

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal No.1482 of 2010

JUDGMENT:

This is an appeal by the unsuccessful plaintiff under Section 100 of the Code of Civil Procedure, 1908 ('the Code' for short) assailing the decree and judgment dated 05.07.2010 of the learned V Additional District Judge, Vijayawada whereby the learned Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 08.09.2006 of the learned III Additional Junior Civil Judge, Vijayawada in OS.No.728 of 2004 filed for recovery of Rs.56,500/- being the amount of principal and interest due under a chit agreement dated 15.03.1998 executed in between the plaintiff and the 1st defendant with the 2nd defendant as guarantor as per the promissory note and guarantee agreement executed for Rs.36,250/- repayable with interest at 12% per annum from the date of the default and for costs.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff. Though notices are served on the respondents, none appeared. I have perused the material record.

3. The learned counsel for the appellant/plaintiff ('the plaintiff', for short) had contended that the following substantial questions of law are involved and, therefore, the appeal deserves admission and disposal on merits.

- a) Whether the first appellate court is justified in dismissing the appeal by confirming the trial court decree and judgment?**
- b) Whether the appellant can be treated as defaulter in the absence of any notice issued under Section 20 (1) A.P. Chit Fund Act?**
- c) Whether the appellant who is a non defaulter is entitled**

for the dividends?

d) Whether the proof of sending the demand draft for Rs.21,349/-, the admitted amount, by the respondent company to the appellant is sufficient to prove the receipt of the amount by the appellant, in the absence of proof of its encashment?

4. Now, this court has to examine as to whether or not any substantial questions of law are involved in this second appeal and whether the appeal deserves admission for disposal on merits or is liable to be dismissed at the stage of admission.

5. The case of the plaintiff, in brief, is this: - 'The 1st defendant is the chit fund company and the 2nd defendant is its Managing Director. The plaintiff has joined as a subscriber on 15.03.1998 in a chit of the value of Rs.50,000/- with monthly subscription of Rs.1,250/- for a period of 40 months. The plaintiff had paid 29 instalments amounting to a sum of Rs.36,250/- and the chit was closed in June, 2001. The plaintiff had approached the defendants to pay the amount paid by him but the repayment was postponed. Therefore, the plaintiff had got issued a notice and the same was returned with endorsement 'office was closed'. Hence, the plaintiff had issued another notice dated 10.03.2003 demanding repayment of the amount with interest. The defendants had admitted the liability to the extent of Rs.21,348.75ps and had expressed willingness to pay the same but the plaintiff having refused to receive the same brought the suit.'

6. The 1st defendant resisted the suit by filing a written statement. While denying the plaint averments it had *inter alia* contended as follows: - 'The plaintiff committed default in payment of instalments from the 30th installment onwards. Only an amount of Rs.21,348.75 ps was outstanding and due to the plaintiff after deducting the commission. The said amount is only payable to the plaintiff that too only after the completion of the chit period i.e., after June, 2001. The plaintiff had insisted upon the 1st defendant company for payment of 29 instalments amounts. As per the law, if a non prized

subscriber commits default, he would not be entitled to dividend either on past or future instalments and as such the demand of the plaintiff is illegal. The 1st defendant is always ready and willing to pay the amount of Rs.21,348.75 ps. Since the plaintiff had refused to receive the same inspite of the willingness to pay the same on the part of this defendant, the plaintiff is not entitled to claim interest even on the said amount. The plaintiff is entitled to receive that amount only after completion of the chit period and not before. A suitable reply was given *vide* reply notice dated 13.03.2003 to the notice issued by the plaintiff. The suit is not *bona fide*. The plaintiff is not entitled to the suit claim. The suit is liable to be dismissed.'

7. Taking into consideration the above pleadings, the following issues were framed by the trial Court.

- 1. Whether the plaintiff is entitled to claim interest as prayed for?**
- 2. Whether the plaintiff is entitled to recover the entire suit claim from the defendant?**
- 3. To what relief?**

8. At trial, on the side of the plaintiff, the plaintiff was examined as PW1 and exhibits A1 to A24 were marked. On the side of the defendants, DWs1 and 2 were examined and exhibits B1 to B6 were marked.

9. On merits, the trial Court had dismissed the suit of the plaintiff with costs. As already noted, the first appeal of the plaintiff was also dismissed. Therefore, the plaintiff is before this Court.

10. The learned counsel for the plaintiff would contend that the plaintiff cannot be treated as a defaulter in the absence of a notice under Section 20(1) of the A.P. Chit Funds Act and that when the plaintiff is not a defaulter, she is entitled to dividend and that though the 1st defendant had contended that the amount due in a sum of Rs.21,348.75 ps was paid by way of a demand draft, no evidence was adduced to show that the same was encashed by the plaintiff and that in any view of the matter, the plaintiff is entitled to receive the admitted amount.

11. The fact that the plaintiff is a member of a chit of the value of Rs.50,000/- and that the plaintiff is under an obligation to pay 40 instalments at the rate of Rs.1,250/- per month and that the plaintiff had only paid 29 instalments and did not pay subsequent instalments is not in dispute. According to the plaintiff after the closure of the chit fund company and the closure of the chit, the plaintiff had demanded the amount paid by her with interest but, the same was not paid. The 1st defendant, on the other hand, had contended that after the completion of the chit period, the amount due and paid by the plaintiff towards 29 instalments is only repayable and that the plaintiff being a defaulter from the 30th instalment onwards is not entitled to any dividend as per settled legal position and that the amount due was already paid by way of a demand draft and that, therefore, no amount is payable to the plaintiff. The plaintiff as PW1 had reiterated her stand. On the other hand, DW1 also reiterated the defence. DW1 is the branch manager of the 1st defendant chit fund company.

12. Coming first to the entitlement of the plaintiff to the amount claimed in the suit, admittedly from 30th instalment onwards the plaintiff is a defaulter. The legal position that a defaulter is not entitled to dividends is not in dispute. Further, the courts below have recorded concurrent findings of fact after appreciation of evidence that the plaintiff is not entitled to the entire suit claim. This court finds that the courts below have properly appreciated the oral and documentary evidence and recorded the said findings by giving valid and cogent reasons and that therefore, the said findings brook no interference. Be that as it may. Coming to the sum of Rs.21,348.75 ps, which the defendants admit as due and payable to the plaintiff, the evidence on record shows that the Branch Manager, who was examined as DW1, had stated that the defendants had obtained a bank draft in the name of the plaintiff for the said sum and the same was sent by registered post to the plaintiff. The plaintiff though stated that the same was not received had admitted the signature on the postal acknowledgement. Therefore, it is for the plaintiff to prove that the draft that was received is not encashed by either producing the draft in original or by producing a copy of her bank account.

When the onus of proof is shifted to the plaintiff, the plaintiff did not adduce any evidence. Therefore, in the absence of proof that the amount sent by way of demand draft was not received and encashed by the plaintiff, the Courts below had concurrently held that the plaintiff is not entitled to the said amount since already paid.

13. Viewed thus, this Court finds that the plaintiff had failed to establish her case and that none of the questions raised are questions of law let alone substantial questions of law. Considering the narrow scope of Section 100 of the Code, this Court is of the well considered view that no substantial question of law is involved and the appeal deserves to be dismissed at the admission stage.

14. Accordingly, the second appeal is dismissed at the stage of admission. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

13th August, 2015
Vjl