HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CCCA No.89 of 2005 and 174 of 2007

COMMON JUDGMENT:

CCCA No.89 of 2005:

The 1st defendant Bhagyanagar Co-operative Urban Bank Limited (for short, 'the bank') among the three defendants including the 2nd defendant the then Manager M.Ramachander of the Bank and the 3rd defendant one Gopichand, in the suit filed by the plaintiff Devender Verma, for recovery of damages of an amount of Rs.15,00,000/- (Rupees fifteen lakhs only) in O.S.No.310 of 2002 on the file of the XIV Additional Chief Judge, City Civil Court, Hyderabad, from the contest including on the maintainability of the suit and jurisdiction barred without notice under the Cooperative Societies Act, 1964(for short, 'the Act') etc., and other aspects, since decreed for an amount of Rs.1,00,000/-(one lakh rupees only) with interest at 6% p.a. from the date of suit till realization, with proportionate costs vide judgment dated 06.12.2014 maintained the appeal C.C.C.A.No.89 of 2005, with contentions in the grounds of appeal that the trial Court went wrong in fastening the liability of damages from the transaction took place before the cancellation of certificate of the bank on 18.07.2000 whereas, the appellant was appointed as liquidator on 10.10.2000, that even granting of one lakh as damages with interest at 6% p.a. from the date of suit i.e. 26.09.2002 is unsustainable and bad in law besides contrary to facts and evidence on record, that the lower Court erred in fixing said liability for the transaction said to have taken place between the plaintiff and defendants 2 and 3 and it was the Managing Director who is responsible for the transaction with cancellation certificate and the Managing Director and Board of Directors of the Bank seized as the functionaries of the bank from the liquidator appointed and any liability seized under the liquidation but for against the then Managing Director or Branch Manager apart from the 3rd defendant said to have obtained loan by using documents of plaintiff but in any event not against the liquidator who is the officer appointed by the Registrar, Cooperative Societies to manage the affairs of the bank and there is a bar under Section 121(2) of the Act,1964 which reads as '*while a society is wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof any matter touching the affairs of the society except by leave of the Registrar and subject to such terms and conditions as he may impose."* But no leave of the Registrar was obtained to sustain the suit, that the plaintiff mainly alleges against one G.Satyanarayana Mudhiraj @ Satyam who styling himself as devotee of Sai Baba came nearer to the family members of the plaintiff and committed theft of the documents in July, 1997, however, did not choose to report to police nor taken immediate steps thereafter, till filing C.C. No.1541 of 2010 on the file of the XI Metropolitan Magistrate, Secunderabad, that the trial Court failed to see that the claim of the plaintiff relating to loan already moved the Co-operative Tribunal on rejection of his objection under Rule 52(21)(a) of the A.P. Co-operative Societies Rules,1964, in CTA No. 33 of 2003 and when the criminal case or co-operative appeal which is pending, the suit for damages won't lie, that the trial Court went wrong in fixing vicarious liability against the 1st defendant along with other defendants i.e. D.2 and D.3, that the liquidator (D.1) appointed to the bank never acted as a principal to the D.2 nor successor in office of D.1 but for only to manage the affairs of the bank after cancellation of the certificate, thereby question of vicarious liability does not arise and there is no compliance of the statutory requirement of the notice under Section

126 of the Act 1964 that failed to be considered by the trial Court apart from suit is barred by law and the application to condone the delay after the suit filed is unsustainable including under Section 14 of the Limitation Act and suit is liable to be dismissed therefrom and instead the trial Court excluded the time from 30.09.2001 to 26.09.2002 of the time taken in WP No.18809 of 2001 as bona fide prosecution in another form without any basis and there is no even any basis to the claim of damages much less to the alleged lowering of image or the plaintiff could not perform the marriage of his daughter etc., and trial Court erred in coming to the conclusion that the D.2 and D.3 committed fraud in creating documents and mortgaging the property for which the forum to decide is elsewhere, hence to set aside the judgment and decree of the trial Court passed against all the defendants by allowing the appeal.

CCCA No.174 of 2007

2. On the other hand, the plaintiff of the suit supra, preferred the appeal impugning the quantum of Rs.1,00,000/-(Rupees one lakh only) awarded by the trial Court with interest at 6% p.a. with the contentions that the trial Court should have decreed the suit as prayed for the tortuous liability against the tort feasors i.e. D.1 to D.3 and for defaming also, that the bank fraudulently brought into an auction of the plaintiff's immovable property which is proved beyond any doubt before the trial Court and hence the damages may be granted as claimed for by allowing the appeal.

3. The learned counsel for the both the appeals as respondents respectively of one against the other reiterated their respective claims and contentions in support of the respective grounds of appeal.

4. Heard and perused the material on record.

5.As both the appeals are outcome of same judgment and decree, both the appeals are taken up together for deciding by common judgment.

6. Now the common points for consideration in both the appeals are :-

1. Whether the trial Court's decree and judgment of the suit claim, granting one lakh rupees out of 15 lakhs as claimed towards damages, is unsustainable and the suit claim is barred by law either under Limitation Act or under Section 121 and 126 of the Act, and if so, the trial Court's decree and judgment is liable to be set aside by allowing C.C.C.A.No.89 of 2005 as prayed for, if not, the suit claim is sustainable and survives with cause of action to the decree of the trial Court and the quantum of one lakh awarded by the trial Court as damages requires enhancement either as prayed for of 15 lakhs or otherwise anything beyond one lakh as claimed in C.C.C.A.No.174 of 2007, if that is so, with what amount of enhancement?

2. To what result?

Points 1 and 2:

7. Before deciding the same, it is necessary to mention the factual matrix of the lis which is subject matter O.S.No.310 of 2002 of the trial Court decree and judgment dated 06.12.2004 in the suit for damages of 15 lakhs of plaintiff against the defendants. As per the plaintiff, he is a retired government employee. The D.3 committed theft of the title deeds of plaintiff, colluding with the then Managing Director (D.2)and the bank(D.1) during the year 1997 and took loan of 10 lakhs, fraudulently depositing title deeds of the plaintiff with the D.1-bank and signed all the blank forms pertaining the bank. The plaintiff did not sign any of the application or deed of guarantee or deed of deposit of title deeds much less as co-obligant and 3rd defendant cannot repay the loan for which the 1st defendant bank filed arbitration proceedings which is covered by

ARC No.126/2000/J1, dated 23.01.2001 against D.3 for Rs.16,79,138.50/- and pursuant to which and from exparte decree a notice under form Nos. 9 and 8 for sale of the property to be served upon the Decree Holder and defaulter under Rule 42(ii) (e) and 52(1) of the Act rules 1694 drawn at the house of the plaintiff and affixed to the house of the plaintiff as notice of public auction of plaintiff's property and said notice also distributed in the locality mentioning the property will be auctioned on 30.09.2001 from which the plaintiff filed Writ Petition No.18809 of 2001 and obtained stay of the proposed auction and further the said WP was dismissed with a direction to exhaust the remedies open to the plaintiff under law, that the plaintiff also filed a criminal complaint vide C.C.No.154 of 2001 on the file of the XI Metropolitan Magistrate, Secunderabad, against the D.2 and D.3 and one Satyanarayana Mudiraj, who conspired together and committed theft of the title deeds etc., documents of the plaintiff and obtained loan of Rs.10 lakhs. The plaintiff came to know of this only on 20.11.2001 to count the limitation therefrom and from the documents stolen by Satyanarayana Mudiraj from the plaintiff's house under the guise of swamiji, and mortgaged the house property of the plaintiff with D.2 and D.3 for 10 lakhs and withdrew the amount sanctioned as loan. The plaintiff was put to mental agony and defame in the society so also his family members sister, wife and two children and he could not even perform the marriage of his daughter by taking loan by mortgaging the property because public auction notices affixed for sale of the house property of the plaintiff and the plaintiff sent letter to the Registrar of Co-operative Societies under Section 126 of the Act on 03.07.2002 that was received and acknowledged on 06.07.2002 and waited for 60 days and thereafter filed the suit for the suit claim includes Rs.7 lakhs for mental torture and Rs.3lakhs for prevention to deal with his own property, Rs.4,60,000/- for loss of reputation and Rs.40,000/- for legal expenses in seeking to decree.

8. The written statement filed by the 1st defendant bank, while D.2 and D.3 remained exparte, is with the contentions that the D.3 availed an overdraft of Rs.10lakhs with interest at 22%p.a. and the plaintiff appears to have filed criminal cases against D.3 and Satyanarayana Mudiraj and also filed W.P.No.18809 of 2001 that was, on contest, ended in dismissal by giving opportunity to file appeal before the Co-operative tribunal and plaintiff came with inconsistent version of how Sathyanarayana Mudiraj committed theft of title deeds of plaintiff's property including the original release deed etc., alleged as stolen in 1997, if true, why not taken any steps in this regard without even lodged any police report and plaintiff filed a petition u/sec. 52(21)(a) of the APCS Rules 1964, only on 07.09.2001 that was rejected against the which before the Co-operative tribunal filed CTA No.33 of 2003 and the same is pending. All the branches of D.1 bank were wound up at the instance of RBI and the liquidation proceedings were commenced by cancelling the certificate of the D.1 bank on 18.07.2000 and the liquidator assumed charge on 10.10.2000 and the plaintiff should have waited the adjudication of the Co-operative Appeal and criminal complaint before filing the suit which is thereby pre-mature to sustain. It is also the contest that the plaintiff has to establish the alleged fraud in conspiracy with D.3 and Sathyanarayana Mudiraj with the D.2 and there is no notices given under the Act before filing of the suit and there is no permission of Registrar of Societies for institution of suit and the cause of action arose in January or May 1997 of the alleged theft if at all and the suit filed on 22.09.2002 is barred by time and there is no leave given in WP by

the High Court to file suit for damages and plaintiff has no cause of action otherwise and hence to dismiss the suit.

9. It is from the said pleadings, the trial Court framed as many as 10 issues viz; *whether the 3rd defendant and Mudiraj stolen the title deeds of plaintiff, whether the 3rd defendant and Mudiraj have stolen the title deeds of the plaintiff, whether there is collusion between the 2nd and 3rd defendants and Mudiraj in sanctioning and availing loan on the security of the property of the plaintiff, whether the 1st defendant is vicariously liable for the acts of the 2nd defendant, whether the plaintiff suffered mental torture, was defamed, suffered damages as he is unable to deal with his own property and incurred legal expenses as claimed in the suit, whether the plaintiff is entitled to different claims and if so, to what amount under each head, who is liable to pay the amount, if any, to the plaintiff, whether the suit is bad for want of notice or permission from the Registrar of Co-operative Societies and whether the suit is barred by limitation and to what relief.*

10. The findings of the trial Court in the said issues in nut shell is that as per the plaintif-P.W.1 said Sathyanarayana Mudiraj acting as if Swamiji or a God man, gained confidence and stayed in his house and committed theft of his title deeds. No doubt, for which the plaintiff has not given any report to police and what he claimed of he came to know of the title deeds stolen when the property adverted for sale by the D.1 bank from which he filed criminal case against Sathyanarayana Mudiraj and so far as collusion between the D.2 and D.3 and Sathyanrayana Mudiraj concerned, held that from Exs.A.1 to A.6 among Exs.A.1 to A.20 viz; loan application, letter authority, debit voucher and letter of authority, delivery letter and demand promissory note of which the D.3 applied for loan

under Ex.A.1 application by mentioning the plaintiff as co-obligant offered his property as security being the owner and the D.2 Manager of the D.1 bank sanctioned the loan even though the plaintiff has not signed Ex.A.1 application and in all the documents mentioned Exs.A.1 to A.6. Apart from it most of the columns of Exs.A.1 to A.6 are kept blank. The letter of authority under Section 37 of the Act vide Ex.A.2 was even not signed by anybody, so also Ex.A.3 debit voucher and another alleged letter of authority the Ex.A.4 and A.5 delivery letter and except D.3 signed on it. The Ex. A.5 delivery letter also blank and Ex.A.6 pronote also blank except D.3 signed four times thereof. Which all show the collusion between the D.2 and D.3 with Sathyanarayana Mudiraj in sanction of the loan by D.2 to D.3. Needless to say the D.2 is, no other than the manager employed by the bank and the loan granted to the D.3 is on the basis of title deeds of plaintiff. From which the Agent's action was with implied authority that binds the principal-D.1 bank and even the acts of Agent are in excess of his authority and when there is a fraud committed by the agent while acting within the scope of the authority, the principal cannot avoid liability and even the principal is liable for misappropriation of the valuables or amounts for the acts of Agent vicariously. Once the plaintiff therefrom claimed suffered mental torture and defamed in the society by the proposed auction of the house property in saying he could not raise funds by mortgage of the house to perform marriage of his daughter from the earlier mortgage, suffice but also mental torture and defamation meted out by the plaintiff and though the plaintiff claimed 50lakhs under several heads for actual loss or defamation from which there is no any proof but for on conjectures and thereby holding award of one lakh is just as damages under all the heads out of the claim in saying the D.2 and 3 in creating mortgage and availed loan by deposit of title deeds of plaintiff without even the plaintiff borrowed as co-obligant for the benefit of D.3 and for the acts of D.2, D.1 is liable and in further saying so far as the notice under Section 126 of the Act concerned, to file suit after expiry of 60 days, after issuing notice but the section does not contemplate any permission from Registrar and said notice under Ex.A.14 was served on the Registrar on 03.07.2002 covered by Ex.A.15 postal acknowledgment and the suit filed more than two months thereafter on 26.09.2002 is a sufficient compliance and even under Article 75 of the Limitation Act, suit for damages or compensation for libel shall be filed within one year after the libel is published. In the present case the suit is filed within one year on 20.09.2002 after publishing proposed public notice, hence no way barred by time apart from u/sec.15(2) of the Limitation Act, when a statutory notice has to be given before filing the suit, the period of notice should be excluded in computing the limitation. Hence, the plaintiff complied the same by filing the suit after waiting two months from issuing notice and the said two months time is also to be excluded in continuing limitation and any how thereby suit is within time, apart from I.A.No.8 of 2004 to condone the delay of 14 days from 13.09.2001 to 26.09.2002 to file the suit u/sec. 14 of the Limitation Act as a *bona fide* prosecution by litigating in the High Court, that is for stay of proposed sale and not for the relief of the damages, hence the trial Court held that the suit is within time and decreed the suit for one lakh with interest at 6% p.a. from the date of suit till realization with joint and several liability against defendants 1 to 3.

11. No doubt from the evidence on record or from the judgment supra, the so called Sathyanarayana Mudiraj, allegedly committed theft of the documents of the plaintiff pretending as

swamiji while staying in the house of plaintiff and in its handing over to 3rd defendant if any, by said Sathyanarayana Mudiraj, that is the main case of plaintiff to show of he is a necessary party and if not at least a proper party to the suit. The alleged theft was in the year 1997 by Sathyanrayana Mudiraj and till 2001 of the criminal case of the plaintiff as complainant against said Sathyanrayana Mudiraj and 3rd defendant if any, there is total silence from the plaintiff for four years nearly. No doubt it is the plaintiff's version saying he came to know only from the annulment of public auction of the property when the plaintiff was informed by the 1st defendant-bank for the alleged loan availed by 3rd defendant on sanctioned by 2nd defendant by mortgaged the property of the plaintiff as if co-obligant. Same no doubt not applying to believe. However, the fact remains from the very loan forms among the Exs.A.1 to A.20 particularly of Exs.A.1 to 6 referred supra, there is nothing to say even the loan sanctioned to 3rd defendant by 2nd defendant-Manager of the 1st defendant-bank, is on mortgage of the title deeds of the property of the plaintiff. Even the plaintiff not signatory to any of the documents which is mandatory to obtain, as to intention to create deposit of title deed for equitable mortgage is by the person holding title and not by a person in whose custody the documents otherwise came and pursuant to which and for no one can convey a better title than what he has, to bind the plaintiff for the sanction of the loan to 3rd defendant on the property of the plaintiff by alleged mortgaging, for nothing showing plaintiff mortgaged, as not suffice from mere showing of the title deeds of plaintiff with bank, and when it is a clear case of collusion between the defendants 2 and 3 in creating the loan without even signatures of plaintiff as if to say the plaintiff deposited his title deeds for the loan, availed by the 3rd defendant and but for the collusion and fraud played by the 2nd defendant with the authority as Manager of the 1st defendant-bank in question sanctioning such loan does not arise. No doubt the claim is allegedly availed the loan by the plaintiff over the property on the alleged mortgage of deposit of title deeds. It is in fact, not be all and end all, for the property brought to sale by wide publication as if the plaintiff mortgaged as co-obligant to the loan of 3rd defendant is in fact not true, as can be seen from the record, as all the columns are mostly in blank without even proper filling with any consensus ad idem and as party to the written contract, much less tacitly to bind the plaintiff. Thus same is nothing but disreputing the plaintiff in the eye of public as if his property is bringing to auction for the loan as if he is a party guarantor or co-obligant that is suffice to say civil suit for damages for disreputing the plaintiff survives, for which when trial Court within its discretion came to the reasoned conclusion with all its prudence and experience of men and matters besides having full grip of the factual matrix being fresh in mind of the facts from the opportunity of recording evidence, for nothing that could be shown of what the one lakh rupees awarded is either excess or utterly low to interfere on the quantum. Apart from it, once there is a statutory notice given and that is served and after with waiting for two months period, the suit is validly filed, and if at all, apart from said compliance of Section 126, leave about the combined reading of Section 126 r/w 121 of the Act, implied or deemed sanction that could be by the Registrar, for having received the notice, could not have kept quiet. Apart from it, it is rightly observed by the trial Court of the compliance of Sec.121 of the Act, not required from compliance of Sec.126. Thus, there is nothing to say the suit claim is barred by any law, or the suit is not validly filed or the quantum of compensation awarded is how high to reduce even for the 1st defendant to maintain the appeal in CCCA No.89/2005. Thus, there is nothing to interfere against the reasoned judgment of the trial Court supported by justified and sound conclusions even on the period of limitation to compute saying from the cause of action commenced and proved from the evidence of P.W.1 on his came to know only in maintaining the suit for damages, that too, from wide publicity in bringing the property to sale to disrepute there from within one year since consequential to it and within the limitation period. Accordingly both the point No.1 for consideration is answered holding the suit as filed is sustainable so also the decree of the trial Court is just and there is nothing to sit against in the appeal filed in CCCA No.89 of 2005 and by further holding the amount awarded is just and no way requires interference much less to enhance in equally dismissing the appeal CCCA.No.174 of 2007 by upholding the trial Court's decree and judgment in all respects.

Point No.2:

12. In the result both the appeals (CCCA Nos.89 of 2005 and 174 of 2007) are dismissed confirming the trial Court's decree and judgment in O.S.No.310 of 2002 on the file of the XIV Additional Chief Judge, City Civil Court, Hyderabad. There is no order as to costs. Consequently, miscellaneous petitions, pending in these two appeals, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:23.03.2016

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