

\* HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

+ AS No.1724 of 1998 and AS No.3136 of 1999

% 09-11-2018

AS No.1724 of 1998:

# Ch. Ramanjaneyulu

...Appellant/  
2<sup>nd</sup> defendant

Vs.

\$ M/s. Siraj & Co., guntur,  
Rep.by its Sole Proprietor,  
Mr. Sirajul Hassan,  
and 16 others

.. Respondents/  
Plaintiff & other defendants

! Counsel for the appellant: Sri K.V. Raghu Veer

Counsel for the Respondents : Kurti Bhaskara Rao

< Gist:

> Head Note:

? Cases referred:

<sup>1</sup> AIR 1985 Gujarat 106

<sup>2</sup> AIR 2000 AP 263

<sup>3</sup> 2005 (5) ALD 895

<sup>4</sup> [1933] Ch. 151



**HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU****A.S.No.1724 of 1998  
and A.S.No.3136 of 1999****COMMON JUDGMENT:**

Since the issues and the parties involved in both the appeals are one and the same, the same are disposed of by way of this common judgment, with the consent of the Learned Counsel.

For the sake of convenience, as these are the first appeals, the parties are referred to as plaintiff and defendants only.

AS No.1724 of 1998 is filed by the second defendant in the suit questioning the judgment and decree dated 31.07.1998 passed against him and others in OS No.307 of 1982 by the Principal Senior Civil Judge, Guntur.

AS No.3136 of 1999 is filed by the fourth defendant in the same suit OS No.307 of 1982 questioning the judgment and decree dated 31.07.1998 passed against him along with others.

The facts leading to the appeals are set out as hereunder:

The plaintiff is a proprietary concern doing commission business in chillies. 1<sup>st</sup> defendant is a partnership firm doing commission business. Defendants 2 to 5 are the partners of 1<sup>st</sup> defendant. Defendants 7

and 8 are the partners of 6<sup>th</sup> defendant firm. 9<sup>th</sup> defendant is the agent of 6<sup>th</sup> defendant firm at Guntur.

Defendants 2 to 5 approached the plaintiff on behalf of 1<sup>st</sup> defendant firm and represented that 50 bales of MCU-5 cotton weighing about 82 quintals worth Rs.1,32,000/- was entrusted to the 9<sup>th</sup> defendant by them for transportation to Wardha for the 10<sup>th</sup> defendant who was the consignee and that the goods had already left Guntur. Further, they represented that they would draw a hundi for Rs.1,30,000/- on the 10<sup>th</sup> defendant and requested the plaintiff to discount the said bill/hundi. The plaintiff believed their representatives and agreed to discount the bill. On 14.09.1979 the plaintiff received lorry receipt No.CR.13149, dated 13.09.1979 issued by 9<sup>th</sup> defendant, an agent of 6<sup>th</sup> defendant and a hundi for Rs.1,30,000/- drawn by 1<sup>st</sup> defendant on the 10<sup>th</sup> defendant mentioning the plaintiff as a payee. The plaintiff discounted the bill and issued an account payee cheque No.PPN 122415 for Rs.1,30,000/- in favour of the 1<sup>st</sup> defendant. The cheque was presented on the same day on 14.09.1979 by 1<sup>st</sup> defendant to the Punjab National Bank, Guntur who debited the amount to the account of the plaintiff and credited the proceeds to the account of 1<sup>st</sup> defendant. On the very same day, 1<sup>st</sup> defendant withdrew the said

amount from the account. Thus, the plaintiff is a bona fide purchaser for value and is a holder in due course of the hundi. The plaintiff in turn submitted the lorry receipt and hundi to his banker/Punjab National Bank at Guntur and got the bill discounted by them as he enjoyed the limit facility with them. The Punjab National Bank, Guntur transmitted the said lorry receipt and the hundi to their branch at Wardha for presenting the same to the 10<sup>th</sup> defendant and to obtain payment. When Punjab National Bank, Wardha presented the hundi, 10<sup>th</sup> defendant accepted the same, but failed to make the payment. The 10<sup>th</sup> defendant is liable to make the said payment to the plaintiff. The Wardha branch of the Punjab National Bank returned the lorry receipt and the bill to the Punjab National Bank, Guntur, who advised the plaintiff with a memo dated 20.12.1979 that the drawee-10<sup>th</sup> defendant dishonoured the bill. The Punjab National Bank, Guntur debited to the account of the plaintiff Rs.1,34,055.70, which was paid earlier by discounting the said bill.

On 04.02.1980 the plaintiff got issued a registered notice to the defendants 1, 9 and 10 under intimation to the defendant 2 to 6. Except 9<sup>th</sup> defendant, all the defendants received the said notice. 10<sup>th</sup> defendant got issued a reply dated 22.02.1980 stating that it did not

contract to buy from the 1<sup>st</sup> defendant and in fact no goods ever reached Wardha. The plaintiff realized that he was cheated by the defendants. He then got issued another registered notice dated 06.02.1980 to the defendants 1 to 6 and 9 demanding payment of Rs.1,30,000/- with interest. On 15.03.1980 the plaintiff gave a complaint to the police who investigated the same and on 16.03.1980 the police seized from the defendant the driver's copy of the lorry receipt which showed that no goods had ever reached Guntur and that there was no entrustment of goods at all. Defendants 1 to 5 and 9 were tried on the charge of cheating in C.C. No.159 of 1980 in the Court of the II Additional Munsif Magistrate, Guntur. Defendants 1 to 5 were convicted. 9<sup>th</sup> defendant as agent of 6<sup>th</sup> defendant issued a lorry receipt without receiving the goods and deliberately helped the defendants 1 to 5 to successfully cheat the plaintiff. Defendants 6 to 9 are, therefore, liable to pay the suit amount to the plaintiff. 10<sup>th</sup> defendant is hand-in-glove with 1<sup>st</sup> defendant and assisted him in the cheating. Thus, 10<sup>th</sup> defendant and its partner, who is the 11<sup>th</sup> defendant, are also liable to pay the suit amount to the plaintiff. Thus, all the defendants are jointly and severally liable to pay the suit amount.

Defendants 1 & 3 remained *ex parte*. 2<sup>nd</sup> defendant in his written statement stated that the suit is barred by limitation, that he neither represented the 1<sup>st</sup> defendant firm nor managed its affairs, that it was the 3<sup>rd</sup> defendant that managed the affairs of 1<sup>st</sup> defendant, that he did not go to the plaintiff on 13.09.1979 nor he made any representation to the plaintiff to discount any bill that he did not obtain any lorry receipt for transport of 50 bales of MCU-5 cotton, nor he handed over the lorry receipt to the plaintiff, that he had no knowledge about the transaction referred to by the plaintiff, that he is not liable to pay any amount under the suit transaction, that to purchase piece he paid the amount of Rs.38,000/- to the plaintiff on 01.03.1980 towards his share and the plaintiff agreed to absolve him completely from criminal and civil liability and issued a letter dated 01.03.1980 to that effect, but later the plaintiff initiated criminal proceedings against him and hence, the suit is liable to be dismissed with compensatory costs.

The 4<sup>th</sup> defendant in his written statement stated that this is a collusive suit brought by 2<sup>nd</sup> defendant in collusion with the plaintiff to cheat him, that he is only a capitalist partner of the 1<sup>st</sup> defendant; that the account books of the 1<sup>st</sup> defendant did not contain entries in respect of the said cotton, that 2<sup>nd</sup> defendant who is the

Managing Partner of M/s. Ramu Cotton Gins, Guntur seems to have brought into existence a lorry receipt from 9<sup>th</sup> defendant as if cotton bales were entrusted to it for transport to the 10<sup>th</sup> defendant in the name of M/s. Ramu Cotton Gins, Guntur, that 2<sup>nd</sup> defendant with the connivance of the 3<sup>rd</sup> defendant and assistance of the plaintiff struck off the name and introduced the name of the 1<sup>st</sup> defendant in the lorry receipt, that the lorry receipt was forged and on the basis of it is a cheque for Rs.1,30,000/- was drawn in the name of the 1<sup>st</sup> defendant; that 2<sup>nd</sup> defendant taking advantage of the account books with him manipulated the accounts which he did not aware till the criminal case was filed against by the police, that it is clear from the fact that the plaintiff compromised with the 2<sup>nd</sup> defendant by receiving Rs.38,000/- towards full satisfaction of the claim against 2<sup>nd</sup> defendant absolving him from civil and criminal liability; that the suit is bad for non-joinder of insurance company and also M/s. Ramu Cotton Gins, Guntur and that the suit may be dismissed with exemplary costs.

The 5<sup>th</sup> defendant in his written statement stated that though he is a working partner of the 1<sup>st</sup> defendant firm, 1<sup>st</sup> defendant has no occasion to deal with the cotton trade as it was only a dealer in chillies, that defendants 2 and 3 are having a business under the

name and style as 'Ramu Cotton Gins', that defendants 2 and 3 taking advantage of their position in the 1<sup>st</sup> defendant firm appropriated the funds of the 1<sup>st</sup> defendant; that he has nothing to do with the transactions alleged to have been entered by the 1<sup>st</sup> defendant with the plaintiff; that 1<sup>st</sup> defendant firm did not benefit any single pie out of the suit transaction; that the amount accounted was credited to the account of 'Ramu Cotton Gins' and it clearly indicated the collusion between defendants 2 and 3 with the plaintiff and hence, the suit may be dismissed with costs. 9<sup>th</sup> defendant in his written statement admitted that they were the agent of 6<sup>th</sup> defendant and carried on transport business in the name of 6<sup>th</sup> defendant at R. Agraharam, Guntur but contended that defendants 7 and 8 had nothing to do with 6<sup>th</sup> defendant; that the suit is therefore liable to be dismissed for misjoinder of parties. On 13.09.1979 the first defendant approached 6<sup>th</sup> defendant represented by its agent 9<sup>th</sup> defendant, to transport 50 bales of MCU-5 cotton to M/s. Kistna Enterprises, Cotton Merchants, Wardha, for which 6<sup>th</sup> defendant agreed that on the same day, the 1<sup>st</sup> defendant entrusted the said consignment and took lorry receipt No.131149, that on 14.09.1979 1<sup>st</sup> defendant approached the 6<sup>th</sup> defendant, represented by 9<sup>th</sup> defendant and instructed 6<sup>th</sup> defendant to stop

dispatch of the consignment, entrusted on 13.09.1979 and gave a letter to that effect as there were some differences with the consignees; that as per the instructions of 1<sup>st</sup> defendant, the goods were stored in a godown; that 1<sup>st</sup> defendant did not give clearance for dispatch of the said consignment; that to the surprise of 6<sup>th</sup> and 9<sup>th</sup> defendants, a registered notice was sent on behalf of the plaintiff; that there was no privity of contract between the plaintiff and 6<sup>th</sup> defendant, represented by 9<sup>th</sup> defendant; that 6<sup>th</sup> defendant got issued a notice dated 11.04.1980 giving time till 18.04.1980 to pay the demurrage/storage charges by 13.09.1979 @ Rs.1.50 per quintal per day, that the concerned parties took delivery of the said notice but kept quiet. With all vengeance, the plaintiff filed the present suit which is not maintainable against defendants 6 and 9, that there is no privity of contract between the plaintiff and 6<sup>th</sup> defendant, represented by 9<sup>th</sup> defendant and hence, the suit may be dismissed costs.

A memo was filed on behalf of the defendants 6 to 8 adopting the written statement of the 9<sup>th</sup> defendant. 10<sup>th</sup> defendant in his written statement stated that he is neither a necessary nor a proper party to the suit, that he had never any transaction with the 1<sup>st</sup> defendant or with

the plaintiff. Another memo was filed on behalf of 11<sup>th</sup> defendant adopting the written statement of 10<sup>th</sup> defendant.

During the pendency of the suit, 5<sup>th</sup> defendant died and his legal representatives were brought on record as defendants 12 to 17, who filed a memo adopting the written statement of the deceased-5<sup>th</sup> defendant.

Based on the above pleadings, the following issues were framed :

1. Whether the suit of the plaintiff is barred by time?
2. Whether the 2<sup>nd</sup> defendant is not liable for the suit debt?
3. Whether the plaintiff is entitled to the suit claim against all the defendants jointly and severally?
4. To what relief?

For the plaintiff, PWs.1 to 3 were examined and Exs.A.1 to A.15 were marked. For the defendants, the 2<sup>nd</sup> defendant was examined as DW.1 (appellant in AS No.1724 of 1998), the 4<sup>th</sup> defendant was examined as DW.2 (appellant in AS No.3136 of 1999) and Exs.B.1 to B.3 were marked.

On the basis of the evidence, a decree was passed against defendants 1 to 4 jointly and severally and also

against the estate of the deceased-5<sup>th</sup> defendant in the hands of defendants 12 to 17. The suit against defendants 6 to 11 was dismissed.

As can be seen from the pleadings, the suit was essentially filed by the plaintiff against 1<sup>st</sup> defendant firm and its partners-defendants 2 to 5. As a joint decree was passed, the 2<sup>nd</sup> defendant filed one appeal in AS No.1726 of 1998 while the 4<sup>th</sup> defendant filed another appeal in AS No.3136 of 1999.

Written statements filed by the defendants in this suit reveal that all of them were pushing the blame onto the other. According to the pleadings of 4<sup>th</sup> defendant, the suit was a collusive suit brought into existence by 2<sup>nd</sup> defendant to make a claim against the 4<sup>th</sup> defendants and others. 2<sup>nd</sup> defendant on the other hand filed a written statement raising issues about the suit transaction but claiming that he has paid his share of Rs.38,000/- to the plaintiff and that therefore, he is absolved from all the liability in this case.

The first issue framed in the suit whether the suit claim is barred by time was not really argued during the course of the submissions before this Court. Even in the original suit, this issue was not really argued. The lower Court also held that the suit is within time.

The second and third issues to the effect whether 2<sup>nd</sup> defendant is not liable for the suit debt and whether the plaintiff is entitled to the suit claim against all the defendants jointly and severally are the two important issues that arise for determination in this case. The suit was dismissed against the other defendants and decreed against the partners of 1<sup>st</sup> defendant firm. A personal joint and several decree was passed against defendants 1 to 4. As the deceased-5<sup>th</sup> defendant's estate is in the hands of his legal representatives/defendants 12 to 17, the estate was also made liable to discharge the decretal debt.

Therefore, the primary question that has to be examined in this case is whether the suit transaction is true and correct and whether the same is binding on the firm. The next question that arises is whether Ex.B.1-receipt executed by the plaintiff in favour of 2<sup>nd</sup> defendant would exonerate him from all further liabilities. The 5<sup>th</sup> defendant is a partner of the 1<sup>st</sup> defendant firm, who has died and his legal representatives brought on record as defendants 12 to 17. For the sake of convenience as this is a first appeal, defendants 2 to 5 are referred to as partners of the firm only.

The dispute arises out of the discounting of a hundi and the primary transaction arises out of the alleged

transportation and the sale of 50 bales of cotton valued at Rs.1,32,000/- which were supposedly entrusted to the 9<sup>th</sup> defendant for transportation to 10<sup>th</sup> defendant who is the consignee. The value of goods is Rs.1,30,000/-. The hundi (Ex.A.2) was drawn by 1<sup>st</sup> defendant and addressed to 10<sup>th</sup> defendant. The plaintiff was asked to discount the said bill. The plaintiff discounted the said hundi and paid the proceeds through a cheque. The amount was received by 1<sup>st</sup> defendant firm. But, later the hundi was dishonored by 10<sup>th</sup> defendant and the 10<sup>th</sup> defendant failed to make the payment. Therefore, after exchange of notices, the suit is filed.

The lorry receipts on the basis of which the hundi was issued were marked as Ex.A.1 and as Ex.A.15 also. The lorry receipt is issued by 6<sup>th</sup> defendant who is the transporter and is the agent of 9<sup>th</sup> defendant. Exs.A.1 and A.2 the hundi signed by DW.1/2<sup>nd</sup> defendant form the crux of this case. According to the contents of Ex.A.1/Ex.A.15, a consignment of 50 bags of cotton was entrusted for transportation from Guntur to Wardha. The consignor is Sri Ramu Traders (1<sup>st</sup> defendant firm). The name initially written on the lorry receipt is 'Sri Rama Cotton Gins'. The word 'Gins' was scored out and the name of 'Sri Ramu Traders' is written. The same is visible from Ex.A.1-receipt and the original of the same viz.,

Ex.A.15. Ex.A.2 is the hundi which is the subject matter of the dispute. This is signed by 2<sup>nd</sup> defendant on behalf of 1<sup>st</sup> defendant-firm. The question that has to be decided now is whether this document and the transaction are correct or not.

The oral evidence of PW.1 who is the plaintiff is considered first. PW.1 states that defendants 2 to 5 came to him and requested him to discount the hundi. Thereafter, on 14.09.1979 one Veerabhadra Rao brought the lorry receipt, hundi and insurance cover and gave them to him. He discounted the same and paid the amount, vide cheque dated 14.09.1979. Ex.A.4 is a copy of the cheque. PW.1 reiterates in his cross-examination on 14.10.1992 that 2<sup>nd</sup> defendant brought the lorry receipt and later all the partners of 1<sup>st</sup> defendant firm came to him about the discounting of the hundi. He reiterates the same more than once. He also offers an explanation that the partners of 1<sup>st</sup> defendant firm stated that the words 'cotton gins' were struck off, because they wanted to initially transport the goods in the name of the firm Ramu Cotton Gins and later, they decided to transport the goods in the name of Ramu Traders. The witness further deposes that Ex.A.2 was signed by DW.1 himself and that DW.1 himself has scored out the words 'Punjab National Bank' and written Siraj & Co., and

initialed the same. Therefore, according to this deposition, all the partners of the firm were part of the transaction including the request for 'discounting'.

PW.3 states that on his request, the plaintiff asked all the partners of 1<sup>st</sup> defendant firm to come and accordingly all the partners were brought by 2<sup>nd</sup> defendant and all of them (defendants 2 to 6) requested the plaintiff to discount the hundi and on the next day, the hundi was given for discounting. This aspect of defendants 2 to 6 requesting the plaintiff for discounting the hundi is not really challenged by effective cross-examination.

As far as the flow of consideration is concerned, PW.1 clearly deposed about the fact that the amount was paid, vide Ex.A.4 cheque bearing No.122415. He also produced the account copy which was marked as Ex.A.13 and also the day book entry, which was marked as Ex.A.14. The bank has in turn debited the amount with interest for Rs.1,34,055.70 paise, as the payment was not made. Therefore, a reading of the evidence of the witnesses of the plaintiff makes it clear that all the partners had approached the plaintiff for discounting of the bill and that the proceeds were realized by 1<sup>st</sup> defendant firm.

The examination of the evidence of DW.1 clearly shows that he was at the helm of affairs of the firm-Ramu Traders (present 1<sup>st</sup> defendant) and also the second firm Rama Cotton Gins. He states that both the firms had facilities with the Punjab National Bank and he used to borrow the amounts on behalf of both the firms. He also admits that the Punjab National Bank filed two suits against both the firms and that both the suits were compromised. The certified copies of the compromise memos were marked as Exs.B.2 and B.3 by him in his cross-examination. In addition, in his cross-examination on 10.02.1994 he clearly admits that he has withdrawn the amount of Rs.1,30,000/- from the account of the plaintiff, which was credited to the account of 1<sup>st</sup> defendant firm and the same was in turn credited to the account of Rama Cotton Gins. The witness also admits that he signed the documents on behalf of the firm. The active role of DW.1 in the firm and the transaction are thus borne out by the oral evidence and also by the documentary evidence. He clearly admitted in his cross-examination on 02.02.1994 that Ex.A.15 is an approved document. He also admits that the "initials" on Ex.A.15 belonged to him. He further admits that the liability of the partners is joint and several.

DW.2 is another important witness. He is the 4<sup>th</sup> defendant in the suit and the appellant in AS No.3136 of 1999. The case, as set up by him, is that the transaction is a fraudulent transaction. But in the chief-examination itself he admits that 'the hundi amount was credited to the 1<sup>st</sup> defendant firm and later it was transferred to the account of Ramu Cotton Gins'. He further states that he was not aware of the said transfer. The fact, however, remains that he did not take any action pursuant to this transaction of transfer of funds to Ramu Cotton Gins. He also states in the cross-examination that 1<sup>st</sup> defendant firm does not deal in cotton. His case is that 1<sup>st</sup> defendant firm does not deal with the cotton business and only the firm-Ramu Cotton Gins deals with the cotton business. In his further cross-examination on 27.02.1996, he admits that 2<sup>nd</sup> defendant is a Managing Partner of Sri Ramu Traders (1<sup>st</sup> defendant firm). He also states in the cross-examination on 27.02.1996 as follows:

'I do not know if Veerabadhara Rao obtained the signature of 2<sup>nd</sup> defendant on Ex.A.2-hundi at the instance of myself and 3<sup>rd</sup> defendant'.

The 4<sup>th</sup> defendant's case is that he was not privy to the transaction and that it is a fraudulent transaction also. However, his cross-examination clearly reveals the flow of funds from the plaintiff to 1<sup>st</sup> defendant and then

to the firm-Ramu Cotton Gins. When a question was put to him about the signature of 1<sup>st</sup> defendant on Ex.A.2-hundi, he answered that he does not know if Veerabadra Rao obtained the signature at his instance. It is important to note that he does not categorically deny that 2<sup>nd</sup> defendant did not sign at his instance. It is also important to note that in the chief examination itself his admission is that the funds reached the firm Rama Cotton Gins. There is a failure to return the money or to take any action against 2<sup>nd</sup> defendant for refund of the funds. This makes it clear that he was privy to the transaction. In fact, the deposition of PW 3 about the presence of the defendants who are partners of the 1<sup>st</sup> defendant firm when the request for discounting is made is not effectively touched upon in the cross-examination. This witness clearly deposed that 1<sup>st</sup> defendant firm was doing business in chillies only and not in cotton. Therefore, PW.3 states that he asked all the partners to come and also that he wanted to ascertain about the discounting of the bill from the partners. He clearly states that all the partners requested the plaintiff to discount the bill. There is virtually no cross-examination on this aspect. Although there is a plea of a 'fraudulent transaction', the burden of proving the said fraud was

not at all discharged by 4<sup>th</sup> defendant. Neither is there clear pleading of fraud nor is there proof of the fraud.

In addition, the certified copy of plaint which is filed by the bank in OS No.213 of 1982 and marked as Ex.B.4 clearly shows that both the firms viz., Sri Ramu Traders (present first defendant) and Rama Cotton Gins are represented by Ch. Ramanjaneyulu as the Managing Partner. Ch. Ramanjaneyulu is the present 2<sup>nd</sup> defendant/DW.1. This plaint was filed by Punjab National Bank and it reveals that both the firms were in the habit of discounting of hundies/bills of exchange etc.

A reading of the entire evidence that has been considered so far shows that a) both the firms were actively engaged in business; b) they were in the habit of discounting bills of exchange; c) 2<sup>nd</sup> defendant/DW.1 is the Managing Partner of both the firms; d) the amount covered by the suit transaction was paid by a cheque and was credited to the account of 1<sup>st</sup> defendant firm; e) from the account of 1<sup>st</sup> defendant firm it was in turn transferred to the account of Rama Cotton gins; f) all the partners of 1<sup>st</sup> defendant firm were involved in the process of discounting in this particular transaction.

In the opinion of this Court, the scoring out of the words 'Cotton Gin' and the writing of the word 'Traders' did not materially effect the transaction as the payment

was in fact made and the cash reached the coffers of the firm Cotton Gins from the 1<sup>st</sup> defendant.

The above facts are being highlighted at this stage in view of the fact that the learned counsel for the appellant in AS No.3136 of 1999, which is filed by 4<sup>th</sup> defendant argued on the basis of Section 19 of the Indian Partnership Act, 1932 that the 1<sup>st</sup> defendant firm is not liable. According to the learned counsel, as per Section 19 of the Indian Partnership Act, the authority of a partner to bind the firm would extend only to the actions of a partner done in the 'usual' way for the business of the firm carried on by the firm. According to the learned counsel, 1<sup>st</sup> defendant firm carries on business only in the trading of chillies etc. and that the firm does not carry on any business in trading of cotton. It is his contention that the actions of DW.1/2<sup>nd</sup> defendant do not bind the firm as Cotton is not a commodity they usually trade in or deal with. Therefore, it is his contention that the firm cannot be made liable for the unilateral actions of 2<sup>nd</sup> defendant.

The learned counsel relied upon **Porbandar Commercial Co-op. Bank Ltd. V. M/s. Bhanji Lavji**<sup>1</sup> and **Kadiyala Seshagiri Rao v. Kanneganti Dasaiah**<sup>2</sup> and argued that the actions of DW.1/ 2<sup>nd</sup> defendant do not

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<sup>1</sup> AIR 1985 Gujarat 106

<sup>2</sup> AIR 2000 AP 263

bind the firm, since the usual business carried on by the firm is trading in chillies etc. and not in cotton. It is his contention that therefore neither the firm nor the partners can thus be held to be liable for the suit claim.

However, an examination of the evidence in this case reveals that 2<sup>nd</sup> defendant is the Managing Partner and is the person in-charge of the affairs of the firm. 2<sup>nd</sup> defendant along with the other partners met the plaintiff and requested him to discount the bill. This is borne out by the oral evidence of both - PW.1 and PW.3. The contention of the learned counsel could have been accepted if the partnership deeds of the firms were filed to show the extent to which the authority of DW.1 existed and also if the PW.1 and PW.3 were cross-examined effectively about the presence of the partners at the time a request was made to PW.1 to discount the bill. Both the witnesses stated on oath that all the partners were present and at their request the bill was taken up for discounting. This aspect of the chief examination is virtually unchallenged. The flow of funds into the coffer's of Rama Cotton Gins from 1<sup>st</sup> defendant firm is also established. In the opinion of this Court this argument about Section 19 does not apply in view of the unchallenged facts and because the implied authority of a partner is not static and it can be extended or

restricted by virtue of a written contract. Section 20 of the Indian Partnership Act clearly states that by a contract between the parties, the implied authority can be extended or restricted. If the partnership deed of 1<sup>st</sup> defendant was filed and evidence was introduced as to the extent of DW.1's authority, the above argument could have been accepted. But, 4<sup>th</sup> defendant, who was examined as DW.2, did not choose to file the partnership deed to show the extent of the authority of DW.1/DW.2. As per Section 18 of the Partnership Act, a partner is an agent of the firm. Further, as per Section 22 of the Partnership Act, an act done on behalf of the firm is binding on the firm. Section 25 makes all the partners jointly and severally liable.

Therefore, this Court is of the opinion that 1<sup>st</sup> defendant firm, and its partners are jointly and severally liable for the debt of the firm (the discussion on Ex.B.1 follows later). The amount was credited to the account of 1<sup>st</sup> defendant firm and it was not repaid or refunded after the hundi was dishonored. Therefore, in line with Section 25 of the Indian Partnership Act, every partner is liable jointly and severally for this debt.

Whether discharge of one partner discharges the other partners is the next question that arises for consideration. Ex.B.1 is a receipt dated 01.03.1980 given

by the plaintiff in favor of 2<sup>nd</sup> defendant. This exhibit shows that after the dispute arose between the parties, the 2<sup>nd</sup> defendant paid a sum of Rs.38,000/- to the plaintiff. The plaintiff executed this receipt stating that he is receiving this amount in full and final settlement of his claim against 1<sup>st</sup> defendant only. It is further recited that the plaintiff reserves the right to proceed against the rest of the partners and also 1<sup>st</sup> defendant firm. There is a reference in Ex.B.1 to a registered notice dated 04.02.1980 and to a notice dated 26.02.1980. The receipt mentions that although DW.1 does not admit the liability still the payment is made in full discharge of his personal obligation.

Since a lot turns on the language used in Ex.B.1, the same is reproduced fully hereunder:

“Received an amount of Rs.38,000/- rupees thirty eight thousands only from Sri Chunduru Ramajaneyulu, Guntur, in full settlement of all our claims direct and indirect, hitherto claimed or not in respect of the transaction between us and M/s. Delhi Punjab Golden Carriers, Guntur, 2. M/s. Sri Ramu Traders, Guntur, 3. M/s. Krishna Enterprises, Wardha, covered by our registered notice dated 4-2-80, copy of which is sent to Sri Ch. Ramanjaneyulu and registered notice of 26.2.80 served on him. This payment is made to me by him without admission of any liability on his part. The payment is however treated and accepted by both of us to be in full discharge of his obligations and we have no more claims against him, either individual or as a partner of

M/s. Sri Ramu Traders, although we reserved our right against the parties other than Ch. Ramanjaneyulu. Sri Ch. Ramanjaneyulu is fully relieved from all obligations Civil and Criminal.

For SIRAJ & CO.,

Sd/- xx xx  
Sole Proprietor”

The question is whether this receipt discharges DW.1 alone or whether it discharges all the partners. The learned counsel for the appellant appearing in AS No.1724 of 1998 relied upon a decision of a learned single Judge of this Court reported in **Damera Narsimha Reddy v. Syed Ibrahim**<sup>3</sup> and argues that in case of a joint and several liability, there is only one single obligation. He relies upon this judgment to argue that the release of one of the joint and several debtors operates as a discharge of all other debtors since the obligation is single. In this case before the another learned Judge, a decree was passed in a motor vehicle accident case for Rs.1,77,480/-. The third respondent paid a sum of Rs.88,000/- and respondents 1 and 2 filed a memo into the case stating that they do not wish to prosecute the case against 3<sup>rd</sup> defendant/respondent . In these circumstances, the Court held that a discharge of one judgment debtor operates as a discharge of all other judgment debtors. Therefore, the question that remains

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<sup>3</sup> 2005 (5) ALD 895

for examination is whether by Ex.B.1 receipt the entire debt is waived or the liability subsists for defendants 1, 3 to 5.

The plaintiff in the suit gave credit to this amount and as can be seen from the calculation of the plaint, the sum paid by 2<sup>nd</sup> defendant was deducted and the claim is made against all the defendants including 2<sup>nd</sup> defendant. This clearly implies that the Ex.B.1 receipt is not taken as a full and final discharge of DW.1 but is treated as a part payment on behalf of all the partners only.

A plain language interpretation of this document clearly shows that it is issued in full and final settlement of the liability against DW1/the 2<sup>nd</sup> defendant only and not against the rest but the lower Court did not rely on Ex.B.1 and passed a decree against all the defendants as prayed for. This aspect is specifically challenged by 1<sup>st</sup> defendant in his appeal No.1724 of 1998.

The learned counsel relying upon **Damera Narsimha Reddy's** case (3 supra) now argues that a discharge of one partner releases all the other partners. But, a further examination of this case goes to show that in the case of **Damera Narsimha Reddy**, there is no document like 'Ex.B.1'. The contents of Ex.B.1 which are reproduced above make it clear that the plaintiff stated that he does not have any further claims against 2<sup>nd</sup> defendant either

as an individual or as a partner of Sri Rama Traders, although he reserves his right to proceed against the other partners other than 2<sup>nd</sup> defendant. This language of Ex.B.1 makes a fundamental difference in the opinion of this Court.

In the well known text 'Lindley & Banks on Partnership' 19<sup>th</sup> edition at page 487, it was clearly mentioned that the traditional view has always been that a discharge of one partner from a partnership debt means a release of the other partners. The logic behind this seems to be that the debt is one but all the partners are jointly and severally liable. Therefore, in such a case it was felt when there is a single obligation the release of one could operate as release of other. However, the later case law on this subject is also worth noticing. In ***Deanplan Ltd. v. Mahmoud***<sup>4</sup>, it was held as follows:

“From this long review of the cases, I draw the following conclusions. First, a release of one *joint* contractor releases the others. There is only one obligation. A release may be under seal or by accord and satisfaction. A covenant not to sue is not a release. It is merely a contract between the creditor and the joint debtor which does not affect the liabilities of the other joint contractors or their rights of contribution or indemnity against their co-contractor. It is a question of construction of the contract between the creditor or joint debtor in the light of the

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<sup>4</sup> [1933] Ch. 151

surrounding circumstances whether the contract amounts to a release or merely a contract not to sue.

.....  
.....

Returning to the facts of the present case, we start with a document signed by Mr. Mahmoud and accepted by the landlord. The release from the obligations under the lease is purchased by an immediate surrender of the term and his handing over of one half of his goods. So, it would seem to be a clear case of accord and satisfaction. Furthermore, there are no words reserving rights against any other parties, nor can the document be read as a covenant not to sue.....”

Relying upon this judgment, as no other Indian judgments could be found on this subject, this Court has examined whether Ex.B.1 would operate as a document by which all the partners are discharged. A plain language reading clearly shows that the plaintiff in the suit accepted that he does not have any claim against 2<sup>nd</sup> defendant only and at the same time there is a specific reservation of his rights to proceed against the parties other than Ch. Ramanjaneyulu. Therefore, in the light of the specific language of Ex.B.1, the case of **Damera Narsimha Reddy** (3 supra) is clearly distinguishable.

In the light of these judgments and more particularly in view of the language used in Ex.B.1, this Court is of the opinion that it is only Ch. Ramanjaneyulu, the appellant who is exonerated and released from all

liability. Both by virtue of express words of Ex.B.1 and by virtue of the principles of *estoppel* and *waiver*, the 2<sup>nd</sup> defendant in the suit is bound to succeed. Therefore, AS No.1724 of 1998 is to be allowed and it accordingly is allowed.

The appeal filed by 4<sup>th</sup> defendant in AS No.3136 of 1999 however cannot be allowed. This Court finds that there are no merits in this appeal. The reasons are already mentioned in the earlier part of the judgment. The presence of the partners when the request for discounting was made, the authority of 2<sup>nd</sup> defendant/DW.1 and flow of funds make it clear that the firm and its partners are liable. In view of the clear language of Ex.B.1, the second defendant is exonerated. Accordingly, the judgment and decree of the lower Court are modified, in view of this Court decision. The judgment and decree is confirmed as far as defendants 1, 3 and 4 are concerned and also the estate of deceased-5<sup>th</sup> defendant in the hands of defendants 12 to 17. It is made clear that only DW.1/2<sup>nd</sup> defendant, who is the appellant in AS No.1724 of 1998, is exonerated/released of his liability. The impugned judgment and decree holds good against the defendants 1, 3 and 4 jointly and severally and the estate of the deceased-5<sup>th</sup> defendant in the hands of defendants 12 to 17.

AS No.1724 of 1998 is allowed while AS No.3136 of 1999 is dismissed. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous Petitions, if any, pending in these appeals shall stand closed.

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**D.V.S.S. SOMAYAJULU, J**

Date: 09.11.2018

Note: L.R. Copy marked.  
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