
(2004) 09 AP CK 0127
In the Andhra Pradesh High Court
Case No : CMA No. 3046 of 2000

S. Jaya Prakash Narayana

APPELLANT

Vs

K.K.N. Kumari and Others

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 7 Rule 11, 2, 34, 96

Citation : (2004) 6 ALD 560 : (2004) 6 ALT 755

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Jayanthi, for the Appellant; V.H.V.R.R. Swamy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.

1.This civil miscellaneous appeal is filed against the order dated 10.7.2000 passed by the Court of Senior Civil Judge, Proddatur, in O.S. (S.R.) No.5626 of 1999.

2. The appellant filed the suit against the respondents for recovery of a sum of Rs.1,76,634/-. It was pleaded that Respondents 2 to 4 made him to lend a sum of Rs.3,00,000/- to the first respondent, which in turn was to be invested in making a film "OMKARAM" and that the amount was to carry interest at the rate of 24% per annum. It was alleged that the principal amount of Rs.3,00,000/- was repaid on 9.2.1997, whereas the accrued interest was not paid, in spite of demands.

3. The Trial Court examined the contents of the plaint and rejected it through the order under appeal, on finding that the plaint does not disclose any cause of action.

4. Smt. M. Jayanthi, learned Counsel for the appellant, submits that the question as to whether the suit claim was valid, ought to have been considered in the trial

of the suit and there was no justification for the Trial Court to reject the plaint. She contends that there was voluminous record to disclose that the amount of Rs.3,00,000/- was borrowed by the first respondent from the appellant and it carried 24% interest.

5. Mr. V.H.V.R.R. Swamy, learned Counsel for respondents, on the other hand, submits that the suit claim itself was without any basis and that there did not exist any cause of action. He further contends that for the same relief, the appellant moved the District Forum under the Consumer Protection Act (for short "the Act"), and though initially an order was passed in his favour by the District Forum, it was set aside in the appeal, by the State Commission, and in that view of the matter, the suit was not maintainable. He also takes objection for the maintainability of the civil miscellaneous appeal under Order 43, Rule 1 C.P.C.

6. The suit was filed for recovery of certain amount. The appellant pleaded that the suit amount represents the interest to be paid on the principal amount of Rs.3,00,000/-. For this purpose, it was obligatory on her part to have placed before the Trial Court, the document providing for payment of such interest. Nothing was enclosed to the plaint. Therefore, the Trial Court rejected the plaint, by undertaking extensive discussion.

7. The present appeal is filed under Order 43, Rule 1 of C.P.C. It is not in dispute that the Trial Court rejected the plaint. The definition of decree u/s 2 C.P.C, makes it very clear that an order rejecting the plaint is a decree and the decree is appealable only u/s 96 C.P.C.

8. Placing reliance upon the Judgment of Madhya Pradesh High Court in Smt. Chamarin Vs. Mst. Budhiyarin and Another, , learned Counsel for the appellant submits that every rejection of plaint cannot be treated as a decree, and it is only such rejections, as are within the scope of Rule 11 Order 7 C.P.C, that can be treated as decrees. There is absolutely no quarrel with this proposition. The rejection of the plaint in the instant case is on the ground that it does not disclose cause of action and such a ground finds place under Rule 11 of Order 7 C.P.C. Therefore, the appeal under Order 43, Rule 1 C.P.C. is not maintainable.

9. Coming to the merits of the matter, it is evident that the appellant has invoked the jurisdiction of the District Forum under the provisions of the Act. An order was passed in his favour, but the same was set aside in appeal preferred by the respondents and the matter assumed finality at that stage. It is true that Section 3 of the Act declares that the provisions of the Act are in addition to and not in derogation of any law for the time being in force. However, once a citizen invokes the jurisdiction under the provisions of the Act, he cannot have recourse to the other parallel remedies and that was never, the intention in enacting that Act. Same is the situation, if he has invoked the remedy under any other law, for the same relief.

10. Even otherwise the appellants has failed to disclose any cause of action in the plaint. A reading of the plaint discloses that the amount claimed represents

the interest on the principal amount of Rs.3,00,000/-. The interest is always a matter of contract and unless the existence of such contract specifically pleaded and placed before the Court, it cannot be said that there exists cause of action for filing the suit. Viewed from any angle, this Court does not find any basis to interfere with the order under appeal.

11. The civil miscellaneous appeal is accordingly dismissed. No costs.