

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.308 of 2008

JUDGMENT:

Heard Sri P.Venugopal, learned Senior Counsel, assisted by Sri Siddhartha Sarma, learned counsel for the appellant - defendant, and Sri P. Rajasekhar, learned counsel for the sole respondent - plaintiff.

The present appeal is directed against the judgment and decree dated 04.02.2005 in O.S.No.443 of 2001 on the file of II-Additional Senior Civil Judge, Visakhapatnam.

The reliefs sought for by the plaintiff have been to declare that the agreement dated 21.07.1998, is void and its arbitration clauses are inoperative, inducing such an agreement by the defendant is an act of wrong (2) consequential relief to grant a decree and judgment for Rs.5,00,000/- in favour of the plaintiff and (3) to grant interest from the date of suit till the date of decree and costs of the suit.

It appears, before the trial Court, the plaintiff has only filed chief affidavit and marked Exs.A1 to A15 and no others were examined. The trial Court, somehow, just referring to filing of the chief affidavit and marking of Exs.A1 to A15 and then observing that the evidence of PW.1 remains unchallenged and is sufficient to prove the case of the plaintiff, decreed the suit. The relevant portion of the judgment reads thus:

“Perused the evidence affidavit filed in chief of Mediboina Manmadha Rao, Director of plaintiff. Perused the documents filed and plaint averments in support of the plaintiff case. Exs.A.1 to A.15 are marked. The evidence of P.W.1 remained unchallenged and proved the case of the plaintiff.

Hence suit is decreed with costs declaring the agreement dt.31-7-98 is void. That the defendant is directed to pay a sum of Rs.5,00,000/- (Rs.five lakhs) to the plaintiff with subsequent interest thereon at the rate of 6% p.a., from the date of suit till realisation.”

Learned counsel for the respondent, though, supports the judgment of the trial Court, it is obvious that except the chief affidavit of PW.1, there is nothing else on record. In fact, when a declaration is sought to declare that the agreement is void and its arbitration clauses are inoperative, inducing such an agreement by the defendant is an act of wrong, certainly, something more is required, but not just the affidavit in chief of the plaintiff to prove as to how the arbitration clauses are inoperative and such inducement had taken place. Thus, when looked at the judgment under challenge, it would reflect that it is very cryptic and not in accordance with the procedure contemplated by the provisions of the Civil Procedure Code, 1908. Thus, it is a case where the matter requires to be remitted to the Court below for disposal afresh by a well considered judgment assigning reasons in arriving at such a conclusion. Even the Court below shall afford an opportunity to the defendant to lead evidence, so also the plaintiff to lead further evidence by subjecting PW.1 to cross-examination. The whole exercise shall be completed by the Court below within six months from the date of receipt of a copy of this order.

Accordingly, the present appeal is allowed setting aside the judgment and decree under challenge and remanding the matter to the

Court below for disposal of the Original Suit afresh as stated above, affording an opportunity to the defendant to lead evidence, so also the plaintiff to lead further evidence by subjecting PW.1 to cross-examination. The parties are directed to bear their own costs.

As a sequel, the miscellaneous applications, if any, pending in this appeal, stand closed.

A. SHANKAR NARAYANA, J

27.02.2018

v v

