

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

APPEAL SUIT No.215 OF 2005

ORDER:

This is an Appeal Suit filed by the unsuccessful appellant who is the 1st defendant in O.S.No.109 of 2003 on the file of Senior Civil Judge, Karimnagar. The present appeal is filed under Order 41 Rule 1 of C.P.C., with a prayer to set aside the judgment of the trial Court by which a decree was passed for recovery of suit amount from the defendants including the appellant herein. The appeal is filed by the appellant on the following grounds:

The trial Court failed to consider the actual facts of the suit and without making detailed calculation passed decree directing the appellant to pay a sum of Rs.2,71,801/- along with interest @ 12% per annum from the date of suit till date of decree and further interest @ 6% per annum from the date of decree till the realization of principle amount of Rs.2,46,600/-. The trial Court could not have awarded interest @ 12% per annum which

according to the appellants is an exorbitant rate of interest. He has also claimed that the Court below failed to consider his genuine request for granting installments because he suffered huge loss in his business. He has also pleaded that though the respondent/plaintiff did not deduct dividend for future instalments, a decree was passed in favour of the plaintiff. There was specific pleading in the written statement that he sustained heavy loss in the business. But, the same was not considered on the ground that he failed to adduce any evidence about the said loan. Therefore, the appellant sought for setting aside the decree granted in favour of the respondent/plaintiff.

2. As could be seen from the judgement and other record, 1st respondent/plaintiff filed a suit vide O.S.No.109 of 2003 against the petitioner/appellant and other defendants on the basis of chit fund transaction between the parties. According to the plaint averments it shows that the appellant herein joined as subscriber in the chit run by the respondent/plaintiff for a sum of Rs.5,00,000/- to be subscribe in 40 monthly instalments @ Rs.12,500/- per

month. He has executed required documents including the chit agreement and later he participated in the auction conducted by the respondent. He was declared as successful bidder when he agreed to forego Rs.2,00,000/-. The respondent/plaintiff paid prized amount of Rs.3,00,000/- after deducting the bid amount and by the date of auction, the appellant has paid Rs.1,62,500/- thereby, his future liability was Rs.3,37,500/-. The other defendants in the suit stood as guarantors to enable the appellant to claim the prize amount and they have executed joint promissory note in favour of the respondent/plaintiff. The respondent has claimed that subsequently the appellant/1st respondent committed default in payment of instalments from 15.11.2002. He failed to respond to the notice got issued by the plaintiff, thereby sought for decree of the defendants.

3. The appellant made his appearance before the trial Court filed written statement claiming that he did not commit any default in payment of instalments. The suit was filed before the expiration of chit-term. The

instalments paid by the appellant were not properly deducted by the respondent. He suffered losses in the business thereby sought for decree to pay the actual amount in monthly instalments @ Rs.2,000/.

4. The trial Court framed the following issues:

- 1. Whether the amount paid by defendant No.1 are not properly accounted for?*
- 2. Whether the plaintiff is entitled to suit amount?*
- 3. Whether defendant No.1 is entitled for installments?*
- 4. To what relief?*

5. It seems the respondent/plaintiff examined its Assistant Manager as Pw1 through whom Exs.A1 to A14 were marked. The appellant/defendant No.1 is examined as DW1. He did not mark any documents on his behalf. The Court below having considered oral and documentary evidence concluded that the plaintiff proved its claim whereas the appellant herein was unable to establish his

contention, thereby passed decree in favour of the respondent.

6. Now the point for consideration is :

- 1. Whether the appellant herein is able to substantiate his contentions vide written statement and able to establish that he has paid more amount than an amount shown by respondent/plaintiff and whether he is entitled to an installment decree ?*
- 2. Whether the judgment of the trial Court is liable to be set aside on the ground that exorbitant rate of interest was awarded to the respondent ?*

7. **POINT Nos.1 & 2:**

There is no much controversy between the parties. The appellant while filing written statement has admitted his membership in the chit run by the respondent and also about the agreements executed prior to auction and subsequent auction in which he was declared as successful bidder. Similarly, there is no dispute about the execution of document by the other defendant on the basis of the

respondent/plaintiff paid the prize amount to the appellant. The only dispute raised by the appellant is with regard to excess payment which is not correctly calculated by the respondent and about the rate of interest apart from a prayer for installment decree.

8. In order to substantiate his claim, the appellant himself was examined as DW1. As could be seen from the judgment and record though it is claimed in the written statement that he did not commit any default and paid more installments etc, the cross examination of DW1 shows that he admitted default in payment of instalments from 15.11.2002 and he has admitted the receipt of legal notice got issued by the plaintiff. Admittedly, he did not issue any reply denying the averments made in the notice. As per his own cross examination the alleged default in payment of instalments has been admitted. If really the defendant paid more instalments, he could have obtained receipts from the respondent and he could have filed receipts in support of the claim. The oral evidence without supported by any documentary proof cannot be accepted to

believe that he has paid some more amount and the same was not deducted from the liability.

9. The record shows that having joined as member in the chit run by the respondent, and having participated in the auction he has received the prize amount from the plaintiff. But, committed default from November, 2002. The suit was filed before the trial Court during 2003 and decree was passed in 2004. The present appeal is filed before this Court in 2005. If really the appellant was genuine in making such request for instalments, he could have cleared the balance amount by this time. The intention of the appellant in filing the appeal and in taking plea about the instalments clearly shows that he has no real intention of clearing amount and he wanted to drag on the proceedings by one way or the other. The transactions being commercial transaction between the parties, the respondent/plaintiff is entitled to recover the amount with interest @12%. The trial Court right awarded the appropriate interest from the date of transaction till the date of decree and also from the date of decree till the date

of its realization. Therefore, there are no ground in the appeal.

10. In the result, the appeal is dismissed with costs.

11. As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 11-11-2022

PSSK