**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**APPEAL SUIT No.2029 of 1998**

**JUDGMENT:**

This appeal arises out of the judgment and decree in O.S.No.70 of 1992 on the file of the learned Subordinate Judge, Ramachandrapuram, dated 17.05.1996.

The defendant in the said suit is the appellant herein. The said suit was filed for recovery of Rs.1,39,238/- with subsequent interest and for costs. The case of the plaintiff is that it is the business concern doing banking business at Draksharamam and it is represented by its Proprietor Sri Govarchand. The defendant is doing kirana business. The defendant took an amount of Rs.50,000/- on 13.07.1989 and Rs.31,000/- on 17.07.1989 for his business purpose. The said amounts were entered in the account books maintained by the plaintiff and the relevant entries are found on the respective dates. The defendant scribed and executed two documents as per the business practice on the said dates and he undertook to pay interest at 24% per annum. In spite of demand by the plaintiff when no amount was paid, the plaintiff got issued a registered notice on 10.07.1992.

The defendant filed the written statement denying the plaint averments and taking a stand that the promissory note dated 13.07.1989 for Rs.50,000/- was materially altered. The case of the defendant is that he has taken an amount of

Rs.1,16,000/- from the plaintiff's brother Sri Seth Ramesh Kumar for the purpose of purchasing a house from his relations and when he was asked to execute the promissory note for separate amounts, he executed promissory notes for a sum of Rs.50,000/-, Rs.31,000/- and Rs.35,000/- on the dates asked by the brother of the plaintiff with his own handwriting. In the said promissory notes, the purpose or rate of interest was not mentioned and it was included later by the plaintiff. But, the sale transaction for which purpose the amount was borrowed did not take place and when he wanted to discharge the debt, the brother of the plaintiff informed that the promissory notes were with his brother - Sri Govarchand. The defendant was asked to pay the amount and take back the pronotes. Accordingly, the defendant deposited Rs.1,10,000/- in Account No.P.2630 in the State Bank of India, Draksharamam, on 30.10.1989 and the said account was furnished by the brother of the plaintiff. The defendant gave counter foil to the brother of the plaintiff and asked to cancel the pronotes to the extent of the amount deposited by him. But, the plaintiff's brother refused to cancel the same, as the practice was to pay daily interest on the amounts lent for short time. Since the amount of Rs.1,16,000/- was lent for less than three months, the defendant was asked to pay a further sum of Rs.10,440/- towards the daily interest. Though there were no witnesses at the time of execution of promissory notes, the signatures of the witnesses were obtained at a later point of time and, thus, there was material alteration. The defendant admitted to pay small amount of interest to the plaintiff and he denied the payment of suit amount.

On the above pleadings, the trial Court framed the following issues:

> "1. Whether the defendant borrowed Rs.50,000/- on 13-7-89 and Rs.31,000/- on 17-7-89 from the plaintiff banking concern and acknowledged the transactions on the respective dates?
>
> 2. Whether the plaint documents are materially altered as alleged by the defendant in the written statement?
>
> 3. To what relief?"

The plaintiff was examined as P.W.1 and the defendant was examined as D.W.1. The plaintiff marked Exs.A1 to A5 and the defendant did not mark any documents. The trial Court gave a finding that the defendant borrowed Rs.50,000/- and Rs.31,000/- on 13.07.1989 and 17.07.1989 from the plaintiff's concern and acknowledged the transactions on the respective dates. The trial Court also gave a finding that the suit documents were not materially altered. Accordingly, the suit was decreed with costs for Rs.1,30,238/- and with subsequent interest at 6% per annum on Rs.81,000/- from the date of the suit till date of payment.

Learned Counsel for the appellant submits that though it was argued before the trial Court with regard to the application of the Pawn Brokers Act, neither an issue was framed nor a finding was recorded with regard to the same. Learned Counsel also submits that though Exs.A3 and A4 are in favour of the brother of the plaintiff, the said fact was not properly appreciated by the trial Court. He lastly submits that the conclusion of the trial Court on the issues framed are erroneous.

With regard to the application of the Pawn Brokers Act, no plea was taken in the written statement filed by the defendant and it appears that the said point was taken only in the written arguments stating that Exs.A1 and A2 – chitta extracts of the plaintiff's business concern, are in some other language and the said language is not in accordance with the rules made under the Andhra Pradesh Pawn Brokers Act. In spite of not taking a specific pleading with regard thereto in the written statement, the trial Court considered the said issue and held that in view of the definition of "pawn", in the absence of any pledge of articles while obtaining the loan, the provisions of the said enactment are not applicable. With regard to Exs.A1 and A2, the trial Court found that the entries are not disputed and they were marked without any objection. In view of the same, there is no need for the plaintiff to examine any person connected with the said entries. With regard to the findings recorded by the trial Court, this Court carefully perused the reasoning given by the trial Court in respect of the issues framed and the reasoning is based on ample evidence, and hence, the findings cannot be called as erroneous.

In view of the above, this appeal is dismissed with costs confirming the judgment and decree in O.S.No.70 of 1992 on the file of the learned Subordinate Judge, Ramachandrapuram, dated 17.05.1996. The miscellaneous petitions pending in this appeal, if any, shall stand closed.

**(A.RAMALINGESWARA RAO, J)**

21.03.2018
vs