

(2013) 11 AP CK 0062

Andhra Pradesh High Court

Case No: O.S.A. No. 11 of 2009 and CCCA No. 93 of 2009

M/s. Lotus Aluminium Private
Limi

APPELLANT

Vs

Smt. K. Padmasree and Others

RESPONDENT

Date of Decision: Nov. 19, 2013

Hon'ble Judges: M.S.K. Jaiswal, J; L. Narasimha Reddy, J

Bench: Division Bench

Judgement

L. Narasimha Reddy, J.

These appeals are between the same parties. Hence, they are disposed of through a common judgment. For the sake of convenience, the parties are referred to as arrayed in C.C.C.A. No. 93 of 2009.

2. The appellant is a private limited company involving the activities of manufacture, import of aluminium, brass, copper and all non-ferrous metals and their alloys. With a view to purchase shares in the company, the 1st respondent (for short "the respondent") is said to have deposited a sum of Rs. 3,57,000/- on various dates between September 1999 and March 2002. The respondent stated that she has been issued a cheque for a sum of Rs. 3,57,000/- on 15.04.2004. It was dishonoured when presented to her banker. On that basis, she filed C.C. No. 1328 of 2004 in the Court of the II Metropolitan Magistrate, Secunderabad u/s 138 of the Negotiable Instruments Act. The appellant filed Criminal Petition No. 6224 of 2007 before this Court u/s 482 Cr.P.C. with a prayer to quash C.C. No. 1328 of 2004. The Criminal Petition was allowed by this Court. Aggrieved by that, the respondent filed SLP before the Hon'ble Supreme Court and the same is pending.

3. The respondent initiated two more steps in this behalf. She filed Company Petition No. 82 of 2005 under Sections 433(e), 434(1)(a) and 439(1)(6) of the Companies Act, 1956 with a prayer to order winding up of the appellant-company. She also filed O.S. No. 526 of 2007 in the Court of the XIII Senior Civil Judge, City Civil Court, Secunderabad against the appellant for recovery of the amount. The

Company Petition was admitted on 18.03.2004. However, advertisement thereof was deferred by four weeks enabling the appellant to clear the debt. Feeling aggrieved by the admission of the Company Petition, the appellant filed O.S.A. No. 38 of 2006. The same was dismissed by a Division Bench of this Court on 29.01.2007. Thereafter, Company Petition No. 82 of 2005 was tried and ultimately it was allowed on 15.04.2009. O.S.A. No. 11 of 2009 is filed against the said order.

4. Even while Company Petition No. 82 of 2005 was pending, the respondent filed O.S. No. 526 of 2007 for recovery of the amount. The suit was contested by the appellant. Ultimately, the trial Court decreed the suit on 17.03.2009 for a sum of Rs. 6,78,300/- with interest at 12% per annum. C.C.C.A. No. 93 of 2009 is filed against the said decree.

5. Heard Sri Dammalapati Srinivas, learned counsel for the appellant and Sri V. Hari Haran, learned counsel for the respondent.

6. The respondent initiated three sets of proceedings against the appellant in the context of realizing the amount said to have been paid by her. The first was under the Negotiable Instruments Act, the second was under the Companies Act and the third was under the Code of Civil Procedure. In all the proceedings, the plea of the appellant herein was that the amount payable to the respondent was paid to her husband. At one stage, the genuinity of the cheque issued on 15.04.2004 was also doubted.

7. Though it is urged before this Court that it was not competent for the respondent to invoke the jurisdiction of various Courts, in relation to the same amount, we find that there is no bar in law in this behalf. It is competent for a party to invoke all the remedies simultaneously. The only difference would be that the relief granted in one set of proceedings would render the other sets of proceedings nugatory.

8. The appellant does not dispute that it has received a sum of Rs. 3,57,000/- from the respondent. It is, however, pleaded that the amount was repaid to the husband of the respondent. The record discloses that the respondent on the one hand and her husband on the other, had independent financial transactions with the appellant. That being the case, repayment of the amount paid by the appellant herein ought to have been to the respondent or to any one with her permission. Except by raising a plea that the amount paid to the appellant has been returned to the husband of the respondent, no evidence whatever was adduced in this behalf.

9. The trial Court in the suit has taken note of the oral and documentary evidence before it and has arrived at a just and proper conclusion that the amount received from the respondent remained unpaid by the appellant. We are not at all inclined to interfere with the findings recorded by the trial Court.

10. Learned counsel for the appellant submits that the rate of interest awarded by the trial Court is on the higher side. Even according to the respondent, the amount

was paid with a view to purchase shares. It is difficult to predict the growth or otherwise of the money invested in shares. It is on the demand made by the respondent that the cheque was issued for refund of the amount. Having regard to the purpose for which the amount is said to have been advanced, we are of the view that the interest can be slashed down to 9% per annum.

11. With the findings recorded by us in C.C.C.A. No. 93 of 2009, the order passed in the Company Petition becomes dependent upon compliance with the decree in O.S. No. 526 of 2007. If the decree is satisfied, the order in the Company Petition stands set aside. If on the other hand, the decree subsists, the winding up proceedings need to be continued.

12. Hence, C.C.C.A. No. 93 of 2009 is partly allowed upholding the decree to the extent of principal amount, but reducing the rate of interest from 12% to 9% per annum. O.S.A. No. 11 of 2009 is disposed of directing that in case the decree in O.S. No. 526 of 2007 is satisfied within three (3) months from today, the order passed in C.P. No. 82 of 2005 shall stand set aside. If on the other hand, the decree survives and subsists, the order passed in C.P. No. 82 of 2005 shall become enforceable. Since the payment of the amount would have its impact upon C.C. No. 1328 of 2004, it is left open to the parties to take necessary steps in that behalf. There shall be no order as to costs. The miscellaneous petitions filed in these appeals shall also stand disposed of.