HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.12 OF 1999

JUDGMENT:

The present appeal is preferred by the defendants under Section 96 of Civil Procedure Code, aggrieved over the judgment and decree dated 30.11.1998 in O.S. No.454 of 1991 on the file of IV-Senior Civil Judge, City Civil Court, Hyderabad, whereby and whereunder the trial court, having recorded the findings on issues, arrived at the conclusion that the defendant is liable to pay a sum of Rs.2,04,000/- with 12% interest per annum from the date of suit till the date of realization, with costs.

2. The plaintiffs/respondents, who are four in number, have set out their case that they have lent Rs.40,000/-, Rs.35,000/-, Rs.35,000/- and Rs.40,000/- respectively on 25.5.1988 at Hyderabad to the defendants on a deed of agreement which was also attested by the witnesses, the defendants agreed to repay the same with interest at 24% per annum and also issued post-dated cheques, but despite repeated demands and issuing Legal Notice, dated 14.5.1991, the defendants failed to repay the same. They answered the legal notice.

3. The trial Court originally framed two issues on 7.11.1995. Later, it appears that an amendment was introduced to the written statement, which compelled the trial Court to frame five additional issues on 20.6.1998, which are as follows:

(i) Whether the plaintiff has cause of action to file the present suit?

(ii) Whether the court is having jurisdiction to try the suit?

(iii) Whether the plaintiff is a money lender and the suit transaction is hit by the provisions of A.P. (Telangana Area) Money Lenders Act, 1349 F?

(iv) Whether the defendants have not borrowed any amounts from the plaintiff as stated by the defendants in their written statement?

(v) To what relief?

4. During trial, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked. P.W.2 is an attesting witness to the suit document, Ex.A1, Agreement, dated 25.5.1988, whereas P.W.1 is the 1st plaintiff; and on behalf of the defendants, the 1st defendant alone examined himself as D.W.1. No further witnesses were examined and no documents were marked.

5. The learned trial Court, on appraisal of evidence on record on Additional Issue No.1 as to whether the plaintiffs have any cause of action to file a suit basing on the agreement having been proved through the evidence of P.W.2, an attestor, recorded finding in favour of the plaintiffs and against the defendants.

6. On Additional Issue No.2, which relates to jurisdiction to entertain the suit by the trial Court at Hyderabad, having noted that the transaction has taken place at Hyderabad and there was no dispute with regard to the parties being residents of Hyderabad held in affirmative. But, on Additional Issue No.3 though, amendment was

introduced to the written statement filed by the defendants taking the plea that the plaintiffs being professional money lenders and the suit transaction was hit by the provisions of A.P. (Telangana Area) Money Lenders Act 1349 F (for short, 'the Act'), observed that no suggestion was made to P.W.1 that they were money lenders and also noting that D.W.1 has not stated anywhere in his evidence that the suit filed by the plaintiffs is hit by the provisions of the said Act, and consequently observing that the burden lying on the defendants stood undischarged held against the defendants.

7. On Issue No.1 and Additional Issue No.4, referring to the evidence of P.Ws.1 and 2 and the post-dated cheques issued by D.W.1 and the admission made by D.W.1 that he failed to take the plea in the written statement that the signature in Ex.A1 was not of himself, and also denied the signature in the post-dated cheques, invoked the provisions of Section 73 of the Indian Evidence Act, 1872, compared the signatures of D.W.1 occurring in the written statement, vakalat with that of the signatures in Ex.A1 and Ex.A4 observing that they belong to one and the same person as pen strokes are similar and identical and held that D.W.1 issued cheques and executed Ex.A1, thereby decreed the suit with interest at 12% p.a. as mentioned in the above from the date of the suit till realization on Rs.2,04,000/-.

8. Two main grounds have been put forth in the Grounds of Appeal and also canvassed by the learned counsel for the appellants.

The first ground is that the learned trial Judge committed an error in overlooking the fact that the suit was barred by limitation as money was borrowed on 25.5.1988 and the suit was filed on completion of three years period and the suit, therefore, ought to have been dismissed rather than decreeing the suit.

9. The main submission put forth by the appellants/defendants is that when the transaction is hit by the provisions of the said Act, initial onus, in fact, lies on the plaintiffs/respondents alone and, therefore, learned trial Judge was not right in holding that the entire burden lies on the defendants and observations made by the learned Judge that no evidence was adduced therefor is incorrect.

10. Incidentally, certain submissions have been made including comparison of signatures by the Court itself by invoking the provisions of Section 73 of the Evidence Act.

Thus, these are the main grounds agitated and canvassed by the learned counsel for the appellants.

11. This apart, the learned counsel also came up with the submission that the capacity to lend such amounts by each of the plaintiffs was even questioned and there is nothing on record to show that the plaintiffs were affluent enough to lend amounts to the defendants, and hence institution of the present suit was also wrong and misconceived.

12. Heard the learned counsel for the respondents/plaintiffs, who has drawn attention to the finding recorded by the trial Court on limitation aspect as well as jurisdictional aspect. Perused the judgment and the evidence on record both, oral and documentary.

13. In paragraph-18, the trial Court observed that the defendants failed to put forth the plea in their written statement that the claim was barred by limitation and even in evidence it was not stated by D.W.1. Even otherwise, the learned trial Court found that since the amounts were paid on 25.5.1988 and the suit was filed on 3.6.1991, the first working day of the court after summer vacation, the claim was within the period of limitation. It is needless to mention that Section 5 of the Limitation Act would make it clear that the limitation extends to reopening day in case civil court is on vacation. The said finding recorded by the trial Court, therefore, cannot be disturbed as it does not suffer from any legal infirmity. In fact when the limitation is a mixed question of fact and law, the defendant is duty bound to raise the plea in his written statement. Such a plea was not at all put forth by the defendant as rightly observed by the Court below.

14. Concerning other submissions that the claim made by the plaintiffs is hit by the provisions of the Act. It is not as though, the initial burden really rests on the plaintiffs/respondents as contended by the learned counsel for the appellants/defendants. When a plea is put

forth, the burden rests on the party, who asserts it, more so, the plea relating to absence of licence under the relevant provisions of the Act. The burden cast on the appellants/defendants to the effect that it is not one transaction which is coming into vogue but there has been consistent courses of conduct on the part of plaintiffs in lending amounts has to be proved. D.W.1 did not specify whether the plaintiffs did really lend amounts to others and, if so, the details thereof. His evidence is absolutely silent. It is also not as though that only one plaintiff lent amounts to the defendants. It is on record that each of the plaintiffs lent distinct amounts to the defendants 1 and 2. Therefore, even that ground would not sustain and does not warrant interference with the findings recorded by the Court below.

15. Turning to the exercise done by the Court below invoking provisions of Section 73 of the Evidence Act and comparing the admitted signatures of D.W.1 available on record with that of the disputed signatures occurring on Exs.A1 and A4 to A7 and arriving at the conclusion that they are similar and identical cannot at all be faulted. It is no doubt true the Courts may not have that much expertise as an expert possesses but, still, comparison by the Court under Section 73 of the Evidence Act is not impermissible. It is not as though the Court invoked Section 73 of the Evidence Act discarding the request to send the document for expert's opinion. Such a situation did not occur in the present case. Therefore, even that finding recorded by the Court below cannot be upset.

16. So far as framing of suit is concerned, the joinder of plaintiffs together is not prohibited to lay claim against the defendants, as the defendants are borrowers under one and the same transaction covered by Ex.A1.

17. Therefore, viewed from any angle, the judgment and decree under challenge do not suffer from any legal infirmity, warranting interference by this Court.

18. Hence, the Appeal is dismissed with costs.

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

A. SHANKAR NARAYANA, J

Dt. 10.08.2017
gbs