HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.76 of 2017

JUDGMENT:

The present Second Appeal is directed against the judgment and decree dated 17.10.2016 passed by the learned Principal District Judge, Chittoor, in A.S. No.100 of 2011, whereby and whereunder, the appeal was dismissed confirming the judgment and decree dated 29.07.2011, passed by the learned Principal Senior Civil Judge, Chittoor, decreeing the suit in O.S. No.25 of 2003. Thus, against concurrent findings recorded by the Courts below, the present Second Appeal is preferred by defendant No.1.

2. The original suit was laid by respondent No.1 herein - plaintiff viz., Nagarjuna Financiers (Registered), represented by its Managing Partner P. Jayachandra Reddy, for recovery of Rs.2,60,000/- with future interest at 6% per annum from the date of filing the suit till realisation from the appellant herein, which is defendant No.1 viz., Annapoorna Agro Machine Services, represented by its proprietor, R. Sambasiva Naidu. Respondent No.2 herein is, in fact, defendant No.2 in the original suit before the trial Court who stood as surety. It is not known as to why defendant No.2 is arrayed as respondent No.2 in the appeal suit referred to in the above, which, of course, continued in the present Second Appeal, though, he stood as guarantor for defendant No.1.

3. Heard Sri M.R.S. Srinivas, learned counsel for the appellant (defendant No.1), and perused the material on record.

4. None appears for respondent Nos.1 and 2, plaintiff and defendant No.2 respectively, though, service was completed.

5. For the sake of convenience, the parties herein are hereinafter referred to as they arrayed in the original suit before the trial Court.

6. This Court, having heard, admitted the present second appeal on 01.03.2018 by formulating the following substantial questions of law:

> "(1) Whether the suit is not maintainable as the same is hit by the provisions of Chit Funds Act and the Rules made thereunder as Exs.A-4 and A-7 are incomplete?
>
> (2) Whether the concurrent findings recorded by the Courts below rejecting the plea of discharge as contrary to the evidence on record ignoring vital admissions made by the plaintiff in his cross-examination and Exs.B-1 and B-2?"

7. A few facts are necessary for deciding the controversy occurring in the present second appeal as the learned counsel for defendant No.1 would submit that there is patent illegality in the findings recorded by the Courts below and that the judgment rendered by the lower appellate Court is nothing but almost replica of the findings recorded by the learned trial Court.

(a) The plaintiff, which is a registered chit fund company, conducted a chit for a value of Rs.3,00,000/- with 25 subscribers for duration of 25 months and the monthly subscription being Rs.12,000/- with 4% foreman commission and the chit was commenced on 03.01.2000 and terminated on 01.01.2002. Defendant No.1, a proprietary concern, subscribed the chit with allotted Ticket No.K2/20 and executed a chit agreement. It participated in the third auction and became successful bidder and received Rs.1,94,000/-, whereas defendant No.2 stood as guarantor and a promissory note for Rs.2,64,000/- was executed agreeing to repay the same with future interest at 18% per annum, but the plaintiff restricted the interest to 12% per annum.

(b) According to the plaintiff, defendant No.1 paid eight (8) full installments including dividend and a sum of Rs.284/- as part of ninth (9th) installment and, thus, became due a sum of Rs.11,716/- towards balance of ninth (9th) installment and the amount of remaining sixteen (16) installments. Therefore, plaintiff claims that defendant No.1 is not entitled to dividend as it committed default in payment of chit installments. Despite repeated demands, the outstanding amount stood unpaid, and, therefore, the suit was laid having issued registered notice.

(c) It appears, defendant No.2 remained *ex parte* before the learned trial Court.

(d) Defendant No.1 filed written statement and, later, also filed additional written statement introducing further pleas. It denied the monthly installments at the rate of Rs.12,000/- and 4% foreman commission and the rate of interest at 18% per annum as the terms of the contract not being stipulated. Defendant No.1 claims that on 19.09.2001, a cheque bearing No.602852 drawn on Vysya Bank Limited, Chittoor, for a sum of Rs.1,23,000/- in the name of P. Jayachandra Reddy, who is Managing Partner of the plaintiff firm, and out of the said amount, plaintiff adjusted the suit amount and another chit. It claims that it has also paid a sum of Rs.48,972/- by way of cheque bearing No.451440 drawn on Vysya Bank Limited, Chittoor, dated 19.10.2000 in favour of the very same P. Jayachandra Reddy, and the amounts were collected by the plaintiff and adjusted to the present suit chit and another chit filed in O.S. No.26 of 2003 on the file of Additional Senior Civil Judge, Chittoor. It claims that the amount covered by the said two cheques was not credited to the suit claim and another suit chit.

(e) Its further plea is that it owns a J.C.B. and the same was engaged by the plaintiff firm for their work from 21.07.2002 to 21.07.2003 on hire basis and in that connection also, hire amounts were also adjusted to the suit chit transaction installments and two other chit transactions. But, the plaintiff did not account for due to misunderstandings that cropped up between them. The plaintiff filed the present suit to make a wrongful gain.

(f) Defendant No.1 also claims that when it received legal notice, approached the plaintiff and questioned its officials about issuance of notice, for which, they informed that by mistake, they issued notice and that they will verify the accounts after consulting their agent and promised to return the promissory note to it through their agent and that was the reason why, it did not give any reply. Defendant No.1 claims that its proprietor became sick and admitted in Apollo Hospital, Madras, and, therefore, could not contact the plaintiff's officials and could not take back promissory note from them. It states that ledger extract is incorrect and the suit is liable to be dismissed.

(g) When defendant No.1 filed additional written statement, it comes out stating that it was subscriber of two chits conducted by the plaintiff and plaintiff's another concern viz., Gowtham Financers, Chittoor, i.e., one for Rs.3,00,000/- bearing No.L/5 and another for Rs.2,00,000/- bearing No.H5/18 and defendant No.1 also raised loan of Rs.1,00,000/- and fell due towards chit installments and loan amount. According to defendant No.1, to discharge the said two defaulted chit installments and the loan amount, it subscribed another chit bearing No.KW/20 for Rs.3,00,000/- with the plaintiff firm and became a prized bidder for Rs.2,69,500/- and discharged the amount due under two chits and the loan amount to Gowtham Financiers run by the same partners.

(h) Defendant No.1 claims that it has also paid an amount of Rs.1,46,500/- under cheque bearing No.602852 drawn on Vysya Bank, Chittoor in favour of Gowtham Financiers, Chittoor, and also paid a sum of Rs.1,23,000/- under a cheque in favour of P. Jayachandra Reddy, Managing Partner of the plaintiff firm. Defendant No.1 again reiterates payment of an amount of Rs.48,972/- through cheque bearing No.451440 on 19.10.2000 drawn on Vysya Bank, Chittoor in favour of P. Jayachandra Reddy, partner of plaintiff's firm, to be credited to its chit dues and loan, but the same was not credited. Even the amounts due, towards lease of JCB belonging to it, were not adjusted to a tune of Rs.1,20,000/-. Defendant No.1 claims that it has paid Rs.30,000/- through cheque bearing No.474995 drawn on Corporation Bank to Gowtham Financiers on 30.05.2002 run by the plaintiff itself. Thus, defendant No.1 put-forth the plea of complete discharge and, therefore, claims that it is not liable to pay any amount to the plaintiff and suppressing the said facts, the plaintiff filed the suit and also another suit in O.S. No.26 of 2003 on the file of Additional Senior Civil Judge, Chittoor. Contending that the plaintiff is not entitled to suit claim, and, therefore, sought to dismiss the suit.

8. (a) Based on the aforesaid pleadings, the trial Court settled the following three issues for trial:

> "(1) Whether the defendants are entitled for dividends?

(2) Whether the discharge pleaded by the defendant is true, valid and binding on the plaintiff?

(3) To what relief?

(b) When additional written statement was filed by defendant No.1, the following additional issue was settled for trial:

"(1) Whether the plaintiff is entitled to recover the suit amount?"

9. During trial, P. Jayachandra Reddy, Managing Partner of the plaintiff firm, was examined as PW.1 and Exs.A-1 to A-10 were marked to substantiate its case, and, on behalf of defendant No.1, as many as five (5) witnesses were examined as DWs.1 to 5 and marked Exs.B-1 and B-2 besides Exs.X-1 to X-3 through DW.3 viz., B. Venkatachalapathi, which are photostat copies of the cheques for Rs.1,46,500/-, 48,972/- and Rs.1,23,000/- respectively.

10. In the direction of whether there has been any patent illegality in the findings recorded by the Courts below so as to give rise to substantiating the substantial questions of law, the evidence on record and the findings recorded by the trial Court require advertence.

11. The learned trial Judge taken up issue Nos.1 and 2 together for discussion. The learned trial Court referred to Exs.X-1 to X-3 which are the cheques issued by defendant No.1. Ex.X-1 cheque is for Rs.1,46,500/- dated 19.09.2001 drawn on Vysya Bank in favour of

Gowtham Financiers. Admittedly, it is a sister concern of the plaintiff firm. Ex.X-2 is photostat copy of the cheque dated 19.09.2001 for Rs.1,23,000/- in favour of P. Jayachandra Reddy, Managing Partner of the plaintiff company. Ex.X-3 is photostat copy of another cheque dated 19.10.2000 for Rs.48,972/- in favour of very same P. Jayachandra Reddy. Apart from these cheques, the stand of defendant No.1 is that it has also paid Rs.30,000/- by way of cheque to Gowtham Financiers on 30.05.2002, which is sister concern of the plaintiff firm. This apart, the stand of defendant No.1 is that the plaintiff has become due a sum of Rs.1,20,000/- to it towards J.C.B. hire charges as the plaintiff engaged the J.C.B. belonging to it for one year from 21.07.2002 to 21.07.2003. Thus, payment of amounts under Exs.X-1 to X-3 cheques and another sum of Rs.30,000/- by way of cheque to Gowtham Financiers and Rs.1,20,000/- said to be due by the plaintiff firm to defendant No.1 towards J.C.B. hire charges, according to defendant No.1, constitute discharge of the amount due to the plaintiff.

12. The learned trial Court finding that Exs.X-2 and X-3 were issued by defendant No.1 in the name of P. Jayachandra Reddy, but not in the name of plaintiff firm and P. Jayachandra Reddy being Managing Partner of the plaintiff firm in his individual capacity, arrived at the opinion that defendant No.1 repaid the amounts borrowed from P. Jayachandra Reddy and they did not have concern with the due amount under the chit to the plaintiff firm. It was held

that the said contention of defendant No.1 is unbelievable as per the evidence available on record.

13. To substantiate the said finding, the learned trial Court raised a probability in not answering the legal notice by defendant No.1. According to the learned trial Court, payments under Exs.X-1 and X-3 were in his individual capacity and the amounts received by Jayanchandra Reddy are in his individual capacity. The legal notice issued under Ex.A-7 to defendant No.1 is dated 06.11.2002, which was subsequent to the cheques under Exs.X-1 to X-3. Concerning Ex.X-1, the learned trial Judge opines that since it was issued in favour of Gowtham Financiers, it cannot be construed that it was towards discharge of due amount under the chit to the plaintiff firm. The learned trial Judge opines that in case, there is truth in the stand taken by defendant No.1, certainly, he would have got a suitable reply issued to Ex.A-7 by referring to these facts and adjustments. In the said direction, the learned trial Judge has also relied on a decision in **Arun Shriram Bawaskar v. Ramdas Vishnupant Kakane** [2007 (4) Bombay CR 348] in drawing an adverse inference, where the Court held that the trial Court in that case has rightly drawn an adverse inference when there was failure to send a reply notice controverting the allegations in the legal notice issued by the opposite party.

14. The second probability, basing on which the learned trial Judge recorded findings in favour of the plaintiff, is that defendant No.1 is not a layman and in fact it is a proprietary concern, and,

therefore, without knowing the consequences of issuing cheques in favour of a different company and in favour of a Managing Partner in his personal capacity, would issue the cheques as such, and would claim now that the plaintiff firm adjusted the amounts under Exs.X-1 to X-3 towards the chit amount and it was not due any amount.

15. Likewise, concerning Exs.B-1 and B-2, where the plaintiff firm was not referred to and even DW.1, in his cross-examination, admits the same and even the signature of P. Jayachandra Reddy as a partner of the plaintiff firm was not occurring therein, disbelieved the stand taken by defendant No.1 that the amount due by Suvera Hatcheries has to be adjusted by the plaintiff. Once again, the learned trial Judge drawn an inference from the fact of not answering legal notice under Ex.A-7 by defendant No.1, and, thus, rejected the stand of defendant No.1 as to the plea of discharge.

16. On issue No.1, whether defendant No.1 is not entitled to dividend as per the conditions of Ex.A-4 original chit agreement, which contemplates that for a defaulter, dividend would not be available, on observance of mandatory provisions of A.P. Chit Fund Act, which was taken up as one of the grounds by the learned counsel for defendant No.1 and the circumstance that Column No.9 of Ex.A-4, the plaintiff chit fund company deposited the chit amount by its foreman in Canara Bank Account No.1088024 of Chittoor, whereas, as per Chit bye-laws in Ex.A-6 under Column No.4, the approved bank is mentioned as Corporation Bank, and, therefore, Exs.A-4 and

A-6 are not related to the suit chit amount and places reliance in **Karnati Mallikarjuna Rao & Co. v. Konlapati Krishna Murthy** [1986 (1) ALT 132] and, therefore, the suit is not maintainable for recovery of amount form the subscriber, the learned trial Judge held that the said authority is not applicable to the fact-situation occurring in the instant case and referred to that under Column No.11 of Ex.A-4 chit agreement, chit number is mentioned as 509/99-2000 and in Form No.II of Ex.A-6, the same number i.e., 509/99-2000 is mentioned, and therefore, they are related to the suit chit transactions, and, thus, even rejected that submission.

17. The contention of the learned counsel for defendant No.1 is that Ex.A-6 is incomplete document and that the suit based on incomplete document cannot be decreed and to substantiate the said contention, the learned counsel relied on the decision in **P. Rukmangadha Chetty v. The Public Finance Corporation, Chittoor, represented by its Proprietor D.Balakrishna** [The Law Summary (AP) 1996 (2) 474]. The learned trial Judge observing that though, Form No.1 of Ex.A-6 does not show mentioning of the amount in chit bye-laws, all details are mentioned including the amount etc., and, therefore, non-mentioning of amount in the first page of Ex.A-6 would not give an indication that the application was not submitted to the Registrar of Chits, Chittoor, and, thereby, held that the ruling relied on by the learned counsel for defendant No.1 is inapplicable. The other authorities relied on by the learned counsel

for defendant No.1 were **Allam Gangadhara Rao v. Gollapalli Gangarao** [AIR 1968 AP 291] and **Ram Sewak v. Ram Charan (died per L.Rs.)** [AIR 1982 Allahabad 177]. According to the learned trial Judge, the said authorities are inapplicable to the fact-situation occurring in the instant case.

18. Thus, based on the said findings, the suit was decreed with costs for a sum of Rs.2,60,000/- with future interest on the principal sum of Rs.2,03,716/- at 6% per annum from the date of suit till realisation. The said findings were challenged in A.S. No.100 of 2011 before the learned Principal District Judge, Chittoor, by defendant No.1. The learned lower appellate Court having extracted the issues by projecting the respective cases of the plaintiff and defendant No.1, formulated the following points for consideration:

> "1. Whether IA.No.166/2015 filed by the platiniff/1st respondent under Or.41 R.27 CPC and IA.No.375/2015 filed by the 1st defendant/appellant under Or.41 R.27 can be allowed?
>
> 2. Whether the appellant/1st defendant has proved the plea of discharge put forward by him?
>
> 3. Whether the suit chit agreement in Ex.A4 is not in accordance with the A.P Chit Funds Act and Rules and is unenforceable?
>
> 4. Whether the plaintiff is not entitled for the recovery of suit amount as prayed for?
>
> 5. Whether the impugned decree and judgment are liable to be set aside?"

19. On point No.1, received the additional evidence notwithstanding the delay in securing the documents and producing the same as additional evidence, observing that how far they are useful to substantiate the contentions of the parties is a different issue, which can be considered while re-appreciating the documentary evidence and the stand taken by each party and marked them as Exs.A-11 and A-12, which were filed by the plaintiff, and the documents filed by defendant No.1 were marked as Exs.B-3 and B-4.

20. The learned lower appellate Court then taken up point Nos.2 to 4 together for common discussion as they require one and the same appreciation on record. Based on the admissions made by defendant No.1 in the additional written statement and also in his chief-affidavit, held that defendant No.1 joining as a subscriber in the suit chit bearing No.K2/20 for Rs.3,0,00/- is undisputed. Then referred to the stand taken by defendant No.1 which was already discussed in the above while referring to the issues answered by the learned trial Judge.

21. The learned lower appellate Court then taken up Exs.X-2 and X-3 in the light of the stand taken by defendant No.1 and observed that defendant No1 did not specifically plead and prove as to what were the instructions, he has given to the plaintiff at the time of issue of said cheques and how much amount has to be adjusted towards the amount due under the suit chit transaction and also the amount due under the chit transaction covered by O.S. No.26 of 2003.

The learned lower appellate Court referring to the evidence of DW.3, observes that the evidence of DW.3 shows that defendant No.1 issued not only Exs.X-2 and X-3 cheques, but also Ex.X-1 cheque for Rs.1,46,500/- and that Exs.X-2 and X-3 were issued in favour of T. Jayachandra Reddy, whereas Ex.X-1 was issued in favour of Gowtham Financiers and all of them were encashed. Thus, according to the learned lower appellate Court, evidence of DW.3 coupled with Exs.X-1 to X-3 would prove not only issuance of said cheques, but also encashment of the same by the persons mentioned therein and, thus, deliberated much on the controversy mentioning that entire controversy rests with regard to whom the said payments were made and with regard to the amounts covered by plaintiff firm and also another sister concern of the plaintiff firm i.e., Gowtham Financiers, which filed suit in O.S. No.26 of 2003 in respect of another chit transaction.

22. The learned lower appellate Court then on an analysis observing that defendant No.1 is also a proprietary firm and the proprietor knows English and he has been subscribing signatures in English and also admitted that he has been doing business from the year 1990 in the name of 'Jalakanya Tube Wells' and earlier to it, in the name of 'Annapurna Agro Machine Services' from 1999 till 2002, but, they were not registered firms, and, subsequently, in 1996, they were closed and he used to have turnover of Rs.5,00,000/- to Rs.6,00,000/- per annum, and, therefore, the learned lower appellate

Court opined that defendant No.1 is aware of the distinction between plaintiff firm and its sisters concern and also the transactions carried on by the said firm and the transactions carried on by the managing partners in their individual capacity and in the said background, and opined that the contentions of the parties required to be considered according to it.

23. Thus, the learned lower appellate Court refers to the contentions of the plaintiff touching the averments covered by Exs.X-2 and X-3, observing that the burden rests on defendant No.1 to substantiate that the payments were in respect of the amounts due under the suit chit and also another chit covered by another suit and finally held that when the said cheques were not issued in the name of the plaintiff firm, as per the evidence of DW.3, and they were not shown to have been encashed by the persons in whose favour they were issued, it cannot be readily inferred that the said payments were only towards discharge of the amount due under the suit chit, that too, when admittedly there were other transactions between the parties, and, then refers to the circumstances of failure on the part of defendant No.1 in getting a reply issued to Ex.A-7 legal notice. Then the learned lower appellate Court refers to failure on the part of defendant No.1 in showing what sort of instructions it has given to substantiate the stand it has taken and even went to the extent of observing that even if the apprehension of defendant No.1 that issue of said two cheques was for suit chit transaction is believed to be true

for a moment, it cannot be said that plaintiff is at fault in adjusting the said amounts towards other transactions and claiming the amount due under the suit chit transaction. The learned lower appellate Court would observe from the pleadings in the written statement initially filed and also in the additional written statement filed, after the plaintiff got the date of the promissory note amended and also as per the evidence of DW.1, and observed that it is evident that defendant No.1 has not come forward with specific plea as to which amounts the payments covered by the cheques and the amount due to it by usage of JCB have to be adjusted, and, on the other hand, it shows that it came forward with ambiguous pleas and it also tried to improve its case from stage to stage, as initially, it stated that it has issued two cheques covered by Exs.X-2 and X-3 and subsequently, added two more cheques and came forward with a plea that the payments covered by the said four cheques and also the amount of Rs.1,20,000/- due to it by the usage of JCB were liable to be adjusted towards the amounts due by it under the two chit transactions i.e., one covered by the present suit, the other covered by the suit in O.S. No.26 of 2003 and Rs.1,00,000/- borrowed by him (in individual capacity) may be as a hand loan.

24. The learned lower appellate Court then refers to the admissions made by DW.1 which according to it are crucial admissions. DW.1, in his cross-examination, admitted that in Exs.B-1 and B-2, the name of the plaintiff firm was not referred, and the name

of P. Jayachandra Reddy, as shareholder and partner of the plaintiff firm in Exs.B-1 and B-2 and the signatures are also not there in Exs.B-1 and B-2, and, thus, drawn an inference that in case the said transaction has no bearing with the suit chit transaction, defendant No.1 could have got issued reply to Ex.A-7 legal notice putting forth all the said contentions. But, the very fact that it did not issue any such reply and the explanation put-forth by it for non-issue of reply does not inspire confidence and thereby held that the said version is also against the conduct of an ordinary prudent person.

25. The learned lower appellate Court then holds that since some irrelevant columns in Ex.A-4 chit agreement are left unfilled, it cannot be said that it is unenforceable, as the claim is just not based on Ex.A-4 chit agreement but also on Ex.A-5 promissory note, due execution of which has not been disputed, and, therefore, held that defendant No.1 cannot be permitted to question the enforceability of Exs.A-4 and A-5. Thus, held all the three points against defendant No.1. On point No.5, arrived at that the learned trial Court has appreciated the oral and documentary evidence in proper perspective and has come to right conclusions and has rightly decreed the suit and there are no justifiable grounds to interfere with the same, and, thereby dismissed the appeal.

26. Thus, aggrieved, defendant No.1 preferred the present second appeal raising the very same grounds in the grounds of appeal once again, and in the grounds of appeal in paragraph No.3, referring

to the suggestions put to DW.1 and the answers mentioned that when the suggestion is that chit bearing No.KW.20 of Nagarjuna Finance and H5 18 of Gowtham Finance are nothing to do with the suit chit transaction, ought not to have decreed the suit for the same transaction and, thus, the lower appellate Court has not properly appreciated.

27. According to defendant No.1, the lower appellate Court when given much weight to the suggestion made by the learned counsel for the defendant with regard to relationship between the plaintiff firm and its sister concern firms, it ought to have given equal weight to the suggestion got made by the plaintiff and ought not to have ignored, and, therefore, the lower appellate Court totally erred in applying its mind and even without going through the entire evidence on record, it has came to conclusion to decree the suit and taken some of the evidence only to its consideration, and even the answer given by PW.1 in his cross-examination that he has not shown the alleged hand-loan in his income tax returns which itself is an admission for proof that there are no such transactions in between him and defendant No.1 firm, but the same was ignored by the lower Court and arrived at an erroneous conclusion that the payments made by defendant No.1 were towards the alleged hand-loan transactions with PW.1 individually that too without any evidence to substantiate it and formulated substantial questions of law, thus:

> "1) Whether the suit filed by the 1st Respondent is maintainable as the same is hit by provisions of the

Chit Funds Act and Rules made therein. As Ex.A4 and A7 are incomplete.

2) Whether courts below committed jurisdictional error while rejecting the pleas of discharge set up by the Appellant contrary to the evidence on record ignoring crucial admissions made by the Plaitniff/1st Respondent and Ex.B1 and Ex.B2."

28. Now, turning to the submissions made by the learned counsel for defendant No.1, based on the substantial questions of law, which were referred to in the above, certainly, it has to be held that no substantial questions of law would, in fact, arise, unless defendant No.1 is successful in establishing that the findings recorded by the Courts below are patently perverse, no interference at all is warranted.

29. Turning to Exs.A-4 and A-7, based on which the first substantial question of law is formulated, in fact, it ought not to have been Ex.A-7 and it ought to be Ex.A-6 which are bye-laws and Ex.A-4 chit agreement is not at all disputed by defendant No.1.

30. The learned trial Judge recorded definite findings referred to in the above in holding that the chit number mentioned against Column No.11 of Ex.A-4 and chit number mentioned in Form - II of Ex.A-6 are one and the same and relates to suit chit transactions, and, therefore, the ruling relied on by defendant No.1 in **Karnati Mallikarjuna Rao v. Konlapali Krishna Murthy**, held to be inapplicable.

31. What is sought to be projected by the learned counsel for defendant No.1 is that Ex.A-4 chit agreement under Column No.9 shows that the plaintiff chit fund company deposited the chit amount through its foreman in Canara Bank account, whereas Ex.A-6 bye laws in Column No.6 shows the approved bank as Corporation Bank, and, therefore, if any amount due under Ex.A-4, ought to have been deposited in Corporation Bank but not in the account of Canara Bank. Thus, the learned counsel for defendant No.1 intends to project and thereby formulated the first question of law stating that the suit is not maintainable as the same is hit by the provisions of Chit Fund Act and the rules made thereunder besides that Exs.A-4 and A-6 are incomplete. This was referred to by the learned trial Court in paragraph No.13. What was found by the learned trial Judge is in Form No.1 of Ex.A-6, amount is not mentioned, but, in chit bye laws, all details are mentioned including the amount etc., and just non-mentioning of amount in the first page of Ex.A-6 cannot be an indicator that the application was not submitted to the Registrar of Chits, Chittoor. It is true, when the case of the parties examined, it has to be examined by keeping in view the whole document, but not a part of the document where a blank is leftover. Therefore, non-mentioning of the amount in the first page of Ex.A-6 would not tilt the case of the plaintiff nor can it be said that on account of the same Ex.A-6 is hit by the provisions of the Chit Funds Act and the Rules made thereunder.

32. It is no doubt true, Ex.A-4 refers to the bank as Canara Bank, whereas Ex.A-6 shows that approved bank is Corporation Bank. However, that cannot be viewed so seriously so as to reject the suit claim, more particularly, when the entire stand taken by the defendant is wholly incorrect and unbelievable in view of the elaborate discussion made by both the Courts below in recording the findings on the issues framed by the trial Court and the points formulated by the lower appellate Court. The findings recorded are based on appreciation of evidence on record, both, oral and documentary, and in accordance with evidentiary rule supported by well-judged process of reasoning. In such an event, certainly, the present Second Appeal has to be out-rightly thrown away at the threshold.

33. Admittedly, touching the second substantial question of law projected by defendant No.1, certainly, it touches the factual aspect and in view of the fact that no patent illegality is projected except relying on a suggestion made to DW.1 which was extracted in the grounds of appeal, it cannot be said that patent illegality crept in recording the findings by the Courts below concurrently. Thus, there is no merit in the present second appeal.

34. Therefore, the Second Appeal is dismissed at the admission stage itself. There shall be no order as to costs.

As a sequel thereto Miscellaneous Petitions, if any, pending in the present Second Appeal stand dismissed.

A. SHANKAR NARAYANA, J

March 14, 2018.

PV