

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.410 of 2013

JUDGMENT:

The present appeal is preferred by the defendants in O.S.No.57 of 2004 on the file of the Additional Senior Civil Judge, Eluru, West Godavari District. They suffered decree dated 22.10.2008, whereby and whereunder they were directed to pay a total sum of Rs.1,25,000/- with interest at 18% per annum on Rs.25,000/- from 06.04.2002 till the date of filing of the suit and thereafter, at 6% per annum till realization. The trial Court also granted interest at 6% per annum on the principal amount of Rs.1,00,000/- from the date of filing of the suit till realization. That judgment and decree were assailed by the defendants in a regular appeal in A.S.No.156 of 2011 on the file of the Principal District Judge, West Godavari at Eluru, but they did not succeed, since their appeal was dismissed by judgment dated 31.05.2012 affirming the judgment and decree passed by the trial Court. Hence, the present Second Appeal.

The appellants herein are the defendants, whereas the respondent herein is the plaintiff in the original suit.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.S before the trial Court.

The plaintiff laid the suit for recovery of a total sum of Rs.3,81,669.90 ps. based on certain entries in the account books, maintained by the defendants, marked as Ex.B10 for the year 2001-2003 and, in fact, certain account books, which contained the entries, have

been marked as Exs.B2 to B10. The written statement filed by the defendants was one of total denial.

The trial Court settled the following three issues to adjudicate upon the controversy between the parties:

- “1. Whether the suit fixed deposit receipts and cheque are true and valid documents, binding upon the defendants?
2. Whether the plaintiff is entitled for recovery of the suit amount as prayed for?
3. To what relief, the plaintiff is entitled to?”

In order to substantiate his case, the plaintiff examined himself as PW.1 and marked Exs.A1 to A8, whereas, on behalf of the defendants, defendant No.2 - Gutta Kowsalendra Rao, who is the Managing Partner of defendant No.1, examined himself as DW.1 and one C.Suresh was examined as DW.2, besides exhibiting Exs.B1 to B15 and, of course, the expert's opinion is also marked as Ex.X1.

Though, the signatures in the account books were denied by the plaintiff, the report of the Expert would clearly show that they belong to the plaintiff. The trial Court, as could be seen from the discussion in paragraphs '15' to '20', has appreciated the opinion tendered by the Expert in the light of the signatures occurring in Exs.B2 to B10. It has given cogent reasons so far as the entry marked as Ex.B9, in the light of admission made by the defendants as to the receipts of the deposits under Exs.A2 to A5, and felt that consideration of Ex.B9 was not at all necessary and opined that since Exs.B2 to B8 clearly disclose that the interest was paid to the plaintiff regularly, he is not entitled to recover any amount towards interest on the two F.Drs marked as Ex.A3 (sic) and Ex.A5. But concerning Ex.B10, on an intrinsic examination of the entries finding place therein, so far as the amounts of Rs.50,500/- and

Rs.51,000/-, which according to the defendants were paid to the plaintiff on 30.06.2003 and 03.06.2003, respectively, it found that there were interpolations by way of insertion of figure '5' before the figure '1,000' making it to Rs.51,000/-, as regards the entry dated 03.06.2003. As regards entry dated 30.06.2003, where the figure was shown as '500' originally, figure '50' was inserted as prefix making it to look as if it was 'Rs.50,500'. Thus, the trial Court has found that there have been interpolations and, thereby, discarded the stand taken by the defendants and finally granted decree only for Rs.1,25,000/- observing in paragraph '21' that the defendants since failed to prove that they refunded the original amount deposited by the plaintiff, they are liable to return the original amount of Rs.1,00,000/- deposited by the plaintiff on 01.03.1997 and Rs.25,000/- deposited under Ex.A7 on 06.04.2002. The decree has been accordingly passed as mentioned in the beginning itself. This was questioned in A.S.No.156 of 2011 by the defendants.

The learned appellate Judge formulated the point for consideration touching the amount decreed and, making independent appraisal of evidence on record, as could be seen from the discussion made in paragraphs '10' to '13', more particularly paragraph '13', dismissed the appeal by judgment and decree, dated 31.05.2012, affirming the decree and judgment passed by the trial Court. The said judgment and decree of the appellate Court are under challenge in the present appeal by the defendants.

Heard Sri Kambhampati Ramesh Babu, learned counsel for the appellants - defendants, and Sri K.Chidambaram, learned counsel for the sole respondent - plaintiff.

Learned counsel for the appellants, particularly, insists on the substantial questions of law described in ground No. 13 (c) and 13 (e) of

the grounds of appeal. According to him, the Courts below were unjustified in holding that the entries at page No.23 of the account book of Ex.B10, more particularly, figures '5' and '50' were subsequently added in the absence of pleading in the plaint and positive evidence to that effect.

Now, the question is whether the aforesaid ground touches the factual aspect or otherwise?

It is to be said that both the courts being the fact finding courts recorded the findings, having found interpolations. It is no doubt true a plea has not been there in the plaint in that regard, but so far as the positive evidence let in by the parties is concerned, when the very examination by the courts as to the entries in Ex.B10 in the face of such findings recorded by the courts below is based on appreciation of the entries by the courts themselves, it is not now open for the appellants to contend otherwise on technicalities, more particularly, in a second appeal. The question of law which is formulated does not constitute the substantial question of law at all.

Turning to the question of law described in ground 13 (e), again it touches discarding of evidence. Touching entries under Ex.B10 account book, the learned counsel for the appellants would submit that the conduct of the plaintiff as PW.1 in denying his very signature occurring on the vakalat and also the plaint is sufficient to throw away his evidence in entirety and consequently to set aside the decree passed by the trial Court as well as the appellate court on that ground. It is true such denials were made by PW.1 while in witness box, but, there has been an

observation in that regard also in the judgment rendered by the trial Court. In the cross-examination of PW.1, his signature alone was confronted with the signatures occurring on vakalat as well as the plaint. No doubt, there is no prohibition to confront the signature alone, but not the contents unless a document which is sought to be introduced in the cross-examination for the first time said to have authored by the plaintiff in accordance with the provisions of Section 145 of the Evidence Act, where there is a rider to the effect that unless the contents were shown or a brief narration is given to the witness as regards that particular document, the same cannot be confronted to the witness in his cross-examination. There is, of course, no infirmity in confronting his signatures alone without referring to the contents of vakalat or the plaint or giving description of the documents on which the signatures were occurring, to the plaintiff, but again the question is whether mere denial of his signatures on vakalat as well as plaint would assist the defendant in substantiating their stand. The answer is invariably 'no'. Therefore, looking from any angle, certainly, it is not a case where substantial questions of law would arise and, therefore, the present appeal fails.

Accordingly, the Second Appeal is dismissed.

Miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J