

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO. 56 OF 2011

APPELLANT :

Shri Khokan Saha,
S/O. Late Priya Lal Saha,
Proprietor of Shachi Automobiles,
91, H.G.B. Road, Melarmath,
P.O. Agartala, P.S. West Agartala,
District – West Tripura.

BY ADVOCATES :

Mr.S. M. Chakraborty,
Mr.S. Bhattacharjee,
Ms.P. Chakraborty,
Ms.D. Das,
Mr.B.S.Bhowmik,

- *Vs* -

RESPONDENTS :

1. The State of Tripura
Through the Secretary to the
Government of Tripura,
Department of Home, Civil Secretariat,
Agartala-799006.

2. The Deputy Inspector General,
AP(ADM&TRG), Arundhutinagar,
Agartala, West Tripura,
Pin-799003.

3. The Commandant,
5th Bn. T.S.R.(IR),
Daluma, P.O. Amarpur,
South Tripura.

BY ADVOCATE :

Mr.D.C.Nath,

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

Date of hearing & delivery
of Judgment & order : **26.11.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

Heard learned senior counsel, Mr. S. M. Chakraborty
for the appellant and learned counsel, Mr. D. C. Nath for the State-
respondents.

2. The second appeal has been admitted for hearing on
the following substantial questions of law:-

"(a) Whether after making payment of the bills to the appellant, can the respondents make any departure from their liability by showing any technical formality?"

(b) Whether the payment of different amounts from time to time without any specific reference to any particular bill/debt the appellant was having discretion to adjust the said payment against any particular debt or debts?"

(c) Whether the learned Appellate Court below committed gross perversity by not appreciating the last payment of Rs.24,874.00 made by the respondents by draft dated 25.11.2003 and thus acknowledged the liability giving extension of the period of limitation for 3(three) years from the date of said payment?"

(d) Whether a First Appellate Court is under obligation to pass judgment with reference to issue-wise findings of the Trial Court, since it is the last Court of fact?"

3. The appellant as plaintiff instituted Money Suit No.23 of 2006 in the Court of Civil Judge(senior Division), Agartala, West Tripura seeking decree of an amount of Rs.2,72,776.34P from the defendant-respondents, *inter alia*, contending that the plaintiff being

the proprietor of Sachi Automobiles situated at HGB Road, Melarmath, Agartala, on oral requisition of defendant-respondent No.3 supplied spare parts of motor vehicles and also time to time done repairing works of the vehicle of respondent No.3. The plaintiff further contended that during the year 2000-2001 he raised bill of Rs.56,218.00, out of which he received payment of Rs.41,342.00 and there was a balance of Rs.14,876.00. In the year 2001-2002 he raised bill of Rs.92,420.56, out of which he received payment of Rs.71,267.36 and an amount of Rs.21,153.20 remain unpaid. In 2002-2003 he raised bill of Rs.3,22,967.94, out of which he received payment of an amount of Rs.90,447.80 and an amount of Rs.2,32,520.14 remain unpaid. In 2003-2004 he raised bill of Rs.3,871.00 and the amount remain unpaid.

The plaintiff wrote several letters for making payment and after his letter dated 08.10.2003, he was paid an amount of Rs.24,874.00 by a demand draft No.838824 dated 25.11.2003 and that demand draft the plaintiff received on 09.12.2003. Thereafter also the plaintiff raised demand and the defendant No.3 paid a cash amount of Rs.3,544.00 on 30.09.2003. Thereafter the defendant No.3 did not make payment of the rest amount and hence, the plaintiff issued notice to the defendants, but the defendants did neither pay the amount nor respond to the said notice and hence, the plaintiff instituted the suit seeking recovery of Rs.2,72,776.34 with interest @ 21% per annum.

4. The respondents by filing a joint written statement denied the contention of the plaintiff made in the plaint and further contended that as per the procedure followed in the Government departments codal formalities for procurement of articles have to be followed and any supply has to be made as against written requisition and particular bills should be raised after the supply of the good/materials pursuant to written requisition and since the plaintiff has nothing to show that the supply was made pursuant to a written requisition, there was no question of payment of any bill as claimed by the plaintiff.

5. The trial Court considering the pleadings of both side framed following issues:-

"(1) Is the suit maintainable in its present form and nature?"

(2) Whether the plaintiff is entitled to get a decree for Rs.2,72,776.34 paise with interest @ 21% per annum against the defendants for the materials/goods supplied to the defendant Nos.2 and 3 in the year 2000-01, 2001-02, 2002-03 and 2003-04?"

(3) Whether the defendants paid in part the value/cost of the materials to the plaintiff, as stated, and whether the last payment was paid by the defendants on 9.12.2003 by a Demand Draft dated 25.11.2003?"

(4) To what relief/reliefs the plaintiff is entitled to get?"

6. The plaintiff examined himself as PW1 and in support of his claim proved six items of documents, namely:

1. Exhibit-1 – a letter dated 22.08.2003 written to the Commandant of 5th Bn. TSR on behalf of Sachi Automobiles;

2. Exhibit-2 - One letter addressed to the M/S. Sachi Automobiles written by Commandant of 5th Bn. TSR dated 25.08.2003;
3. Exhibit-3 - Copy of letter of Sachi Automobiles dated 19.09.2003 addressed to the Commandant of 5th Bn. TSR for payment of the pending bills;
4. Exhibit-4 - A letter of the Commandant of 5th Bn. TSR dated 8.10.2003 addressed to the Dy. Inspector General(defendant No.2);
5. Exhibit-5(series) - Postal receipts dated 26.04.2004 bearing No1896 and 1897; and
6. Exhibit-6 - Copy of notice under section 80 of CPC addressed to the three defendants and written by the Advocate of plaintiff dated 09.06.2004.

7. On behalf of the defendants, one witness, namely, Shri Sishir Kumar Das was examined as DW1 and no documentary evidence was proved.

8. The trial Court decided the issues in favour of the plaintiff and decreed the suit.

9. The defendants having felt aggrieved preferred Money Appeal No.01 of 2009 in the Court of District Judge and the learned Additional District Judge, West Tripura, Agartala by impugned judgment dated 23.04.2011 allowed the appeal and set aside the judgment and decree passed by the trial Court.

10. Hence, this second appeal.

11. It is submitted by learned senior counsel, Mr. Chakraborty that the plaintiff supplied automobiles spare parts on the oral requisition of defendant No.3 and also time to time repaired the official vehicles of defendant No.3 and raised bills for the period from 2000-2001 to 2003-2004. Part of those bills raised by the plaintiff was paid time to time by the defendants, but full payment was never made. The last payment the defendant No.3 was made by a demand draft dated 25.11.2003, which the plaintiff received on 09.12.2003, and since the payments were made not against particular bill, the finding of the appellate Court that the claim of the plaintiff was time barred is not sustainable in view of the provision of Section 60 of the Contract Act. The claim raised by the plaintiff was justified and, therefore, the appellate decree passed by the learned Additional District Judge is liable to be interfered and set aside.

12. Learned counsel, Mr. Nath appearing on behalf of the respondents submitted that the plaintiff could not prove his claim by adducing relevant documentary evidence. There is nothing that the plaintiff raised several bills spread over during the period as claimed in the plaint and there was payment made as claimed by the plaintiff.

13. In response to such submission of Mr. Nath, learned senior counsel, Mr. Chakraborty has submitted that the claim of the plaintiff has not been specifically denied by the defendants in their

written statement and so, it should be held that the claim of the plaintiff that he raised bills time to time and certain amount was paid as stated in the plaint has been admitted.

14. I have meticulously gone through the pleadings and evidence on record. Burden lies on the plaintiff to prove his case. The plaintiff cannot stand referring to any defect of the defendants' pleading. What is claimed by the plaintiff in para-4 of the plaint has been denied in para-11 of the written statement. The denial, as I find, was made in general and in my considered opinion that there was no need of word by word and line by line denial of the allegations made in the plaint.

15. Be that as it may, the plaintiff was not supposed to supply any material to the defendant No.3 without any supply order and according to the plaintiff on the basis of oral requisition supplies were made, but there is nothing to support that oral orders were made by defendant No.3. The plaintiff also did not prove any document that the plaintiff supplied automobile spare parts taking receipts from either defendant No.3 or from any other subordinate officer of defendant No.3. Burden lies on the plaintiff to prove that he supplied spare parts to defendant No.3 and the defendant No.3 or any subordinate of him received the spare parts and issued any receipts on receipt of such spare parts.

16. The plaintiff claimed that he raised several bills during the period spread over from 2000-2001 to 2003-2004, but not a

single copy of the bill proved by the plaintiff to justify his claim. If any payment was made by a demand draft dated 25.11.2003, the plaintiff would prove it by placing a copy of the same before the trial Court or by placing any books of account of the plaintiff. The document proved by the plaintiff does in no way prove his case. So, the claim of the plaintiff was made actually without placing on record any admissible documentary evidence to consider the claim of the plaintiff.

17. Since the plaintiff could not prove his case at all by adducing required documentary evidence, the question as to whether the claim was time barred or not is redundant. However, as I find, the plaintiff has failed to prove payment in a consolidated manner out of the outstanding bills pending during the period spread over from 2000-2001 to 2003-2004. While the plaintiff has failed to prove that the payments were made out of the total outstanding bills, the provision of Section 60 of the Contract Act is not attracted.

18. Learned senior counsel, Mr. Chakraborty referred the decision of the Apex Court in the case of **The Madras Port Trust V. Hymanshu International**, reported in **AIR 1979 SC 1144** and submitted that it was a just claim of the plaintiff and so, it was a State's obligation that the claim of the plaintiff should be accepted. The ratio of that decision cannot be applied in the case of the plaintiff-appellant since the plaintiff-appellant has failed to prove

that he has supplied any spare parts or any other services to defendant No.3 and that he has raised any bill and that the bills were partly paid and partly not paid. The claim what is stated by the plaintiff in the pleadings has not been supported by documentary evidence adduced by him and since the claim of the plaintiff required to be proved by documentary evidence, the oral evidence cannot be accepted as sufficient to prove the claim of the plaintiff. The appeal is, therefore, found to be devoid of any merit and hence, stands dismissed.

19. Send back the lower court records along with a copy of this judgment.

JUDGE