THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

APPEAL SUIT Nos.617 of 1997 & 874 of 1998,
CIVIL REVISION PETITION Nos.1333 of 1998 and 4145 of 2003

COMMON JUDGMENT:

Both the appeals arise out a common judgment in O.S.No.573 of 1989 on the file of the Court of II Additional Subordinate Judge, Rangareddy at Saroornagar, Hyderabad.

2. The suit was one filed by the plaintiff for recovery of damages of Rs.3,29,587/- with interest at the rate of 24% per annum.

3. The allegations in the plaint goes to show that the plaintiff placed an order with the 1st defendant on 27-04-1989 to supply the stainless steel coils to be delivered in the premises of the plaintiff firm at Balanagar. 1st defendant accepted the order and plaintiff paid a sum of Rs.2,30,000/- to the 1st defendant by way of a demand draft, which was received by the 1st defendant. The 1st defendant failed to deliver the goods till 08-08-1989. When contacted, 1st defendant informed that the goods were sent through the 2nd defendant under three packages under lorry receipt in the name of the plaintiff for delivery at the premises of the plaintiff. But subsequently by a letter dated 19-05-1989 the 2nd defendant has informed the plaintiff that the goods were inadvertently delivered to the 3rd defendant and promised to redeliver the same. But in spite of it, the goods were not supplied. A police report was also lodged by the plaintiff and goods could not be traced with the 3rd defendant. Since 3rd defendant has received the consignment and defendant Nos.1 and 2 have failed to deliver the consignment to the plaintiff after receiving money, the suit was filed

against all the defendants.

4. The 2nd defendant remained *ex parte.* The 1st defendant filed a written statement contending that the Court has no jurisdiction to try the suit. The responsibility of the 1st defendant is over by dispatching the consignment to the 2nd defendant as per the directions of the representative of the plaintiff. The claim of the plaintiff, therefore, can only be against the defendant Nos.2 and 3.

5. The 3rd defendant filed a written statement contending that he never received any consignment from the 2nd defendant and the goods were not delivered to him and consequently, there is no liability.

6. On the basis of the above pleadings, necessary issues have been framed for trial, and after considering the evidence on record, the Court below has passed a decree against the 3rd defendant as prayed for, and dismissed the suit against defendant Nos.1 and 2. Aggrieved by the said judgment, the 3rd defendant preferred the appeal in A.S. No.874 of 1998, and against the dismissal of the claim against defendant Nos.1 and 2, the plaintiff has preferred an appeal in A.S. No.617 of 1997.

7. Civil Revision Petition No.1333 of 1998 was filed by the 3rd defendant against the order in I.A.No.956 of 1997 in the same suit, which is an application filed for amendment of the decree incorporating the relief of damages at the rate of 15% per annum, which was not in the judgment and also the decree with regard the to subsequent interest. The said application was dismissed on the ground that the petition was not filed within 30 days and as the appeal is pending against the main judgment. Civil Revision Petition No.4145 of 2003 was filed against the order in I.A.No.956 of 1997 in the appeal

preferred against the plaintiff. The parties are referred as in the lower Court.

8. The points that arise for consideration are:

1. Whether the decree of the Court below so far as it relates to the 3rd defendant is valid and binding?
2. Whether the dismissal of the suit against defendant Nos.1 and 2 is proper?
3. Whether the Revision Petitions filed by the 3rd defendant are legal and sustainable?

POINTS:-

9. There is no dispute about the fact that the plaintiff paid some money to the 1st defendant for supplying of stainless steel coils, and the said goods are said to have been booked with the 2nd defendant to be delivered to the plaintiff. It is the stand of the 2nd defendant that goods were delivered to the 3rd defendant and an acknowledgment was said to have been given by the employee of the 3rd defendant and the said person is one Venkateswarlu.

10. Evidently, the judgment of the Court below clearly goes to show that a sum of Rs.2,30,000/- was paid by way of a demand draft towards cost of the goods, and the 1st defendant has encashed the same. The lower Court without there being proof of actual delivery by adducing evidence on behalf of the 2nd defendant taking into consideration, the mere filing of the First Information Report by the plaintiff and also Ex.A-37, which is said to be an acknowledgment of receipt of goods by one A.Venkateswarlu sent by 2nd defendant to 1st defendant, the Court below has fixed the liability of the 3rd defendant. This approach of the Court below is totally incorrect. It has to be noted that it is the burden of the 2nd defendant to prove that the goods were advertently or inadvertently delivered to the 3rd defendant and a

person by name Venkateswarlu has received the same. In fact, the plaintiff has not examined any of the employees of the 2nd defendant to show that the goods were delivered to the 3rd defendant. The fact remains that immediately the plaintiff gave a police report and the police went to the premises of 3rd defendant and they did not find any goods as alleged to have been transported by 2nd defendant meant for delivery to the plaintiff. The Court below has not taken into consideration the evidence of D.Ws.1 and 2, who are the Managing Partner and Manager of the

3rd defendant firm, who specifically deposed that no person by name Venkateswarlu was working in their company. In fact, they were also not confronted with Ex.A-37 receipt being signed by Venkateswarlu. D.W.1 clearly stated that Ex.A-37 does not contain the stamp of the company. Therefore, in the absence of any positive evidence of either finding the goods in possession of 3rd defendant or proof of delivery of the possession of the 3rd defendant, there cannot be any liability against the 3rd defendant and it cannot, but to hold that the evidence on record is not sufficient to hold that 2nd delivered the goods to the

3rd defendant, and consequently, the decree against the 3rd defendant is not valid.

11. So far as the defendant Nos.1 and 2 are concerned, evidently, the goods were entrusted to the 2nd defendant, who is a carrier and he has to deliver the goods to the plaintiff. It is not in dispute that the

1st defendant has specifically instructed the 2nd defendant to deliver the same to the plaintiff. The correspondence by the 2nd defendant clearly goes to show that by inadvertently he has delivered the goods to the

3rd defendant. Therefore, there is no proof on the side of the

2nd defendant that he has delivered the goods either to the plaintiff or to the 3rd defendant, and consequently, there is a negligence on his part and for any loss occurred to the goods, which were meant for delivery, the carrier is liable. Therefore, it is quite clear that the reasoning given by the Court below in dismissing the suit against the 2nd defendant is not valid.

12. So far as the 1st defendant is concerned, evidently, as per the instructions the goods were delivered to the 2nd defendant for transporting the same to the plaintiff and for any negligence and breach of contract committed by the 2nd defendant, he cannot be held liable since the goods were entrusted to the 2nd defendant with the consent of the plaintiff. Therefore, in view of the above circumstances, the judgment of the Court below in so far as dismissal of the suit against

2nd defendant is concerned, is liable to be *set aside*.

13. When the decree against 3rd defendant is liable to the set aside, the other Civil Revision Petitions becomes infructuous as there was no need for amendment in so far as 3rd defendant is concerned.

14. The judgment of the Court below clearly says that the suit is decreed as prayed for, which includes the relief of 15% of damages. But however, as can be seen from the plaint, only a sum of Rs.2,30,000/- was given by plaintiff towards value of the goods. On that interest is claimed, business loss is claimed and escalation of the cost of the material was also claimed, which, I feel in the interest of justice, cannot be allowed when interest is claimed on the above said amount. Therefore, there shall a decree against the 2nd defendant for a sum of Rs.2,30,000/- with interest at the rate of 18% per annum from 03-05-1989 till the date of suit and with interest at the rate of 12% per annum from the date of the suit till the date of decree and thereafter at

the rate of 6% per annum till the date of realization. The plaintiff is entitled to proportionate costs.

15. Consequently, Appeal Suit No.617 of 1997 is partly allowed granting a decree against the 2nd defendant for a sum of Rs.2,30,000/- with interest at the rate of 18% per annum from 03-05-1989 till the date of suit and with interest at the rate of 12% per annum from the date of the suit till the date of decree and thereafter at the rate of 6% per annum till the date of realization.

16. Appeal Suit No.874 of 1998 is allowed, and the suit against the 3rd defendant stands dismissed. Civil Revision Petitions are disposed of in view of the judgment in both the Appeal Suits as being infructuous. Each party do bear their own costs in both the appeals. Miscellaneous applications, if any, pending in the above Appeal Suits and Civil Revision Petitions shall also stand closed.

N.R.L.NAGESWARA RAO,J

Dated: 04.03.2013
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