

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Second Appeal No.1462 of 2018

Judgment:

This second appeal arises out of a decree for payment of interest allegedly borrowed by the appellants from the defendant.

2. Heard Mr. S.Subba Reddy, learned counsel for the appellants.

3. It is a very curious case where as on the date of filing of the suit, the entire amount borrowed by the appellants had been repaid. The transaction was not evidenced by a promissory note. The basis for the transaction was only cheques and the appellants/defendants pleaded discharge. The discharge was admitted by the plaintiff, but the plaintiff claimed that interest was payable. The Trial Court granted a decree to the extent of interest. The Appellate Court confirmed the same.

4. The contention of the learned counsel for the appellants is that when there is no agreement for payment of interest, the question of invoking Section 80 of the Negotiable Instruments Act, 1881, does not arise. Therefore, the learned counsel contended that both the Courts below could not have awarded interest.

5. The learned counsel for the appellants contended that there was no proof of demand. In the absence of a proof of demand, the question of payment of interest does not arise,

even if Section 80 of the Negotiable Instruments Act is applicable.

6. But the second question raised by the learned counsel is only a question of fact. There is no substantial question of law.

7. If the second question goes, the invocation of Section 80 of the Negotiable Instruments Act cannot be found fault with.

8. Therefore, I find no justification to admit the second appeal.

9. However, by the common judgment, rendered in two appeals, one arising out of the decree for money filed by the defendants and another arising out of an appeal filed by the successful plaintiff for denial of costs, the Trial Court granted a decree for costs also. Since no appeal would lie against a decree for costs, the appellants have filed a separate revision. The revision has already been admitted. Therefore, while dismissing the second appeal, it is clarified that the respondent cannot plead merger, insofar as the civil revision is concerned. Pending applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

26th October, 2018.
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