HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.781 of 2018

JUDGMENT:

The unsuccessful defendant No.1 filed this Second Appeal aggrieved by the Judgment and Decree dated 18.12.2017 in A.S.No.26 of 2012 passed by the learned Special Sessions Judge for Trial of Cases under SCs. and STs. (POA) Act-cum-Additional District Judge, Nalgonda, confirming the Judgment and Decree dated 24.01.2012 in O.S.No.10 of 2010 passed by the Senior civil Judge, Nalgonda.

2) The parties in this appeal are referred as they were arrayed before the trial Court.

3) The facts in nutshell are thus:

a) The case of the plaintiff—Chit Funds is that D1 joined as a member of its chit fund scheme with series No.SVCF/T1, Ticket No.28 agreeing to subscribe Rs.20,000/- per month for a period of 50 months for the chit of Rs.10 lakhs and executed Ex.A2—chit agreement; he participated in the auction of the chit held on 26.08.2007 and became successful bidder agreeing to forego Rs.3,70,100/-; he furnished D2 to D6 as sureties and executed guarantee agreement under Ex.A5; after fulfilling the formalities, the prize amount of Rs.6,29,900/- was paid to him vide cheque bearing No.844055 drawn on Indian Bank, Nalgonda; after receiving the said cheque, he executed Ex.A3—receipt and Ex.A4—promissory note dated 26.10.2007 for Rs.6,20,000/- for future installments; out of 33 installments, he paid only 14 installments upto October, 2008 and thereafter, became defaulter and hence Ex.A6—legal notice was issued to him and his sureties—D2 to D6; notice sent to D1 was returned with an endorsement *addressee left,* D2 to D5 received the notices and D6 refused to receive the notice; though the defendants received legal notices did not choose to discharge their liability. Hence the suit.

b) D2 to D6 remained ex-parte.

c) D1 filed written statement and opposed the suit. While admitting his joining as a member in the chit group of the plaintiff—Chit Fund Company, becoming successful bidder in the auction held on 26.08.2007, furnishing D2 to D6 as guarantors and execution of Exs.A2 to A5—documents, D1 contended that he had no knowledge about the particulars of the said documents as they were not read over to him. He denied receipt of cheque dated 26.10.2007 for Rs.6,29,900/- said to have been issued by plaintiff and execution of Ex.A4—pronote.

d) He stated that he was informed by the plaintiff that the prize amount was kept in fixed deposit. He further stated that subsequent to 33 monthly installments, he issued four cheques drawn on ICICI Bank for the remaining 12 installments. He denied receipt of suit notice issued by the plaintiff. He thus prayed to dismiss the suit.

e) Basing on the above pleadings, the trial Court framed the following issues.

i) Whether the suit pronote and jameen pronote are true, valid and binding on the defendants1 to 6?

ii) Whether the plaintiff is entitled to recover the suit amount as prayed for?

iii) To what relief?

f) During trial, PW1 was examined and Exs.A1 to A20 were marked on behalf of plaintiff. DW1 was examined but no documents were marked on behalf of defendants.

g) After hearing both sides and basing on the oral and documentary evidence, the trial Court observed that Exs.A3 to A5 are true, valid and binding on defendants; plaintiff—Chit Fund Company has proved its case and it is entitled for suit amount. Accordingly, the trial Court decreed the suit with interest @ 12% per annum from the date of suit till the date of decree and future interest @ 6% per annum from the date of decree till the date of realization.

h) Aggrieved, D1 preferred A.S.No.26 of 2012 and the lower appellate Court dismissed the appeal holding that respondent/plaintiff has established that there is outstanding liability due to it and appellant/defendant No.1 has to pay the same jointly and severally along with his sureties and the plaintiff is entitled for the suit claim by confirming the judgment and decree of the trial Court.

Hence, the instant Second Appeal by defendant No.1.

4) The appellant submitted the following questions of law which, according to him, are substantial questions for consideration in the Second Appeal. Hence, before admission, this Court heard on the involvement of substantial questions of law:

> *1. Whether the appellant is entitled for the relief of recovery of amount?*
>
> *2. Whether the documents filed by the plaintiff marked as Ex.A3 and Ex.A4 were interpreted and examined its effect in just and proper way?*
>
> *3. Whether the suit promissory note marked as Ex.A4 is valid and enforceable and is supported by passing of consideration?*
>
> *4. Whether the crucial and vital aspect of passing of consideration through cheque bearing No.844055 dated 26.10.2007 drawn on Indian Bank, Nalgonda is proved and if not whether adverse inference can be drawn under Section 114 of the Evidence Act, as there is no documentary evidence that the consideration passed towards the payment of prize amount through cheque bearing No.844055 dated 26.10.2007?*
>
> *5. Whether the evidence on record let in by the parties was properly was considered in a proper perspective?*
>
> *6. Whether the dismissal of the appeal is justified?*

5) Heard arguments of Sri K.Amarnath Reddy, learned counsel for appellant/defendant No.1 and Sri K.Mahipathi Rao, learned counsel for respondent No.1/plaintiff. Notice served to respondents 2 to 6 but there is no representation on their behalf.

6) It is the contention of D1 that he had no knowledge about the particulars of documents said to be executed by him i.e. Exs.A2 to A5 as they were not read over and explained to him. He denied that he received Rs.6,29,900/- through cheque bearing No.844055, dated 26.10.2007 drawn on Indian Bank, Nalgonda. His contention was that plaintiff got all the blank documents including Ex.A3—receipt signed by D1 at a time and thereafter, the receipt and other documents were filled up by the persons of the plaintiff. However, he never received any amount as mentioned in Ex.A4—promissory note. When he asked about prize amount, the plaintiff informed that the said amount was kept in fixed deposit and so saying the plaintiff collected 44 monthly installments but showed only 33 installments. Subsequently, D1 issued four cheques drawn on ICICI bank for other 12 installments which were not accounted for by the plaintiff. Thereafter, when D1 requested plaintiff to pay the prize amount of the chit, the plaintiff informed that he appropriated monthly subscription amount from out of the accrued interest of the prize amount of the chit kept in fixed deposit and he did not pay any amount. As against this contention, the trial Court on appreciation of oral and documentary evidence particularly Exs.A3 to A5, observed that defendant (D1) in cross-examination has admitted that he subscribed his signatures on Ex.A3—receipt, A4—promissory and A5—agreement of guarantee on 26.10.2007 after they were filled up and their contents were read over and explained to him. The trial Court further observed that the aforesaid admissions made by him belie the stand taken by D1 that the prize amount of the chit was not paid to him and that without reading

over and explained the contents of Exs.A3 to A5, which were in English, his signatures were taken. It further observed that the evidence on record supports the case of the plaintiff and shows that D1 executed Exs.A3 to A5 after receiving the prize amount. Having received the prize amount D1 paid only 14 installments and failed to pay the balance chit installments. On this evidence the trial Court decreed the suit.

7) In A.S.No.26 of 2012 the lower appellate Court more or less observed in similar fashion and held that the contention of appellant/D1 that he did not sign is not well founded and observed the defence was baseless. The lower appellate Court made an observation that when the amount was not received by D1 why he had signed the documents. It also observed the plaintiff issued legal notice under Ex.A6 but no reply was given. It also observed that when D1 has not received the prize amount why he paid some installments. On all the aforesaid observations, the lower appellate Court dismissed the appeal.

8) I gave my anxious consideration to the judgments of the Courts below and also the material on record. Needless to emphasize that, both the Courts below gave a concurrent finding of facts involved in the case. As rightly held by the Courts below, if really D1 has not received the prize amount, there was no need for him to pay some installments. The prize money was a huge amount of Rs.6,29,900/-. That being so, D1 wound not kept silent if that amount was not received by him. He would have surely initiated civil and criminal proceedings against the plaintiff for non-payment of prize money. Further, it appears, D1 and other

guarantors have not given reply to the notice issued by the plaintiff. Thus, the conduct of D1 clearly demonstrates that having received the prize money only he executed the necessary documents.

9) In this back drop, I find no question of law, much less substantial question of law, to consider and decide in the Second Appeal. All the questions projected by D1 in this Second Appeal are only questions of fact but dubbed as substantial questions of law. Of all these question of facts, both the Courts below have given concurrent findings basing on the evidence available on record. It is trite law that Second Appeal is maintainable only on substantial questions of law but not questions of fact wherein concurrent finding was arrived at by the Courts below.

10) In the result, this Second Appeal is dismissed at the admission stage.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 22.10.2018
Murthy