

**HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA**

**SECOND APPEAL No.870 OF 2010**

**JUDGMENT:**

The present Second Appeal is preferred by the plaintiff having been unsuccessful throughout.

2. The respondents are Municipal Council of Nizamabad and its Engineers respectively.

3. Heard Sri R.N. Hemendranath Reddy, learned counsel for the appellant - plaintiff.

4. Of course, there is no representation for the respondents - defendants.

5. For the sake of convenience, the parties are hereinafter referred to as arrayed in the original suit.

6. Originally, the plaintiff, which is M/s. Delhiwala Sweet Home, located at Mirchi Compound, Nizamabad, filed the suit in O.S. No.18 of 2003 requesting for grant of declaration and injunction concerning the demand for enhancement of water charges by the respondents pursuant to G.O.Ms. No.44 M.A., dated 19.01.1993.

7. It is unnecessary to probe into factual aspect nor it is necessary to refer to facts.

8. Suffice it to say that the declaration sought for is in relation to demand notice issued by the defendants expressing therein to disconnect the water tap connection which is sought to be annulled by the present suit claim.

9. Defendant Nos.1 to 3 filed common written statement resisting the suit. Their main defence is that pursuant to the aforesaid G.O., they enhanced the water charges, demand notice was issued in accordance with the procedure laid down therein and sufficient publicity was given about enhancement bringing awareness in the General Public by distributing pamphlets. According to the defendants, there was no cause of action for the plaintiff to approach the Civil Court.

10. The learned Senior Civil Judge, Nizamabad, framed as many as five (5) issues and during trial, the plaintiff examined its Managing Partner as PW.1 and marked Exs.A-1 to A-8, and, on behalf of the defendants, DW.1 was examined and Exs.B-1 to B-16 were marked.

11. The trial Court, having taken up each issue, on appraisal of evidence on record, more particularly, relying on G.O.Ms. No.44, and referring to the contents therein, held all the issues against the plaintiff and consequently dismissed the suit with costs.

12. Aggrieved over the same, the plaintiff preferred the appeal in A.S. No.55 of 2008 on the file of District Judge, Nizamabad. The learned District Judge, referring to the findings recorded by the trial Court, formulated the point for consideration in paragraph No.10 to the effect that “whether the Court below misinterpreted the G.O.Ms.No.44 and wrongly concluded the matter?”

13. The learned District Judge, once again going through the aforesaid G.O. and referring to the relevant contents therein and the clarification issued under Ex.A-8, affirmed the judgment and decree of the trial Court and dismissed the appeal.

14. That is how the plaintiff has approached this Court by preferring the present Second Appeal formulating the substantial questions of law.

15. The present appeal is coming up for admission.

16. When questioned, the learned counsel for the plaintiff would, of course, admit that there is a forum and the competent authority which the plaintiff ought to approach in a case of this nature under the A.P. Municipalities Act. The claim made by the plaintiff ought not to be by way of a suit for declaration and perpetual injunction. Hence, the plaintiff ought to approach the competent authority. In case, he is aggrieved over the same, there is an appellate authority provided thereunder and it is left open to it to approach this

Court by way of Civil Miscellaneous Appeal (CMA). The very claim made by the plaintiff is misconceived.

17. The question of substantial question of law having arisen is also misconceived.

18. There is no merit in the present Second Appeal as could be seen from the judgments and the decrees passed by both the Courts below.

19. Therefore, the Second Appeal 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 appeal stand closed.

**June 15, 2017.**  
PV

**A. SHANKAR NARAYANA, J**

