

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

SECOND APPEAL NO.52 OF 2018

DATED:09-02-2018

Between:

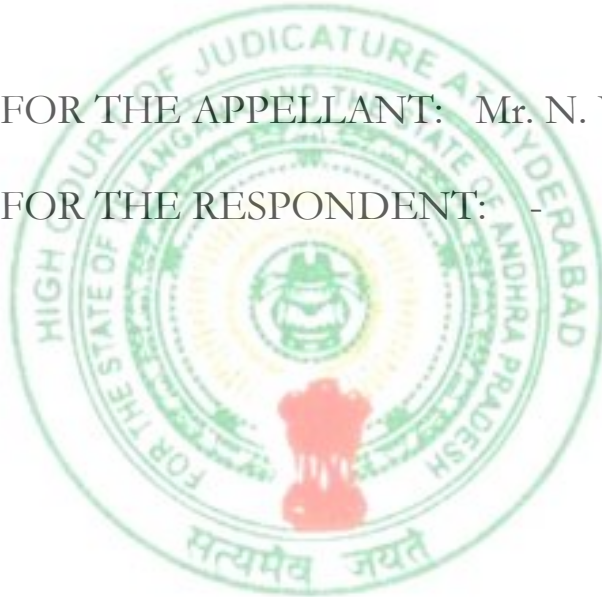
Mall Appalaraju ... Appellant

And

Repati Srinivasa Rao ... Respondent

COUNSEL FOR THE APPELLANT: Mr. N. Vijay

COUNSEL FOR THE RESPONDENT: -



THE COURT MADE THE FOLLOWING:

JUDGMENT:

This second appeal arises out of concurrent findings of fact arrived at by both the Courts below in O.S. No.118 of 2015 and A.S. No.17 of 2016.

2. The respondent - plaintiff filed the aforesaid suit for recovery of Rs.1,51,267/- along with interest at 24% per annum on the strength of a promissory note. The appellant – defendant has taken the plea that due to ill-health of his wife, he stopped the bangles business in the month of April 2012 onwards and finally it was closed in the month of January, 2013 and therefore he had no necessity to borrow amount for his business investment. He has accordingly denied borrowing of any amount from the respondent and the execution of the suit promissory note.

3. Based on the respective pleadings of the parties, the trial Court framed the following issues.

1. “Whether the suit promissory note is true, valid and binding on the defendant?
2. Whether the plaintiff is entitled to recover the suit amount together with subsequent interest and costs from the defendant?
3. To what relief?”

4. On behalf of the respondent, he examined himself as P.W.1 and also examined P.W.2. He has got Exs.A.1 to A.5

marked. On behalf of the appellant, he examined himself as D.W.1 and got Exs.B.1 to B.6 marked.

5. On issue No.1, the trial Court has placed the initial burden on the respondent to adduce cogent and convincing evidence. Based on the evidence of P.Ws.1 and 2 and also Exs.A.1 to A.5, the trial Court has rendered a finding that the respondent has discharged the initial burden placed on him to the effect that the appellant has borrowed a sum of Rs.1,00,000/- under Ex.A.1 agreeing to repay the amount with interest at the rate of 24% per annum and that he failed to discharge the same. The trial Court further held that the appellant failed to produce any evidence in support of his plea that Ex.A.1 promissory note is forged and that no consideration was passed under the same. The trial Court also took note of the specific statement made by the appellant in his cross-examination that he does not intend to send Ex.A.1 to an expert for comparison of his signature. The trial Court also held that on getting himself recalled as D.W.1, the appellant has produced Exs.B.1 to B.6 and introduced a new story that he used to sign as “M.A. Raju”, but not “Malla Appalaraju” in Telugu. The Trial Court has observed that the said stand is a pure afterthought as nowhere either in the written statement or

in Ex.A.3 - reply, or in his chief examination as D.W.1 he has taken the said plea. On appreciation of the oral and documentary evidence, the trial Court has arrived at the aforementioned conclusions while decreeing the suit. The lower appellate Court has confirmed the judgment and decree of the trial Court by assigning cogent reasons.

6. After hearing Mr. N. Vijay, learned counsel for the appellant, and carefully considering the findings recorded by the Courts below, I do not find that the judgments under appeal suffer from any legal errors giving rise to substantial questions of law. Hence, the second appeal is dismissed.

As a sequel to dismissal of the second appeal, I.A. No.1 of 2018 shall stand disposed of as infructuous.

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C.V. NAGARJUNA REDDY, J

09-02-2018

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