

THE HON'BLE SRI JUSTICE M.VENKATA RAMANA

SECOND APPEAL No.481 OF 2021

JUDGMENT:

The defendant is the appellant and the plaintiff is the respondent. The respondent laid the suit for recovery of Rs.1,40,290/- on the foot of a promissory note dated 22.01.2016.

2. The defence of the appellant is one of the denial of the suit transaction.

3. In view of the peculiar circumstances in which the second appeal is presented, it is not necessary that there shall be consideration or merits of this matter.

4. Sri V.L.N.Sarma, learned counsel for the appellant brought to the notice of this Court the circumstances under which the first Appellate Court disposed of the appeal. In Para 8 of the judgment of the Appellate Court, it is stated as follows:

“Learned counsel for defendant who is appellant herein has failed to submit arguments inspite of giving number of opportunities and finally as she was not coming forward to complete their case, this court treated the arguments of appellant as heard”.

5. Learned counsel for the appellant was not heard by the 1st appellate Court before disposing of the appeal. The first appellate Court has closed the appeal on 23.11.2020. It is in common knowledge that entire world is reeling on account of effect of Covid-19 pandemic for the last 1 ½ years. Though the virtual hearing was going on in all the Courts in the State, when the

learned counsel was not in attendance in the matter, the appropriate course would have been to offer further opportunity requiring attendance of learned counsel for the parties. When the situation was so peculiar which none could think of, the pressure of which is being felt even now, there was no necessity for the appellate Court to rush with hearing of the matter. The hearing was concluded by the appellate Judge *ex parte*.

6. Sri V.V.L.N.Sarma is right in raising this question. Sri Nanda Kishore Koduri, learned counsel for the respondent though attempted to bring to the notice of this Court that on earlier occasions, opportunities were given to the learned counsel for the appellant by the first Appellate Court and that he was aware of the proceedings going on in this matter. They cannot be proper or appropriate reasons to consider nor the first appellate Court could have considered such situation.

7. In view of the facts and circumstances, if this matter is remanded, and if an opportunity is given to the parties to advance arguments once again none would stand prejudiced.

8. In the above circumstances, on this sole ground the decree and judgment of the appellate Court should be interfered with.

9. In the result, the Second Appeal is allowed setting aside the decree and judgment in A.S.No.136 of 2019 of the Court of learned III Additional District Judge, Guntur dated 23.11.2020. The matter is remanded to the Court of learned III Additional District Judge, Guntur for fresh consideration on all the questions. Learned

Appellate Judge is directed to hear the learned counsel for the parties and dispose of the appeal purely on merits without being influenced by the observations in the earlier judgment of the same court dated 23.11.2020. No costs.

10. Appellate Court is directed to dispose of the appeal within two (02) months from the date of receipt of a copy of this judgment.

All pending petitions, if any, shall stand closed.

JUSTICE M. VENKATA RAMANA

Date: 23.12.2021
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