

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

AS.No. 1100 of 1999

ORDER:

This is an appeal filed against the judgment and decree dated 26.02.1999 in O.S.No.102 of 1996 passed by the Senior Civil Judge, Khammam.

The parties are referred to as plaintiff and defendants for the sake of convenience.

The plaintiff is a chit fund company. The first defendant is the principal borrower of a chit. Defendant Nos.2 to 5 are the guarantors of the said chit. As the principal borrower defaulted in the payment, a notice was issued and thereafter the suit was filed. Defendant No.4 filed a written statement and five issues were framed. P.W.1 was examined on behalf of the plaintiff company and Exs.A.1 to A.5 were marked. P.W.1 was cross-examined also. After this, the suit was decreed against Defendant Nos.2 to 5 and the suit was dismissed against Defendant No.1 (the principal borrower). It is this finding strongly assailed in the appeal.

Heard Sri K.Pawan Kumar for the appellant. None appeared for the respondents.

The principal submission of the learned counsel for appellant is that Defendant Nos.2 to 5 are the guarantors for

the loan obtained by Defendant No.1. Once the suit against Defendant No.1 (principal borrower) is dismissed; the guarantors cannot be held liable.

The learned counsel for the appellant is right in his submission. The very concept of guarantee means that the guarantors agree to repay (jointly/severally) the debt due from the principal borrower. In this case, the Court below for its own unknown and unrecorded reasons discharged defendant No.1 from liability. If defendant No.1 is discharged, then as per law, even defendant Nos.2 to 5 should have been discharged of their obligation. No reasons are forthcoming or apparent why the suit against defendant No.1 was dismissed. No reasons are also visible why the suit was decreed against the guarantors. The evidence of PW.1, who was the only witness examined in this case was not discussed at all. Even PW.1 sought a decree against all the defendants and the pleading about defendant Nos.2 to 5 in the plaint is that they are 'guarantors'.

The judgment in question is a very cryptic judgment. There is no discussion on the issues nor are the documents and evidence discussed. No reasons are given for dismissing the suit against defendant No.1 and for decreeing the same against defendant Nos.2 to 5. This Court is of the opinion that the guarantor cannot be made liable when the principal debtor is exonerated.

For all the reasons, the appeal is allowed and the judgment and decree passed against the appellant is set aside. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 28.11.2017
KLP

