

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.323 of 2013

JUDGMENT:

This appeal is filed by the defendant, under Section 100 of CPC, assailing the judgment and decree dated 06.9.2012 passed in A.S. No.10 of 2011 on the file of the II Additional District Court, Kurnool at Adoni, wherein and whereby the judgment and decree dated 19.3.2010 passed in O.S.No.71 of 2004 on the file of the Court of Senior Civil Judge, Adoni, was confirmed with certain modifications.

2. Heard the learned counsel for the appellant.
3. The parties will hereinafter be referred to as they were arrayed before the trial Court, to avoid confusion.
4. The facts leading to filing of the present appeal are, in nutshell, as follows: The plaintiff is a registered partnership firm carrying on the business in banking, in the name and style of M/s.Pavan Financiers, Adoni and is being represented by its Managing Partner, Mr.T.G.Pavan Kumar. The defendant borrowed an amount of Rs.1,00,000/- from the plaintiff on 30.5.2000 agreeing to repay the same with interest at 24% per annum and plaintiff paid the said amount to the defendant by way of cheque bearing No.059104, dated 30.5.2000 drawn on Karnataka Bank, Adoni Branch. The defendant has paid Rs.8,000/- under a cheque bearing No.226699, dated 17.10.2000 towards part payment. The defendant also paid Rs.12,000/- under a cheque bearing No.635837, dated 09.5.2001 drawn on Corporation Bank, Adoni Branch towards part-payment of the debt amount. The plaintiff

issued notice on 08.8.2001 directing the defendant to pay the loan amount. The defendant issues reply notice dated 05.9.2001 denying the averments made in the notice. Having no other alternative, plaintiff filed the suit for recovery of an amount of Rs.1,64,605/- and future interest @ 24% per annum on Rs.1,00,000/-. The defendant filed written statement admitting the loan amount, *inter alia* contending that M/s.Maruthi Agencies is the sister concern of the plaintiff. The defendant supplied goods to M/s.Maruthi Agencies to the tune of Rs.1,08,945/-. The plaintiff firm is not a registered firm; therefore, the suit is not maintainable under law. The defendant reserves its right to proceed against M/s.Maruthi Agencies for recovery of the said amount. The defendant is not liable to pay either the suit amount or any portion thereof. The suit filed by the plaintiff is barred by limitation. Hence, the suit is liable to be dismissed. Basing on the above pleadings, the trial Court framed the following issues:

- (1) Whether the plaintiff has legal entity?
- (2) Whether the plaintiff advanced Rs.1,00,000/- to the defendant?
- (3) Whether the suit is filed within limitation?
- (4) Whether the plaintiff is entitled to recover the amount?
- (5) To what relief?

On behalf of the plaintiff, P.W.1 was examined and Exs.A.1 to A.21 were marked. On behalf the defendant, D.W.1 was examined and Exs.B.1 to B.8 were marked. Basing on the oral, documentary evidence, and other material available on record, the trial Court decreed the suit in favour of plaintiff for Rs.1,64,606/- with subsequent interest at 12% per annum from the date of the suit till the date of decree, and future interest at 6% per annum from the date of decree till the date of realization on the principal sum of Rs.1,00,000/-. Feeling aggrieved by the judgment and decree of

the trial Court, the defendant preferred A.S.No.10 of 2011 on the file of the II Additional District Court, Kurnool at Adoni. The first appellate Court, after considering the material available on record, allowed the appeal in part decreeing the suit for an amount of Rs.1,08,300/- with future interest at 6% per annum on the principal sum of Rs.1,00,000/- from the date of filing of the suit till the date of realization. Hence, the defendant filed the second appeal.

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

Whether an unregistered partnership firm is entitled to file a suit against a registered partnership firm, for recovery of money?

6. Even as per the case of the defendant, it borrowed an amount of Rs.1,00,000/- from the plaintiff and paid an amount of Rs.8,000/- and Rs.12,000/- towards part-payment. The plaintiff has been maintaining running account of the defendant. Exs.A.6 to A.8 are the day-books and ledgers of plaintiff-firm for the years 2000-2001, 2001-2002 and 2002-2003 relating to defendant-firm. Ex.A.9 is the entry dated 30.5.2000, Ex.A.10 is the entry dated 18.10.2000, Ex.A.12 is the entry dated 10.5.2001, Ex.A.14 is the entry dated 07.11.2002, Ex.A.15 is the entry dated 02.1.2003, Exs.A.11, A.13 and A.15 are the corresponding entries. A perusal of the above entries would reveal that the plaintiff maintained running account of the defendant-firm up to 2003. The suit was filed on 29.4.2004. The trial Court as well as the appellate Court arrived at a conclusion that the suit filed by the plaintiff is not barred by limitation, in view of Exs.A.9 to A.16 entries in the ledgers and day-books maintained by the plaintiff-firm in the name

of defendant-firm. I am fully endorsing the finding recorded by the Courts below on that aspect.

7. Having regard to the facts and circumstances of the case and also the recitals of Exs.A.9 to A.16, this Court is of considered view that the suit was filed within the period of limitation.

8. A perusal of the record reveals that M/s.Maruthi Agencies is a partnership firm, registered under the Indian Partnership Act. The plaintiff is also a partnership firm registered under the Indian Partnership Act. Each partnership firm is an independent one. The defendant is the Agency of Colgate-Palmolive company and the said Agency was transferred in favour of M/s.Maruthi Agencies. The contention of the defendant is that the plaintiff is not entitled to recover the suit amount from it, in view of relationship between plaintiff and M/s.Maruthi Agencies. If M/s.Maruthi Agencies owe any amount to the defendant, it ought to have filed a separate suit for recovery of the amount due to it. For the reasons best known, the defendant did not choose to implead M/s.Maruthi Agencies as a party to the suit. Without impleading M/s.Maruthi Agencies, as a party to the suit, the defendant is not entitled to plead that it is entitled for set-off of the amount owe to it by M/s.Maruthi Agencies. Both the Courts below concurrently held that simply because M/s.Maruthi Agencies owe some amount to the defendant that itself is not a valid ground to dismiss the suit filed by the plaintiff. I am fully endorsing the finding recorded by the Courts below on that aspect.

9. The predominant contention of learned counsel for the appellant is that the plaintiff is not a registered partnership firm;

therefore, the suit is liable to be dismissed. Ex.A.20 is the certified copy of acknowledgment of Firm Registration Certificate. Ex.A.21 is the certified copy of Partnership deed of the plaintiff-firm. A perusal of Exs.A.20 and A.21 clearly reveals that the plaintiff is a registered partnership firm. Basing on Exs.A.20 and A.21, the trial Court as well as the first appellate Court arrived at a conclusion that the plaintiff is a registered firm. The contents of Exs.A.20 and A.21 negate the contention of learned counsel for the appellant that the plaintiff is not a registered partnership firm. Being a registered partnership firm, the plaintiff can file a suit against third parties for recovery of the suit amount.

10. With regard to the quantum of suit amount, the first appellate Court meticulously scrutinized the ledgers produced by both the parties. Basing on the entries made in the ledgers, the first appellate Court arrived at a conclusion that the plaintiff is entitled to recover an amount of Rs.1,08,300/- from the defendant, instead of Rs.1,64,606/- as decreed by the trial Court. As to the rate of interest, the trial Court granted interest at 12% per annum from the date of the suit till the date of decree, and at 6% per annum on the principal amount of Rs.1,00,000/- from the date of the decree till the date of realisation. The decree and judgment of the first appellate Court, in A.S.No.10 of 2011, as to the interest, is binding on the plaintiff, in view of non-filing of second appeal. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. The first appellate Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the first appellate Court on all aspects.

11. Having regard to the facts and circumstances of the case, this Court is of the considered view that the question of law raised by the learned counsel for the appellant will not fall within the ambit of Section 100 of C.P.C. There is no question of law much less substantial question of law in this appeal.

12. Hence, the second appeal is dismissed at the stage of admission. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 12.11.2018

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