HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

<u>C.C.C.A. No.114 OF 2005</u>

<u>JUDGMENT</u>:

Dismissal of the suit in O.S. No.2701 of 2004 by the judgment and decree, dated 17-01-2005 by the learned V Senior Civil Judge, City Civil Court, Hyderabad, aggrieved the plaintiff to prefer the present City Civil Court Appeal.

2. The appellant herein is the plaintiff in the aforesaid suit, while respondents are the defendants.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid suit before the trial Court.

4. A regular suit in O.S. No.2701 of 2004 was instituted by the plaintiff, a company registered under the Companies Act, 1956, with registration No.01-22568 and started carrying on business of finance under the name and style 'Twin Cities Investment and Finance Limited' with its office at Hyderabad.

i) When defendant No.1 approached for a loan of Rs.2,25,000/- on 09-01-1997, loan was sanctioned on 10-01-1997. In token thereof, defendant No.1 executed a demand promissory note and defendant Nos.2 and 3 executed an agreement of guarantee. Since it stood un-discharged and on repeated insistence to discharge the loan, defendant No.1 paid Rs.1,50,000/- on 31-03-2000 and, in fact, defendant No.1

revived the loan on 29-10-1999 and again on 25-10-2002, but did not completely discharge the loan. The contracted rate of interest was at 30% per annum.

ii) Though, legal notices were got issued by the plaintiff on 01-05-2004 and 07-05-2004 to make payment of Rs.7,03,403/-, which includes compound interest, stood unanswered. Hence, the suit requesting to grant decree with interest at 24% per annum till realization.

5. Before the trial Court, defendant Nos.2 and 3 remained *ex parte.*

6. Defendant No.1 contested the suit claim by filing written statement.

i) Defendant No.1 put forth the plea of bar of limitation and pleaded that the revival letter, dated 25-10-2002, is fabricated for the purpose of limitation.

ii) Concerning the promissory note, defendant No.1 denied the execution of promissory note, besides alleging that it does not contain the stamps required under law. He has also pleaded that the plaintiff has not filed receipt to show that it received the amount, and the statement of account filed by the plaintiff is not an audited copy and, therefore, cannot be accepted.

iii) A typical plea was taken by the defendant No.1 stating that the plaintiff obtained the signatures on blank papers and fabricated the same for the purpose of the suit. The consent said to have given by him for which 30% compound interest was charged is denied.

iv) Finally, pleading that he is not liable to pay the suit claim, besides stating that the revival letter do not bear the revenue stamp, sought to dismiss the suit.

7. On the basis of rival pleadings, the trial Court has framed the following three issues:

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1. Whether the plaintiff is entitled for recovery of the suit amount?
2. Whether the suit is barred by limitation and whether the suit documents are brought into existence to overcome limitation?
3. To what relief? "

8. In order to prove the suit claim, on behalf of the plaintiff, one T. Venkateshwarlu examined himself as PW.1 and marked Exs.A-1 to A-11. On behalf of defendant No.1, its Managing Director - Sri K. Satyanarayana has stepped into witness box and examined himself as DW.1 and no documents were filed.

9. The trial Court has taken up issue Nos.1 and 2 together for discussion, and observing that Ex.A-1 – statement of account would reflect that the amount of Rs.3,09,915/- as having been credited to the account of defendant No.1, but the claim of the plaintiff being that the

defendant No.1 has paid only Rs.1,50,000/- and since plaintiff failed to explain how the amount of Rs.1,50,000/- alleged to have paid by the defendant No.1 has switched to Rs.3,09,915/- in the statement of account (Ex.A-10); basing on the admission of the plaintiff that the amount of Rs.1,50,000/- paid was by way of transfer from the account of the Managing Director of defendant No.1's firm into the account of defendant No.1, and a separate suit was filed against defendant No.1 for recovery of the said amount; and viewing with suspicion, dismissed the claim by tendering a finding that the revival letter, dated 25-10-2002, is a fabricated document.

10. Heard Sri K. Gopal, learned counsel for the appellant - plaintiff. Though, service was completed on defendant Nos.2 and 3, none appears for them. Having heard the learned counsel for the plaintiff, since there was no representation for defendant No.1, the appeal was adjourned for hearing the 1st defendant's learned counsel, but the 1st defendant was not availed of the opportunity. Later also, when it was listed, there was no representation for defendant No.1.

11. Perused the judgment rendered by the trial Court and the evidence on record, both, oral and documentary let in by the plaintiff and defendants respectively.

12. On the basis of the material on record including the judgment rendered by the trial Court, the following points are formulated for adjudication:

i. Whether the suit promissory note, Ex.A-3, dated 10.01.1997 was executed by defendant No.1 in favour of the plaintiff, and whether it is true, valid and binding on the defendants?

ii. Whether the Agreement of Guarantee, Ex.A-7-dated 10.01.1997 was executed by defendant Nos.2 and 3?

iii. Whether the revival letters, dated 29.01.1999 and 25.10.2002, which are Exs.A-5 and A-6, are true, valid and binding on the defendants?

iv. Whether the plaintiff is entitled to the suit claim?;

v. Whether the plaintiff is entitled to the interest in case the aforesaid points are held in the affirmative? and

vi. If so, to what other relief?

POINT Nos.1 and 2

13. These points are taken up together for the reason that defendant No.1 alone stepped into witness box and examined himself as DW.1, whereas defendant Nos.2 and 3 did not contest the suit claim. The trial Court having analyzed the evidence of PW.1 and DW.1 and also Exs.A-2 to A-4, recorded definite findings that the case set out by the defendants is wholly untrue. In the said direction, the trial Court would observe that defendants did not deny the signatures occurring on Exs.A-3 and A-4, respectively, and the contents scribed by the officials of plaintiff's company and the plea taken by the defendants that contents thereof were not explained to them by the officials of the plaintiff's company cannot be believed for the reason that the defendants did not raise any sort of objection, nor

did they file any complaint when they are pleading that Exs.A-3 and A-4 were fabricated. That finding recorded by the trial Court is based on proper appreciation of evidence on record and on well-judged process of reasoning and, therefore, that finding does not warrant interference.

i) When defendant Nos.1 to 3 admit their signatures on Ex.A-3 so far as defendant No.1 is concerned and Ex.A-4 so far as defendant Nos.2 and 3 are concerned, and when they plead that Exs.A-3 and A-4 are fabricated documents, the entire burden rests on them to prove that Exs.A-3 and A-4 are fabricated documents associated with forging of their signatures. They are not clear as to which of the portions of Exs.A-3 and A-4 were either subsequently introduced or interpolated by way of additions or alterations. Besides, the statutory presumption under Section 118 of the N.I. Act would attract for the reason that defendant No.1 has not denied his signature on Ex.A-3 promissory note, there is nothing on behalf of defendant No.1 to rebut passing of consideration there-under. Thus, even the defence set up by the defendants that the documents under Exs.A-3 and A-4 are fabricated appears to be false. Therefore, that plea put forth by the defendants is without any basis and it appears only to wriggle themselves, out of liability in the present suit, they have set up such an artificial and unnatural plea. Therefore, these points are held against the defendants.

Point No.3

14. Turning to Exs.A-5 and A-6, the trial Court mainly carried away by the fact that the signature on Ex.A-6 was not occurring on the revenue stamp, though, the signature of defendant No.1 is occurring on the other document i.e. Ex.A-5. Therefore, the trial Court disbelieved the execution of Ex.A-6 by defendant No.1. But, the trial Court so far as Ex.A-5 is concerned, which is revival letter, dated 29.10.1999, holds it to be true since signature is occurring on the revenue stamp. The trial Court observing that there was no explanation offered by the plaintiff for the absence of revenue stamp on Ex.A-6 and it supports the submission of defendants that the said letter has been fabricated for the purpose of overcoming the period of limitation by the plaintiff, more particularly, when the plaintiff admitted that the contents of Ex.A-6 were not written by the defendants, and thereby recording the finding against the plaintiff appears to be not correct. There are entries in the account-sheet, which is marked as Ex.A-10, which was also referred to in a different context by the trial Court. In the present context, the decision relied on by the plaintiff would require advertence.

i) In **Hiralal and others v. Badkulal and others**[1], the Hon'ble Supreme Court held that unqualified acknowledgment contained in the entry and the statement of accounts under which the entry was made were sufficient to furnish a cause of action to the plaintiff for

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[1]. AIR 1953 SC 225

maintaining the suit. The same has been reiterated by the Hon'ble Supreme Court in a later decision in **Syndicate Bank v. R. Veeranna & others**[2], in paragraph No.8, referring to the law declared by the Hon'ble Supreme Court in **Hiralal's Case** (Supra). Therefore, it cannot be said that merely because Ex.A-6 does not contain the signature on the revenue stamp or no revenue stamp at all was affixed is not a ground to hold that Ex.A-6 was fabricated for the purpose of suit, more particularly, when Ex.A-5 earlier revival letter, dated 29.10.1999 was admitted to have executed by defendant No.1.

15. Turning to the other ground, basing on which, the trial Court dismissed the suit, relates to the entries in account sheet - Ex.A-10 on the ground that the plaintiff failed to explain how Rs.1,50,000/- alleged to have been paid by defendant No.1 has changed into the amount of Rs.3,09,915/- in the statement of account and referring to the admissions made by the plaintiff that the entry, dated 31.03.2000, was for an amount of Rs.1,50,000/- which was by way of transfer from the account of Managing Director of defendant No.1's firm into the account of defendant No.1, besides filing a suit for recovery of money from defendant No.1, dismissed the suit. There has been evidence on record that Rs.1,50,000/- was transferred to the personal account of the Managing Director of defendant No.1's firm, but not to the account of defendant No.1. The trial Court, somehow, overlooked the said fact and without properly appreciating the

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[2]. AIR 2003 SC 2122

evidence on record, did not answer the issue correctly and recorded an incorrect finding which is liable to be set aside and, accordingly, set aside including the finding recorded holding that Ex.A-6 revival letter in favour of the defendants.

i) One strong probability was lost sight of by the trial Court. It is clear from the evidence of PW.1 as well as the plaintiff that Ex.A-11 - legal notice was issued to the defendants requiring them to discharge the due amount under Exs.A-3 and A-4. It is an admitted fact that Ex.A-7 is also one of the notices, dated 01.05.2004. The postal acknowledgment - Ex.A-8 would prove that notice was served. The defendants did not answer the notice. In case they did not borrow any amount and Exs.A-3 to A-6, which are suit promissory note, agreement of guarantee and revival letters, were really fabricated for the purpose of laying the suit for recovery of amount from them, they would have invariably replied with true facts putting forth the plea of fabrication of documents, which are pleaded in their written statement. Thus, non-reply to the said notices got issued by the plaintiff despite service is a strong circumstance, which gives rise to an inescapable inference in favour of the plaintiff and adversely affecting the plea taken by the defendants.

<u>Point Nos.4 and 5</u>:

16. In view of the foregoing discussion, the findings recorded by the trial Court warrant interference as they suffer from legal

infirmity as indicated in the above and, therefore, overturning the said findings, the judgment and decree passed by the trial Court are set aside decreeing the suit in favour of the plaintiff for the suit claim.

17. So far as rate of interest is concerned, it is no doubt true, the interest at 24% per annum with costs was claimed by the plaintiff, but keeping in view, the pendency of the proceedings before both the Courts, it is desirable to award at 12% per annum from the date of suit till the date of decree and at 6% per annum from the date of decree till realization.

18. Thus, the suit is decreed for Rs.7,45,185/- with interest at the rate of 12% per annum from the date of suit till the date of decree and at the rate of 6% per annum from the date of decree till realization.

Point No.6

19. Accordingly, the appeal is allowed to the extent indicated in the above. However, in the circumstances of the case, the parties are directed to bear their own costs.

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

A. SHANKAR NARAYANA, J

August 29, 2017.
Mgr