IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE THIRTIETH DAY OF JULY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HONOURABLE SMT JUSTICE TIRUMALA DEVI EADA

CITY CIVIL COURT APPEAL NO: 36 OF 2011

Appeal under section 96 of C.P.C against the Judgment and Decree Dated 26-11-2010 made in O.S.No.105 of 2004 on the file of the Court of the XI Additional Chief Judge (Fast Track Court) City Civil Court at Hyderabad.

Between:

The A.P. State Finanicial Corporation , Rep.by its Managing Director, Ranga Reddy Branch-West, H/o Chirag Ali Lane Hyderabad.

...Appellant(Defendant)

AND

M/S Raphael Pharmaceuticals [P] Ltd., having itsRegd. Office at No. 1-11-252, Begumpet, Hyderabad. Rep.by its Director Vijay Kumar Madanlal Ganeriwala, S/o Late Sri Kadanlal Ganeriwala, Occ Business,age 57 years.

...Respondent(Plaintiff)

I.A. NO: 1 OF 2011(CCCAMP. NO: 111 OF 2011)

Petition under order 41 rule 27 R/w Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased permit the petitioner Corporation to file the following documents as additional evidence to prevent miscarriage of justice: 1] Statement of Account 2] Demand notices served upon the petitioner Corporation for payment of property taxes on 28-7-1998. 3] Copy of the letter No. AFC/RR[W]/68418311/99-00/953,dated November 25, 1999 from the Asst. General Manager, APSFC, RR [West]Branch, Hyderabad addressed to the office of the Mandal Revenue Officer, Qutubullapur, R.R.District. 4] Demand Notice dated 5-9-1998 for payment of land tax. 5] Copy of the letter No.AFC/RR[W]/68418311/99-00/954,dated November 25, 1999 from the Asst. General Manager, APSFC, RR [West]Branch, Hyderabad addressed to Qutubullapur Industrial Municipality, II floor, APIIC Bldgs, IDA, Jeedimetla, Hyderabad.

I.A. NO: 2 OF 2011(CCCAMP. NO: 112 OF 2011)

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings including the execution of the decree passed in OS.No.105 of 2004 in the court of the XI Additional Chief Judge[FTC] CCC, Hyderabad.

I.A. NO: 3 OF 2011(CCCAMP. NO: 171 OF 2011)

Petition under Order 41 Rule 27 R/w Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the petitioner corporation to file the following typed documents as additional evidence to prevent miscarriage of justice 1. Typed copy of the affidavit filed in support of the Writ Petition No.19735/1997. 2. Typed copy of the Counter affidavit filed on behalf of the first respondent in WP.No. 19735/1997 3. Typed copy of the reply to the counter affidavit of first respondent in WP.No. 19735/1997 4. Typed copy of the Counter affidavit of R-2 and R-3 in WP.No. 19735/1997 5. Addl. counter affidavit of R2 & R3 in WP.No. 19735/1997

I.A. NO: 1 OF 2013(CCCAMP. NO: 614 OF 2013)

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to expedite the hearing of the above appeal by fixing an early date of hearing for the same and this Hon'ble Court.

I.A. NO: 2 OF 2013(CCCAMP. NO: 615 OF 2013)

Between:

M/S Raphael Pharmaceuticals [P] Ltd., having its Regd. Office at No. 1-11-252, Begumpet, Hyderabad. Rep.by its Director Vijay Kumar Madanlal Ganeriwala, S/o Late Sri Kadanlal Ganeriwala, Occ Business, age 57 years.

...Petitioner/ Respondent/Respondent

And

The A.P. State Financial Corporation , Rep.by its Managing Director, Ranga Reddy Branch-West, H/o Chirag Ali Lane Hyderabad.

...Respondent/Petitioner/Appellant

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased To pass orders to vacate the orders dated 11/4/2011 passed in CCC.A.M.P.No.112 of 2011 in CCCA.No.36 of 2011 where under orders of conditional interim stay on deposit of sum of Rs.4,00,000/- (rupees four lakhs only) and costs were granted, and this Honourable Court.

Counsel for the Appellant : SRI R RAJENDRA PRASAD

Counsel for the Respondent : SRI MOHAMMED IMRAN KHAN

The Court delivered the following: Judgment

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SMT. JUSTICE TIRUMALA DEVI EADA

CITY CIVIL COURT APPEAL No.36 OF 2011

JUDGMENT: *(Per Hon'ble Smt. Justice Tirumala Devi Eada)*

This is an appeal filed by the appellant being aggrieved by the judgment and decree, dated 26.11.2010, passed in O.S.No.105 of 2004 by the learned XI Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short "the trial Court").

2. The appellant herein is the defendant and respondent is the plaintiff before the trial Court. The parties herein are referred to as they were arrayed in the suit before the trial Court for the sake of convenience and clarity.

3. The case of the plaintiff before the trial Court is that the plaintiff is a private company and availed a loan of Rs.3,67,245/- from the defendant Corporation i.e. Andhra Pradesh State Financial Corporation for its business and could not repay, so the defendant initiated steps for recovery of outstanding loan amount and has sold the estate of the plaintiff's company worth Rs.50 Lakhs for a sum of Rs.23 Lakhs in the absence of the plaintiff. Thus, the plaintiff has filed a Writ Petition vide W.P.No.19735 of 1997 in the erstwhile High Court of Andhra Pradesh questioning

the sale. The High Court vide order dated 08.11.1999 has not set aside the sale but directed the defendant to return the remaining sale price to the plaintiff. Inspite of the said direction, the defendant has not paid the excess amount to the plaintiff. The plaintiff has made several representations but in vain. It is his case that the defendant Corporation is acting in collusion with the Ex-Directors of the plaintiff company and thus delayed the payment. The Ex-Directors have filed a Writ Appeal No.1790 of 1999 against the orders of the said Writ Petition and the said Writ Appeal was dismissed. Even then the defendant has not complied the orders of the High Court, but has sought a clarification by filing a miscellaneous petition as to which address the cheque has to be sent. Then the High Court has further observed that it should be sent to the company in the given address and has dismissed the said petition. The plaintiff has filed a Contempt petition, thereafter, the Ex-Directors instituted a suit vide O.S.No.480 of 2000 on the file of III Additional Chief Judge, City Civil Court, Hyderabad to stop the payment, which was also dismissed. Subsequently, after several reminders from the plaintiff, the defendant has paid an amount of Rs.9,23,826/- on 23.11.2000 without disclosing any particulars of the account.

4. The grievance of the plaintiff is that out of Rs.23 Lakhs i.e. obtained out of the sale of his estate, the amount due was very less i.e. to an extent of Rs.3,67,245/-, even if the interest is calculated @12% he would be entitled to much more money and further that he is also entitled to damages to be paid from the company for the loss occasioned to him and therefore, claimed a sum of Rs.40 Lakhs in addition to the balance amount, he is claiming damages of Rs.3000/- per day and according to his calculation he arrived at an amount of Rs.40 Lakhs to be payable by the defendant Corporation.

5. The defendant has filed a written statement admitting the loan and default committed by the plaintiff Company and also the auction sale done by it and further, it has also admitted that it has paid Rs.9,23,826/- to the plaintiff company but has denied its further liability to pay any amount. It is their case that they have already paid the excess amount received from the sale consideration and that they are not liable to pay any further amount to the plaintiff. They further contended that the suit is barred by limitation and that the plaintiff is not authorized on behalf of the company to file a suit and thus, the suit has to be dismissed.

6. Based on the above pleadings, the trial Court has framed the following points for consideration:

> "1) Whether the plaintiff is entitled to recover a sum of Rs.40,32,763/- together with interest @ 18% p.a. from the date of suit till the date of realization?
>
> 2) Whether the suit is duly instituted?
>
> 3) Whether the suit is barred by limitation?
>
> 4) To what relief?"

7. At the time of trial, the plaintiff got examined PW1 and got marked Exs.A1 to A27. On behalf of the defendant, DW1 was examined and Ex.B1 was marked.

8. Based on the evidence on record, the trial Court has decreed the suit for Rs.16,34,633/- with interest @9% per annum from 25.11.2003 i.e. the date of suit till realization. Aggrieved by the said judgment, the Andhra Pradesh State Financial Corporation has filed the present appeal.

9. Heard the submissions of Sri R.Rajendra Prasad, learned counsel for the appellant and Mohammed Imran Khan, learned counsel for the respondent.

10. The learned appellant counsel has submitted that the trial Court has erroneously given a finding that the Corporation is liable to pay such huge amount of Rs.16,34,633/- to the plaintiff. He further argued that the trial Court has failed to appreciate the evidence in a proper manner and that the trial Court has failed to consider that the suit is barred by limitation. He argued that even as per the pleadings of the plaintiff, the cause of action arose from the date of knowledge of the plaintiff but the plaintiff very well knows about the deductions that were made under Ex.A1 which is of 01.08.1996 and therefore, the suit is barred by limitation. He further argued that the plaintiff has not chosen to raise any dispute about the amount that was due in the Writ Petition No.19735 of 1997 but still the Court has given a finding in his favour awarding huge amount and that the trial Court has committed an error by going into the question as to the amount refundable to the plaintiff, inspite of the orders given in W.P.No.19735 of 1997. He further argued that the Corporation is not bound to pay interest on the amount if any that has to be paid by the Corporation in favour of the plaintiff, thus, the trial Court has wrongly arrived at the quantum and has further erred in calculating the amount due by the plaintiff to the Company and therefore, has arrived at a wrong finding that the Corporation is

due to a tune of Rs.16,34,633/-, he therefore, prayed to set aside the judgment by allowing this appeal.

11. The learned respondent counsel has submitted that the trial Court has appreciated the evidence in a proper prospective and also has gone through the orders of the High Court passed in the Writ Petition and thus, decreed the suit in his favour and that there is no need to interfere with the same. He further argued that the suit is well within the period of limitation from the date of Ex.A22, which is dated 09.02.2001 through which the defendant Corporation has intimated the plaintiff about the amounts due and therefore, he submitted that the Corporation is finding lame excuses to evade the payment to the plaintiff. He further argued that after a thorough litigation and after more than a decade of litigation, the Court awarded the said amount and that the Corporation is still not complying the same, thus resulting in grave injustice to him. He therefore, prayed to uphold the judgment and decree passed by the trial Court.

12. Based on the above rival submissions, this Court frames the following points for consideration:

1) Whether the suit is barred by limitation?
2) Whether the plaintiff is not authorized to file the suit?

3) Whether the plaintiff is entitled to recover the excess of sale proceeds from the defendant Corporation, if so, to what extent?

4) Whether the judgment and decree of the trial Court is sustainable in law and under the facts?

5) To what relief?

13. **POINT NO.1**:

a) The case of the plaintiff company is that it has availed loan and could not repay the same and thus, the APSFC has sold its assets and secured an amount of Rs.23 Lakhs but the amount due by the plaintiff was very low to an extent of Rs.3,67,245/-, thus he is entitled to recover the excess amount of sale proceeds from the defendant Corporation. The defendant's contention is that the suit is barred by limitation as the plaintiff has knowledge about the amount which was due as on 01.08.1996 vide Ex.A1. Ex.A1 is the system generated statement of account dated 01.08.1996. However, there was a series of correspondence between the plaintiff and defendant with regard to the amount that has to be paid and the auction sale was conducted on 18.07.1997. Thus, subsequent to the auction sale, the Corporation had to deduct the amount due from the plaintiff and had to pay the excess amount to the plaintiff. After a series of letters that have been addressed time and again by the plaintiff, finally a letter was addressed by the Corporation to the plaintiff vide Ex.A22 which is dated 09.02.2001. The same is admitted by defendant as DW1.

b) It is elicited from DW1 that they have not filed any statement of account pertaining to the loan account of the plaintiff and also the terms and conditions of the loan showing as to what extent are they entitled to receive compound interest with quarterly rests. He admitted that in Ex.A22 they have made deduction from the sale price and finally arrived at the amount of Rs.9,23,826/-. Therefore, the final document Ex.A22 that is received from the Corporation is dated 09.02.2001, the date of suit is 12.11.2003, therefore, the suit is well within limitation. DW1 further admitted that the suit is within three years i.e. they made payment on 28.11.2000 and the suit is filed on 12.11.2003.

c) Though, it is contended by the defendant that the cause of action arose in 1997 and that the suit is barred by limitation, Ex.A22 shows that it is the final communication received by the plaintiff from the defendant with regard to the statement of account, though it does not reveal the details of deductions and the interest thereon, since it is the final communication received by the plaintiff from the defendant, the period of limitation has to be reckoned from 09.02.2001, therefore, it is held that the suit is well within limitation. Point No.1 is answered accordingly.

14. **POINT NO.2:**

a) It is the contention of the defendant that the plaintiff is not authorized to file the suit. Ex.A27 is the copy of resolution of the plaintiff Company authorizing plaintiff No.1 to proceed legally to get the dues from the Corporation. Thus, Ex.A27 nullifies the contention of the defendant in this regard.

b) It is also borne out by record that the plaintiff herein is Vijay Kumar Madanlal Ganeriwala, who filed the Writ Petition before the erstwhile High Court of Andhra Pradesh and got succeeded against the Corporation and also the Writ Appeal preferred by the former directors of the Company got dismissed before the High Court. Now the Corporation cannot turn around and question the authorization of the plaintiff. However, the evidence on record i.e. Ex.A27 itself clarifies the position that the plaintiff was very much authorized by the Company. Point No.2 is answered accordingly.

15. **POINT NO.3:**

a) Admittedly, the plaintiff was due to the Corporation and the Corporation has auctioned the property of the plaintiff and thus realized an amount of Rs.23 Lakhs. Now the contention of the plaintiff is that the amount due by him to the Corporation is only Rs.3,67,245/-, while the amount realized is Rs.23 Lakhs and thus, he is entitled to the excess of sale proceeds. The defendant Corporation has sent Ex.A22, the statement of account disclosing that it is entitled to the interest compoundable quarterly on the said due amount and thus, it has held that the excess proceeds that can be given to the plaintiff comes upto only Rs.9,23,826/- and thus, has sent the same to the plaintiff. Admittedly, the auction was conducted on 18.07.1997 and the date of payment of the balance amount was on 23.11.2000, thus, there is a gap of 32 months between the date of auction and the payment of balance and thus, he too is entitled for the interest on the said payment. The efforts of plaintiff in realizing the amount are very well elicited through the communication sent by him to the corporation time and again vide its letters under Exs.A3 to A6, A12 to A24. They are the letters of communication between the plaintiff and the defendant with regard to the amounts payable and the excess sale proceeds that are requested by the plaintiff to be paid by the defendant Corporation. Further, Ex.A5 is the orders of the High Court in W.P.No.19735 of 1997, dated 08.11.1999. A perusal of the said orders discloses that the High Court has held that the sale proceeds is an amount of Rs.23 Lakhs, while the amount due to the 1st respondent therein is to a tune of Rs.11 Lakhs and has ordered the Corporation to pay back the excess amount to the Writ Petitioner No.1 who is none other than the appellant herein.

Thus, it is clear that even as per the observation made by the High Court, around Rs.11 Lakhs was due to be paid by the defendant to the plaintiff in the year 1997 i.e. the date of Writ Petition.

b) DW1 has stated that as per their record the plaintiff was not a sick industry. He admitted that they have received Rs.23 Lakhs on 19.07.1997 towards the sale consideration in the auction sale and he further admitted that they are entitled to interest upto 19.07.1997 only, and that too from 31.06.1996 i.e. for 14 months. He further admitted that they have not mentioned in the written statement that they would charge compounding interest for every quarter in a year. He further admitted that they have not filed any statement of account pertaining to the loan account of plaintiff and even in Ex.A22 they have not mentioned the mode of calculation of interest. He further admitted that in Ex.A22 they have not shown any reason for the deduction of Rs.23,363/- and has also not filed any supportive document. He further admitted that he has not filed any document in support of payment of Rs.1,40,000/- by the Corporation as mentioned in Ex.A22 and further they have not mentioned how they have arrived at a figure of Rs.9,23,826/-. It is elicited from DW1 that the plaintiff Company addressed letters under Exs.A23 and A24 claiming the due amount by disputing the quantum of Rs.9,23,826/-. He admitted that the plaintiff company has mentioned the names of Directors and retired Directors of the plaintiff along with the registration of company under Ex.A15. It is further elicited from him that the plaintiff requested for payment of Rs.17 Lakhs as mentioned in Ex.A3 dated 29.01.1998 and that they have not paid any interest for three years while making the payment in the month of November, 2000. It is also elicited that they have not kept the excess sale proceeds in any fixed deposits and further have not given any reply to the plaintiff company when they questioned them with regard to keeping the amount in fixed deposit. It is further elicited from him that inspite of the direction given in the Writ Petition, they have not paid the amounts. It is further elicited from him that they have not filed any documents to show that they have paid amounts to Quthbullapur Municipality and that they paid legal charges to the advocate.

c) PW1 was subjected to thorough cross examination by the defendant but they could not disprove the contention of the plaintiff with regard to the excess sale proceeds to be payable to the plaintiff. It is elicited from him that the plaintiff Company is at default in repayment of loan to an extent of Rs.3,67,245/-, which is an admitted fact. Therefore, the plaintiff was successful in proving his case that the defendant is liable to pay the excess sale proceeds in favour of the plaintiff Company. Though, DW1 denied that the plaintiff Company is a sick industry, it is borne out by record that there was change in directors and also that it is admitted fact that the plaintiff could not pay the loan raised from the Corporation and thereafter, the company was sold to the present director and the same was intimated to the Corporation.

d) It is not out of place to mention in this regard that even as per the Writ Petition, the High Court has held that Rs.11 lakhs is due amount by the Corporation to the plaintiff and the date of Writ Petition is 1997, therefore even from then onwards, the defendant is liable to pay the plaintiff the said amount along with interest.

e) Undisputedly, the amount due by the plaintiff to the Corporation is Rs.3,67,245/- and he had to pay an interest @12% per annum and also that the sale proceeds were Rs.23,00,000/-. Thus, the trial Court has calculated the amount to be payable by the plaintiff as Rs.6,00,912/- which includes the original loan amount + interest of Rs.2,33,567/-, which was calculated @ 12% per annum. When this amount is deducted from the sale proceeds of Rs.23,00,000/-, the amount arrived at is Rs.16,99,088/-, thus, the trial Court has calculated the interest

@9% per annum on this amount of Rs.16,99,088/- from the date of sale i.e. 19.07.1997 till the date of payment of Rs.9,23,826/- which came upto Rs.22,10,939/- (Rs.16,99,088/- + Rs.5,11,851/). Then, the part payment of Rs.9,23,826/- is deducted from the said amount and arrived at Rs.12,87,113/- (Rs.22,10,939/- (-) Rs.9,23,826/-). Then again it has calculated the interest @9% per annum on the balance amount of Rs.12,87,113/- and arrived finally at an amount of Rs.16,34,633/-. The said calculation made by the trial Court is found to be based on the evidence as discussed in the preceding paragraphs and it is opined that there is no infirmity in the decision of the trial Court. Hence, it is held that the plaintiff is entitled to claim an amount of Rs.16,34,633/- with interest @ 9% per annum from 25.11.2003 till the date of payment from the defendant and the defendant is liable to pay the same. Point No.3 is answered accordingly.

16. **POINT NO.4:**

In view of the reasoned findings arrived at point Nos.1 to 3, it is held that the judgment and decree passed by the trial Court are based on sound reasoning and the same are held to be sustainable in law and under the facts and circumstances of the case.

17. **POINT NO.5:**

In the result, the appeal is dismissed upholding the judgment and decree, dated 26.11.2010, passed in O.S.No.105 of 2004 by the learned XI Additional Chief Judge (FTC), City Civil Court, Hyderabad. No costs.

Miscellaneous Applications, if any, pending in this appeal shall stand closed.

SD/- MOHD.ISMAIL
DEPUTY REGISTRAR

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SECTION OFFICER

To,

1. The XI Additional Chief Judge (Fast Track Court) City Civil Court at Hyderabad(With records, if any)
2. One CC to SRI R RAJENDRA PRASAD, Advocate [OPUC]
3. One CC to SRI MOHAMMED IMRAN KHAN, Advocate [OPUC]
4. Two CD Copies

ADK/PSL
18

HIGH COURT

DATED:30/07/2025

JUDGMENT+DECREE 2 DRAFTS

CCCA.No.36 of 2011

DISMISSING THE CCCA

WITHOUT COSTS

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IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE THIRTIETH DAY OF JULY
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PRESENT

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AND
THE HONOURABLE SMT JUSTICE TIRUMALA DEVI EADA

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...Respondent(Plaintiff)

Appeal under section 96 of C.P.C against the Judgment and Decree Dated 26-11-2010 made in O.S.No.105 of 2004 on the file of the Court of the XI Additional Chief Judge (Fast Track Court) City Civil Court at Hyderabad.

This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the Case and upon hearing the arguments of SRI R RAJENDRA PRASAD, Advocate for the Appellant and of SRI MOHAMMED IMRAN KHAN, Advocate for the Respondent.

This Court both Order and Decree as follows:

1. That the CCCA be and hereby is dismissed upholding the judgment and decree, dated 26.11.2010, passed in O.S.No. 105 of 2004 by the learned XI Additional Chief Judge (FTC), City Civil Court, Hyderabad ;
2. That there shall be no order as to costs in this appeal.

SD/- MOHD.ISMAIL
DEPUTY REGISTRAR

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SECTION OFFICER

To,

1. The XI Additional Chief Judge (Fast Track Court) City Civil Court at Hyderabad
2. Two CD Copies

ADK/PSL

HIGH COURT

DATED:30/07/2025

DECREE

CCCA.No.36 of 2011

DISMISSING THE CCCA

WITHOUT COSTS

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