

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.336 of 2016

JUDGMENT:

This appeal is filed by the defendants, under Section 100 of Civil Procedure Code assailing the decree and judgment dated 10.06.2015 in A.S.No.122 of 2010 on the file of the Court of X Additional District Judge, Ranga Reddy District at L.B.Nagar, wherein and whereby the decree and judgment dated 26.02.2010 in O.S.No.278 of 2008 on the file of the Court of Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar, decreeing the suit in favour of the plaintiff, was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the second appeal are briefly as follows: The plaintiff has been running a trading business in steel with the name and style of M/s.Sri Gajanand Traders, a proprietary concern, situated at NFC Road, Moulali, Hyderabad. The defendant is the regular customer of the plaintiff's firm. The defendant approached the plaintiff and requested to supply M.S.Welding rods, iron and steel etc. on credit basis. The plaintiff supplied the material on various dates from April 2006 to March 2007 to the defendant to a tune of Rs.51,21,562/-. The defendant paid Rs.38,99,543/- and failed to pay the balance amount of Rs.12,12,019/-. To discharge the

debt, the defendant issued a cheque bearing No.288010 for Rs.4,00,000/- on 30.04.2007 drawn on ICICI bank, Habsiguda Branch, Hyderabad, in favour of the plaintiff. The bank authorities issued a memo dated 30.04.2017 stating that the cheque shall be presented once again. Thereafter, the defendant issued a D.D. bearing No.125044 dated 02.05.2007 for Rs.4,00,000/- to the plaintiff. On 26.10.2007 the plaintiff once again presented the cheque bearing No.288010 for collection. The concerned bank issued a memo to the plaintiff stating that 'payment stopped by drawer'. Hence, the plaintiff got issued a notice dated 30.10.2007 by Registered Post with Acknowledgement Due calling upon the defendant to pay the amount of Rs.4,00,000/- in view of dishonour of cheque No.288010 dated 30.04.2007. The defendant issued a reply notice with all false and frivolous allegations. Hence, the plaintiff filed the suit.

4. The defendant filed its written statement denying all the averments made in the plaint *inter alia* contending that the defendant paid an amount of Rs.4,00,000/- to the plaintiff by way of DD No.125044 dated 02.05.2007. The plaintiff filed the suit by creating false invoices. There is no cause of action to the plaintiff to file the suit. The plaintiff was irregular in supplying the material. Defendant filed O.S.No.872 of 2008 on the file of the Court of II Senior Civil Judge, Ranga Reddy District for recovery of the excess amount paid by it. Hence, the suit is liable to be dismissed.

5. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled for recovery of the suit amount?
2. To what relief?

6. During the course of trial, on behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A66 were marked. To non suit the plaintiff's claim, on behalf of the defendant D.W.1 was examined and Exs.B1 to B5 were marked.

7. After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the defendant issued a cheque for an amount of Rs.4,00,000/- but the same was dishonoured, therefore, the plaintiff is entitled for recovery of suit amount of Rs.4,00,000/- from the defendant. Feeling aggrieved by the judgment and decree of the trial Court dated 26.02.2010 in O.S.No.278 of 2008, the defendant preferred A.S.No.122 of 2010 on the file of the Court of X Additional District Judge, Ranga Reddy District, at L.B.Nagar. The first appellate Court after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the plaintiff is entitled for recovery of the suit amount and dismissed the appeal on 12.09.2013. Assailing the judgment and decree in A.S.No.122 of 2010, the defendant preferred S.A.No.78 of 2014 on the file of this Court. This Court after hearing both sides, remanded the matter to the lower appellate Court with a direction to pass fresh judgment strictly

in accordance with the provisions of CPC. After remand of the matter, the first appellate Court had afforded reasonable opportunity to both parties. After reappraising the oral and documentary evidence available on record, the first appellate Court without being influenced by the findings of the trial Court, arrived at a conclusion that the plaintiff is entitled for recovery of the suit amount. Assailing the same, the defendant preferred the present second appeal.

8. Heard the learned counsel for the appellant-defendant, the learned counsel for the respondent-plaintiff and perused the material available on record.

9. The question of law that urged by the learned counsel for the appellant is as follows:

“Whether the courts below are justified in decreeing the suit without taking into consideration the issuance of D.D. for Rs.4,00,000/- by the defendant in favour of the plaintiff?”

10. It is not in dispute that the plaintiff supplied steel and other items to the defendant. As per the invoices submitted by the plaintiff, it had supplied the steel worth of Rs.51,21,559/- to the defendant firm as on 31.03.2007. The defendant made payments on different dates to the plaintiff firm. As per the accounts maintained by the plaintiff, the outstanding amount payable by the defendant is Rs.4,00,000/- as on 30.04.2007. A perusal of the record reveals that the defendant issued a cheque bearing No.288010 for Rs.4,00,000/- in favour of the plaintiff drawn on ICICI bank, Habsiguda Branch, Hyderabad. For one reason or

other, the said cheque was not honoured. The contention of the learned counsel for the appellant is that the defendant issued a D.D. for Rs.4,00,000/- on 02.05.2007, therefore, the defendant paid the entire amount due to the plaintiff. This Court carefully perused the judgment of the trial Court and the first appellate Court. If really, the defendant had issued a D.D. for Rs.4,00,000/- in favour of the plaintiff on 02.05.2007 in respect of the amount covered under cheque bearing No.288010 dated 30.04.2007, what prevented him to issue a legal notice directing the plaintiff to return the cheque.

11. It is not in dispute that the plaintiff filed a case in C.C.No.288 of 2008 on the file of the Court of X Metropolitan Magistrate, Hyderabad, under Section 138 of Negotiable Instruments Act basing on the cheque bearing No.288010. As rightly pointed out by the learned counsel for the appellant, the C.C. filed by the plaintiff was dismissed. It is needless to say that the judgment of the criminal Court is not binding on the civil Court. In a criminal case, the complainant has to prove his case beyond all reasonable doubts. In the instant case, the documentary evidence produced by the plaintiff, Exs.A1 to A66 clearly reveals that as on 30.04.2007, the defendant owe an amount of Rs.4,00,000/- to the plaintiff. Absolutely there is no material on record to establish that the defendant paid the above said Rs.4,00,000/- to the plaintiff. There is no material on record to connect that the defendant issued a DD in favour of the plaintiff on 02.05.2007 in order to discharge the debt covered under the cheque bearing No.288010. In the absence of such evidence, it may not be possible for the Court to come to a conclusion that the

DD bearing No.125044 dated 02.05.2007 was issued by the defendant in discharge of the legally enforceable debt covered under the above cheque. Whether the DD was issued by the defendant in favour of the plaintiff in respect of the amount covered under the cheque bearing No.288010 is purely a question of fact. The trial Court as well as the first appellate Court concurrently held that the DD was issued by the defendant in respect of the material supplied by the plaintiff subsequent to 30.04.2007. Absolutely there is no material on record to establish that the defendant issued D.D. in pursuance of the debt covered under the cheque bearing No.288010 dated 30.04.2007 for Rs.4,00,000/-. The point urged by the learned counsel for the appellant is purely a disputed question of fact. It is needless to say that the first appellate Court is the fact finding final Court. This Court shall not lightly to interfere with the concurrent finding of fact recorded by the Courts below while exercising the jurisdiction under Section 100 CPC. The findings recorded by the Courts below are supported by oral and documentary evidence much less legally admissible evidence. The Courts below have assigned reasons much less cogent and convincing reasons to its findings. Therefore, I am unable to accede to the contention of the learned counsel for the appellants that the findings recorded by the courts below are perverse.

12. In **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, while dealing with the scope of Section 100 of CPC, the Hon'ble apex Court held at paragraph No.16 as follows:

¹ (2010) 13 SCC 216

16. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC.

13. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that there is no question of law much less substantial question of law involved in this appeal and the appeal is liable to be dismissed.

14. In the result, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

26th December, 2017

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