

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

APPEAL SUIT No.878 OF 1999

JUDGMENT:

1. This Appeal, under Section 96 of Code of Civil Procedure, 1908 (for short, 'the C.P.C.'), is preferred against the judgment and decree dated 16.12.1998 passed in O.S. No.9 of 1990 by the Principal Senior Civil Judge, Narasaraopet, Guntur District (for short, 'the trial Court').

2. Heard both sides and perused the material available on record.

3. For the sake of convenience, the parties hereinafter are referred to as arrayed before the trial Court.

4. The plaintiff filed the suit against the defendants stating that defendant Nos.1 to 4 borrowed an amount of Rs.36,000/- from him on 09.01.1987 agreeing to repay the same with interest at the rate of 18% p.a. and executed a promissory note. The defendants also borrowed an amount of Rs.34,800/- on the same day from one Eluri Rama Koteswara Rao for their business purpose agreeing to repay the same with interest at the rate of 18% p.a. and executed another promissory note. The said Rama Koteswara Rao subsequently transferred the said promissory note in favour of the plaintiff on 04.01.1990 for collection. After the transfer of the promissory note in favour of the plaintiff, the plaintiff intimated the same to the defendants and issued a notice on 18.01.1990 demanding them to repay the amount.

5. Defendant No.1 remained *ex parte* before the trial Court. Defendant No.2 contested the suit by filing written statement before the trial Court, which was adopted by defendant Nos.3 and 4. During pendency of the suit, defendant No.3 died and his legal representatives *i.e.*, defendants 5 to 7 were brought on record.

6. The trial Court, after considering the evidence of P.Ws.1 and 2, D.Ws.1 and 2 and the documents Exs.A-1 to A-12, decreed the suit in favour of the plaintiff for a sum of Rs.1,09,320/- with interest at the rate of 6% p.a. from the date of suit till the date of realization. The trial Court further held that the amounts paid during the pendency of the suit *i.e.*, an amount of Rs.34,000/- paid by defendant No.2 on 01.07.1996, Rs.38,000/- paid by defendant No.3 on 01.04.1997 and Rs.38,000/- paid by defendant No.1 on 01.04.1997 be deducted from the amount due. Challenging the said decree and judgment, defendant No.4 preferred the present Appeal.

7. During pendency of the Appeal, plaintiff-1st respondent herein died and respondents 8 to 12 were brought on record as his legal representatives on 05.03.2012. Further, the Appeal against the respondents 2 and 7 herein was dismissed for default on 19.10.2011.

8. Learned counsel for the 4th defendant-appellant would submit that the judgment and decree of the trial Court is contrary to law and facts of the case. The trial Court erred in granting a decree for Rs.1,09,320/- with interest at the rate of 6% p.a. The trial Court ought to have granted interest at the rate of 6% p.a. only on Rs.19,645/-; the amounts paid *i.e.*, Rs.34,000/-, Rs.38,000/- and Rs.38,000/- respectively are required to be deducted from the principal amount, in view of Section 79 of the Negotiable Instruments Act, 1881 (for short, 'the Act'). The plaintiff is not entitled for any interest and ultimately prayed to dismiss the suit by allowing this Appeal.

9. On the other hand, learned counsel for the respondents 8 to 12 herein would contend that there is no infirmity in the impugned judgment and decree. The trial Court has rightly granted interest at the rate of 6% p.a. on the decretal amount of Rs.1,09,320/-; Section 79 of the Act has

no application to the case on hand and ultimately prayed to dismiss the Appeal.

10. No arguments were advanced on behalf of the other respondents.

11. In view of the contentions put forth by both sides, now the **point** for determination is, whether the judgment and decree in awarding the decreetal amount of Rs.1,09,320/- with interest at the rate of 6% p.a. from the date of suit till the date of realization is sustainable?

12. **POINT**: There is no dispute with regard to defendants 1 to 4 borrowing an amount of Rs.36,000/- on 09.01.1987 from the plaintiff agreeing to repay the same with interest at the rate of 18% p.a. under suit pronote and subsequently borrowing an amount of Rs.34,800/- from one Eluri Rama Koteswara Rao agreeing to repay the same with interest at the rate of 18% p.a. under another suit pronote. It is also not in dispute that the said Rama Koteswara Rao transferred the said suit pronote in favour of the plaintiff on 04.01.1990. Thereafter, the plaintiff issued notices to the defendants to repay the suit amount and interest. There is also no dispute with regard to the calculation of the suit amount. The only submission of learned counsel for the 4th defendant-appellant is that an amount of Rs.34,000/- was paid by 2nd defendant on 01.07.1996, an amount of Rs.38,000/- was paid by 3rd defendant on 01.04.1997 and an amount of Rs.38,000/- was paid by 1st defendant on 01.04.1997 are required to be deducted from the principal amount and granting decree for Rs.1,09,320/- with interest at the rate of 6% p.a. is erroneous.

13. It is pertinent to note that the trial Court decreed the suit for the suit amount *i.e.*, Rs.1,09,320/- with interest at the rate of 6% with a direction to give credit to the amounts paid by the defendants, during the pendnecy of the suit. As seen from the evidence on record, there is no calculation error

with regard to the suit amount. Therefore, the trial Court has rightly decreed the suit for Rs.1,09,320/- with interest at the rate of 6% p.a. from the date of suit till the date of realization. The trial Court had given credit to the amounts paid by the defendants during the pendency of the suit, the same was taken into consideration while passing the decree and judgment. The submission of learned counsel for the 4th defendant-appellant that the amounts paid by the defendants during the pendency of the suit are required to be deducted from the principal amount is erroneous, without any substance and the same is unsustainable. There is no infirmity in the impugned decree and judgment. The Appeal is devoid of merits and liable to be dismissed.

14. In the result, the Appeal Suit is dismissed confirming the decree and judgment dated 16.12.1998 passed in O.S. No.9 of 1990 by the trial Court.

15. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 04.10.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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