

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.810 of 2000

JUDGMENT:

This appeal is filed by the defendants, under Section 100 of Civil Procedure Code assailing the decree and judgment dated 29.02.2000 passed in A.S.No.189 of 1996 on the file of the Court of the Additional Special Judge for SPE & ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad, wherein whereby the decree and judgment dated 26.06.1994 passed in O.S.No.734 of 1990 on the file of X Assistant Court, City Civil Court, Hyderabad, dismissing the suit filed by the plaintiff, was reversed.

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: It is the case of the plaintiff that it has been carrying on chit fund business having its registered office at 1-1-80/21, RTC X Roads, Chikkadapally, Hyderabad. On 03.10.1986 the first defendant joined as one of the subscribers in the chit fund scheme for an amount of Rs.25,000/- to be paid at Rs.500/- per month for 50 months. The chit commenced on 31.12.1986 and terminated on 31.01.1991. The plaintiff company allotted ticket No.LT5H-25 to the first defendant. On 24.07.1988, the first defendant participated in the chit auction and became

successful bidder having agreed to forego an amount of Rs.10,000/- out of Rs.25,000/-. The plaintiff company paid the prize amount to the first defendant by way of two cheques and one cash voucher. The first defendant executed a promissory note in favour of the plaintiff company and defendants No.2 to 4 stood as guarantors on behalf of the first defendant. For one reason or other, the first defendant did not pay the instalments. The plaintiff company got issued a legal notice directing the defendants to pay the amount. The defendants did not choose to pay the amount. The plaintiff having no other alternative, filed the suit.

4. The first defendant filed his written statement denying all the averments made in the plaint *inter alia* contending that he did not join as a subscriber in the chit run by the plaintiff company. It is the further case of the first defendant that he did not execute any promissory note in favour of the plaintiff company and defendants 2 to 4 did not stand as guarantors for him. The plaintiff filed the suit without following the procedure as contemplated under the A.P.Chit Fund Act, 1982. 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 company is a registered company?
2. Whether the plaintiff is entitled to the suit amount as prayed for?
3. To what relief?

6. During the course of trial, on behalf of the plaintiff, the manager of the plaintiff company was examined as P.W.1 and Exs.A1 to A11 were marked. To demolish the case of the plaintiff, on behalf of the defendants, the first defendant examined himself as D.W.1 but no documents were marked.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff is a chit fund company registered under the provisions of the Chit Fund Act. The trial Court dismissed the suit on the ground that the plaintiff did not file the registration certificate. Feeling aggrieved by the judgment and decree of the trial Court dated 28.06.1994 in O.S.No.734 of 1990, the unsuccessful plaintiff preferred A.S.No.189 of 1996. During pendency of the appeal, the plaintiff filed I.A.No.88 of 1999 under Order 41 Rule 27 CPC to receive the registration certificate and bye laws of the plaintiff company as additional evidence and the same was allowed. The first appellate Court marked the registration certificate as Ex.A12. 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 from the defendants and allowed the appeal on 29.02.2000. Assailing the judgment and decree in A.S.No.189 of 1996, the first defendant alone preferred this appeal.

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

9. On 29.09.2000, this Court admitted the second appeal and framed the following substantial question of law for consideration:

“Whether the suit filed by the plaintiff claiming to be Chit Fund company is maintainable on account of non compliance with the mandatory provisions relating to Sections 6 to 8 of the A.P.Chit Funds Act.”

10. Before advertng to the findings of the Courts below, this Court is placing reliance on the judgment in **Municipal Committee, Hoshiarpur v. Punjab SEB¹**, wherein, while dealing with the scope of Section 100 of CPC, the Hon’ble Apex Court held at paragraph No.16 as follows:

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. ...

11. Let me consider the facts of the case on hand in the light of the above legal principle. The predominant contention of the learned counsel for the appellant-first defendant is that the plaintiff filed the suit without complying with the provisions of Sections 6 to 10 of the A.P. Chit Fund Act. Section 6 of the Act deals with form of chit agreement, Section 7 deals with filing of

¹ (2010) 13 SCC 216

the chit agreement before the Registrar. Section 10 contemplates that the chit fund company has to supply the copy of the chit agreement to the subscriber. It is the case of the first defendant that he did not join as one of the members of the plaintiff's chit fund company. It is the further case of the first defendant that he did not receive the prize amount. As seen from the testimony of P.W.1, the first defendant joined as one of the members in the chit on 03.10.1986. As seen from the testimony of P.W.1, the first defendant became a successful bidder on 24.09.1988. His testimony further reveals that the first defendant executed a promissory note.

12. Ex.A1 is the certificate of incorporation. Ex.A2 is the bye-laws and Ex.A3 is the chit agreement. Ex.A4 is the promissory note executed by the first defendant. Ex.A5 is the agreement of guarantee executed by defendants 2 to 4 in favour of the plaintiff company. A perusal of Ex.A6 cash voucher clearly reveals that the plaintiff company paid an amount of Rs.2,524/- vide cheque bearing No.044787 dated 14.08.1988, Rs.4,616/- vide cheque bearing No.044788 dated 14.08.1988 and Rs.7,859/- vide receipt No.11208 on 14.08.1988, in total Rs.15,000/- to the first defendant. The first defendant has taken a specific plea that the plaintiff company has not paid the chit amount. By examining P.W.1 and marking Exs.A1 to A6, the plaintiff clearly established that the first defendant joined as one of the members of the chit and received the prize amount by

way of two cheques and cash receipt. The contention of the first defendant is not sustainable in view of Ex.A6.

13. The trial Court has given a specific finding that the plaintiff company is a registered one. The plaintiff company got issued Ex.A7 legal notice directing the defendants to pay the amount. Exs.A8 to A11 are the postal acknowledgments. The defendants having received legal notice, did not choose to befitting issue reply. Mere issuance of reply by itself is not a valid ground to draw an adverse inference against the defendants. The Court has to take into consideration the totality of facts and circumstances of the case. As observed earlier, Exs.A4 to A6 clearly prove that the first defendant received the prize amount and defendants 2 to 4 stood as guarantors to the first defendant.

14. A perusal of the record reveals that the plaintiff filed a petition under Order 13 Rule 2 CPC to receive and mark the letter addressed by the plaintiff company to the Registrar of Chits, Chikkadapally, Hyderabad. For one reason or other, the plaintiff could not mark the same before the trial Court. During pendency of the appeal, the plaintiff filed a petition under Order 41 Rule 27 CPC to receive the document as additional evidence and the same was allowed. The appellate Court marked the letter addressed by the plaintiff company to the Registrar of Chits as Ex.A12. As per the recitals of Ex.A12, the chit commenced on 03.10.1986 and terminated on 31.01.1991. The trial Court failed to consider Ex.A1 certificate of incorporation,

Ex.A2 bye-laws of chit and Ex.A3 chit agreement. Had the trial Court has taken a little care and considered Exs.A1 to A3, its finding would be otherwise. The finding of the trial Court that the plaintiff has not filed the chit agreement is not sustainable in view of marking of Exs.A1 to A3. In Ex.A12 letter, the plaintiff intimated to the Registrar of Chits about the commencement of chit on 03.10.1986. The plaintiff company has strictly followed the provisions of Sections 6 to 10 of the A.P.Chit Fund Act, 1982 before filing of the suit. Whether the plaintiff company has supplied the copy of the chit agreement to the first defendant or not is purely a question of fact. There is no whisper in the testimony of D.W.1 that copy of Ex.A3 was not supplied to him. The first defendant simply denied every thing. If really the plaintiff has not paid the prize amount or not supplied the copies of the chit agreement, what prevented him to issue a befitting reply to the legal notice Ex.A7. The material available on record clinchingly establishes that the plaintiff company followed the procedure as contemplated under Sections 6 to 10 of the A.P. Chit Fund Act, 1982. The plaintiff clearly establishes that the first defendant having received the prize amount failed to repay the same. The finding recorded by the trial Court that the plaintiff has not filed the bye-laws and the agreement of chit is not sustainable, in view of Exs.A2 and A3. The first appellate Court considered the oral and documentary evidence in right perspective and arrived at a conclusion that the plaintiff is entitled to recover the suit amount from the defendants. The first appellate Court has

assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the first appellate Court. There are no grounds much less valid grounds to upset the findings recorded by the first appellate Court. As observed earlier, the findings recorded by the trial Court are not sustainable. There is no question of law much less substantial question of law involved in this appeal. Hence, the appeal is liable to be dismissed.

15. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 22.10.2018
Rns

T.SUNIL CHOWDARY, J

