

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

C.C.C.A.NO.115 OF 2016

JUDGMENT:

When CCAMP No.44 of 2017 came up for hearing, both parties agreed that the main appeal can be disposed of and hence with the consent of both parties, the arguments in the main appeal are heard.

2. This appeal is filed by the appellant/defendant in O.S.No.672 of 2012 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad, questioning the correctness of the judgment and decree, dated 30-11-2015, whereunder and whereby, the learned trial Judge directed the appellant/defendant to pay an amount of Rs.10,00,000/- with interest thereon at the rate of 12% per annum from the date of suit till the date of decree and further at the rate of 6% per annum from the date of decree till the date of realization.

3. Aggrieved by the judgment and decree, the appellant/defendant preferred this appeal contending that the trial Court has not taken into consideration the material aspect that it was manifest from the record itself that the suit is barred by limitation for the reason that the suit is based on a promissory note, which is dated 20-01-2008, whereas the suit came to be filed on 07-12-2012 i.e., more than three years after the execution of the alleged promissory note.

4. Learned counsel for the appellant further submits that the material is filed to frame proper issues and adjudicate the material question about the aspect that the suit is barred by limitation. It is the further contention of the learned counsel for the appellant that the Court below erred in shifting the burden and appreciating the evidence in a proper perspective and decreed the suit.

5. Per contra, learned counsel appearing for the respondent/plaintiff contended that the trial Court after taking into consideration the material available on record rightly decreed the suit and absolutely, there are no grounds to interfere with the same.

6. During the course of trial, the respondent/plaintiff herself was examined as P.W.1 and produced Exs.A1 to A8. The appellant/defendant himself was examined as D.W.1, but no documents were marked on his behalf.

7. The trial Court framed the following issues for trial:

1. Whether the plaintiff is entitled to recover the suit amount as prayed for?
2. To what relief?

8. However, a perusal of the written statement more particularly para 8 shows that two more issues arise for adjudication, which the Court below has failed to frame and answer. Para 8 of the written statement reads as follows:

“The defendant submits that he is not liable to pay any amount to the plaintiff and the plaintiff is also not entitled to claim anything from the defendant based on the time bond promissory note. The defendant submits that the promissory note is dated 20-01-2008 and the claim of the plaintiff is time bond and she is not entitled to receive any amount basing on time bond promissory note from the defendant. The defendant submits that the alleged cheques were also not supported to the claim of the plaintiff and they are not having any value in the eye of law and four cheques were dated long back. The defendant submits that the alleged agreement is also not supporting the claim of the plaintiff and alleged agreement was not executed by the defendant. The defendant submits that the recitals of alleged agreement dated 20-09-2011 are also not supporting the claim of the plaintiff and in the alleged agreement it was mentioned that principal amount was taken from V.Dakshayani and V.Dakshayani is not the plaintiff in this case and the plaintiff claim can be rejected basing on the recitals of alleged agreement. The defendant submits that as a matter of fact he has not taken any amount from V.Dakshayani and purported agreement dated 20-09-2011 was created and fabricated by the plaintiff with the help of her husband G.K.Rao and her sister V.Dakshayani.”

9. In that view of the matter, it is felt necessary that the judgment and decree of the trial Court is liable to be set aside and the matter need to be remanded to the trial Court for fresh

adjudication after framing proper issues, which emanate from out of para 8 of the written statement filed by the appellant/defendant.

10. Accordingly, the Appeal Suit is allowed setting aside the judgment and decree, dated 30-11-2015 in O.S.No.672 of 2012 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad. However, the matter is remanded to the trial Court with a direction to dispose of the suit within a period of three (3) months from the date of receipt of the record, if necessary by affording opportunity to both parties to adduce further oral and documentary evidence insofar as the additional issues are concerned. No order as to costs. Miscellaneous petitions, if any pending, in this appeal shall stand closed.

DATED: 09-03-2017
Hsd



M.S.K.JAISWAL, J