HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

A.S.NO.1713 of 2002

JUDGMENT :

The appellants herein are defendants and respondent herein is plaintiff in O.S.No.79 of 1999 on the file of II Addl. Senior Civil Judge, Warangal. Being aggrieved by the Judgment and Decree of the II Addl. Senior Civil Judge, Warangal (herein after will be referred as trial Court) where under the suit filed by the respondent herein was decreed, these appellants preferred the present appeal with a prayer to set aside the Judgment and Decree of the trial Court. The following are the grounds on which this appeal has been preferred.

2. The appellants have claimed that the Court below committed a gross error by passing a decree in the suit filed by the respondent which was hit by Money Lenders Act. The appellants have claimed that as could be seen from the plaint averments, the defendants said to have entered into a hire purchase agreement with the respondent for purchasing a Air Conditioner Bus, and a Scooter. The trial Court having negatived the theory of hire purchase agreement held that the plaintiff is a money lender and suit transaction is hit by Money Lenders Act. Thereby, the Court ought to have seen that the payments made by the appellants

herein were not properly accounted and if the amounts were properly accounted, the appellants are not liable to pay any amount towards the suit transaction. They have also claimed that inspite of the finding that respondent is a money lender, the Court could not have awarded interest @ 12% per annum because the respondent failed to comply the provisions of Money Lending Act and failed to furnish the statement of account to the appellants.

3. They have also claimed that the Court below grossly erred in appreciating the contention of respondent that an amount of Rs.1,33,000/- which was deposited under Exs.B1 to B3 were adjusted towards tractor and trailer account. The adjustment of Rs.50,000/- towards penal interest charges by the respondent towards tractor and trailer account is totally without any basis. Therefore, the said amount is liable to be adjusted towards the suit transaction. The appellants have claimed that the trial Court committed an error by holding that the plaintiff is entitled to recover an amount of Rs.1,51,500/- together with interest @ 12% per annum on the principal amount and to recover a sum of Rs.1,23,261/- with interest @ 12% per annum on the principle amount. Therefore, they sought for setting aside the Judgment and Decree of the trial Court.

4. As per the copies of the plaint and written statement filed along with the present appeal, it appears that the

respondent/plaintiff filed the suit vide O.S.No.79 of 1999 claiming that the plaintiff firm is engaged in hire purchase and finance business. The first appellant/D1 filed an application for sanction of Rs.1,50,000/- towards loan, both the appellants have executed hire purchase agreement on 09-04-1996 in favour of the respondent herein. The 2nd appellant/B2 stood as guarantor for the above loan for appellant No.1 and executed an agreement in favour of the respondent/plaintiff. The 1st appellant availed the loan which was dispersed on 19-04-1996 for purchase of a tourist bus, the amount was paid by way of cheque. The respondent further claimed that as per the agreement, the appellants herein have to pay hire purchase price of Rs.2,10,000/- in 24 monthly installments @ Rs.8,750/-. The appellants shall pay the installment by 15th of every month. The appellants agreed to pay penal charges @ Rs.250/- per month for every default. The respondent further pleaded that appellant No.1 paid only 6 installments and committed default thereafter. There was no response from appellant No.1/defendant No.1 inspite of repeated demands by the respondent. A legal notice was also issued on 30-01-1999. Therefore, the respondent terminated the hire purchase agreement as such, it is entitled to resume the possession of the vehicle and claim damages as such, the respondent filed the above referred suit for recovery of money.

5. The trial Court has disposed three different suits vide O.S.No.79 of 1999, 39 of 1999 and O.S.No.437 of 2001 under a Common Judgment. In view of a joint memo filed before the trial Court, O.S.No.437 of 2001 and O.S.No.13 of 1999 were clubbed with O.S.No.79 of 1999 and evidence was recorded in O.S.No.79 of 1999 which would be treated as evidence in all the suits. Therefore, the trial Court disposed all the three suits by a common Judgment on 08-11-2001. Among these three suits, O.S.No.79 of 1999 is filed for recovery of Rs.2,52,050/- with penal charges and for a direction to the defendant No.1 in the suit to deliver the tourist bus in respect of which there was a hire purchase agreement between the parties. The present appeal is filed against the finding of the trial Court in O.S.No.79 of 1999. Therefore, the appeal is confined to the finding of the Court in respect of O.S.No.79 of 1999 alone.

6. A written statement was filed on behalf of the appellant wherein it is claimed that the respondent did not obtain permission from RBI for conducting finance business. They have no money lending license. They have admitted the application for loan, but claimed that the partners of the respondent firm took possession of the vehicle by use of force. Having denied the other averments of the plaint including the quantum of monthly

installment, duration, penal charges, rate of interest, the appellants have further submitted that the claim of respondent is contrary to the principals of AP (Telangana Area Money Lenders Act) Usurious loan Act, Death Relief Act. The appellants did not dispute the agreement of guarantee executed by appellant No.2/D2. But according to them, the respondent obtained signatures of B2 on blank papers. They have also claimed that they paid a sum of Rs.52,500/- out of the loan amount. Therefore, the balance was only Rs.97,500/-, out of the said amount, they paid Rs.1,25,000/- through one Mahankali Vishwanatham, who purchased the movables of the defendants. They have requested him to adjust the said amount to the respondent. They have also claimed they paid Rs.36,000/- in cash.

7. The trial Court framed the following 6 issues in O.S.No.79 of 1999 :

1. Whether the alleged payments made by the defendant No.1 are true and if so whether they are not properly accounted for?
2. Whether the plaintiff is entitled for any penal interest?
3. Whether the vehicle is seized by the plaintiff ?
4. Whether the plaintiff is entitled to suit claim?
5. To what relief?

8. Subsequently, three more additional issues were framed in all the three suits as mentioned below :

1. Whether the suit transactions are money lending transactions covered by the provisions of Telangana Area Money Lenders Act?

2. If so, whether the plaintiff is a money lender?
3. Whether the plaintiff has got money lending license and the plaintiff complied with the provisions of Money Lenders Act?

9. In order to substantiate its claim, the respondent has examined PW.1 through whom Exs.A1 to A38 were marked. D1 i.e., appellant No.1 himself was examined as DW.1. He has examined his brother, who is guarantor in the suit as DW.2. One Mohd. Mahbub Ali was examined as DW.3 and Exs.B1 to B5 are marked on behalf of the appellants.

10. The trial Court having considered the pleadings of both parties, the evidence adduced by plaintiff and defendant both oral and documentary, came to the conclusion that the respondent is able to prove part of its claim and accordingly decreed the suit enabling the respondent to recover an amount of Rs.1,51,500/- with simple interest @ 12% per annum on the principle amount of Rs.97,500/-. The rest of the claim of plaintiff was dismissed. There is no counter, cross-appeal by the respondent/plaintiff against partial dismissal of the suit.

11. Heard both parties.

12. The following points arose for consideration are :

1. Whether the findings of the trial Court with regard to hire purchase agreement between the parties are incorrect?

2. Whether the findings of the trial Court by which the claim of respondent/plaintiff was partly allowed with interest @ 12% per annum is incorrect, thereby the suit is liable to be dismissed?
3. Whether the findings of the trial Court on the other issues in favour of the respondent/plaintiff are incorrect thereby, the Judgment and Decree impugned in the present appeal are liable to be set aside?

POINTS :

13. According to the plaint averments and as per the evidence of PW.1, it was specifically pleaded that defendant No.1 applied for loan of Rs.1,50,000/- for purchasing a tourist bus and after complying the required formalities and on execution of the necessary documents, the loan amount was sanctioned in pursuance of the hire purchase agreement dated 09-04-1996. Therefore, the hire purchase agreement was executed by defendant No.1. Defendant No.1 did not dispute the execution of the hire purchase agreement in favour of the plaintiff. The trial Court having placed reliance on different Judgments and having discussed the evidence adduced by the party, came to the conclusion that the agreement executed by defendant No.1 in favour of the plaintiff is a hire purchase agreement. The Court below came to the conclusion the hire purchase agreement was executed as a security for the loan obtained by defendant No.1.

14. The appellant has claimed that the trial Court held that the suit transaction is not a hire purchase agreement and held that the plaintiff is a money lender, thereby it is hit by Money Lenders Act. The appellant further claimed that the trial Court having held that the plaintiff is a money lender awarded interest @ 12% per annum though the plaintiff failed to comply the provisions of Money Lenders Act and failed to furnish the statement of account.

15. The trial Court while answering additional issues No.1 and 2, after a detail discussion, concluded that the suit transaction is not a hire purchase transaction and it is only a loan transaction and plaintiff is a money lender. The trial Court answered the additional issue No.3 to the effect that the plaintiff has got money lending license at the relevant time i.e., at the time during which the plaintiff advanced money to the defendant No.1. The trial Court also came to a correct conclusion that the plaintiff had complied partly the provisions of Money Lenders Act by maintaining the Account books. However, the appellant could not place any material before this Court as to how the above said findings are helpful for the appellant in allowing the appeal. The main contention of the appellant is with regard to payments made by the appellant which are not supposed to be considered by the Court below. According to ground No.6 of the appeal grounds, it is claimed that plaintiff adjusted an amount of Rs.1,33,000/- which is

deposited under Exs.B1 to B3 towards the loan for tractor and trailer but an amount of Rs.50,000/- was adjusted towards penal interest. The appellant has claimed that such adjustment is totally without any basis and it has to be adjusted towards the suit transaction.

16. The next argument of the appellant was with regard to payments made by the appellant and not properly adjusted towards his loan account. The appellant has claimed that even though an amount of Rs.1,33,000/- deposited under Exs.B1 to B3, the said amount includes a sum of Rs.50,000/- which was adjusted as penal interest shall be adjusted towards the suit transaction. The appellant further contended that the trial Court committed an error by awarding interest @ 12% per annum while passing a decree in favour of the respondent/plaintiff to recover Rs.1,51,500/- and another sum of Rs.1,23,261/-.

17. A perusal of the Judgment of the trial Court clearly shows that the learned trial Judge has appreciated the entire evidence in detail and came to a correct conclusion that the suit transaction is only a loan transaction. The plaintiff is a money lender. However, the plaintiff has got valid money lending license during the period of the above referred transactions. While answering issues No.1 to 4, the trial Court discussed in detail about the claim of plaintiff as well as the contention of the

defendants. While relying on the evidence of PW.1, wherein it is stated that the defendant had to pay 10 installments though the schedule was completed by June 1997, there was an outstanding amount of Rs.88,200/-. Therefore, a penal interest of Rs.50,000/- was calculated upto March, 1999. Exs.B1 to B3 were issued in April 1999, July 1999. Therefore, the Court below found that the amounts payable to the plaintiff under the tractor and trailer loan account must have been adjusted by the plaintiff thereby, there is no amount available for adjustment to the suit transaction. A clear finding as to why the request of defendants in not adjusting Rs.50,000/- to the suit transaction has been explained by the trial Court. When there is no such amount available, the appellant herein cannot contend that he is entitled to seek adjustment of Rs.50,000/- to the suit transaction. There is no basis for the claim raised by the appellant as such, the Court below rightly answered the issue against the appellant herein.

18. The next aspect is with regard to the order of the trial Court for payment of interest @ 12% per annum. Even though the plaintiff claimed that they are entitled to interest @ 20% per annum and the said rate of interest was agreed by the defendants, the Court below observed that there is no provision under which the plaintiff can claim such a rate of interest. The trial Court while relying on Section 11 (e) of Money Lenders Act and after

discussing the claims of both parties, came to a correct conclusion that the plaintiff is entitled to recover the principle loan amount along with interest @ 12% per annum and plaintiff was directed to deduct the amounts paid by defendant No.1 and having considered all the contentions, the Court below passed a decree in favour of the plaintiff to recover a sum of Rs.1,51,500/- under one transaction and Rs.1,23,261/- under the another transaction. The appellants herein are not able to substantiate their contention as to how they are entitled to pay interest less than 12%. Therefore, absolutely there are no merits in the appeal as such, it is liable to be dismissed.

19. In the result, the appeal is dismissed.

Consequently, Miscellaneous applications if any, are closed. There shall be no order as to costs.

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JUSTICE SAMBASIVA RAO NAIDU

Date: 14.10.2022

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