

HON'BLE SRI JUSTICE R.KANTHA RAO

A.S.No.765 OF 1998

JUDGMENT

This appeal is directed against the decree and judgment dated 29.03.1996 passed in O.S.No.121 of 1989 by the Principal Subordinate Judge, Tenali.

The defendant in O.S.No.121 of 1989 is the appellant. The respondent-plaintiff filed suit against the appellant for recovery of an amount of Rs.45,000/- based on a promissory note.

It is the case of the plaintiff that the defendant borrowed the said amount for the purpose of business and also for construction of house and executed the suit promissory note dated 23.03.1983 unconditionally undertaking to pay the same together with interest at the rate of 15% p.a. The defendant made part payment of Rs.500/- on 21.3.1986 and acknowledged the same on the reverse of the promissory note.

In the trial Court, the defendant filed written statement contending that he did not borrow any

amount from the plaintiff; he has no business; he is a small farmer within the meaning of A.P. Agricultural Indebtedness Relief Act, 1987 and he is entitled to be benefits of the Act 7/77 and also 45/87, according to which, the suit debt is liable to be discharged in its entirety. He also took the plea that the suit is barred by limitation.

The trial Court framed the following issues:

- (1) Whether the suit pronote is true, valid and binding on the defendant?**
- (2) Whether the defendant is not a small farmer entitled to the benefits of Act 45/87?**
- (3) Whether the plaintiff is a small farmer?**
- (4) To what relief?**

Even though the plea of limitation has been specifically taken in the written statement, there is no issue framed by the trial Court in relation to limitation.

The plaintiff examined PWs.1 and 2 and marked Exs.A1 and A2. Exs.X1 and X2 are also marked. Ex.A1 is the suit promissory note. Ex.A2 is part payment endorsement for Rs.500/- on 21.3.1986. Ex.X1 is the application of the defendant to one Viswanatha Co-operative Society, Tenali for the purpose of granting loan for construction of house. Ex.X2 is loan

sanctioning order. No oral or documentary evidence was adduced on behalf of the defendant.

After going through the material available on record, the trial Court *vide* judgment dated 29.03.1996 decreed the suit on merits for an amount of Rs.84,775/- with interest at the rate of 12 ½% p.a. from the date of the suit till the date of decree and thereafter at the rate of 6% p.a. from the date of decree till the date of realization on principal amount of Rs.45,000/-. Aggrieved thereby, the defendant preferred the present appeal.

Learned counsel appearing for the appellant contended that though the defendant-appellant filed written statement, he did not examine any witnesses on his behalf and therefore, the trial Court ought not to have decreed the suit on merits and the proper course for the trial Court was to dispose of the suit in one of the modes laid down in Order 17 Rule 2 CPC. It is further argued that the issue relating to applicability of Act 7 of 77 and 45 of 87 has been wrongly framed and that the contention raised by the

appellant that the suit is barred by limitation is not at all considered by the trial Court.

In *Karri Appalamma (since died) and others v . Bendalam Seetarama Murthy*^[1], learned Single Judge of this Court took the view that under Section 13 of A.P.Agricultural Indebtedness (Relief) Act, 1977, the burden is on the creditor to prove that debtor is not entitled to protection of the Act. But, in this case, the trial Court framed the issue by placing burden on the defendant and recorded a finding that as the defendant did not adduce any evidence in respect of the said issue, he is not entitled to the relief under the Act. Therefore, the said finding is unsustainable in law.

The important question, which needs to be determined in the present case is as to whether the trial Court can pass a decree against the defendant on merits even though he did not adduce any evidence on his behalf. This point has been dealt with by the Apex Court in *Prakash Chander Manchanda and another v. Smt Janki Manchanda*^[2], wherein the following view was taken.

“If on a date fixed, one of the parties to the suit remain absent and for that party no evidence has been examined up to that date the court has no option but to proceed to dispose of the matter in accordance with O.17, R.2 in any one of the modes prescribed under O.9 of the Civil P.C. After the Amendment by Act 104 of 1976 to O.17, Rr.2 and 3 in cases where a party is absent only course is as mentioned in O.17, R.3 (b) to proceed under R.2. Therefore, in absence of the defendant, the Court had no option but proceed under R.2. Similarly the language of R.2 as now, stands also clearly lays down that if any one of the parties fails to appear the Court has to proceed to dispose of the suit in one of the modes directed under O.9. The explanation to R.2 gives a discretion to the Court to proceed under R3 even if a party is absent but that discretion is limited only in cases where a party which is absent has led some evidence or has examined substantial part of their evidence. Also, in such a case, the Court cannot proceed to dispose of the suit on merits and after it proceeds to dispose of the suit in any one of the modes provided under O.9, in the present case to pass *ex parte* decree, the defendant can subsequently file an application under O.9, R.13 for setting aside *ex parte* decree.”

Therefore, in view of the language of Order 17 Rules 2 and 3 CPC and also the ratio laid down by the Apex Court in *Prakash Chander Manchanda and another v. Smt Janki Manchanda*, the only option in the facts and circumstances of the present case left to the trial

Court is to pass an *ex parte* decree but not to dispose of the suit on merits. Further, the trial Court did not frame any issue of limitation and render any decision thereon. Another important factor which requires to be noticed is that the issue relating to the benefit available to the defendant under the provisions of Act 7 of 77 and 45 of 87 has been wrongly framed which consequently led the trial Court to render a wrong decision.

For all the afore going reasons, the decree and judgment dated 29.03.1996 passed in O.S.No.121 of 1989 by the Principal Subordinate Judge, Tenali, is set aside. The matter is remitted to the trial Court for disposal in accordance with law after framing proper issues and affording opportunity to the parties to lead evidence.

Accordingly, the appeal is allowed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE R.KANTHA RAO

24th November, 2015
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[\[1\]](#) 2001 (2) An.W.R.453 (AP)
[\[2\]](#) AIR 1987 Supreme Court 42