

The Hon'ble Sri Justice V.Ramasubramanian

Second Appeal No.607 of 2016

Date: 09.12.2016

Judgment:

This Second Appeal arises out of concurrent Judgment and Decrees of two Courts, decreeing a suit for recovery of money filed by the State Bank of India.

Heard Mrs.A.Padma, learned Counsel for the appellants, and Mr.B.S.prasad, learned Standing Counsel for the respondent- State Bank of India.

The suit *viz*, OS.No.281 of 1995 was instituted by the Bank for recovery of a sum of Rs.69,964/-. The claim made by the Bank was on the basis that a wrong credit was given in the Savings Bank Account of the first appellant herein. The trial Court found, upon evidence, that there was a wrong credit. As a matter of fact, the defence taken by the appellants was that the first appellant deposited a cheque, which was issued by her customer, in the Bank and that the fate of that cheque remained unknown. But, this aspect has been dealt with by both the Courts below and a factual finding has been recorded. No question of law, much less, a substantial

question of law arises in this Second Appeal. As a matter of fact, the suit was of the year 1995. There was a counter-claim by the appellants herein. The suit was decreed in 1998 and the counter-claim was dismissed. Therefore, the appellants had actually filed two Appeals in AS.Nos.78 and 80 of 1998. Both the Appeals were dismissed by a Common Judgment way back on 08-03-2006.

But the appellants chose to file only one Second Appeal. If, as against the Common Judgment passed in the two regular First appeals, only one Second Appeal is filed, the claim would be barred by *res judicata*.

Apart from the above, the Appeal itself, though filed in 2006, was in cold storage without any steps being taken for about 10 years and got numbered in 2016. Therefore, the Second Appeal is dismissed.

As a sequel to dismissal of the Second Appeal, interim Order, dated 03-11-2006, is vacated and SAMP.No.2748 of 2006 is disposed of as infructuous.

(V.Ramasubramanian, J)

Dt: 9th December, 2016

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