

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.8 OF 2015

ORAL ORDER:

In a suit for recovery of Rs.4,04,800/-, a decree was passed by the learned III Additional Senior Civil Judge, Vijayawada, in O.S. No.1256 of 2009, decreeing the suit claim by the judgment dated 26.04.2012, and granting interest at 6% per annum on Rs.3,00,000/- both *pendente lite* and post decree, having considered the evidence of PWs.1 to 3 and Ex.A-1 promissory note dated 12.05.2008 on behalf of the plaintiff and oral evidence of DW.1 and Exs.B-1 to B-3 on behalf of the defendant, recording a finding that Ex.A-1 promissory note was executed by the defendant and proved through the evidence of the witnesses and disbelieved the stand taken by the defendant which is of total denial. Aggrieved over the same, the defendant preferred regular appeal in A.S. No.178 of 2012 on the file of XIV Additional District Judge, Vijayawada. The learned first appellate Court having formulated the points for determination, as many as three (3) in number, and on re-appraisal of both oral and documentary evidence let in by the rival parties, affirmed the judgment and decree of the trial Court, dismissing the appeal in entirety.

2. Aggrieved over the judgment and decree of the first appellate Court, the present Second Appeal is preferred.

3. The present Second Appeal is coming up for admission.

4. Heard Sri Sai Gangadhar Chamarty, learned counsel for the appellant, and perused the material on record.

5. The learned counsel would submit that the attachment of salary was ordered and effected and the amount is lying to the credit of the suit. According to him, the main controversy between the parties is identity of the defendant which was in question before both the Courts below and continues to be the same even in the present Second Appeal and that has been the reason that the defendant has taken the stand that he never executed promissory note '*Hami Pathram*' dated 12.05.2008 and 12.05.2009, respectively. Of course, he fairly concedes that concurrent findings were recorded by both the Courts below holding that the appellant - defendant is liable to pay suit claim and the interest as ordered.

6. When both the Courts below on appraisal of evidence, more particularly, the evidence of PWs.1 to 3, recorded a finding that the defendant, who borrowed the amount and executed Ex.A-1 in favour of the plaintiff and even '*Hami Pathram*', of course, which appears to have not been marked as an exhibit, still, that finding when confirmed by the first appellate Court and the reasons assigned in arriving at such finding, when examined, it is to be found that they are supported by process of appreciation and in accordance with the evidentiary rule. In which case, it is not a case, where interference is warranted as

there is no patent illegality or perversity in the findings recorded by both the Courts below.

7. Turning to the substantial questions of law formulated by the appellant in paragraph No.8 of the grounds of appeal, certainly, they do not constitute questions of law even, much less, substantial questions of law.

8. There is no merit in the present second appeal, and, therefore, the same is dismissed, at the admission stage itself. There shall be no order as to costs.

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



A. SHANKAR NARAYANA, J

July 18, 2017.

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