

**HIGH COURT OF TRIPURA
AGARTALA
RFA No.16 of 2023**

Sri Dulan Bhattacharya,
S/O. Late Jogendra Ch. Bhattacharya,
resident of P.O. & P.S. Churaibari,
Dharmanagar, North Tripura

----Appellant(s)

Versus

Sri Debabrata Paul @ Tinku,
S/O. Late Sunil Ch. Paul,
resident of Padhya Kashipur,
P.S.Reshambagan, Agartala,
West Tripura

---- Respondent(s)

For Appellant(s)	:	Mr. S. Deb, Sr. Adv. Mr. S. Datta, Adv.
For Respondent(s)	:	Mr. S. M. Chakraborty, Sr. Adv. Mr. S. Bhattacharjee, Adv.
Date of Hearing	:	02.12.2024
Date of delivery of Judgment and Order	:	07.12.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 96 read with Order XLI of CPC is filed challenging the judgment dated 30.07.2022 and decree dated 04.08.2022 delivered by Learned Civil Judge (Sr. Division), Dharmanagar, North Tripura in connection with Money Suit 03 of 2017 dismissing the suit of the plaintiff.

02. Heard Learned Senior Counsel Mr. S. Deb assisted by Mr. S. Datta, Learned counsel appearing on behalf of the appellant-plaintiff and also heard Learned Senior Counsel Mr. S. M. Chakraborty assisted by Mr. S. Bhattacharjee, Learned counsel appearing on behalf of the respondent-defendant.

03. In course of hearing of argument Learned Senior counsel Mr. S. Deb appearing for the appellant-plaintiff first of all drawn the attention of the court referring para nos.3, 4 and 5 of the plaint and also drawn the attention of the court referring para nos.7, 8, 10 and 16 of the written statement filed by the respondent-defendant and submitted that before the Learned Trial court the respondent-defendant has failed to show that he has paid Rs.3,00,000/- to the appellant-plaintiff as mentioned in para No.7 of the written statement. But he admitted that the appellant had received the amount of Rs.30,000/- as mentioned in para-8 of the W/S and referring the provisions of Order 8 Rule 4 of CPC, and Rule 5 he submitted that by evasive denial the defendant cannot be exempted from the liability of the payment of dues amount and furthermore referring the statement of accounts of the appellant which was marked as Exbt.3. Learned Senior Counsel drawn the attention of the court that from the said statement nowhere it will be found that the respondent-defendant has ever paid Rs.3,00,000/- as alleged to the appellant-plaintiff of the suit. Learned Senior Counsel also drawn the attention of the court the demand notice issued by the appellant-plaintiff to the respondent-defendant (Exbt.1) and the reply made by the said defendant Exbt.A (3 pages) submitted that excepting Rs.30,000/- the appellant-plaintiff did not receive that amount of Rs.3,00,000/- as alleged by the defendant in two written statements. But the Learned Trial Court below failed to appreciate the evidence on record properly. He also drawn the attention of the court the

evidence on record of the witnesses of the parties and submitted that the judgment and decree of the Learned court below suffers from infirmities and urged for allowing this appeal by setting aside the judgment and decree of the Learned Trial Court below.

04. On the other hand, Learned Senior Counsel Mr. S. M. Chakraborty assisted by Learned counsel Mr. S. Bhattacharjee, first of all drawn the attention of the court that the present appeal is not maintainable as because the appellant-plaintiff has not come before the court with clean hands. He first of all drawn the attention of the court the evidence of CW-1, Tamoghna Bhattacharjee and his deposition and also Exbt.BS series from where it is clear that on 15.05.2013 Rs.3,00,000/- was transferred by the respondent-defendant to the account of the appellant-plaintiff and that was duly credited to the respective account of the appellant-plaintiff. So Learned Senior counsel submitted that there was no infirmity in the judgment delivered by Learned Trial court and urged for dismissal of this appeal with costs.

05. Here, in the case at hand the appellant-plaintiff filed the suit before the court of Learned Civil Judge, Senior Division for realization of money amounting to Rs.8,31,507/-. According to the appellant-plaintiff the plaintiff is a Timber Merchant and has been doing his timber business with name and fame and used to purchase timber/logs from various land owners and also used to sell the name to the different persons. The appellant-plaintiff purchased 49.693 cum of round block timber from one Sudhir Ch. Dey and Dilip Narayan

Das of Kurti and sold out the aforesaid 49.693 cum of round block timber to the respondent-defendant @ Rs.9750/- per cum with the condition that the respondent-defendant would pay the purchased money amounting to Rs.4,84,507/- only by installments time to time after selling the purchased round block timber with the further condition that the respondent-defendant must make all the payment of the said timber within three years from the date of 1st delivery and accordingly the appellant-plaintiff delivered the logs as per the following dates:

Sl. No.	Date	Lorry No.	T.P No.	Volume(M3)
1.	14.08.2013	TRL 3367	683480	9.633
2.	16.08.2013	TRL 3992	683481	9.936
3.	18.08.2013	TRL 3367	683482	10.133
4.	28.08.2013	TRL 3367	683483	10.024
5.	28.08.2013	TR01-1606	683486	9.967

06. It was further stated by the appellant that the respondent-defendant paid total amount of Rs.1,53,000/- only against the purchased round block timber through cheques out of total amount of Rs.4,84,507/- which are as follows:

Sl. No.	Date	Amount(Rs.)
1.	17.08.2013	53,000/-
2.	09.10.2013	50,000/-
3.	16.04.2014	50,000/-

07. The appellant-plaintiff further stated that the defendant-respondent did not pay the balance amount of Rs.3,31,507/- to the appellant. As such the plaintiff was entitled to the balance amount of Rs.3,31,507/-. It was also stated that the appellant-plaintiff time to time requested the defendant-respondent to make payment of the said balance amount, but each and every occasion the respondent-defendant requested the appellant-plaintiff to wait for some

months. In this way many months and time has been elapsed and on the expiry of three years i.e. w.e.f. 14.08.2013 the appellant-plaintiff approached to respondent-defendant on 01.09.2016 for payment of the balance amount and the respondent-defendant took 6 months time for payment of the balance amount but failed. Thereafter the appellant-plaintiff further requested the defendant for making payment of the balance amount, but the respondent-defendant did not response and due to that the plaintiff was suffering both mentally and physically and sustained huge loss and so he was entitled to Rs.2,00,000/- for business loss, Rs.1,00,000/- for pain and sufferings and Rs.2,00,000/- for loss of good reputation of business.

08. The appellant-plaintiff further asserted that finding no other alternative the appellant compelled to serve one advocate's notice dated 25.03.2017 to the respondent-defendant with demand and request to pay Rs.8,31,507/- to the appellant-plaintiff within a period of seven days after receipt of the notice. But in pursuance of the said notice the respondent-defendant gave a reply through his engaged lawyer on 04.04.2017 wherein it was stated that he already paid the amount to the plaintiff. Hence the plaintiff-appellant has filed the suit.

09. The sole respondent-defendant appeared and submitted written statement wherein it was stated that the appellant-plaintiff has suppressed the fact that an amount of Rs.3,00,000/- was paid by him in advance to the plaintiff from the State Bank of India C.C. Account directly to the account of

the plaintiff and the defendant reserved his right to submit the bank statement before the court to show the falsity of the statement. It was further stated that the respondent-defendant has paid another amount of Rs.30,000/- in cash on 07.07.2014 and the balance amount of Rs.1507/- was relinquished by the appellant-plaintiff verbally after receipt of the full payment but to the utter surprise and misfortune the appellant-plaintiff despite receipt of the full payment filed the suit. It was further asserted that the suit was by this time barred for which the same was liable to be dismissed. However, upon the pleadings of the parties Learned court below framed the following issues:

- (1) Whether the suit is maintainable?**
- (2) Whether the suit is barred by law of limitation?**
- (3) Whether plaintiff sold out 49.693 cum of round block timber to the defendant for consideration of Rs.4,84,507/- within the period of 14.08.2013 to 29.08.2013?**
- (4) Whether defendant failed to make payment of balance consideration money of Rs.3,31,507/- to plaintiff within 3 years from the date of first delivery since 14.08.2013?**
- (5) Whether Plaintiff suffered any loss in business and reputation and sufferings due to non-payment of the balance money?**
- (6) Whether defendant make payment of total Rs.3 lacs to the plaintiff from his C.C Account and Rs.30,000/- in cash on 07.07.2014?**
- (7) Whether there is cause of action in this suit?**
- (8) Whether plaintiffs are entitled to get decree of recovery of total Rs.8,31,507/- along with interest @ 18% per annum w.w.f. 01.04.2017?**

10. To substantiate the issues the appellant-plaintiff was examined and cross-examined as PW-1 and relied upon some documents which were marked as Exbt.1 and Exbt.2. On the other hand, the respondent-defendant submitted examination-in-chief in affidavit of two witnesses who were

examined as DW-1 and DW-2 and they relied upon some documents which were marked as Exbt.A to Exbt.D which are as follows:

(A) Plaintiff-Appellant's Witness:-

PW-1:- Dulan Bhattacharya

(B) Plaintiff-Appellant's Exhibits:-

- (1) Exbt.1 as a whole- Advocate notice dated 25.03.2017.**
- (2) Exbt.2 – Copy of reply of advocate notice dated 04.04.2017**

(C) Defendant-Respondent Witnesses:-

DW-1:- Debabrata Paul

DW-2:- Tejendra Majumder

(D) Defendants Exhibits:-

- (1) Exbt.A- Reply of Advocate's notice dated 25.03.2017 sent on 04.04.2017.**
- (2) Exbt.C – Registered Letter slip bearing No.RE.4695513118 IN**
- (3) Exbt.D – Accounts Statement relating to defendant dated 24.05.2017 vide AC No.32952042713 SBI MBB College Branch.**

(E) Court Witness:-

CW-1 – Sri Tamoghna Bhattacharjee

CW-2 – Sri Saibal Kanti Roy

(F) Material Exhibit : Nil

11. Finally on conclusion of trial Learned court below dismissed the suit. The operative portion of the judgment and order of the Learned Trial Court dated 30.07.2022 is narrated below:

"21. In the result on the basis of the above discussion and deliberation, the suit is dismissed on merits. The cost of the suit shall be borne by the plaintiff. This suit is disposed off accordingly on contest. Sherestedar is directed to prepare decree accordingly and place it before the undersigned within 15 days. This Judgment and Order is passed on this 30th day of January, 2022 under the seal and signature of the Court. Make necessary entry in the Trial Register. Record shall be sent to the Record Room after due compliance."

12. I have heard detailed argument of both the sides and gone through the record of the Learned Court below

including the judgment and decree delivered by the Learned Trial Court. As already stated to substantiate the suit Learned Trial Court in total framed eight nos. of issues. Learned Court below at the time of delivery of judgment discussed the evidence on record in detail and after perusal of the oral/documentary evidence on record decided the issues accordingly and finally dismissed the suit. However, in deciding issue No.6 Learned court below came to the observation that the defendant submitted a reply of Advocate's notice dated 23.03.2017 sent on 04.04.2017, Registered Letter slip bearing No.RE.469551318 and Accounts Statement relating to defendant dated 24.05.2017 vide Account No.32952042713 of SBI MBB College Branch. The court cited witness has exhibited bank statement consisting of 3 pages and transaction dated 15.05.2013. Learned Trial Court below on considering the evidence on record and the documents exhibited by the respondent-defendant specially Exbt.B came to the observation that on 15.05.2013 an amount of Rs.3,00,000/- was debited from the account of Joyram Timber against Account No.32952042713 and the same was transferred and credited to the account vide No.0010987597757 belonging to the appellant-plaintiff.

13. The appellant-plaintiff tried to counter the said argument of the respondent-defendant by showing the account statement of SBI Branch relating to the period with effect from 01.04.2010 to 31.03.2011 [Exbt.3] and Learned Senior Counsel in course of hearing of argument drawn the attention of the court that the transaction was a continuous business transaction which was not disputed by the

respondent-defendant. There is also no contrary evidence on record from the side of the appellant that the said payment of Rs.3,00,000/- was made by the respondent-defendant for some other purpose or for discharging previous debts which was not related to the present cause of action. Moreso, on perusal of Exbt.3 it appears that it has got no nexus with the plaint filed by the appellant-plaintiff and on perusal of the evidence of court witnesses and other evidence on record and the evidence of DWs it further appears that the defendant also made payment of Rs.30,000/- in cash to the appellant-plaintiff on 07.07.2014 relinquishing the balance amount of Rs.1507/- on the request of the respondent-defendant. Thus the respondent-defendant could prove that he had paid Rs.3,00,000/- to the plaintiff-appellant from his C.C. account and also Rs.30,000/- in cash on 07.07.2014 to the appellant-plaintiff. So finally Learned Trial Court below came to the observation that the defendant was able to make payment of the balance consideration money of Rs.3,31,507/- to the appellant-plaintiff within three years from the date of first delivery i.e. on 14.08.2013 and ultimately decided the issues against the appellant-plaintiff and also in favour of the respondent-defendant.

14. So, after hearing the submission of the Learned counsels of both the sides and also after going through the judgment of the Learned court below and also on perusal of the evidence on record it appears that the Learned Tribunal below after considering the oral/documentary evidence on record rightly and reasonably has delivered the judgment dismissing the suit of the appellant-plaintiff. Hence this court

does not find any scope to interfere with the judgment and decree delivered by Learned Trial Court below and the same is accordingly liable to be dismissed.

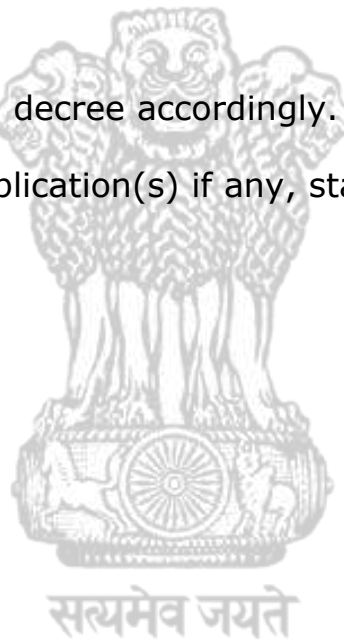
15. In the result, the appeal filed by the appellant is hereby dismissed on contest but without any costs. The judgment and order dated 30.07.2022 and decree dated 04.08.2022 delivered by Learned Civil Judge (Senior Division), Dharmanagar, North Tripura in connection with Case No. Money Suit 03 of 2017 is hereby upheld and the same is accordingly affirmed.

Send down the LCRs along with a copy of this judgment.

Prepare the decree accordingly.

Pending application(s) if any, stands disposed of.

JUDGE



**MOUMITA
DATTA**

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