

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**APPEAL SUIT No.3121 OF 1999**

**JUDGMENT:**

This appeal is filed by the appellants-defendants against the judgment and decree dated 04.11.1999 rendered in O.S.No.104 of 1996 by the Senior Civil Judge at Nizamabad, whereby and whereunder the learned Judge has decreed the suit for recovery of money filed by respondents 1 to 3 herein against the appellants and respondents 4 and 5 herein.

2. Heard both sides. Perused the material on record.

3. Learned counsel for the appellants-defendants would contend that no amount is due to the plaintiffs as contended. The suit was filed based on false and frivolous documents. The Trial Court did not appreciate the facts in correct perspective and erroneously decreed the suit for Rs.1,50,000/- with interest at 18% per annum against defendants 1 to 4 and ultimately prayed to dismiss the suit.

4. Learned counsel for the respondents-plaintiffs would contend that there are number of documents available to substantiate the borrowings made by defendants 1 to 4. The Trial Court elaborately discussed the evidence of PWs 1 and 2 as well as DWs 1 and 2 and rightly decreed the suit and there is no infirmity and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the following point arises for determination:

“Whether the judgment and decree passed in O.S.No.104 of 1996 on 04.11.1999 by the Senior Civil Judge at Nizamabad is liable to be set aside?”

6. There is specific evidence of PWs 1 and 2 with regard to the borrowing of Rs.2,00,000/- by defendants under promissory note. As Rs.50,000/- was repaid, the cheques were issued for realization of balance amount of Rs.1,50,000/-. Those cheques were dishonoured. Ex.A.2 promissory note dated 20.07.1993 reveals borrowing of Rs.2,00,000/- by the defendants from the plaintiffs. Ex.A.3 is the loan application made by the defendants on 20.07.1993. The borrowings were mentioned in Ex.A.4-cash book vide entry dated 20.07.1993. Ex.A.5 is the extract of account of the first defendant and it reveals the said borrowings. 1<sup>st</sup> Defendant is the Firm, 2<sup>nd</sup> and 3<sup>rd</sup> defendants are its partners and 4<sup>th</sup> defendant is the guarantor for the loan borrowed by D.1-Firm. The documents on record establish the borrowings made by D.1-Firm from the plaintiff-Firm. In view of the documentary and oral evidence, no credibility can be given to the defence set up by the defendants. The Trial Court elaborately appreciated the oral and documentary evidence and decreed the suit for Rs.1,50,000/- with 18% interest per annum from the date of the suit till the date of decree and at 6% per annum thereafter till realization. There is no infirmity and there are no circumstances to take a different view. The appeal is devoid of merits and liable to be dismissed.

7. Accordingly, the appeal is dismissed. No order as to costs.

8. Miscellaneous petitions pending in this appeal, if any, shall stand closed. No order as to costs.

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**Dr. SHAMEEM AKTHER, J**

24<sup>th</sup> January, 2019.  
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