit claim and the former suit, though it is a suit for recovery of a secured debt on the foot of four registered mortgages, are one and the same.

10.5 We have given earnest consideration to the facts and the submissions. In the first place, it is to be noted that there is no pleading in the written statement of the defendants that the claim for recovery of Rs.2,68,800/- is barred under Order II Rule 2 of the Code. Further, the plaint in the former suit, which is admittedly filed for recovery of mortgage debt due under four registered mortgages, is also not exhibited. Therefore, on these two grounds, we find that the defence of the defendants/appellants that the present suit claim insofar as the relief of recovery of Rs.2,68,800/- is barred under Order II Rule 2 of the Code is untenable. Obviously, the burden to establish this plea based on Order II rule 2 of the Code was on the defendants. The defendants did not even care to produce the plaint in the former suit to show what exactly was the cause of action put by the plaintiff in that suit. To sustain a plea based on Order II Rule 2 of the Code, the production of pleadings is mandatory is well settled in view of the ratio in the decision in **Gurbux Singh**

v. Booralal^[1]. In the cited decision, the Supreme Court held as follows:

‘(i) A plea under Order 2 Rule 2 of the Code based on the existence of a former pleading cannot be entertained when the pleading on which it rests has not been produced. It is for this reason that a plea of a bar under Order 2 Rule 2 of the Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. In other words, a plea under Order 2 Rule 2 of the Code cannot be made out except on proof of the plaint in the previous suit the filing of which is said to create the bar. Without placing before the court the plaint in which those facts were alleged, the defendant cannot invite the court to speculate or infer by a process of deduction what those facts might be with reference to the reliefs which were then claimed.....’

(ii) In order that a plea of a bar under Order 2. Rule 2(3) of the Code should succeed the defendant who raises the plea must make out (i) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (ii) that in respect of that cause of action the plaintiff was entitled to more than one relief (iii) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed.’

It is fairly conceded and it is not in dispute before this Court that the former suit is a suit for recovery of a debt on the foot of four registered mortgages while the instant claim in the instant suit is for recovery of a loan amount of

Rs.2,40,000/- with interest, which is in the nature of a simple unsecured loan transaction. However, the learned counsel for the defendants had forcefully contended that the fact that the earlier suit is one for recovery of money on the foot of four registered mortgages and that the relief in the instant suit is for recovery of money due under a simple loan transaction, which is an unsecured debt, is not going to make a difference; and, the fact that the loan transaction in the former suit is a secured loan transaction will not preclude the defendants from raising the plea available to them in view of the explanation appended to Order II Rule 2 of the Code. In view of the said contention, it is necessary to refer to the provision under Order II Rule 2 of the Code and the explanation thereunder, which read as under:

“Suit to include the whole claim: - (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) *Relinquishment of part of claim:* - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) *Omission to sue for one of several reliefs:* - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

***Explanation:* - For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”**

In the case on hand, the successive claims i.e., claim in the former suit and the relevant claim in the instant suit are not arising under the same obligation in the well considered view of this Court, as the claim under the former suit is made on the basis of four registered mortgages whereas the relief claimed in the instant suit is for recovery of a simple money debt advanced as a loan under an agreement. Be that as it may. Be it noted that Order XXXIV of the Code deals with the ‘suits relating to mortgages of immovable property’. Sub-rule (1) of Rule 14 of the said Order dealing with the ‘suit for sale necessary for bringing mortgaged property to sale’ reads as under:

14. Suit for sale necessary for bringing mortgaged property sale: -

(1) where a mortgagee has obtained a decree for the payment of

money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, Rule 2.

A plain reading of the above provision would show that a suit for sale in enforcement of the mortgage can be filed by the plaintiff notwithstanding anything contained in Order II Rule 2 of the Code and in-fact, that is the only remedy available to the plaintiff to enforce the mortgage since the plaintiff would not be entitled to bring the mortgage properties to sale without instituting such suit. The Hon'ble Supreme Court in the decision in

S.Nazeer Ahmed v., State Bank of Mysore and others^[2] held as follows:

'11.....Be it noted, that Rule 14 has been enacted for the protection of a mortgagor. In the context of Rule 14 of Order XXXIV of the Code, it is difficult to uphold a plea based on Order II Rule 2.'

.....

'12. That apart, the cause of action for recovery of money based on a medium term loan transaction simpliciter or in enforcement of the hypothecation of the bus available in the present case, is a cause of action different from the cause of action arising out of an equitable mortgage, though the ultimate relief that the plaintiff-Bank is entitled to is the recovery of the term loan that was granted to the appellant. On the scope of Order II Rule 2, the Privy Council in *Payana Reena Saminatha and Anr. v. Pana Lana Palaniappa* (XLI Indian App 142) has held that Order II Rule 2 is directed to securing an exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action of different causes of action, even though they may arise from the same transactions. In *Mohammad Khalil Khan and Ors. v. Mahbub Ali Mian and Ors* (AIR 1949 PC 78): (75 Ind App121)). The Privy Council has summarised the principle thus:

"The principles laid down in the cases thus far discussed may be thus summarised:

(1) The correct test in cases falling under Order 2, Rule 2, is "whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit." *Moonshee Buzloor Ruheem v. Shumsunnissa Begum* (1867 11 M.I.A. 551 : 2 Sar. 259 PC) (supra)

(2) The cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment. *Read v. Brown* (1889 22 Q.B.D. 128 : 58 L.J.Q.B. 120) (supra)

(3) If the evidence to support the two claims is different, then the causes of action are also different. *Brundsden v. Humphrey* (1884 14 Q.B.D. 141 : 53 L.J.Q.B. 476) (supra)

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. *Brundsden v. Humphrey* (1884 14 Q.B.D. 141 : 53 L.J.Q.B. 476) (supra)

(5) The causes of action has no relation whatever to the defence that may be set up by the defendant nor does it depend upon the character

of the relief prayed for by the plaintiff. It refers - to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. *Muss. Chandkour v. Partab Singh* 15 I.A. 156 : 16 Cal. 98 PC (supra). This observation was made by Lord Watson in a case under Section [43](#) of the Act of 1882 (corresponding to Order 2 Rule 2), where plaintiff made various claims in the same suit.

In this cited case the facts show that the bank has first brought a suit against the defendant for recovery of money and that suit was decreed. When the bank was unable to trace the bus which was hypothecated and recover the money, the bank had tried to proceed against the mortgaged properties in execution and on that the defendant/judgment debtor in the money decree had contended that the bank has not obtained a decree on the mortgage; and hence, the bank has instituted the subsequent suit for enforcement of the equitable mortgage. The defendant/appellant resisted the suit pleading that the suit was barred by Order II rule 2 of the Code. The High Court held that the suit was hit by Order II Rule 2 of the Code. Applying the test so laid down, the Supreme Court held that it is not possible to come to the conclusion that the suit to enforce the equitable mortgage is hit by Order II Rule 2 of the Code in view of the earlier suit for recovery of the mid term loan, especially in the context of Order XXXIV Rule 14 of the Code and that the two causes of action are different, though they might have been parts of the same transaction and that even otherwise, Order XXXIV Rule 14 read with Rule 15 removes the bar if any that may be attracted by virtue of Order II Rule 2 of the Code. Applying the tests laid down supra by the Supreme Court to the facts of the instant case, it is not possible to come to the conclusion that the instant claim in the instant suit for recovery of simple money debt is hit by Order II Rule 2 of the Code in view of the fact that the earlier suit was to enforce the claims under four registered mortgages whereas the claim in the instant suit is for the recovery of a simple money debt and as the cause of action to enforce the claims under the four registered mortgages and the cause of action for the recovery of simple money debt are different though they might be parts of the same transaction covered by the same agreement. Further, as per the precedential guidance, Rule 14 of Order XXXIV read with Rule 15 of the Code removes the bar, if any, that may be attracted by virtue of Order II Rule 2 of the Code. Therefore, the point is accordingly answered holding that

relief in the instant suit insofar as the recovery of Rs.2,40,000/- with interest thereon is not hit by Order II Rule 2 of the Code.

11. POINT No.2:

Insofar as the merits of the claim for recovery of this amount of Rs.2,40,000/- with interest, PW1 had deposed in line with the pleadings and his entitlement to recover the said amount advanced as under: Rs.20,000/- through pay order dated 29.11.1997; Rs.20,000/- through cheque dated 28.02.1998; Rs.48,750/- through DD dated 28.02.1998; Rs.49,250/- through DD dated 02.03.1998; Rs.42,000/- through DD dated 03.03.1998 and Rs.60,000/- through cheque dated 15.07.1998. He had further testified that on repeated demands, the defendants had paid Rs.1,50,000/- in cash on 30.10.2000 and that the same was adjusted towards interest due till then and that the principal amount and the interest for the period from 31.10.2000 to 28.04.2001 in a sum of Rs.28,800/- are still due and that the defendants had agreed *vide* exhibit A7 letter dated 27.02.1999 to pay the amount due and had acknowledged the liability and that the 2nd defendant had further sought time by letter dated 14.11.2000 under exhibit A8 to pay the amount and had thus acknowledged the liability. What is to be noted is that the defence of the defendants is in the nature of total denial and it is the evidence of DW1 that the defendants never borrowed any money from the plaintiff. However, DW1 (the 2nd defendant) in his cross examination had admitted that they had obtained a loan of

Rs.21 Lakhs and that in that connection, at the instance of PW1 he had executed mortgages by way of security for repayment of the said loan. The certified copy of the agreement is exhibit A2. Further, exhibit A14 is a letter to the Manager, Canara Bank seeking confirmation from the Bank in regard to credits of the pay orders viz., (i) dated 28.02.1998 for Rs.48,750/-; (ii) dated 02.03.1998 for Rs.49,250/- and (iii) dated 03.03.1998 for Rs.42,000/- to the SB Account 16153 of the 2nd defendant/DW1. On the said letter itself the Manager of the Bank had made an endorsement as follows: - **‘We confirm having credited the above instruments to the SB A/c.No.16153.’** DW1

had also admitted that the amounts mentioned in exhibit A14 are received in his account and that they form part of Rs.21 Lakhs. However, according to him, the same is the subject matter of the former suit. Exhibit A15 is a letter from A.P. Mahesh Co-operative Urban Bank Limited regarding confirmation of pay orders and cheques issued in favour of the 2nd defendant. In the said letter it was mentioned that certain cheques mentioned therein were presented by Canara Bank, Abids Branch and that another cheque was presented by Bhagyanagar Co-operative Urban Bank and that the same were honoured by the said bank. Exhibit A16 is a continuation letter of the said Bank to the plaintiff confirming that the cheque dated 17.07.1998 for Rs.60,000/- issued by the plaintiff in favour of the 2nd defendant was presented in clearing by Canara Bank, Abids Branch and was honoured by the said Bank on 17.07.1998 by debiting the account of the plaintiff. DW1 had further admitted that Rs.19,20,000/- represents the four registered mortgage transactions. However, it is undisputed that the former suit for recovery of the mortgage debt in a sum of Rs.19,20,000/- covered by four registered mortgages was already decreed and the payments in regard to the present claim of Rs.2,40,000/- were admittedly made by the plaintiff to the defendants towards additional loan by way of pay order, two cheques and three demand drafts referred to supra. Therefore, the evidence on record clinchingly establishes the plaintiff's entitlement to the said amount with interest at 24% per annum simple. Therefore, it can safely be held that the plaintiff is entitled to a decree insofar as the suit claim for recovery of Rs.2,40,000/- with interest thereon at the rate of 24% per annum simple from 31.10.2000 till the date of the decree and further interest at the rate of 6% per annum simple from the date of the decree till date of payment or realization. In-fact, when the plaintiff claimed interest upto the date of suit at 24% per annum simple on this part of the suit claim and when the claim of the plaintiff in regard to interest is confined to 24% per annum, the trial Court was in error in awarding interest at 36% per annum simple on this part of the suit claim. Therefore, the finding of the trial Court to the extent of award of interest at 36% per annum simple, which needs modification, deserves to be set aside.

Viewed thus, we find that the plaintiff is entitled to a decree for Rs.2,40,000/- with interest at 24% per annum simple on the said sum from 31.10.2000 till the date of decree and with further interest at 6% per annum simple on the said sum from the date of the decree till date of payment or realization. Point is accordingly answered.

12. POINT No.3:

12.1 Insofar as the relief for recovery of Rs.2,68,600/- and Rs.2,20,540/- towards cost of material supplied on credit respectively under bills Nos.38 and 48 dated 16.07.1998 and 03.08.1998 along with interest, the case of the plaintiff is that during the course of business transactions, which the plaintiff had with the 2nd defendant, the plaintiff had supplied steel on credit basis for the aforementioned amounts and that the defendants had neglected to pay the amounts towards cost of the said materials supplied on credit and that towards the said amounts due the 2nd defendant had issued a cheque for Rs.10 Lakhs drawn on Canara Bank, Abids Branch, Hyderabad and that the said cheque on presentation had bounced and was dishonoured and that, therefore, the plaintiff had filed a case against the 2nd defendant under Section 138 of the N.I.Act and that the said criminal case had ended in conviction and that the said matter has reached finality, and that the defendants are liable to pay the amount due as on the date of the filing of the suit with interest. Thus, the present claim of the plaintiff against the defendants is in regard to the amount due towards credit supplies of materials including interest.

12.2 The defence of the defendants on this aspect is that the cheque for Rs.10 Lakhs was issued in connection with the suit claim in the former suit OS.No.23 of 2001 but, not towards the amounts due in respect of the claim in the instant suit and that no such credit supplies were ever made and received by the 1st defendant company and that the defendants are not liable to pay the value of the alleged credit supplies and much less the interest.

12.3 In support of the claim, the plaintiff had testified that the supplies were

made and stocks were delivered; he had also exhibited exhibits A3 and A5, the copies of the relevant bills and also the copies of the delivery challans, exhibits A4 and A6, which were said to have been signed by the brother of the 2nd defendant, who is admittedly the factory manager of the 1st defendant company. The carbon copies of the corresponding invoices under exhibits A17 and A18 were also exhibited. Based on this evidence, the learned counsel for the plaintiff/respondent would contend that the suit claim in this regard based on the credit supplies is established. On the other hand, the learned counsel for the defendants would contend that the mere marking of exhibits A3 to A6, A17 and A18 is not sufficient and that the contents of the said documents are not proved and that the plaintiff had failed to discharge the initial onus of proof and that the non examination of the author of the documents or the person concerned with the documents or the person who has received the materials is fatal to the case of the plaintiff. The learned counsel for the defendants had *inter alia* contended that during the period of liquidation from 07.04.1997 until 2002-03 the 1st defendant company had not undertaken any business and the said facts are evident from exhibits B1 and B3 which are the proceedings of Labour Commissioner and the Inspector of Factories, Nalgonda and that the contents of the said documents would lay bare that the factory was closed from 1997 to 2002 and that therefore, the question of placing orders for supplies and receiving supplies of steel does not arise. He would further contend that DW1 had denied the signatures on exhibits A4 and A6, delivery challans, which pertain to the bills under exhibits A3 and A5 dated 16.07.1998 and 03.08.1998 respectively and that though the plaintiff had contended that the delivery challans were signed by the brother of DW1, the Manager of the factory, the plaintiff had not proved the said documents as required under law. It is forcefully contended that the plaintiff ought to have examined the brother of the 2nd defendant who was said to have allegedly signed the delivery challans and that his non examination is fatal to the case of the plaintiff. In support of the said contentions reliance was placed on the decisions in **Kuppuswami Pillai v.**

K.Natarajan & Another ^[3] and **Chandradhar Goswami v. Gauhati Bank**

Ltd., ^[4]. In the decision in **Kuppuswami Pillai** (3rd cited), the Madras High Court while referring to Section 67 of the Indian Evidence Act dealing with proof of signature and handwriting of a person who was alleged to have signed or written the document produced had held that if the document is alleged to have been signed by any person, the signature is proved by examining that person and similarly if a document is alleged to have been written wholly or in part by any person, such handwriting or so much of the document, as is alleged to be in that person's handwriting is proved by examining that person. It was further held that when the signature is found to have been proved in accordance with law, but the genuineness of the contents are in dispute it is all the more necessary that the author or the scribe of the contents is examined, so that opportunity is afforded to the person, who disputed the genuineness of the contents to elicit from the author or the scribe informations which would show one way or the other as to the genuineness thereof. Coming to the modes of proving the signature or handwriting, the signature or handwriting of a person may be proved by calling the very person who had made the signature or written the content in dispute. Further, such signature or handwriting may also be proved by taking the opinion of an expert. Signature and handwriting can also be proved by examining a person who has got acquaintance with the signature and handwriting of the person concerned. In the case on hand, the plaintiff who had entered into an agreement with the 2nd defendant and who had business dealings with the 1st defendant company had proved the contents of the relevant exhibits as well as the signature of the brother of DW1 by stating that he had received the credit supplies under the delivery challans. In the decision in **Chandradhar Goswami** (4 supra), the Hon'ble Supreme Court while referring to the provision of Section 34 of the Indian Evidence Act had held that a bare perusal of the said provision makes it clear that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business and that there has to be further evidence to prove the payment of money which may appear in the books of account in order that a person may

be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them. Reliance was also placed on **Life Insurance Corporation of India v. Ram Pal Singh Bisen**^[5] and **Kaliya v. State of Madhya Pradesh**^[6] in support of the propositions that mere filing and marking of documents does not dispense with proof and that exhibiting a document in court does not amount to proof of its contents. There is no dispute with the legal propositions in the cited decisions. It was also contended that the documents marked are Photostat copies and that there is no foundational evidence that the Photostat copies marked are in-fact true copies of originals and that therefore, the secondary evidence in the form of Photostat copies, which are marked without accounting for the non production of the originals of the same and without seeking permission of the Court to adduce secondary evidence, is not admissible and that mere admission of Photostat copies in the evidence and marking of the same is no proof in the eye of law. In support of the said contentions, reliance was placed on the decision in **H.Siddiqui v. A.Ramalingam**^[7]. In this decision, while dealing with the aspect of the duty of the Court while admitting the secondary evidence, it was held as follows: -

‘The provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the Court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is infact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The Court has an obligation to decide the

question of admissibility of a document in secondary evidence before making endorsement thereon (*vide Roman Catholic Mission v. State of Madras*[AIR 1966 SC 1457]; *State of Rajasthan v. Khemraj* [AIR 2000 SC 1759] and *M.Chandra v. M.Thangamuthu* [(2010)9 SCC 712]. In this decision, it was also laid down that it is the duty of the Court to examine whether the documents produced in the Court or contents thereof have any probative value.

12.4 On the other hand, the learned counsel for the plaintiff/respondent would contend that admittedly the brother of DW1 is the factory manager of the 1st defendant factory and when the plaintiff had exhibited the documents/exhibits A4 and A6 namely the delivery challans as well as the other documents and had stated that the brother of DW1 had signed on the said delivery challans and that the supplies were delivered, it is for the defendants to examine the brother of DW1, who is admittedly the factory manager, and it is not for the plaintiff to examine him, more particularly, in view of his relationship with DW1 and the fact that he was the factory manager of the 1st defendant factory. Therefore, the learned counsel for the plaintiff would contend that the non examination of the brother of DW1 to deny the signatures on exhibits A4 and A6 is fatal to the defence rather than the case of the plaintiff.

12.5 We have carefully gone through the oral evidence as well as exhibits A3 and A5, the carbon copies of bills dated 16.07.1998 and 03.08.1998 and exhibits A4 and A6, the carbon copies of respective delivery challans and exhibits A17 and A18, the carbon copies of invoices dated 16.07.1998 and 03.08.1998. The plaintiff is carrying on business in iron and steel under the name and style of 'Gupta Steel Traders' and the plaintiff had entered into an agreement with the defendants and the plaintiff had not only advanced amounts under the said agreement but also had made credit supplies to the defendants, according to the plaintiff. He is the proprietor of his concern by name 'Gupta Steel Traders'. He being the proprietor gave evidence as PW1 in support of his claims in the suit and had exhibited the documents in

support of his suit claim. Therefore, he is the proper person to prove the contents of the documents exhibited by him. Be it noted that when the certified copy of the agreement, which is admittedly executed between the parties was exhibited as exhibit A2, no objection was raised. The suit is not based on mere accounts or the entries in the accounts of the plaintiff concern which is a proprietary concern. Exhibits A3 and A5 are not Photostat copies but they are carbon copies of the bills bearing nos.38 and 48. Similarly, the delivery challans under exhibits A4 and A5 are also carbon copies and not Photostat copies. They are signed by the plaintiff who is the proprietor of the Gupta Steel Traders. Under exhibit A8-letter dated 14.11.2000 the 2nd defendant had acknowledged the liability in respect of the four registered mortgages and the agreement dated 21.11.1997. Further, exhibits A17 and A18 invoices are also carbon copies. In-fact, before instituting the suit, the plaintiff had got issued a notice dated 12.04.2001 and the office copy of the said notice is exhibited as exhibit A9. The notice was also sent under certificate of posting and the relevant postal receipts and the certificate of posting slip were exhibited as exhibits A10 to A12. To this notice, there was no reply from the defendants. The receipt of notice was also not denied by the defendants in the written statement. In-fact when DW1 had asserted in his evidence that Mr. Prasad who is the brother of the 2nd defendant is the manager of the 1st defendant factory and that exhibits A4 and A6 contain the signatures of the said brother of the 2nd defendant, the only cross examination done was that exhibits A4 and A6 do not contain the signatures of the 2nd defendant and that the PW1 had not filed any document to show that Mr. Prasad was the manager of the 1st defendant. No suggestion was put to this witness that the signatures on exhibits A4 and A6 are not that of the brother of the 2nd defendant. In the cross examination, DW1 had admitted that he has a brother by name K.V. Prasad and that it is true that he worked as factory manager till 07.04.1999. However, he had denied the suggestion that exhibits A4 and A6 contain the signatures of his brother at the place of 'receiver signatures'. He had further denied the suggestion that exhibits A17 and A18 also contain his brother's signatures. He had admitted that his stock

registers would disclose the materials received. He had further admitted that the books are in his custody but he did not produce those books. Exhibit A19 is the cheque for Rs.4 Lakhs. DW1 had admitted that the said cheque bears his signature and stamp of the 1st defendant company. However, he had denied the suggestion that the material was received by the company through his brother and that the cheque for Rs.4 Lakhs was issued in that connection. But he did not explain as to in what connection the said cheque was issued.

12.6 In this background of facts and evidence, in the well considered view of this Court, the onus which is initially on the plaintiff stood discharged and the onus to introduce evidence had shifted to the defendants. When it is the specific case and when it is also admitted that the brother of the DW1 was the factory manager at the relevant time, the defendants ought to have examined the brother of the 2nd defendant to deny his signatures on the delivery challans and the invoices, if really their defence that no such supplies were made is true. Though, exhibits B1 and B3 were marked in support of the defence that the 1st defendant factory was closed from 1997 to 2002, the said proceedings are not going to help the defendants to advance their defence in the absence of evidence in rebuttal to show that no such supplies were made by the plaintiff and were not received on behalf of the 1st defendant company by the brother of the 2nd defendant who is the factory manager. DW2 is the Inspector of Factories, who was said to have signed exhibit B3. According to his evidence, the factory was visited by one of his predecessors on 04.06.2003 and that exhibit X1 is the copy of the record showing the visits of the officers to the factory of the 1st defendant company. In his further cross examination, he had admitted that he had never visited the factory of the 1st defendant and he does not know whether if there were any purchases and sales by the 1st defendant factory during the period covered by exhibit B3 and that he also does not know if the 1st defendant had executed the orders of the customers during the period covered by exhibit B3. In-fact DW1 has admitted that Official Liquidator was appointed on 25.01.2000 and till then, he was in-charge of the 1st defendant company. DW1 had admitted that he had

earlier deposed that his brother

K.V. Prasad was working as factory manager and that he worked so till 07.04.1999 and that thereafter the company was under lay off. DW1 also made the following further admissions in his evidence. 'I do not remember that I had entered into subsidiary agreement dated 07.05.1998 for extension of time with railways with reference to gauge conversion between Mudkhed and Adilabad. It may be true that railways might have addressed a letter dated 05.08.1998 to defendant no.1 company to supply rails and to take immediate action.'

12.7 Thus, a harmonious consideration of the evidence on record would show that when the onus to adduce evidence had shifted to the defendants, the defendants had failed to adduce any evidence much less credible evidence by examining the brother of DW1, who was said to have signed the delivery challans and the invoices to say that no such supplies were ever received. Therefore, in the well considered view of this Court, the contention of the defendants that the plaintiff had failed to establish the supplies made by it under the bills and its entitlement to recover the amount due under the said bills with interest cannot be countenanced.

12.8 Before parting with the claim under this point, it is necessary to mention that the learned counsel for the appellants/defendants had alternately contended that the claim of interest at 36% per annum simple is excessive in nature. In support of the said contention, he had placed reliance on the decisions in (i) **Punjab And Sind Bank v. Allied Beverage Company Private Limited and others**^[8]; (ii) **Rampur Fertiliser Limited v. Vigyan Chemicals Industries**^[9] and **Kitply Industries Ltd., v. Hari Narain & Sons Pvt.Ltd.,**^[10]. In the decision in **Punjab And Sind Bank** (8 supra) the facts show that the Debt Recovery Tribunal granted a decree for recovery of a debt with interest *pendente lite* at the rate of 18% per annum and future interest with monthly rests. However, the High Court had reduced the rate of interest to 14% per annum simple, keeping in view the financial position of the debtor

company. The Hon'ble Supreme Court applying the principles formulated by the Constitution Bench in *Ravindra Case* [(2002) 1 SCC 367] and having regard to the factual aspects had confirmed the orders of the High Court. Therefore, a reading of the decision would show that the reduction of rate of interest as was done by the High Court was accepted having regard to the facts peculiar to the case. In the decision in **Kitply Industries** (10 supra) a claim of interest was for the first time made by the petitioner when it sent bills to the respondent and the only basis for the said claim of interest is that when it had sent the bills to the respondent, an implied agreement came into existence between the parties in regard to payment of interest and that therefore, the petitioner shall be entitled to claim interest at the rate of 21%.

Since it was held that the claim for interest cannot be treated as an admitted debt and as the respondent has raised a dispute of substantial nature in the petition for winding up and as it was not possible to hold that the respondent has failed to pay the debt due from it, the petition for winding up was dismissed by the High Court of Rajasthan. This decision, which was rendered having regard to the provisions of the company law, is not helpful to the defendants. Further, in the decision in **Rampur Fertiliser Limited** (9 supra), the facts of the case are as follows: - 'The suit was instituted in October 1991 for recovery of certain sum along with compound interest with monthly rests from 23.09.1992 till actual date of recovery; and, according to the plaintiff, hydrated lime was supplied to the defendant/appellant but the defendant did not pay the bills amounts and that consequently the aforesaid suit was filed for recovery of the amount with interest. During the pendency of the suit, the plaint was amended after the coming into force of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 which came into force from 23.09.1992. The said Act provided that if the buyer fails to make the payment on or before the agreed date or where there is no agreement before the appointed date, the supplier becomes entitled to interest at such rate which is five per cent points above the floor rate for comparable lending with monthly rest. Basing on the said amendment, the plaintiff/respondent claimed interest. The High Court had held that the increased rate of interest would be payable from 02.04.1993 as

the suit was filed in October 1991 and hence, the provisions of interest as provided under the said Act would not be applicable.’ In this background, the Supreme Court considered the issue in regard to the amount of interest that the respondent therein would be entitled to receive. While answering the issue having regard to the facts, it was held that award of interest by way of damages was not permissible except where money has been wrongfully withheld and there are equitable grounds therefor. In this decision, while referring to the following decision, it was further held as follows: - ‘**In *Clariant International Ltd., v. SEBI* [(2004) 8 SCC 524] it was held by this Court that the interest can be awarded in terms of an agreement or statutory provisions and it can also be awarded by reason of usage or trade having the force of law or on equitable considerations but the same cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory. It was further held in *Clariant International case*(supra) that in the absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. It was also held that in ascertaining the rate of interest the Courts of law can take judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject matter of statutory provisions as also the judge-made laws. In the said case reference was made to the decisions in *kaushmuma Begum v. New India Assurance Co.Ltd.*, [(2001) 2 SCC 9], *H.S.Ahammed Hussain v. Irfan Ahammed* [(2002) 6 SCC 52] and *United India Insurance Co.Ltd., v. Patricia Jean Mahajan* [(2002) 6 SCC 281] and it was observed that: *Clariant International case* (supra) para 36: Even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable.’ Therefore, the decision rendered having regard to the facts peculiar to the case and the special law applicable is not helpful to the defendants to advance their defence in this case on the aspect of the**

liability to pay interest and the rate of interest.

12.9 In the case of hand, the 1st defendant company is a public limited company and the interest was claimed by the plaintiff at the rate of 36% per annum on the sale value as per the terms and conditions of sale as set out in the bills and as per trade practice and custom. The principal amount due under the two bills was Rs.4,89,140/- and the same also appears in the audited balance sheet marked as exhibit A13, the carbon copies of delivery challans marked as exhibits A4 and A6 and exhibits A17 and A18, the carbon copies of invoices, which all contain the signature of 2nd defendant's brother. Before the suit was instituted a notice was given and a copy of notice was also sent by certificate of posting and there was no reply to the said notice. The seller of goods as per trade practice and custom is entitled to claim interest on the sale price in case of delayed payment or non payment till the date of recovery is not in dispute. Based on the terms and conditions of the bills, the plaintiff had claimed the interest. Section 34 of the Code deals with *pendente lite* interest and *post lite* interest. Pre suit interest depends upon the contract between the parties or some statutory provisions or mercantile usage. Interest *pendente lite* is awardable not as a matter of course but, after considering the facts and circumstances of a case. Where and insofar as a decree is for payment of money, the Court in its discretion order interest at such rate as the court deems reasonable to be paid on the principal amount from the date of the suit to the date of the decree. However, as per the provision in Section 34 of the Code, further interest i.e., interest *post lite* i.e., from the date of decree till date of recovery shall not exceed 6% per annum. However, as per the *proviso* to the said Section, where the liability in relation to the sum which arises out of a commercial transaction, the rate of such further interest may exceed 6% per annum, but shall not exceed the contractual rate of interest. Under Explanation II, a transaction is a commercial transaction for the purpose of this section if it is connected with the industry, trade or business of the party incurring the liability. In the case on hand, the credit supplies were received for the business of the defendants which had incurred the liability. Therefore, in the well considered view of this

Court, the plaintiff is entitled to interest at 36% per annum simple without any rests on the principal amount due till the date of payment or realization. Since the interest awarded is simple interest and not compound interest (with either monthly or half yearly or annual rests), it cannot be said that the interest awarded is excessive. Point is accordingly answered holding that the plaintiff is entitled to recover Rs.2,68,600/- and Rs.2,20,540/- towards cost of material supplied on credit respectively under bills Nos.38 and 48 dated 16.07.1998 and 03.08.1998 with interest at 36% per annum simple till the date of recovery. Under the facts and in law, the plaintiff is only entitled to interest on the principal sums due and payable under the bills but not on the entire amount including interest. However, the trial Court had awarded interest on the entire amount including interest. Viewed thus, we find that the trial Court erred in awarding *pendente lite* and further interest on the entire amount of suit claim which included interest due upto the date of the suit. We, therefore, answer the point holding that the plaintiff is entitled to a decree for a sum of Rs.9,71,041/- with interest on Rs.4,89,140/- @ 36% per annum simple from the date of suit (28.04.2001) till the date of payment or realization.

13. Point No.4 :

The contention of the defendants is that the suit is not maintainable as the 1st defendant company was under liquidation for some time and that the Official Liquidator is a necessary party for that reason. Exhibit B2, which is a copy of the order dated 13.04.2004 of this Court in Company Application No.288 of 2003 in C.P.No.61 of 1997 would show that in view of the orders passed in C.P.No.61 of 1997 dated 13.04.2004 the said application was dismissed. There is nothing on record to show that the Official Liquidator had taken over the assets of the company and was in-charge of the affairs of the 1st defendant company. It is not in dispute before this Court that the company petition was dismissed and this Court had directed the Official Liquidator in the company petition proceedings to handover the company files, books etcetera to the 1st defendant company represented by the 2nd defendant who is the managing director. In-fact DW1 had admitted that Official Liquidator

was appointed on 25.01.2000 and till then, he was in-charge of the 1st defendant company. DW1 had admitted that he had earlier deposed that his brother

K.V. Prasad was working as factory manager and that he worked so till 07.04.1999 and that thereafter the company was under lay off. The instant suit in respect of claims due under the agreement dated 21.11.1997 and the bills dated 16.07.1998 and 03.08.1998 was filed in the year 2001 and was decreed on 19.06.2006 i.e., after the company petition was dismissed. In the said circumstances, we are of the view that the contentions that the suit is not maintainable in view of the fact that the company was under liquidation for some time and that the Official Liquidator is a necessary party are untenable. The point is thus answered.

14. Point No.5:-

Insofar as the contention that the 2nd defendant is not personally liable, what is to be noted is that the 2nd defendant is the managing director of the 1st defendant company. However, it is contended that when the 1st defendant company is a juristic person and it has its own independent existence in the eye of law and when it has its own assets and liabilities, which are distinct and separate, the 2nd defendant cannot be made personally liable for any monies which are allegedly due from the 1st defendant company and that the 2nd defendant has no personal liability and hence, he cannot be mulcted with the liability to discharge the debts, which are due to the plaintiff from the 1st defendant company. In this regard, reliance was placed on a decision in **Tata Engineering and Locomotive Co., Ltd., and others cases** ^[11]. In this decision, several writ petitions have been placed before a Constitution Bench of the Supreme Court of India as the said petitions involved a common question of law in regard to the validity of the demand for sales tax which had been made against the respective petitioners by the Sales Tax Officers for different areas. Therefore, from the very question that was considered by the constitution Bench of the Supreme

Court, it appears that the facts of the case are totally different and the ratio in the decision is not helpful to the defendants. In the instant case, the 2nd defendant was admittedly dealing with all the affairs of the company and the evidence on record shows that he was signing the documents on behalf of the company and also on his own behalf. He had in-fact executed the agreement under exhibit A2 and also the registered mortgage deeds related to the former suit. The evidence on record also would show that some of the cheques, pay orders etcetera issued were credited to his personal account and that the cheque issued by him for Rs.10 Lakhs drawn on Canara Bank, Abids Branch had bounced and a criminal case under Section 138 of the NI Act was brought against him by the plaintiff and he was finally convicted in the said case. Further, under exhibit A2 agreement executed between the parties, the 1st defendant company is the first part. According to the terms of the agreement the term 'first part' shall mean and include all its directors individually, severally, personally and on behalf of the company. Therefore, the agreement between the parties contemplated personal liability. The 2nd defendant is a signatory to the said document. Accordingly, we hold that the 2nd defendant, who is admittedly the Managing Director of the 1st defendant company, is liable to discharge the debts due to the plaintiff in his personal capacity and as Managing Director of the 1st defendant company. The point is answered accordingly against the defendants.

15. Before taking up the next point, it is pertinent to note that though in the grounds of objection, it is urged that the suit is barred by law of limitation and that the suit transactions are hit by the provisions of the Hyderabad Money Lenders Act, these contentions were not advanced at the time of hearing and were also not stated in the synopsis of written submissions. As already noted, the amount of Rs.2,40,000/- was a part of the total amount of Rs.21 Lakhs advanced as per the terms of the agreement under exhibit A2 dated 21.11.1997. Part of the amount was covered by four registered mortgages and the same is the subject matter of the former suit. In exhibit A7 letter the 2nd defendant had acknowledged the liability and had promised to clear the

dues to the tune of Rs.21 lakhs along with interest thereon and had undertaken to make payment before 25.03.1999 and discharge the liability and had also expressed his eagerness to clear off the liability. Similarly, under exhibit A8 letter dated 14.11.2000 the 2nd defendant had acknowledged the liability in respect of the registered mortgage deeds and agreement dated 21.11.1997 and made a promise to make payments as stated in that letter. In the concluding line of this letter, he had stated that it is his last request for extension of time to make payment. The suit is filed in April, 2001. Therefore, the contention that the suit is barred by law of limitation cannot be countenanced. Insofar as the plea that the suit transaction is hit by Hyderabad Money Lenders Act, what is to be noted is that the suit is filed for recovery of the loan advanced as per the terms of the agreement and for recovery of the value of the supplies made on credit during the course of business transactions between the parties. Therefore, the suit transactions which relate to the business dealings between the parties cannot be termed as transactions in the course of money lending which the plaintiff is carrying on as a habitual money lender. Therefore, in the facts and circumstances of the case, the provisions of the said Act are not applicable to the transactions covered by the suit claim.

16. POINT No.6:

We have carefully gone through the decree and judgment of the trial court. For the reasons assigned in the judgment of the trial court and for the reasons now assigned by us in this judgment and the findings recorded under points 1 to 5 supra, we find no infirmity in the findings of the trial court calling for interference except insofar as the rate of further interest awarded on the first claim in a principal sum of Rs.2,40,000/- and interest on interest i.e., compound interest on the second claim. Accordingly, we hold that the decree and judgment of the trial court are sustainable, both under facts and in law subject to the modification in regard to future interest on the said first claim and interest on interest on the second claim. The point is accordingly answered.

16. POINT No.7:

In the result, the appeal is partly allowed without costs and the suit of the plaintiff is decreed with costs as indicated infra.

The suit is decreed in favour of the plaintiff for:

(a) a sum of Rs.2,40,000/- with interest at 24% per annum simple from 31.10.2000 till the date of the decree and with future interest on the said sum of Rs.2,40,000/- at 6% per annum from the date of the decree till the date of payment or realization; and, (b) a sum of Rs.9,71,041/- with interest on Rs.4,89,140/- @ 36% per annum simple from 28.04.2001 till the date of payment or realization recoverable from the defendants 1 and 2 jointly and severally.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

01st June, 2015

Vjl

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- [\[1\]](#) SCR 1964 (7) 831
[\[2\]](#) AIR 2007 SC 989
[\[3\]](#) 1993(2) L.W. Madras High court 587
[\[4\]](#) AIR 1967 SC 1058
[\[5\]](#) (2010) 4 SCC 491
[\[6\]](#) (2013) 10 SCC 758
[\[7\]](#) (2011) 4 SCC 240
[\[8\]](#) (2010) 10 SCC 640
[\[9\]](#) (2009) 12 SCC 324
[\[10\]](#) (1998) 91 CompCase.715 (Raj)

[\[11\]](#) (1964) 6 SCR 885