

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.616 OF 2000

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment and decree dated 01.03.2000 passed in A.S. No.21 of 1998 on the file of the I Additional District Judge, Kurnool (for short, 'first appellate court'), wherein the first appellate court, while reversing the judgment and decree dated 01.01.1998 passed in O.S. No.33 of 1994 on the file of the District Munsif, Dhone (for short, 'the trial court'), decreed the suit filed by the plaintiffs therein-respondent Nos.1 to 3 herein directing the appellant-1st defendant to pay an amount of Rs.38,196/- to the 1st respondent-plaintiff with costs and interest at the rate of 12% per annum from the date of filing of the suit and thereafter to claim the amount from the 2nd defendant-4th respondent herein standing in the shoes of respondent Nos.1 to 3 herein-plaintiffs.

2. Heard the learned counsel for the appellant-1st defendant and the learned counsel for the respondent Nos.1 to 3-plaintiffs, apart from perusing the material on record.

3. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court in the original suit.

4. Learned counsel for the appellant-1st defendant would submit that the suit for recovery of money filed by the plaintiffs is not maintainable; the trial Court rightly dismissed suit; the lower appellate court erroneously decreed the suit without giving valid reasons for setting aside the dismissal order passed by the trial Court; and ultimately, prayed to allow the Second Appeal by setting aside the judgment and decree passed by first appellate court.

5. On the other hand, learned counsel for the plaintiffs-respondent Nos.1 to 3 herein would contend that the lower appellate court rightly decreed the suit after re-appreciating the entire evidence on record; there are no grounds to interfere with the same; and ultimately, prayed to dismiss the Second Appeal.

6. The plaintiffs filed the suit stating that they jointly deposited an amount of Rs.25,000/- on 02.05.1985 as fixed deposit with M/s. Dhanalakshmi Consolidates Finance and Industrial Investments, Madras, at Kurnool Branch, and obtained certificate bearing No.22790 (Register Folio No.2017) and Account No.103425 for 7 years. While depositing the amount, the plaintiffs insisted M/s. Dhanalakshmi Consolidates Finance Industrial Investments for bank guarantee for accruing repayment of deposited amount the same was accepted by the said company. The 1st defendant issued undertaking letter dated 15.05.1985 assuring payment of Rs.25,000/- on 13.02.1991 to the plaintiffs, but the said company failed to pay the monthly interest at the rate of 20% per annum as agreed at the time of depositing the amount. The Kurnool Branch has become defunct. The company is facing liquidation and the 2nd defendant was appointed to administer the liquidation proceedings. The plaintiffs addressed a letter to the 1st defendant on 28.08.1990 to pay the amount as agreed by the 1st defendant and it was agreed by its reply dated 04.09.1990. The plaintiffs got issued legal notice dated 16.07.1991 demanding the assured amount of Rs.25,000/- with interest. Irrespective of liquidation proceedings, the 1st defendant is liable to pay Rs.25,000/- with interest at 20% per annum from its due date.

7. The defendants filed written statement denying all the allegations made in the plaint and contended that the letter dated 15.05.1985 does not amount to guarantee. The subject company was taken over by Dhanalakshmi Funds (India) Limited and it was liquidated. The 1st defendant received order from the High Court of Madras restraining it from making payments. It was

ordered that the funds should be transferred to the Official Liquidator, Madras. Accordingly, the fixed deposit amounts were transferred to the Official Liquidator. Therefore, the 1st defendant could not pay the amount to the plaintiffs. The District Munsif Court, Dhone, has no jurisdiction to try the suit.

8. After considering the evidence of P.Ws.1 and 2 and the documents Exs.A.1 to A.9 marked on behalf of the plaintiffs and the evidence of D.W.1 and the documents Exs.B.1 to B.4 marked on behalf of the defendants, the trial Court dismissed the suit holding that the defendants are not liable to pay the suit claim to the plaintiffs. Aggrieved by the said judgment and decree, the plaintiffs preferred A.S. No.21 of 1998 and the same was decreed by the first appellate court vide judgment and decree dated 01.03.2000 directing the appellant-1st defendant to pay an amount of Rs.38,196/- to the 1st respondent-plaintiff with costs and interest at the rate of 12% per annum from the date of filing of the suit and thereafter to claim the amount from the 2nd defendant-4th respondent herein. Challenging the said decree and judgment of the first appellate court, the 1st defendant preferred this Second Appeal.

9. This Court by order dated 04.08.2000 was pleased to admit the Second Appeal and framed the following substantial questions of law:

- (1) Whether the Appellant Bank discharged the liability after depositing the amounts to the credit of Company Petition pursuant to the orders passed by the Hon'ble High Court of Madras in C.P. No.88/89.
- (2) Whether it is open to the respondents 1 to 3 herein filing civil suit for recovery of deposit amount from the appellant bank even after filing application in pending company petition before the Hon'ble High Court of Madras.

10. There is no dispute with regard to the plaintiffs depositing the amount with M/s. Dhanalakshmi Consolidates Finance and Industrial Investments, Madras, Branch at Kurnool. The 1st defendant had given an undertaking letter dated 15.05.1985 in favour of the 1st plaintiff undertaking to pay the suit amount. When the dispute arose with regard to the jurisdiction of the District Munsif Court at Dhone to try the suit, in view of the letter dated 15.05.1985 addressed to the 1st plaintiff at Dhone, the District Munsif Court at Dhone has got jurisdiction to try the suit for recovery of the amount. The pendency of C.P. No.88 of 1989, etc., are dealt with elaborately by the first appellate court. Ultimately, the first appellate court basing on the letter dated 15.05.1985 was pleased to decree the suit in favour of the plaintiffs against the 1st defendant for recovery of an amount of Rs.38,196/- with interest. It also directed that the 1st defendant is entitled to claim the said amount from the 2nd defendant. In view of the undertaking given by the 1st defendant, it is open to the plaintiffs to file suit for recovery of money and recover the same from the 1st defendant. In view of the facts and circumstances of the case, no factual aspects are required to be determined in this Second Appeal. Consequently, no substantial questions of law do arise for determination. The Second Appeal is devoid of merit and it is liable to be dismissed.

11. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 01.03.2000 passed in A.S. No.21 of 1998 on the file of the I Additional District Judge, Kurnool. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 18.07.2018
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Dr. SHAMEEM AKTHER, J