

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.421 OF 2000

JUDGMENT:

Heard Sri P. Venugopal, learned counsel for the appellant, and Sri Kota Subba Rao, learned counsel for respondent No.1.

2. Defendant in O.S.No.2120 of 1988 on the file of II-Additional Judge, City Civil Court, Hyderabad, and appellant in A.S.No.268 of 1996 on the file of III-Additional Chief Judge, City Civil Court at Hyderabad, is the appellant in the present Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908.

3. The 1st and 2nd respondents herein filed the aforesaid Original Suit for recovery of Rs.26,036/-. The learned II-Additional Judge, City Civil Court, Hyderabad, by his judgment and decree dated 08.07.1996, appreciating the evidence of PW.1 and the documentary evidence, Exs.A1 to A11, decided issues 1 to 3 against the defendant and, consequently, decreed the suit with pendente lite interest at the rate of 12% per annum and post-decree interest at the rate of 6% per annum.

4. The issues settled for trial read thus:

“1. Whether the accident was not caused due to the negligence and misconduct of the driver of the tanker?

2. Whether the goods were booked at the owner's risk?

3. Whether the defendant is not liable to pay the suit amount?

4. To what relief?”

5. Later, additional issue was also settled thus:

“Whether this Court has got jurisdiction to try the suit?”

6. On behalf of the appellant herein, who is the defendant in the Original Suit, no evidence, either oral or documentary, was let in.

7. The finding recorded on additional issue was to the effect that the trial Court has jurisdiction to try the suit, for the reason that in none of the documents marked as Exs.A3 and A8 issued by the defendant, the defendant did take a plea that the suit claim is to be settled at Bombay and that there was an agreement to that effect. The trial Court also referred to the Lorry Receipt bearing No.3403, dated 24.09.1985, and observed that it bears the signature of the defendant company and, though, there was a clause on the reverse of the said Receipt that all the disputes, which cannot be settled amicably, will have recourse in the Court of law at Bombay and no other place, but, finding that the said Receipt was neither signed by the 2nd plaintiff nor the consignor, arrived at the finding that the said clause does not bind the parties and negatived the plea taken by the defendant on the additional issue.

8. On issue No.1, the trial Court, observing that the accident took place on account of negligence on the part of the defendant and that to rebut the same, no evidence was let in by the defendant, held that the plaintiffs are successful in proving the allegations touching the material aspects and held the said issue in favour of the plaintiffs.

9. On issue No.2, basing on Exs.A3 and A8 recitals, observing by the trial Court that the defendant never contended therein that the

goods were transported at the owner's risk and, thus, exonerated the plaintiffs holding the said issue also against the defendant.

10. On issue No.3, the trial Court derived the probability from the silence maintained by the defendant in not answering the legal notice got issued under Ex.A11 and also again referring to Ex.A8, wherein the defendant admitted the loss of Methonol, but denied the liability, and the 1st plaintiff being the insurer paid the insurance amount of Rs.26,036/- to the 2nd plaintiff and claimed the said amount through a letter of subrogation under Ex.A1, and, therefore, observing that the 1st plaintiff stepped into the shoes of the 2nd plaintiff, held that the plaintiffs are entitled to the suit claim and, accordingly, answered the issue in favour of the plaintiffs and against the defendant.

11. When these findings recorded and conclusion arrived at by the trial Court were challenged by the defendant by filing A.S.No.268 of 1996, the learned III Additional Chief Judge, City Civil Court, Hyderabad, by his judgment and decree dated 14.12.1999, on re-appraisal of evidence, having formulated the point for consideration and referring to the relevant rulings in paragraphs '12' and '13' and again appreciating the contents of Ex.A2, held that the consignor or the consignee did not agree for the terms and conditions printed on overleaf of Ex.A2 and, therefore, it does not bind either party to insist on the jurisdiction of the Court and for the defendant to contend that the trial Court had no jurisdiction to entertain the suit.

12. On merits also, the lower appellate Court discarded the stand taken by the defendant in the light of Exs.A1 and A3 and also based on the liability referring to that of bailee and Sections 151 and 152 of the Contract Act, held that the defendant did not prove the stand taken by him and assigned reasons in paragraph '18', which are *ex facie* convincing.

13. Though, the learned counsel for the appellant once again reiterated the jurisdictional issue as well as the liability fixed on the appellant by the trial Court and affirmed by the lower appellate Court, the issue again revolves around the contents of Exs.A2, A3 and A8, as rightly found by the Courts below. Thus, it is difficult to disturb the findings recorded by the Courts below, for the reason that there is no substantial question of law involved in the present case, as the arguments advanced by the learned counsel and the points now raised in the grounds of the present appeal only touch the factual aspects, once the jurisdiction issue is settled. Concerning the additional issue, the findings recorded by the trial Court basing on Ex.A2 and affirmed by the lower appellate Court do not suffer from any illegality, much less patent illegality.

14. Learned counsel for respondent No.1 relied on the contents in paragraph '19' of the expression of the Honourable Supreme Court in

Govindaraju v. Mariammam¹, wherein, in the background of factual aspect occurring therein, the Honourable Supreme Court held thus:

“Even if the High Court was of the view that the findings of fact recorded by the Courts below were wrong, in our opinion, these findings of fact could not be disturbed without coming to the conclusion that the findings recorded were perverse i.e., based on misreading of evidence or based on no evidence. The High Court did not come to such a conclusion. The learned Single Judge also did not come to the conclusion that the appeal involved other substantial questions of law or formulate the same.”

15. Thus, the Second Appeal is devoid of merit and the same is, accordingly, dismissed.

Miscellaneous applications, if any, pending in the present Second Appeal, stand closed. No order as to costs.

A. SHANKAR NARAYANA, J

February 02, 2018.
v v

¹ 2005 (2) ALD 90 (SC)