THE HONOURABLE SRI JUSTICE P. SWAROOP REDDY

APPEAL SUIT No.2643 of 2000

JUDGMENT:

This appeal is filed by the appellant, who is the plaintiff in the suit, against the judgment of the learned I Additional Senior Civil Judge, Ranga Reddy District, Hyderabad, in O.S.No.107 of 1994. The said suit was filed for recovery of Rs.2,22,446/- from the defendant, an employee of plaintiff Bharat Dynamics Limited.

2. The plaintiffs case was that the present appellant was incharge of selling canteen coupons and in the process, he has misappropriated the amount by not accounting for the coupons that were sold and money collected. According to the plaintiffs case, the misappropriation was detected during the course of audit proceedings. The defendant-respondent denied the allegations against him and on the basis of the pleadings the following issues were framed.

1. Whether the defendant used to canteen coupons of Rs.2,24,860/-. If so, defendant is liable to refund the same?
2. Whether the defendant is due of Scooter advance amount?
3. Whether the plaintiff is entitled for interest as claimed?
4. Whether the plaintiff is entitled for suit claim?
5. To what relief?

3. On behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A5 were marked. On behalf of the defendant, D.W.1 was examined.

4. On the basis of the above material, the trial Judge dismissed the suit holding that the case of the plaintiff is not

proved. Aggrieved by the same, the plaintiff preferred the present appeal.

5. Now, the point for consideration is whether there are any grounds for allowing the appeal?

6. The only question that arises for consideration to decide the point is whether the plaintiff has proved the misappropriation of the amounts by the defendant?

7. The only witness examined on behalf of the plaintiff has stated that he is working as Deputy General Manager in the plaintiff company. The defendant worked as senior assistant under him. He was dismissed from service on the ground that he has misappropriated canteen coupons of which he was incharge of sales. The defendant has to receive the coupons from the stores under requisition and sell the same to employees either on cash or credit basis and account for the same to the company, but he failed to maintain the accounts properly. During internal audit inspection, it was found that the defendant has not accounted for the canteen coupons and its sale proceeds. Based on that the defendant was chargesheeted on 16.10.1992. After enquiry proceedings, where the defendant was found guilty for the charges leveled, he was dismissed. Enquiry officer found that the defendant misappropriated an amount of Rs.2,24,860/-. The defendant was asked to pay back the amount vide Ex.A1 dismissal order. Ex.A2 is the office copy of notice. Ex.A3 is the acknowledgment. Thus, P.W.1 never spoke about the details of misappropriation as to how the defendant has misappropriated the money. He has merely stated that the audit revealed the misappropriation and consequent to the enquiry conducted, the defendant was dismissed after the enquiry officer found that the defendant has misappropriated the amounts.

8. Learned counsel for the appellant contends that as the enquiry officer found the defendant guilty and as per Ex.A5 the memo filed by the defendant in the lower Court, he was not disputing the finding of the enquiry officer, it has to be accepted that the misappropriation by the defendant-respondent is proved.

9. Learned counsel for the respondent-defendant contends that there is absolutely no evidence to show that the defendant has misappropriated the amounts.

10. A perusal of the enquiry report shows that no specific charge was framed against the defendant showing the details and mode of misappropriation. Further more, it also shows that certain witnesses M.Ws.1 to 3 were examined to show the misappropriation and on the basis of their evidence, the misappropriation was proved. Unfortunately, none of those witnesses were examined before the trial court and no details with regard to the misappropriation, i.e. on what date the coupons were given and when he has not accounted for the same and how the misappropriation has taken place is also not on record. Such being the case, it cannot be held that the misappropriation of amounts by the defendant is proved. As such, I hold that there are no grounds to allow the appeal

11. It is made clear that this finding shall not come in the way of taking independent decision in the pending writ petition filed by the defendant challenging the order of his dismissal, as the enquiry Officer has recorded the evidence of relevant witnesses and on that basis, finding was given and as already referred, the plaintiff failed to examine those witnesses in the present suit on account of that, technically, the alleged misappropriation is not proved in the suit.

12. In the result, the appeal suit is dismissed. No costs.

P. SWAROOP REDDY, J.

3rd September 2010
Rns