<u>HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO</u>

<u>SECOND APPEAL No.158 of 2017</u>

<u>JUDGMENT</u>:

This second appeal arises out of the concurrent judgments passed in suit filed by the plaintiff for recovery of money in OS No.22 of 2011 before the Senior Civil Judge, Addanki. The suit was dismissed on 11.02.2013 and the appeal preferred before the VIII Additional District Judge cum Family Court, Ongole, in AS No.59 of 2013 was also dismissed on 27.06.2016. The plaintiff is the appellant.

2. The suit was filed with the following averments:

The 1st defendant, who is the principal borrower and the 2nd and 3rd defendants, being his wife and daughter, approached the plaintiff bank for grant of loan to meet their domestic expenses and the bank after pledging Kisan Vikas Patras worth Rs.1,60,000/-, sanctioned loan of Rs.1,20,000/- on 24.04.2006 under Ex.A.1 and as per Ex.A.3, the defendants agreed to repay the same with interest at 11% p.a. in five yearly installments at Rs.24,000/- with monthly rests. They executed stamped receipt also under Ex.A.2 for the said amount. They paid four installments and committed default. The 4th defendant is the guarantor. The plaintiff bank issued legal notice to the defendants on 08.02.2011 under Ex.A.5 and on 21.02.2011 under Ex.A.12 and when they failed to pay the amount, the suit was filed.

3. The 1st defendant filed written statement, denying the plaint averments, but admitted the sanction of loan and receipt of the amount. However, it was stated that the then Manager of the Bank at the end of 2008, after verifying the payments made by the defendants 1 to 3, closed the account and returned the Kisan Vikas Patras under proper

acknowledgment. However, the same Manager later on telephoned and stated that they have to pay Rs.1,69,000/- and demanded to settle it or they would face criminal prosecution. When they approached the Ombudsman, complaint was not entertained on the ground that it requires more oral and documentary evidence. It was also denied that the 4th defendant was their guarantor. It was also stated that they issued a reply notice to the bank through letter dated 04.03.2011.

4. The Manager of the plaintiff bank was examined as PW.1 and another person was examined as PW.2. Exs.A.1 to A.14 were marked on behalf of the plaintiffs. The 1st defendant was examined as DW.1 and marked Ex.B.1 to A.3 on their behalf. The trial court framed the issue as to the entitlement of the bank to recover the amount of Rs.1,84,505/- from defendants 1 to 3.

5. The trial court on appreciation of evidence, noticed that the averments made in the plaint is totally contra to the evidence adduced by the plaintiff bank. PW.1, who is the present Manager of the bank, deposed that after closing the account of the defendants, the NSP bonds were returned to the defendants. As per the account copy Ex.A.14, the defendants 1 to 3 paid entire amount to the bank. PW.2, the then Manager of the Bank, made endorsement on the application form "account closed". Thereafter, the trial court carefully examined Ex.A.14 account copy of the plaintiff bank, containing five pages with computerized entries for the loan No.OSL KVP 20060006, which showed that the defendants paid the entire amount of Rs.1,83,628/- and no balance was made in the last entry in the said account copy. But it is having another copy which was affixed on the next page of the 5th page of Ex.A.14, which is a manual one, which contains a different account number as 'OSL GHL 6/2006'. The evidence discloses that the plea of the

bank that after closure of the original loan, the defendants took another loan was not supported by any evidence. The bank took a plea before the Ombudsman that the defendants have taken advantage of inadvertent mistake. The trial court also noticed that it is the claim of the plaintiff bank that the defendants paid only Rs.26,815/-, but the said payment of the amount was not reflected in Ex.A.14 account copy. The trial court also held that the suit is beyond limitation, as the last entry was made on the 4th page of Ex.A.14 dated 18.02.2011. The trial court further held that the evidence of PWs.1 and 2 clearly showed that the loan amount was paid by the defendants and the bank made endorsement on the loan account as 'account closed' and returned the Kisan Vikas Patras to the defendants. In view of the said evidence and in view of the contrary pleadings, the trial court dismissed the suit filed by the plaintiff.

6. When an appeal was preferred by the bank in AS No.59 of 2013, the lower appellate court framed the following points:

1. Whether the judgment of the trial court in OS No.22 of 2011 on the file of the Senior Civil Judge, Addanki suffers from illegality for not framing the issue of plea of discharge by the defendants?
2. Whether the plaintiff/appellant bank is entitled to recover the suit amount from the defendants as prayed for?
3. Whether the plaintiff/appellant bank is entitled to seek the relief setting aside the judgment and decree passed by the learned Senior Civil Judge, Addanki, dismissing the suit?
4. To what relief?

7. The lower appellate court noticing that it is the duty to independently assess the evidence and consider the relevant points, which arises for adjudication, by following the decision in '*H.Siddiqui (dead) by LRs. V.V.Ramlingam*[1]' appreciated the evidence independently. The lower appellate court observed that the plaintiff cannot plead the grounds outside the pleadings and his case has to be considered on the

---

[1] 2011(2) Supreme 427

basis of the original pleadings, but shall not rely on the weakness or absence of defence of the defendants. Accordingly, it negatived the plea of the plaintiff that in the absence of plea of discharge by the defendants, the trial court erred in law and accordingly held the point against the plaintiff.

8. Similarly the lower appellate court brushed aside the contentions raised based on the non-production of receipts by the defendants and by relying on the entries in Ex.A.14 copy of statement, held that the case of the plaintiff must be disbelieved. The lower appellate categorically stated that the evidence of the Bank Managers as PWs.1 and 2, coupled with Ex.A.14 account copy, clearly showed that the defendants paid the entire amount to the bank and no balance was there as per Ex.A.14 and it accordingly dismissed the appeal of the plaintiff.

9. I have carefully gone through the judgments of the courts below and in view of the admissions made by PWs.1 and 2, coupled with the documentary evidence Ex.A.14, I find that the judgments of the courts below do not warrant any interference. As rightly pointed out by the lower appellate court, the plaintiff cannot take advantage of the lapses if any of the defendants in not producing the receipts for payment made by them and the primary duty is cast on the plaintiff to prove their case but their oral and documentary evidence clearly showed that the defendants paid the entire amount and Kisan Vikas Patras were returned to the defendants after closure of the account. In view of the concurrent findings, no question of law, much less the substantial question of law arises for consideration in the present second appeal and the second appeal is liable to be dismissed.

10. Accordingly, the second appeal is dismissed. No order as to costs. Pending miscellaneous petitions, if any, in this second appeal, shall stand dismissed in consequence.

A. *RAMALINGESWARA RAO, J*

Date: 13.04.2017
BSS

166

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

SECOND APPEAL No.158 of 2017

Date: 13.04.2017

PLN/BSS