

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CITY CIVIL COURT APPEAL No.59 of 2003

and

I.A.No.1 of 2022 in/and

CITY CIVIL COURT APPEAL No.194 of 2005

COMMON JUDGMENT:

The unsuccessful defendant No.1 has filed CCCA No.59 of 2003 and the defendant Nos.2 and 3 have filed CCCA No.194 of 2005 assailing the judgment and decree dated 05.12.2002 in O.S.No.237 of 1992 on the file of the learned II Senior Civil Judge, City Civil Court, Hyderabad. Accordingly, it is proposed to dispose of both the appeal suits together as under.

2. In CCCA No.194 of 2005, during pendency of the appeal suit, the second appellant/defendant No.3 died and accordingly, the appellant Nos.3 to 6 were brought on record as legal representatives of deceased appellant No.2/defendant No.3. Learned counsel for the appellants in CCCA No.194 of 2005 has filed I.A.No.1 of 2022 under Order XLI, Rule 27 read with Section 151 of Civil Procedure Code (for short 'CPC') for reception of additional material documents i.e. certified copy of judgment dated 20.01.2004 in O.S.No.765 of 1990 on the file of the Delhi High Court,

which was renumbered as O.S.No.324/03/1990 before the Additional District Judge, Delhi, certified copy of withdrawal letters dated 27.11.2003 and 22.08.2003 and the receipt dated 22.08.2003 for a sum of Rs.1,50,000/- towards full and final settlement in terms of compromise in the said suit as additional evidence on behalf of the appellants/defendant Nos.2 and 3 in CCCA No.194 of 2005. Accordingly, I.A.No.1 of 2022 is proposed to be decided along with CCCA No.194 of 2005.

Pleadings in the plaint and written statements:

3. The plaintiff M/s.Nitco Road Ways Limited, a transporter with branches all over India, has filed Original Suit in O.S.No.237 of 1992 against the defendants for recovery of Rs.7,54,548/- with a prayer for a decree against defendant Nos.1 to 3 jointly and severally with a future interest at 18% per annum.

4. The plaintiff is dealing in transport business and also undertakes to transport all kinds of goods including heavy machinery from one place to another. Defendant No.3 is the Proprietor of defendant No.2 and

that the defendant No.2 claiming to be the agent of defendant No.4. Defendant No.5 is the insurance company. Defendant No.2 has procured an order for the 1st defendant from defendant No.4 for supply of two generator sets at Hyderabad for delivery. Defendant No.4 booked one set of Kirloskar Cummins diesel engine with radiator with the plaintiff for carriage from Delhi to Narketpally of Nalgonda District as per the LR dated 04.02.1989. Defendant No.4 claimed that the consignee of the goods was M/s.Central Electronics, Bank Street, Hyderabad. Accordingly, two invoices were raised on 28.01.1989 for a sum of Rs.6,24,648/- towards price of the above consignment and the same was received at the godown of the plaintiff at Auto Nagar, Ranga Reddy District. The plaintiff has come to know that the defendant No.3 had received Rs.4,00,000/- from defendant No.1 on behalf of defendant No.4 as part-payment for the price of the generator. In the meanwhile, differences cropped up regarding payment between defendant Nos.1 and 3 since defendant No.1 was not willing to pay the balance sale price of generator set unless consignment is delivered by

the defendant No.3 to defendant No.1. Whereas, defendant No.3 contends that he is not agreeable to part with the consignment without receiving the entire balance sale consideration. Defendant No.3 has assembled the generator set at the site of the godown of the plaintiff. It was also inspected by defendant Nos.1 and 3. But in the meanwhile a theft was committed on 07.03.1989 for which the plaintiff gave a report before the police, Vanasthalipuram. In the course of investigation the generator set was found lying in the premises of defendant No.1. On coming to know about the theft, defendant No.4 has tried to negotiate for settlement with defendant Nos.1 and 3, upon which, defendant No.1 has agreed to pay the balance sale consideration but defendant No.3 has refused to part with the amount of Rs.4,00,000/-, which was received from defendant No.1. At this stage, defendant No.1 has also approached the learned Judicial First Class Magistrate East and North Ranga Reddy District and filed a petition in Criminal M.P.No.1860 of 1989 wherein interim custody of the generator set was ordered with a condition to deposit cash of Rs.2,00,000/- with two sureties for an

amount of Rs.75,000/- and to produce the generator set before the Court as and when directed. Since defendant No.4 has not received advance amount from defendant No.3, he issued a letter to the plaintiff for rebooking the consignment and the plaintiff has alleged that a theft has been committed in respect of the said consignment, as such, defendant No.4 has made a claim with the defendant No.5 insurance company, settled the claim at Rs.6,20,000/-. In the meanwhile, defendant No.4 has filed Original Suit in O.S.No.765 of 1990 before the Delhi High Court for recovery of Rs.7,46,548/- with interest against the plaintiff herein, as such, the plaintiff has filed the present suit as abundant caution and without prejudice to the defences of the plaintiff in the aforesaid suit in O.S.No.765 of 1990, filed by 4th defendant before the Delhi High Court. However, during pendency of the said suit in O.S.No.765 of 1990 the defendant No.4 herein has settled the claim with the defendant No.5 herein and also an application was filed by the 5th defendant insurance company for impleadment as co-plaintiff in the said suit and that application was allowed. The 5th defendant

insurance company was impleaded as co-plaintiff in O.S.No.765 of 1990 along with the plaintiff No.1/defendant No.4 herein. Hence, the suit is filed by the plaintiff for recovery of the suit claim.

5. Defendant No.1 filed a detailed written statement. Similarly, defendant No.3 has filed written statement, which was adopted by defendant No.2, whereas defendant Nos.4 and 5 remained absent and they were set ex-parte.

6. The main averments of the written statement filed by defendant No.1 are that defendant No.3 approached them as Proprietor of defendant No.2 and also as agent of defendant No.4 for supply of generator set from Delhi to Narketpally. Defendant No.3 has submitted a quotation to defendant No.1 and also a purchase order together with a letter admitting the terms and conditions of defendant No.1 thereby defendant No.1 has given an advance of Rs.4,00,000/-, which was received by defendant No.3 by executing a receipt there for. As per the agreement, the consignment has to be delivered within one

month but defendant No.3 failed to deliver the goods even after lapse of eight months. Thereafter defendant No.1 doubting the bonafides of defendant Nos.2 and 3, lodged a complaint against defendant No.3 before police, Abids, Hyderabad in Crime No.77 of 1989 for the offence under Section 420 of Indian Penal Code (for short 'IPC'). Thereafter, defendant No.3 sent a letter to defendant No.1 stating that generator set is ready and requested to pay the balance amount for which defendant No.3 was asked by defendant No.1 to deliver the generator set at their factory with all accessories and certificate, thereafter defendant No.3 has issued a telegram to defendant No.1 saying that the consignment was delivered at Narketpally, later the police, Vanasthalipuram visited the factory and informed about the theft of generator. As such, defendant No.1 has filed O.S.No.233 of 1999 and obtained interim custody of the generator. Defendant No.1 has further stated that he is ready to pay the balance amount after deducting the value of accessories, which defendant No.3 has not supplied along with generator set and prayed for dismissal of the suit filed by the plaintiff.

7. The main averments of the written statement filed by defendant No.3, adopted by defendant No.2, are that he is not the Proprietor of defendant No.2 and also not the agent of defendant No.4, never procured any order for supply of generator set from defendant No.1 to be supplied by defendant No.4. However, admitted that defendant No.4 has dispatched one set of generator from Delhi to Narketpally. He denied to have received Rs.4,00,000/- as advance from defendant No.1 and also denied to have assembled the generator set at the godown of the plaintiff. He denied his liability for payment of Rs.4,00,000/- to the plaintiff stating that the suit claim is not tenable, the Court has no jurisdiction as the Auto Nagar is situated in Ranga Reddy District not at Hyderabad and prayed for dismissal of the suit.

Issues, evidence and findings of the trial Court:

8. Based on the pleadings of the plaint, written statements and the material available on record the trial Court has framed the following issues:

- 1) Whether the person who signed the plaint is competent to file the suit?

2) Whether the third defendant or M/s.Power Plant Engineers was the agent of the defendant No.4 at the relevant time?

3) Whether this Court has territorial jurisdiction to entertain the suit?

4) Whether the suit is in time?

5) Whether the defendant No.1 is a necessary party to the suit?

6) Whether the price of the consignment was Rs.6,24,648/- as claimed?

7) Whether the plaintiff is entitled to claim freight charges?

8) Whether the plaintiff is entitled to claim interest at 18% p.a.?

9) Whether the plaintiff is entitled to a decree for the suit amount against defendants 1 to 3 as claimed?

10) Whether the defendant No.1 is entitled to exemplary costs?

11) To what relief?

9. During trial, on behalf of plaintiff, PW1 is examined, Exs.A1 to A7 documents are marked whereas on behalf of contesting defendant No.1, DW1 is examined and Exs.B1 to B13 documents are marked. The trial Court, on

appreciation of oral and documentary evidence available on record, has answered issue Nos.1 to 9, stated above, in favour of the plaintiff and against the defendants. Issue No.10 was answered against defendant No.1. Finally, the suit was decreed with costs for recovery of Rs.7,54,548/- together with interest at 12% per annum from the date of suit till the date of decree and at 6% per annum thereafter till the date of realization on the principal amount of Rs.6,32,648/- against defendant Nos.1 to 3 whereas, the suit of the plaintiff was dismissed against defendant Nos.4 and 5 without costs.

10. Feeling aggrieved by the above said judgment and decree, the 1st defendant has filed CCCA No.59 of 2003, whereas defendant Nos.2 and 3 have filed CCCA No.194 of 2005. As stated supra, during pendency of CCCA No.194 of 2005 defendant No.3 died, accordingly, his legal representatives were brought on to the record as appellant Nos.3 to 6.

11. Heard learned counsel for the appellants/defendant Nos.1 to 3 and the respondent/plaintiff.

Submissions made on either side have received due consideration of this Court.

12. For the sake of convenience, the parties to these appeals are referred as plaintiff and defendants, as arrayed in the Original Suit.

13. In the light of the submissions made and the material available on record, the following points would arise for consideration:

(i) Whether the appellants in CCCA No.194 of 2005 are entitled for reception of additional documents, filed along with I.A.No.1 of 2022?

(ii) Whether the dismissal of O.S.No.765 of 1990 (renumbered as O.S.No.324/03/1990, on the file of the Delhi High Court in terms of compromise recorded on 20.01.2004 have any bearing on the merits of O.S.No.237 of 1992?

(iii) Whether the judgment and decree impugned dated 05.12.2002 in O.S.No.237 of 1992, on the file of the II Senior Civil Judge, City Civil Court, Hyderabad is sustainable?

(iv) To what relief?

14. Since all these points are interconnected, for the sake of brevity and convenience, they are answered together as under:

Point Nos.(i) to (iv):

15. Undisputedly the plaintiff is a transport company, having its branches all over the country, they also undertake transportation of all kinds of goods including heavy machinery, the defendant No.4 has booked one set of Kirloskar Cummins diesel engine with radiator etc., with the plaintiff for carriage from Delhi to Narketpally as per the LR dated 04.02.1989 and raised two invoices for a sum of Rs.6,24,648/- and the consignment was received at the godown of the plaintiff at Auto Nagar, Ranga Reddy District.

16. However, it appears, some disputes arose between defendant Nos.1 and 3 since defendant No.1 was not willing to pay the balance price of the generator set unless the consignment is delivered and the defendant No.3 was not willing to part with the consignment without receiving the entire sale consideration. In such circumstances, the 4th defendant herein i.e. M/s.Sudhir

Engineering Company, Delhi has filed Original Suit in O.S.No.765 of 1990 before the Delhi High Court against the plaintiff herein claiming an amount of Rs.7,46,548/-, being the price of consignment at Rs.6,24,648/- and an amount of Rs.1,21,900/- as interest. On that the plaintiff herein, as an abundant caution, filed the present Original Suit in O.S.No.237 of 1992 for recovery of Rs.7,54,548/- against defendant Nos.1 to 5.

17. In the course of arguments it is submitted by learned counsel for the appellants in CCCA No.194 of 2005 that the said suit in O.S.No.765 of 1990, which was pending on the file of Delhi High Court, was transferred to the Court of learned Additional District Judge at Delhi and renumbered as O.S.No.324/03/1990 and it was settled in compromise on 20.01.2004 and in view of the said settlement between the plaintiff and defendant No.4 herein nothing survives in this appeal and prayed for reception of the additional documents i.e. certified copy of compromise dated 20.01.2004 recorded in O.S.No.765 of 1990 (O.S.No.324/03/1990), certified copies of withdrawal letters dated 27.11.2003 and 22.08.2003 and the receipt

dated 22.08.2003 for a sum of Rs.1,50,000/- on behalf of the appellants/defendant Nos.2 and 3 in CCCA No.194 of 2005.

18. Be it stated that considering the pleadings in the present suit in O.S.No.237 of 1992 more particularly in paragraph No.4 of the plaint, any findings in O.S.No.765 of 1990, which was pending on the file of the Delhi High Court and transferred to the Court of Additional District Judge, Delhi and renumbered as O.S.No.324/03/1990, will have a direct bearing on the merits of this suit. Further, the said suit was decreed in terms of compromise on 20.01.2004 subsequent to the judgment and decree impugned dated 05.12.2002. As such, I find justification in the request made by the learned counsel for the appellants/defendant Nos.2 and 3 in CCCA No.194 of 2005. Accordingly, the documents filed along with I.A.No.1 of 2022 are ordered to be received as additional evidence on behalf of the defendants in CCCA No.194 of 2005.

19. As per the judgment and decree impugned, on behalf of defendants, in all Exs.B1 to B13 documents are

marked. If the proposed documents are received in evidence as additional evidence, they have to be received in 'B' series only as such, they are marked as under :

Ex.B14 : Certified copy of compromise recorded dated 20.01.2004 in O.S.No.765 of 1990 on the file of the Delhi High Court, which was renumbered as O.S.No.324/03/1990 before the Additional District Judge, Delhi.

Ex.B15: Certified copy of letter dated 27.11.2003 from the office of defendant No.5 insurance company stating that the plaintiff herein has offered 20% of the civil suit and they have recovered an amount of Rs.1,50,000/- and that they have already withdrawn the above civil suit in O.S.No.765 of 1990 as per their letter dated 22.08.2003.

Ex.B16 : Certified copy of letter dated 22.08.2003 from defendant No.5, addressed to the plaintiff herein along with receipt for an amount of Rs.1,50,000/-.

20. In the said letter (Ex.B16) it is clearly mentioned that defendant No.5 herein has received Cheque dated 22.08.2003 for Rs.1,50,000/- from the plaintiff

herein towards the claim of G.R.No.820708 dated 27.01.1989 towards full and final settlement of the above mentioned claim being the subject matter of the suit in O.S.No.765 of 1990, pending on the file of the Delhi High Court. It is further mentioned in Ex.B16 that the said amount was received towards full and final settlement of the entire claim of defendant No.4 herein with an undertaking to withdraw the suit unconditionally as having been satisfied. It is only pursuant to the letters under Exs.B15 and B16 and the receipt annexed to Ex.B16 a compromise was recorded as in Ex.B14 in O.S.No.765 of 1990 (renumbered as OS No.324/03/1990) on 20.01.2004 to the effect that in view of the settlement the suit of the plaintiff was disposed of as having been compromised as the plaintiff does not want to continue with the present suit and the same is dismissed as withdrawn being compromised.

21. It is pertinent to mention that the present suit in O.S.No.237 of 1992 is only filed subsequent to the suit in O.S.No.765 of 1990 as an abundant caution without prejudice to the defences of the plaintiff herein, who is the

defendant in the said suit in O.S.No.765 of 1990, filed by the defendant No.4 herein and defendant No.5 insurance company was impleaded in the said suit as co-plaintiff. The insurance company has categorically mentioned in Exs.B15 and B16 letters that they have received an amount of Rs.1,50,000/- being 20% of the claim in O.S.No.765 of 1990 from the defendant therein, who is the plaintiff in the present suit and settled the entire claim, accordingly, issued letter under Ex.B15. Basing on Exs.B15 and B16 along with the receipt, compromise was recorded in O.S.No.765 of 1990 between the parties therein, who are the defendant Nos.4 and 5 and the plaintiff in the present suit. In view of the fact that pursuant to the terms of compromise in O.S.No.765 of 1990 as the entire claim was received, that suit was disposed of as withdrawn.

22. It is pertinent to mention that the present suit is only filed as abundant caution in view of filing of the suit in O.S.No.765 of 1990 and in view of the compromise, as indicated above, in the said suit, subsequent to the judgment and decree in the present suit, the plaintiff

herein, who is the sole defendant in the said suit, has no claim whatsoever against any of the defendants, including defendant Nos.1 to 3. Be it stated that as per Ex.B16 letter the settlement is only in respect of the claim against G.R.No.820708 dated 27.01.1989 and as per the pleadings in paragraph No.6 of the plaint, the present suit is also filed in respect of the said claim under G.R.No.820708 dated 27.01.1989 for an amount of Rs.7,54,548/- as an abundant caution by the plaintiff herein, who is the defendant in O.S.No.765 of 1990.

23. Therefore, without looking into the merits or otherwise of the findings recorded by the trial Court in O.S.No.237 of 1992 in view of the subsequent events/developments in O.S.No.765 of 1990 (renumbered as O.S.No.324/03/1990) and dismissal of the said suit in terms of compromise dated 20.01.2004, the plaintiff's claim cannot sustain. In that view of the matter, the finding recorded by the trial Court in the impugned judgment and decree dated 05.12.2002 in O.S.No.237 of 1992 pending on the file of the learned II Senior Civil Judge, City Civil Court, Hyderabad is liable to be set aside

as the plaintiff cannot continue its claim against any of the defendants much less against defendant Nos.1 to 3 with whom the plaintiff has no privity of contract.

24. Therefore, for the reasons stated above, point Nos.(i) to (iv) are answered in favour of the appellants/defendant Nos.1 to 3 holding that in view of subsequent events in O.S.No.765 of 1990 (renumbered as O.S.No.324/03/1990) and terms of compromise, letter issued from defendant No.5 herein as in Exs.B14 to B16, the plaintiff is not entitled for recovery of the suit claim from any of the defendants including defendant Nos.1 to 3. In view of the compromise dated 20.01.2004 in the said suit in O.S.No.765 of 1990 (renumbered as O.S.No.324/03/1990) the defendant Nos.4 and 5 herein, who are the plaintiffs in that suit have received an amount of Rs.1,50,000/- from the plaintiff herein towards full and final settlement of their claim. The plaintiff herein has filed the present suit in O.S.No.237 of 1992 only as abundant caution as defendant Nos.4 and 5 have filed O.S.No.765 of 1990 before Delhi High Court. As such, in view of the

compromise dated 20.01.2004 in the said suit, the plaintiff's claim cannot sustain

25. In the result, both the appeal suits in CCCA No.59 of 2003, filed by defendant No.1 and CCCA No.194 of 2005, filed by defendant Nos.2 and 3, assailing the judgment and decree dated 05.12.2002 in O.S.No.237 of 1992 on the file of the learned II Senior Civil Judge, City Civil Court, Hyderabad are allowed by setting aside the impugned judgment and decree, stated above. Further, I.A.No.1 of 2022 is allowed, the documents filed along with this interlocutory application are ordered to be received as additional evidence and exhibited as Exs.B14 to B16 on behalf of the defendants in CCCA No.194 of 2005.

In the circumstances of the case, there shall be no order as to the costs. As a sequel, miscellaneous applications, if any pending, shall stand closed.

A.VENKATESWHARA REDDY, J

APPENDIX OF EVIDENCE

Additional documents received as per orders in I.A.No.1 of 2022 on behalf of appellants/defendant Nos.2 and 3 in CCCA No.194 of 2005 are :

Ex.B14 : Certified copy of compromise recorded dated 20.01.2004 in O.S.No.765 of 1990 on the file of the Delhi High Court, which was renumbered as O.S.No.324/03/1990 before the Additional District Judge, Delhi.

Ex.B15: Certified copy of letter dated 27.11.2003 issued from the office of defendant No.5 insurance company stating that the plaintiff herein has offered 20% of suit claim and they have recovered an amount of Rs.1,50,000/- and that they have already withdrawn O.S.No.765 of 1990 as per their letter dated 22.08.2003.

Ex.B16 : Certified copy of letter dated 22.08.2003 from defendant No.5, addressed to the plaintiff herein along with receipt for an amount of Rs.1,50,000/-.

A.VENKATESWHARA REDDY, J

Dated :03-01-2023
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