

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.163 OF 2017

JUDGMENT:

This Second Appeal is preferred by the 1st defendant/appellant against the judgment and decree, dated 9.11.2016, in A.S. No.5 of 2014 on the file of Principal District Judge, Adilabad, confirming the judgment and decree dated 31.01.2014 in O.S. No.115 of 2011 on the file of Junior Civil Judge, Adilabad.

2. Heard Sri S. Chandra Sekhar, learned counsel for the appellant and Sri N. Hari Prasad, learned counsel for the respondent No.1.

3. Though notices were ordered on respondent Nos.3 to 8 also, proof of service not filed and none entered appearance on their behalf.

4. This appeal is disposed of at the admission stage itself for the reason that this Court is constrained to remit the matter even without formulating substantial questions of law, in view of the very nature of the judgment and decree passed by the first appellate court. The order challenged in the present Second Appeal by the 1st defendant/appellant reads thus:

“Appellant not present even today though given several opportunities. Hence perused the appeal, heard the respondent and found no merits in the appeal. Hence appeal is dismissed as devoid of merits.”

5. The learned counsel for the appellant would submit the very fact that there is no re-appraisal of evidence on record despite the appellate court observing that it has found no merits in the appeal having heard the respondent is sufficient to constitute substantial question of law *ex facie* which is disputed by the learned counsel for the 1st respondent on the ground that the first appellate court has specifically mentioned that no merits are found in the appeal indicating that the appellate court gone through the judgment pronounced by the trial court and evidence on record once again. It is also his submission that despite affording adequate chances the appellant before the first appellate court has not come up to lead evidence at any time.

6. The learned counsel for the appellant also places reliance in **Laliteshwar Prasad Singh v. S.P. Srivastava (D) Through LRs.**¹ wherein the Hon'ble Supreme Court declared that the judgment of the appellate Court must reflect the Court's application of mind and record its findings supported by the reasons, it being a final court of facts and the law relating to powers and duties of the first appellate Court well fortified by the legal provisions and judicial pronouncements.

7. Nothing more is required to probe into when it is seen that the order passed by the appellate court *ex facie* is totally against what is contemplated by provisions of Order XLI Rule 1 of Civil

¹ 2017 (1) HLT 50 (DB) (SC)

Procedure Code, 1908 (for short, 'the Code'). The appellate court is duty-bound to resort to reappraisal of evidence on record in arriving at definite finding and conclusion based on such findings. There are no merits in the appeal. The procedure contemplated by Order XLI Rule 1 of the Code is not at all followed. No points for determination were formulated as mandated by provisions of Order XLI Rule 1 of the Code much less no discussion at all touching the evidence let in by both parties before the trial court.

8. In these circumstances, what is open to this Court is only to remit the matter to the first appellate Court for its decision on merits.

9. Therefore, the present Second Appeal is remitted to the first Appellate Court directing to follow the procedure contemplated under Order XLI of the Code and dispose of A.S. No.5 of 2014 in accordance with law.

10. Accordingly, the Second Appeal is allowed setting aside the order under challenge. It appears from the order that the appellants before the first appellate court were not showing interest. It is, therefore, desirable to direct the first appellate court to dispose of A.S. No.5 of 2014 within six months from the date of receipt of a copy of this order. The appellants in the first appeal are directed to co-operate with the Court and get the arguments tendered. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Second Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 23.06.2017
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