

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

SECOND APPEAL No.966 OF 2017

JUDGMENT:

Heard learned counsel for the appellant and the learned counsel for the first respondent.

The defendants 1, 4 and 5 are the appellants herein. The first defendant filed O.S.No.450 of 2007 on the file of the III Additional Junior Civil Judge, Ongole, for recovery of an amount of Rs.93,533/- basing on the Chit transaction against the defendants 1 to 5 and for a subsequent interest at 12% per annum from the date of the suit till the date of realisation and for costs.

The plaintiff company is a registered company and started chit business with a series LT018POG and the first defendant joined as a member of the chit, who was allotted ticket No.46 and he executed a Chit Agreement on 28.05.2004 for the value of Rs.2,00,000/- with a monthly instalment of Rs.4,000/-. He participated in the auction held on 20.03.2015 and became successful bidder having agreed to forego Rs.73,000/-, out of Rs.2,00,000/-. The first defendant paid Rs.40,000/- and furnished guarantee of defendants 2 to 5 and all the defendants executed promissory note on 28.03.2005 towards future liability of Rs.1,60,000/-. The first defendant received the prize amount of Rs.1,27,000/- and he paid 28 monthly instalments and thereafter committed default from 11.10.2016. In spite of repeated demands made by the plaintiff company and the legal notice issued to the defendants on 27.03.2007, when the demanded amount was not paid, the suit was filed.

The first defendant filed the written statement and the same was adopted by the defendants 2 to 5. The first defendant stated that the plaintiff company obtained signatures on blank papers and the copy of the Chit Agreement and the Minutes were not supplied, the Rules and Regulations of the A.P.Chit Fund Act was not followed and also no notice was issued to the first defendant. The plaintiff company collected two instalments without conducting auction and thus, violated the Rules.

On the above pleadings, the trial Court framed the following issues.

- (1) Whether the suit documents are true, valid and binding on the defendants?
- (2) Whether the plaintiff is entitled to recover the suit claim?
- (3) To what relief?

The trial Court dismissed the suit with costs mainly on the ground that the Foreman had demanded the defaulting prized subscriber in writing for future instalments and failure to demand does not entitle recovery of future subscription. Challenging the said Judgment and Decree, dated 13.02.2013, A.S.No.68 of 2013 was filed before the Principal District Judge, Prakasam at Ongole. The learned District Judge by her Judgment and Decree, dated 05.06.2017 reversed the Judgment and Decree of the trial Court and decreed the suit. She mainly relied on Ex.A.13, uninsured registered letter, which showed that a registered notice was sent to the first defendant to the Ananthapur address on 27.03.2007 and legal notice of even date was also sent to the defendants 2 to 5. She further opined that as per Section 27 of the General Clauses Act, a presumption as to service of notice arises, which is a rebuttable one and the defendants failed to adduce any evidence rebutting the said presumption. Accordingly, the learned District Judge held that the suit was not hit by Section 25(1) of the Chit Fund Act.

In view of the above findings of fact recorded by the learned District Judge on the basis of appreciation of Exs.A.8 and A.13, this Court sees no substantial question of law for admitting the Second Appeal.

The Second Appeal is accordingly dismissed. Miscellaneous petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

20.10.2017
pln