

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

APPEAL SUIT No.2900 of 1999
in/and
CROSS-OBJECTIONS (SR) No.24826 of 2000

COMMON JUDGMENT:

Heard learned counsel for the appellants/defendants and the respondent/plaintiff, and perused the record.

This appeal is filed aggrieved by the judgment and decree, dated 18.09.1999, passed by the learned Principal Senior Civil Judge, Ongole, in O.S.No.183 of 1997.

Learned counsel for the appellants/defendants would contend that the findings of the Court below are contrary to law and facts of the case; the evidence on record was not correctly appreciated by the Court below; decreeing the suit basing on the entries, marked as Exs.A.1 to A.8 – relevant entries at page Nos.107, 87, 86, 82, 44 and 35 of the ledger for 1989-90 to 1996-97 respectively, is erroneous; the respondent/plaintiff failed to prove the claim and that the Court below ought not to have relied on Ex.A.8 for passing the impugned judgment and decree and ultimately, prayed to set aside the same.

On the other hand, learned counsel for the respondent/plaintiff would contend that the Court below had appreciated all the facts and circumstances of the case and

decreed the suit for Rs.1,34,670/- with 6% interest per annum from the date of the suit till the date of realization and granting 6% interest is low as the contractual rate of interest between the parties is 18%.

The respondent/plaintiff filed Cross-Objections to increase the rate of interest from 6% to 18% per annum from the date of the suit till the date of realization.

In view of the contentions put forth by both sides, the point for determination is whether the impugned judgment and decree is liable to be set aside or whether the respondent/plaintiff is entitled to 18% interest as prayed for?

To substantiate the case, on behalf of the respondent/plaintiff, P.Ws.1 to 3 were examined and got marked Exs.A.1 to A.8 – relevant entries made in the books of accounts maintained by the respondent/plaintiff. To rebut the same, the appellants/defendants examined D.W.1 and got marked Exs.D.1 to D.3. The evidence and the documents marked on behalf of the respondent/plaintiff would show that there are borrowings by defendant No.1 firm on different occasions. Defendant No.2 is the Managing Partner of Defendant No.1 firm and Defendants 3 to 5 are the other partners of the firm. These documents would reveal that on 25.04.1989, defendant No.1 borrowed Rs.50,000/- from the respondent/plaintiff agreeing to pay interest @ 24% per

annum and again on 12.02.1991, defendant No.1 borrowed Rs.50,000/-. Entries are made to that effect in Exs.A.1 to A.8. There is record to show that defendants 2 to 5 are the partners of defendant No.1 firm and the money was borrowed on two occasions by defendant No.1 firm from the plaintiff. The respondent/plaintiff calculated the amounts due @ 18% per annum and filed O.S.No.183 of 1997 for recovery of Rs.1,34,670/-. As per the ledger entries, the respondent/plaintiff calculated 18% interest on the due amount and filed the suit for the afore-mentioned amount. The finding of the Court below is that there was an understanding between the parties to pay 18% per annum on the borrowings. Ultimately, the Court below decreed the suit for Rs.1,34,670/- with 6% interest. The Court below had given reasons. It is also evident from the record that Ex.A.8 is signed by defendant No.2 who was the Managing Partner of defendant No.1 firm. Defendant No.2 did not enter into witness box to dispute his signature on Ex.A.8 and the entries made therein. Therefore, it cannot be said that the respondent/plaintiff fabricated the document and filed the suit. The Court below had assigned number of reasons and ultimately, decreed the suit. There is no infirmity in the impugned judgment. Further, it is appropriate to state that having considered all the facts and circumstances, the Court below granted 6% interest

from the date of the suit till the date of realization. It is quite reasonable. Therefore, there are no circumstances to vary the impugned judgment and decree.

The Cross-Objections filed by the respondent/plaintiff do not merit consideration. Therefore, they are liable to be rejected.

In the result, the appeal is dismissed confirming the judgment and decree, dated 18.09.1999, passed by the learned Principal Senior Civil Judge, Ongole, in O.S.No.183 of 1997, and the Cross-Objections are rejected.

Pending miscellaneous applications, if any, shall stand dismissed in consequence. No order as to costs.

12th OCTOBER, 2017.

Dr. SHAMEEM AKTHER, J

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