
(2011) 08 KAR CK 0022

In the Karnataka High Court

Case No : Regular Second Appeal No. 130 of 2006

K.G. Srinivas and V. Govindappa

APPELLANT

Vs

Akshaya Financiers

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107 (2)
Karnataka Money Lenders Act, 1961 — Section 10, 11

Citation : (2011) 08 KAR CK 0022

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : G.R. Venkatesh, for the Appellant; M. Narayana Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—This is Defendant's second appeal questioning the correctness and legality of the judgment and Decree passed in RA No. 104/2003 by Civil Judge (Senior Division) & JMFC, Chickaballapur dated 10.11.2005, reversing the judgment and decree passed by Civil Judge (Junior Division), Chickaballapur dated 13.03.2003 in OS No .46/2000, dismissing the suit

2. This Court by order dated 29.07.2010, had admitted the above appeal after framing the following substantial question of law:

Whether in the facts and circumstances of the case, the Appellate Court was justified in reversing the judgment and decree passed by the trial Court by receiving the money lending licence without proper application and opportunity to the Appellants.

3. Heard Sri.G.R. Venkatesh, learned Counsel for the Appellant. Though, Respondent served and represented by counsel, there is no representation on behalf of the Respondent.

4. The facts in nutshell leading to filing of this appeal are as under and parties

are referred to as per their rank appearing in the Trial Court.

5. Plaintiff instituted a suit for recovery of the money from the Defendants for a sum of Rs. 26,690/- together with current and future interest at the rate of 23% per annum and with the cost of the suit. It was contended by the Plaintiff, that first Defendant was Principal borrower and second Defendant was co- obligant/ surely and they had borrowed sum of Rs. 16,000/- from the Plaintiff for purposes of first Defendant's business, agreeing to repay the amount on demand, together with interest at 23% per annum and in consideration for having received the amount on demand promissory note and receipt came to be executed on 25.03.1997. Defendants have also undertaken to clear the due within 04.07.1997 and inspite of several demands, Defendants did not repay the debt, as such suit came to be filed, seeking recovery of the amount of Rs,26,690/-with interest at 23% per annum.

6. Defendants were served with suit summons, appeared and filed their written statement and entire transactions of the Plaintiff and Defendant came to be denied. It was contended that first Defendant is son of second Defendant and he is a student studying in Bangalore. The second Defendant was a loanee with Plaintiff's firm earlier to the cause of the action mentioned in the plaint, one person by name Sri. Muniyappa was the surety/co-obligant for the said ban and Plaintiff had forced the second Defendant to affix his signatures including the signature of his wife and son on blank documents and said they would refuse the loan sought for and as they were in dire need of the amount for agricultural improvements second Defendant had put his signature. It was stated that, first Defendant never signed as surely on the alleged documents, but his signatures were obtained on blank papers. It was denied that, on 25.03.1997, they borrowed loan and they executed on Demand Promissory note and consideration receipt. It was stated that ban borrowed earlier had been cleared and there is no amount due to the Plaintiff for Defendant. It was contended that, based on earlier blank documents obtained from the Defendants, present suit is filed with false and frivolous grounds.

7. On the basis of the rival pleadings, trial Court framed following issues:

1. Whether Plaintiff proves that, on 25.03.1997, first Defendant with a co-obligant of second Defendant has borrowed a sum of Rs. 16,000/-on executing the loan documents?

2. Whether Plaintiff proves that, the Defendants have fallen due in a sum of Rs. 26,090/- as on the date of the said suit?

3. Whether the Plaintiff is entitled to the suit claim?

4. What order or decree?

8. Plaintiff in order to prove its case, examined Managing Partner as PW.I and got produced six documents and got it marked as Ex. P1 to Ex.P6. Defendants got themselves examined as DW.I and DW.2 and got produced 14 documents and got

it marked as Ex. DI to Ex.D.14. After considering the pleadings, evidence and oral arguments advanced, trial Court answered Issue No. 1 and 2 in Affirmative and Issue No. 3 in the Negative and dismissed the suit by judgment and decree dated 13.03.2003.

9. Aggrieved by the said judgment and Decree, the Plaintiff preferred an appeal in RA No. 104/2003 before the Civil Judge (Senior Division) & JMFC, Chickaballapur. After hearing arguments of the learned advocates appearing for the parties, Lower Appellate Court, formulated following points for its consideration:

1. Whether trial Court is Justified in dismissing the suit of the Plaintiff?

2. Whether judgment and Decree of the trial Court is required to be interfered with in this appeal?

10. On reappraisal of evidence and after considering the arguments advanced by the learned advocates appearing for the parties, Lower Appellate Court reversed the findings of the Trial Court and decreed the suit, for sum of Rs .26,690/- with future interest at the rate of 6% per annum from the date of the suit till date of realization of the entire decretal amount.

11. It is this judgment and Decree, which is questioned by the Defendants in the second appeal.

12. SriVenkatesh, learned Counsel appearing for Defendant would contend that, there is violation of provisions of Section 10 and 11 of the Karnataka Money Lenders Act, 1961 and Plaintiff had not produced the money lending license before the trial Court and only before the lower Appellate Court copy of the said license was produced along with a memo. There was no opportunity for the Appellant to rebut the said evidence. The initial defect, namely non production of licence before trial Court cannot be cured before lower Appellate Court and it ought to have been produced before the Trial Court and since, there was absolutely bar u/s 10 and 11 of the Karnataka Money Lenders Act to decree the suit without licence. He would contend that lower Appellate Court could not have taken cognizance of Money Lenders license produced before it for decreeing the suit. In support of his contentions, he relies upon the judgment of this Court rendered in case of K. Lakshmipathy Vs. Channaiah, . On these grounds, he prays for answering the substantial question of law in favour of the Appellant and thereby allowing the appeal and setting aside the judgment of the lower Appellate Court or alternatively, he prays for remanding the matter back to the trial Court, for adjudicating afresh with liberty to the Defendants to rebut the said evidence.

13. Having heard learned Counsel appearing for Plaintiff and on perusal of the judgment and decree passed by the trial Court, as well as lower Appellate Court, following facts would emerge.

14, Though Defendants appeared before the Trial Court and filed detailed written

statement, no plea with regard to non-production of Money Lenders License was raised. Entire suit transaction came to be denied by Defendants. Trial Court also did not formulate any issue with regard to maintainability of the suit on ground of not producing the Money Lenders License.

15. On appreciation of evidence recorded, trial Court held Issue No. 1 and 2 in the Affirmative, namely, it held that Plaintiff has proved the suit transaction. However, Trial Court at para 26, while answering issue No .3, as to the entitlement of the Plaintiff for the suit claim it took into consideration the oral arguments advanced by the learned Counsel for the Defendant and held that, on account of non production of Money Lenders License, as required u/s 11 of the Karnataka Money Lenders Act, 1961, and applying principles laid down in the judgment of this Court, reported in 2000(5) KLJ Page 166 held that Plaintiff as not entitled for suit claim and accordingly dismissed the suit. This judgment and decree was assailed by Plaintiff successfully before the lower Appellate Court.

16. During the course of the proceedings before the lower Appellate Court, which is an appeal being continuation of original proceedings Plaintiff filed a memo for producing Money Lenders license issued by the competent authorities and which was valid as on the date of suit transactions and also on the date of the suit. Lower Appellate Court taking into consideration, the said License produced by Plaintiff decreed the suit.

17. It is the contention of Sri. Venkatesh, learned Counsel appearing for Plaintiff that u/s 11 of the Karnataka Money Lenders Act, suit could not have been decreed by lower Appellate Court on account of non production of Money Lenders License before Trial Court by relying upon the case of K. Lakshmipathy v. Chennaiah, where in it has been held as under:

In the aforesaid circumstances, the decree stands vitiated by virtue of non-compliance with the provisions of Section 11 which care mandatory Under these circumstances, the revision petition is liable to succeed. The decree in question is set aside and as a necessary consequence, the Respondent is directed to refund to the Petitioner, the amounts recovered from him under the terms of the decree.

18. Before discussing the facts relating to the case on hand, applicability or otherwise of the judgment relied upon by the learned Counsel for appellate is discussed herein below. In the case of Lakshmipathy v. Channaiah, referred to supra, Plaintiff did not produce money lending license before the Trial Court. This initial bar as seen from Section 11 of the Karnataka Money Lenders Act was found to be glaring in the said suit. In spite of the same, Trial Court decreed the suit with rider by holding that Plaintiff would be at liberty to produce the Money Lenders License, before drawing up of the decree or otherwise suit to be treated as dismissed. In actual words as discussed by this Court in Lakshmipathy v. Channaiah case, it reads as under:

This point had arisen in the course of the proceedings and the learned Trial Judge has passed a very peculiar order whereunder he has decreed the suit. He has

however directed the Plaintiff to produce the licences in question failing which, the decree was not be drawn up and the suit was to be treated as having been dismissed.

Thus, it emerges from the above judgment that, license was not produced and inspite of non-production, suit came to be decreed with a rider and hence, this Court applied Section 11 of the Karnataka Money Lenders Act 1961, to the facts therein and held that, this initial bar was not cleared and as such, suit could not have been decreed and in exercise of its revisional jurisdiction, judgment and decree of Trial Court came to be set aside.

19. In the instant case, it is the Appellate Court in exercise of its power, under Order 41, which it exercises as continuation of original proceedings decreed the suit by taking into consideration, the Money Lenders License produced before it Section 11 of the Money Lenders Act reads as under:

11. xxx Suite by money-lenders not holding licence(l)After the expiry of six months pom the date on which this Act comes into force, no Court shall pass a decree in favour of a money-tender in any suit to which this Act, applies, filed by a money-lender, unless the Court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, (and on the date such suit was filed)" the money-lender held a valid licence.

(2) xxx

(3) xxx

(4) XXX

(5) Nothing in this Section shall effect

(a) Suits in respect of loans advanced by a money-lender before the date an which this Act comes into force.

(b) The powers of an official receiver, an administrator or a Court under the provisions of the Mysore Insolvency Act, 1925, or other corresponding taw in force in any area of the State, or of a liquidator under the Companies Act, 1956, to realise the property of a moneylender.

A reading of Section 11 of the Karnataka Money Lenders Act, would go to show that, no Court, shall pass decree in favour of a money lender in any suit, to which this Act applies, filed by a money lender, unless the Court is satisfied that, at the time, when the loan or any part thereof to which the suit, relates was advanced and on the date of such suit was filed, the money lenders was holding a license. In effect, Court, ie, referred u/s 11 of the Karnataka Money Lenders Act, would not only mean and include Trial Court but also includes the Appellate Court. Hence, such restrictive meaning cannot be given to the word "court" as found in Section 11 of the Act so as to exclude the powers of the "Appellate Court". A reading of said section in its entirety would go to show that words used therein is that "no court" should pass a decree in favour of a money lender in

any suit filed by a money lender to which the act applies unless such Court is satisfied that such Money Lender had a valid Money Lending Licence. The word "no court" would mean and include the "Appellate Court" also. At this juncture it would be of benefit to extract Sub-section (2) of Section 107 of CPC which reads as under:

107. Powers of Appellate Court -

(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power -

(a) xxx

(b) xxx

(c) xxx (d)xxx

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the code Courts of original jurisdiction in respect of suits instituted therein.

(emphasis supplied by me)

Thus, appellate Court will have the same power as that of the Court exercising original jurisdiction which includes decreeing a suit. As such, it cannot be held or construed that court referred to u/s 11 of the Act does not mean and include Appellate Court. In view of the same, contention of the learned Counsel appearing for Appellant cannot be accepted.

20. One Anr. factor which requires to be noticed is that the court which passes the decree has to be satisfied that at the time when the ban or any part thereof to which the suit relates was advanced and on the date on which such a suit was filed, the money lender held a valid licence. This satisfaction is to be arrived at by the court which passes the decree. In effect, Plaintiff/ Appellant has to demonstrate that as on the date of lending of the money and as on the date of filing of the suit Plaintiff possessed a valid money lenders licence. As such, the Plaintiff or the Appellant as the case be would be entitled to demonstrate the same before the appellate court that Plaintiff possessed a valid Money Lending license and if the said Court is satisfied about the same then such Court would be empowered to pass a decree. In other words once, such evidence is placed, it is for the court to form its opinion about the satisfaction it wants to arrive at. Question of rebuttal evidence by the Defendant does not arise if no doubt arises,

21. In the instant case, lower Appellate Court, in exercise of its power under Order 41, which is in continuation of the original jurisdictional power has taken note of the fact that, Plaintiff had money lending license, as on the date of advancing loan and also on the date of filing of the suit and accordingly decreed the suit. The decree that has been passed is by the Appellate Court. It is this Appellate Court, which passes the decree, which will have to be satisfied about Plaintiff possessing money lending license as on date of advancing the loan and

date of suit. It is this precise exercise, which was done by Lower Appellate Court, after Plaintiff/ Appellant produced the licence. Hence, judgment relied upon by learned Counsel for Defendant to contend that, money lending license subsequently produced to cure the alleged defect cannot be accepted and as such arguments advanced by learned Counsel for Defendants does not hold merit and it stands rejected.

22. In view of the discussion made herein above and in the facts of the present case, it is noticed that, lower Appellate Court had received initially the true copies and later original money lending license produced by the Plaintiff found that as on date of suit transaction and also as on the date of filing of the suit, Plaintiff had valid money lending license and decreed the suit. The lower Appellate Court records fortifies this fact. Further, Issue No. 1 and 2 formulated by the trial Court had already been answered in favour of the Plaintiff and as such substantial question of law formulated by this Court, herein above is answered in the affirmative namely in favour of the Respondent/ Plaintiff and against the Defendants/Appellants.

23. In view of the discussion made herein above following order is passed:

ORDER

- a) Appeal is dismissed.
- b) Judgment and Decree passed by Civil Judge(Senior Division), Chikkaballapur dated 10.11.2005 in RA No. 104/2003 is hereby affirmed.
- c) No order as to costs.
- d) Registry to draw the decree accordingly.