

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.219 OF 1999

JUDGMENT:

The present appeal is preferred by the 2nd defendant in O.S. No.833 of 1993 on the file of the II Senior Civil Judge, City Civil Court, Hyderabad (for short, 'the court below'), aggrieved over the judgment and decree dated 07.06.1999, whereby and whereunder, the suit filed by M/s. Mamatha Chit Fund (respondent No.1 herein) was decreed for a sum of Rs.1,13,670/- with future interest at the rate of 12% per annum on Rs.1,07,000/- till realization.

2. The appellant herein is defendant No.2, while respondent No.1 herein, who is M/s. Mamatha Chit Fund, a partnership firm, Hyderabad, is the plaintiff and respondent No.2 herein, who is M/s. J.J.Enterprises, Hyderabad, is defendant No.1, in the original suit.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the court below in the original suit.

4. Defendant No.1 subscribed chit for the value of Rs.2,50,000/- at Rs.10,000/- per month for 25 months and entered into chit agreement dated 04.07.1999. In the auction held on 06.09.1992, he became the prized subscriber and received the prize amount of

Rs.1,87,975/- after foregoing an amount of Rs.62,000/-. Defendant No.2, who is the present appellant, stood as guarantor stating that defendant No.1 paid an amount of Rs.1,43,000/-, but committed default in paying the monthly subscriptions from the month of February, 1993, and did not oblige to pay the same, despite receipt of legal notice got issued by the plaintiff and, therefore, the suit was laid.

5. Defendant No.1, since did not enter appearance, set *ex parte*.

6. Defendant No.2 raised various pleas including the plea that the plaintiff had no authority to sign and verify the plaint including the allegations. He has denied execution of promissory note as a guarantor for defendant No.1 in favour of the plaintiff and even taken a plea that the suit is not maintainable and bad for mis-joinder of the parties in the sense that he was unnecessarily joined as a defendant. However, at one stage, he admits that the contents were not explained and he was made to sign in the documents with blanks and, therefore, sought to dismiss the suit against him.

7. The court below has settled as many as six issues for trial.

8. During trial, one K.Nageswara Rao, one of the partners of the plaintiff's firm was examined as P.W.1 and marked Exs.A.1 to A.15. No evidence was let in on behalf of defendant No.2.

9. The court below taken up issue Nos.1 to 5 for common discussion and believing the evidence of P.W.1 and the contents of Ex.A.1, which is the certified copy of Form No.A issued under Section 15 of the Indian Partnership Act, 1932, showing that the plaintiff's firm is a registered partnership firm under the name and style of 'Mamatha Chit Funds', Ex.A.2-Form No.I application for issue of certificate of registration under Section 3 of the Andhra Pradesh Chit Fund Act, 1982, and having found that the plaintiff's firm had authority to run the chit fund business, basing on Exs.A.3, A.4 and A.5, found that defendant No.2 also signed as a guarantor in demand promissory note-Ex.A.7 and, basing on the probabilities, even held that the plaintiff proved the suit claim and, accordingly, granted decree as stated in the above.

10. In the present appeal, the appellant-defendant No.2 would agitate that the plaintiff was unsuccessful in proving that he (defendant No.2) stood as guarantor and certain admissions made by P.W.1 were not properly appreciated and the very fact that the guarantee agreement was not filed which constitutes basic document to make a claim against him is sufficient to set aside the decree and, thereby, sought to allow the appeal.

11. Heard Sri B.Narayana Reddy, learned counsel for the appellant-defendant No.2, and Sri S.Ganesh Rao, learned counsel for respondent No.1-plaintiff. The appeal against respondent No.2-defendant No.1 was dismissed for default on 23.01.2013.

12. Now the question is, even in the absence of agreement of guarantee, whether any liability can be fastened on defendant No.2 treating him as a guarantor?

13. It is no doubt true, that the original chit agreement is not filed, but photostat copy was filed. Even excluding the chit agreement, still, the promissory note contains the name of defendant No.2 as a signatory along with concerned authorized person of defendant No.1's firm. The signature on promissory note is not disputed by defendant No.2. This apart, even the notices got issued by the plaintiff would show that they were not only addressed to defendant No.1 but also to defendant No.2. Mere fact that he was not described as 'guarantor' in the notice, is no ground to disbelieve that he did not stand as a guarantor to defendant No.1 for prompt repayment of future instalments. Therefore, the findings recorded by the Court below and the conclusion arrived at holding that defendant No.2 was a guarantor and liable to pay the suit amount does not suffer from any legal infirmity warranting interference. Therefore, there is no merit in the present appeal.

14. Accordingly, the instant appeal is dismissed confirming the judgment and decree dated 07.06.1999 under challenge. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous petitions, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

23rd August, 2016

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