HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

S.A.Nos.477, 478, 513 and 514 of 2016

COMMON JUDGMENT:

Since all these Second Appeals are filed by the same person and since common question of fact and law arise for consideration, they are being disposed of by this common judgment.

2. The appellant is the defendant in O.S.Nos.71 and 72 of 2009 on the file of the Principal Senior Civil Judge, Kovvur.

3. The said suits were filed by the respondent in S.A.No.477 of 2009 and S.A.No.514 of 2009 against the appelant for recovery of a sum of Rs.5,11,200/- on the basis of two promissory notes dt.07-05-2003 for Rs.1.00 lakh each agreeing to repay the same with interest @ 36% per annum.

4. The respondent in S.A.No.477 of 2016 contended that the appellant had only made part payment of Rs.60,000/- on one prontoe and Rs.50,000/- on second pronote towards interest on 15-03-2006, that the endorsement was made on the back of the two promotes by the appellant's father and appellant put his signature. He stated that in spite of issuance of legal notice Ex.A-5 dt.03-03-2009 issued by him, the appellant did not discharge the debt and did not pay the amount.

5. The appellant filed a written statement stating that taking advantage of the signatures on blank printed pronote forms available

at Hyderabad, the suit promotes were fabricated without his knowledge and consent. He contended that they were written by different persons at different point of time. He stated that he borrowed Rs.2,50,000/- from the respondent in S.A.Nos.477 and 514 of 2016 at Hyderabad and while paying the said amount to him by way of bearer cheque, the respondent wrote the cheque for Rs.4.00 lakhs saying that the appellant should keep Rs.2,50,000/- and pay Rs.1,50,000/- to him. He alleged that on 07-05-2003, the appellant withdrew Rs.2,50,000/- from the plaintiff's account and gave Rs.1,50,000/- to the respondent, that it was also witnessed by one V.Rama Krishna and Ch.Srinimohan and at that time, the respondent had obtained signatures of the appellant on four blank promotes. He stated that the amounts of Rs.60,000/- and Rs.50,000/- were paid on 15-03-2006 which was the payment made towards principal and this amount has to be deducted from the principal amount. He stated that the respondent cannot claim interest @ 36% per annum without giving any reasons therefor. He also stated that the suit for recovery of Rs.2,50,000/- by the respondent is also barred by limitation.

6. The trial Court framed the following issues:

1. Whether the suit promotes are true, valid and binding on the defendant?
2. Whether the promotes are materially altered?
3. Whether the plaintiff is entitled to interest as claimed?

4. Whether the plaintiff is entitled to suit amount as prayed for?
5. To what relief?

7. Before the trial Court, the respondent examined P.Ws.1 to 4 and marked Exs.A-1 to A-9 while the appellant examined D.Ws.1 to 3 and marked Exs.B-1 to B-5.

8. By judgment and decree dt.07-03-2012, the trial decreed the suit for Rs.3,70,800/- and granted subsequent interest @ 12% per annum form the date of filing of suit till the date of decree and thereafter @ 6% from the date of decree till realization on the principal amount of Rs.2.00 lakhs.

9. Challenging the judgment and decree in O.S.No.71 of 2009, the appellant filed A.S.No.172 of 2012 before the IX Additional District Judge, West Godavari, Kovvur.

10. Cross Objections were filed by the respondent in S.A.No.477 and 514 of 2016 stating that the trial Court ought to have granted interest @ 36% per annum.

11. O.S.No.72 of 2009 was filed by the respondent in S.A.No.478 of 2016 and 513 of 2016 for recovery of money against the appellant on the basis of two promissory notes Exs.A-1 and A-3 both dt.07-05-2003 each for Rs.1.00 lakh. He claimed that a sum of Rs.70,000/- each was paid by the appellant as part payment towards

interest on 15-03-2006 and the endorsements were made on the back side of the two promissory notices in the handwriting of the appellant's father and the appellant signed it. He claims that he has given legal notice Ex.A-5 dt.13-03-2009 to the appellant, but the appellant did not pay the amount.

12. Appellant filed written statement taking the same defence as in O.S.No.71 of 2009. He alleged that the plaintiff is none other than the son-in-law of the plaintiff in O.S.No.71 of 2009 and the suit promissory notes were fabricated.

13. The following issues were framed therein:

1. Whether the suit promotes are true, valid and binding on the defendant?
2. Whether the promotes are materially altered?
3. Whether the suit is barred by limitation?
4. Whether the defendant is entitled to benefits under Act 4/38?
5. Whether the plaintiff is entitled to interest as claimed?
6. To what relief?

14. Appellant examined P.Ws.1 to 3 and marked Exs.A-1 to A-9. Respondent examined D.Ws.1 to 3 and marked Exs.B-1 to B-5.

15. By judgment and decree dt.07-03-2012, the trial Court decreed the suit with costs of Rs.3,40,800/- and granted subsequent

interest @ 12% per annum from the date of filing of suit till the date of decree and thereafter @ 6% from the date of decree till realization on the principal amount of Rs.2.00 lakhs.

16. Against the judgment and decree in O.S.No.72 of 2009, the appellant filed A.S.No.171 of 2012 before the IX Additional District Judge, West Godavari District at Kovvur.

17. Cross Objections were filed by the respondent in S.A.Nos.478 and 513 of 2016 stating that the trial Court should have granted interest @ 36% per annum.

18. The lower appellate Court dismissed A.S.No.171 of 2012 and allowed the Cross Objections by judgment and decree dt.02-03-2016. It also dismissed A.S.No.172 of 2012 but allowed Cross Objections therein by judgment and decree dt.26-02-2016.

19. Challenging the same, these Second Appeals are filed by the appellant.

20. The principal contention of the learned counsel for the appellant is that the promissory notes were issued at Hyderabad and therefore the suit sought to have been filed in Hyderabad by the respective respondents and the Principal Senior Civil Judge, Kovvur had no territorial jurisdiction to entertain the suit. He stated that the

transaction took place in the State of Telangana where the Telangana Money Lending Act would be applicable.

21. This contention is not tenable inasmuch as this point was not argued either in the trial Court or in the first Appellate Court by the appellant. Moreover, under Section 21 (1) of the CPC, objections as to territorial jurisdiction should be taken in the Court of first instance at the earliest possible of opportunity and before settlement of issues and they cannot be allowed to be raised in the Appellate/ Revisional Court and person raising such objection must prove that there is consequent failure of justice.

22. In view of this provision of law, the appellant, not having raised objection as to territorial jurisdiction before the Courts below, is deemed to have waived his objection to the territorial jurisdiction of the Senior Civil Judge, Kovvur to entertain the suit O.S.Nos.71 of 2009 and O.S.No.72 of 2009. Also there is neither pleading in the Written Statement about consequent failure of justice on account of the Senior Civil Judge, Kovvur entertaining the suit nor did appellant lead any evidence on this point. Therefore, this plea is without any merit.

23. Although the learned counsel for the appellant also contended that the promissory notes on the basis of which the suits

were filed by the respective respondents were fabricated, both the Courts below, after appreciating the evidence on record have concurrently held that the plea raised by the appellant is a false plea and that it is inconsistent with his conduct of making part payments to respective respondents which were endorsed on the back of the promissory notes in question. I completely agree with this reasoning and I am of the opinion that it does not warrant any interference in exercise of the jurisdiction under Section 100 CPC.

24. The other point raised by the learned counsel for the appellant is that the lower appellate Court could not have granted interest @ 36% per annum for the period prior to filing of suits.

25. Admittedly, the promissory notes in question contained a stipulation that interest @ 36% per annum would be paid by the appellant to the respective respondents and the purpose of taking the loan was admittedly business purpose. Exs.A-8 and A-9 filed by the respondents indicate that the defendant borrowed the amounts for production of film by name Leela Mahal Centre. The lower appellate Court therefore rejected the plea of appellant that he was a farmer on the basis of household card and held that the oral evidence as well as Exs.A-8 and A-9 shows that the purpose of borrowing loan is a business purpose. It therefore held that the appellant is liable to pay interest at the contract rate of 36% to the respective respondents and

that the trial Court has not considered these aspects. It also held that rate of interest cannot be varied without any valid reasons. It however maintained the rate of interest @ 12% for the period subsequent to the suit and 6% for the period subsequent to the decree.

26. This reasoning of the lower appellate Court cannot be said to be erroneous since the appellant, having borrowed money for business purpose, cannot avoid liability to pay interest at the contract rate for the period prior to filing of the suit.

27. Therefore, I do not find any merit in all these Second Appeals and they are accordingly dismissed. No costs.

28. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-08-2016
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