THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.651 OF 2017

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 07.03.2017 passed in A.S. No.111 of 2015 on the file of the I Additional District Judge, Ongole (for short, 'first appellate court'), wherein the first appellate court allowed the appeal setting aside the decree and judgment dated 01.04.2015 passed in O.S. No.400 of 2013 on the file of the Additional Senior Civil Judge, Ongole (for short, 'the trial court') and decreed the original suit directing the appellant-defendant to pay Rs.2,00,000/- with interest at the rate of 6% per annum from the date of filing of the suit till date of realization to the respondent-plaintiff within a period of three months.

2. Heard the learned counsel for the appellant-defendant and the learned counsel for the respondent-plaintiff, apart from perusing the material available on record.

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

4. Learned counsel for the defendant-appellant would contend that the defendant did not borrow any money; he has not given Exs.A.1 and A.2-cheques towards security for the loan amount; the plaintiff wanted to obtain some money from the defendant, for that, two cheques were given; the defendant did not instruct his advocate with regard to the admission made in the reply dated 08.07.2013 given to legal notice; the trial court rightly considered the evidence on record and dismissed the suit; the first appellate court did not appreciate the facts and circumstances of the case; there is no enforceable debt; the findings of the

first appellate court are perverse; and ultimately, prayed to set aside the decree and judgment passed by the first appellate court.

5. On the other hand, learned counsel for the plaintiff-respondent would contend that the defendant borrowed an amount of Rs.2,00,000/- on 08.08.2010 agreeing to repay the same within one month from the date of its borrowal; the defendant issued two post-dated cheques to discharge loan amount borrowed by him; the plaintiff issued a legal notice on 19.06.2013 demanding the defendant to repay the amount borrowed by him; on that a reply was given by the defendant on 08.07.2013, wherein there is specific admission of his liability; Ex.A.4 shows the service of the notice on the defendant; there is oral and documentary evidence to substantiate the case of the plaintiff and the first appellate court has rightly decreed the suit; and ultimately, prayed to dismiss the second appeal.

6. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the relevant pleadings of the parties.

(a) The plaintiff filed the original suit for recovery of Rs.2,00,000/- contending that the same was borrowed by the defendant on 08.08.2010 agreeing to repay the same within two months. Subsequently on 15.09.2010, the defendant issued two post-dated cheques bearing No.594418 dated and 25.09.2010 and No.023141 dated 26.09.2010 for Rs.1 lakh each towards discharge of the debt. Thereafter, the defendant did not pay the amount. A legal notice was issued to the defendant on 19.06.2013 demanding the defendant to pay the loan amount. A reply dated 08.07.2013 was given by the defendant admitting the loan transaction. When the defendant did not pay the money borrowed from the plaintiff, the original suit was filed for recovery of money.

(b) The defendant filed written statement denying all the averments made in the plaint and contended that he never took hand loan of Rs.2,00,000/-

from the plaintiff and he has no necessary to borrow such huge amount. The cheques referred by the plaintiff are not at all issued towards discharge of suit debt as alleged in the plaint. If really the cheque amounts were due, the plaintiff would have presented the same in bank for collection to realise the suit debt. The advocate of the defendant wrongly mentioned that the defendant borrowed the suit amount from the plaintiff. The reply notice was given in contra to the instructions given by him to the advocate. Ultimately, prayed to dismiss the suit.

(c) Basing on the pleadings, the trial Court framed the following issues:

1) Whether this court has no territorial jurisdiction to entertain the suit?

2) Whether the plaintiff is entitled for recovery of suit amount?

3) To what relief?

(d) Basing the evidence of the plaintiff deposed as P.W.1 and the documents Exs.A.1 to A.5 marked on behalf of the plaintiff and the evidence of the defendant deposed as D.W.1, the trial Court dismissed the suit, vide judgment and decree dated 01.04.2015. Aggrieved by the said judgment and decree of the trial Court, the plaintiff preferred A.S. No.111 of 2015 and the first appellate court, after appreciating the evidence on record, *vide* decree and judgment dated 07.03.2017, allowed the appeal setting aside the decree and judgment dated 01.04.2015 passed by the trial court in O.S. No.400 of 2013 and decreed the original suit directing the appellant-defendant to pay Rs.2,00,000/- with interest at the rate of 6% per annum from the date of filing of the suit till date of realization to the respondent-plaintiff within a period of three months.

7. While admitting this second appeal on 21.07.2017, this Court framed the following substantial question of law for determination:

1) Whether the judgment of the lower appellate Court, reversing the judgment of the trial Court without properly appreciating the evidence on record merely on the basis of Ex.A5 notice, is proper in the facts and circumstances of the case for decreeing the suit?

2) Whether in the facts and circumstances of the case, the defendant borrowed and liable to pay the amount covered by Exs.A1 and A2 cheques?

8. There cannot be any dispute that under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse findings are some of the questions, which involve substantial questions of law.

9. Whether the defendant borrowed Rs.2,00,000/- from the plaintiff on 08.08.2010 and whether the defendant on 15.09.2010 gave two cheques each for Rs.1 lakh to discharge the loan amount are all factual aspects. There is specific evidence of the plaintiff P.W.1 with regard to the borrowing the suit amount. Exs.A.1 and A.2-cheques and Ex.A.3-office copy of legal notice discloses that the plaintiff issued notice to the defendant demanding the

defendant to pay the debt. Ex.A.4-postal acknowledgment reveals the service of the notice on the defendant. Ex.A.5 is the reply notice given on behalf of the defendant to the plaintiff, wherein there is specific admission with regard to the subject borrowing and the defendant sought some time to pay the loan amount, after selling his land in Sy.No.425/B, situated at Thadur village. The defendant contended that he did not instruct his advocate with regard to the admission made by him in the reply notice. There is admission on the part of the defendant with regard to the subject loan transaction in reply notice and his advocate was not examined. There is no reason for the advocate of the defendant to give details of the property to be sold by the defendant. The defence set up by the defendant is false. These are all factual aspects and they were dealt with and answered by the first appellate court and rightly determined in favour of the plaintiff. The first appellate court had assigned reasons for accepting Ex.A.5-reply notice as true, and Exs.A.1 and A.2 were given by the defendant to discharge the amount borrowed by him from the plaintiff. These findings are not perverse. There is no infirmity in the findings of the first appellate court.

10. It is appropriate to state that under Section 100 of the C.P.C., the jurisdiction of the High Court to interfere with the judgment of the Court below is confined to substantial question of law. The findings recorded with regard to the factual aspects by the first appellate court are final. Those findings of facts are not amenable to the jurisdiction of this Court by way of second appeal. The first appellate court had elaborately dealt with regard to the admission of the defendant with regard to the loan transaction in his reply marked as Ex.A.5. In the circumstances of the case, this Court cannot re-appreciate the evidence and arrive at a different conclusion. Neither inadmissible evidence has been considered nor admissible evidence not acted upon. Viewing from any angle, no question of law much less substantial questions of law does arise for

determination in this second appeal. Therefore, this second appeal is devoid of merit and is liable to be dismissed.

10. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 07.03.2017 passed in A.S. No.111 of 2015 on the file of the I Additional District Judge, Ongole. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 12.09.2018
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