

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.48 OF 1999

JUDGMENT:

Assailing the judgment and decree, dated 23-03-1998, in O.S. No.551 of 1989 on the file of IV Senior Civil Judge, City Civil Court, Hyderabad, dismissing the claim of the plaintiff for a sum of Rs.2,34,000/- with future interest at 18% per annum, the plaintiff preferred the present appeal under Section 96 of the Code of Civil Procedure, 1908.

2. The appellant herein is the plaintiff, while respondents are the defendants in the suit before the trial Court.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in the suit.

4. So far as the basic facts are concerned, for the purpose of disposal of the present appeal, the defendants were tenants of the plaintiff having entered into an agreement on 24-02-1981 with a duration of three years, which got determined on 23-02-1984. The defendants continued even after the expiry of period of tenancy and on 29-12-1987, there was an accident in the plaint schedule premises. The plaintiff stating that he has got issued notices to the defendants marked as Exs.A-1 and A-2, got appointed a Surveyor and assessed the damage to the property leased out and thereby sought the amount of Rs.2,34,000/-

towards damage caused to the property. That has been the main case of the plaintiff.

5. The definite stand of the defendants has been, that there was no negligence on their part and they never violated the terms and conditions of the rental agreement and they, in fact, referred to a suit filed for their eviction by the plaintiff. Finally, they state that the damage was to the tune of Rs.2,000/- to Rs.3,000/- only and they got repaired the damage to the property. It is their specific stand that no surveyor was appointed, nor the surveyor inspected the property at any time and, therefore, they sought to dismiss the claim.

6. The Court below, on the basis of the pleadings, settled the following three issues for trial.

- “ i) Whether the plaintiff entitled to recover the suit amount as claimed?
- ii) Whether the report of the Surveyor given any right to the plaintiff to claim the amount?
- iii) To what relief? ”

7. The plaintiff, in an attempt to substantiate his claim, examined himself as PW.1 and one Shamsunder Totala as PW.2 and marked Exs.A-1 to A-14. On behalf of the defendants, one Mr. Rajan Nandan was examined as DW.1 and marked Exs.B-1 and B-2, which are certified copies of first information report and final report filed by the police having conducted investigation into the fire accident.

8. The Court below, on appraisal of evidence on record, recorded the findings that:

- i. the plaintiff failed to submit any proof that Exs.A-1 and A-2 were served on the defendants;
- ii. the Surveyor's report marked as Ex.A-3 does not indicate that any previous notice was issued to the defendants intimating his conducting survey to assess the damages;
- iii. the non-examination of Surveyor - Mr. I.V.S.R. Chary, would stand adverse to the case of the plaintiff for the reason that the contents of Ex.A-3 stand unsubstantiated;
- iv. The barrels, in which inflammable material was kept, were lying outside the Delivery Section of the defendants, and the final report does not indicate as to whom the barrels belong, and that the incident was purely accidental and the contents of Ex.A-3 against clause-2 shows that there was a minor damage to the building, but not as claimed by the plaintiff;

and, thus, scanning the evidence of DW.1, even arrived at the conclusion that there was no evidence worth-the-name to prove the damage, basing on which the claim was laid, and thereby dismissed the suit.

9. It is the aforesaid judgment which is under challenge in the instant appeal by the plaintiff.

10. Heard Sri G. Krishna Murthy, learned counsel for the appellant - plaintiff, and Sri O. Manohar Reddy, learned counsel for respondent Nos.1 and 2 - defendants.

11. The learned counsel for the appellant would submit that the Court below went wrong in holding that the plaintiff failed to prove the claim and, in fact, Ex.A-2 would indicate that the plaintiff intended to appoint a Surveyor and required the defendants not to carry out any repairs till survey was done, and that itself is sufficient to hold that there was intimation about the survey to be conducted by the Surveyor to be appointed by the plaintiff.

i) It is his submission that the very fact that a Minister from Jammu and Kashmir came to the premises and inspected, would prove the damage occasioned to the building under the possession of the defendants.

ii) It is also his submission that the trial Court was not right in dismissing the suit claim when some of the answers given by DW.1 in his cross-examination expressing his ignorance is sufficient enough to prove the claim laid by the plaintiff.

12. Per contra, the learned counsel for respondents 1 and 2 would point out that omission to intimate the appointment of a Surveyor in advance and the Surveyor not issuing any advance notice at all to the defendants about his intention to conduct survey and in the absence of any material to show that Surveyor did inspect the premises and conduct the survey, and the very fact that the Surveyor himself did not step into box to prove the report said to have prepared by him, are all sufficient enough to discard the claim of the plaintiff and the trial Court rightly did

so, and, thus, the judgment and decree under challenge do not warrant any interference.

13. Perused the pleadings, judgment and the evidence on record in the light of the arguments advanced by the learned counsel for either side.

14. Examination of Exs.A-1 and A-2 would show that Ex.A-1 was the telegraphic notice, which, of course, says that Surveyor was appointed to assess the loss, asking the defendants not to dump any goods till repairs are over at their cost, and to the same effect was the detailed notice, dated 06-01-1988, got issued by the plaintiff to Sri Roshanlalji Bhalla, Managing Director, NATCO Roadways (P) Limited, one of the defendants. But, for the reasons best known to the plaintiff, there is no indication as to on what date the Surveyor would conduct the survey so as to give an opportunity to the personnel of the defendants to be present. Further, even the **report** marked as Ex.A-3 would not disclose that the Surveyor, Mr. I.V.S.R. Chary, did give any advance notice intimating the defendants that on a specified day he was visiting the premises and conducting the survey. It is, no doubt, true that since the premises was in possession of the defendants, some of its Directors would have been present. Certainly, that would not obviate the duty cast on the Surveyor to intimate his visit and the intention to conduct survey to assess the damage or damages to the building, which the surveyor did not do. Certainly, these circumstances would give rise to an inference adverse to the stand of the plaintiff. This apart, the very non-examination of the Surveyor is significantly important to draw an

inescapable inference adverse to the case of the plaintiff, holding that the contents of Ex.A-3, surveyor's report, without examination of the surveyor, stood unsubstantiated. When the plaintiff intended to prove the claim on the basis of Ex.A-3 prepared by a surveyor appointed by him, it was obligatory for him to examine the surveyor and afford an opportunity to the defendants from whom he seeks compensation for the damage to the property, to question him on what basis the assessment was done.

15. In that view of the matter, the findings recorded by the trial Court, as mentioned in the above, certainly, cannot be faulted with. In fact, the findings are based on appreciation of evidence and probabilities derived by the trial Court from proved facts. Therefore, the judgment and decree passed by the Court below do not suffer from any legal infirmity warranting interference. Hence, the appeal fails, and consequently, the same is dismissed. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 29, 2016.

Mgr