IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.515 OF 1992

M/S.RAJENDRAKUMAR & COMPANY)
Through the sole proprietor)
RASIKLAL RUPCHAND MEHTA)...APPELLANT

V/s.

KUSHABA GANPAT TEKWADE)...RESPONDENT

Mr.P.B.Shah, Advocate for the Appellant.

Coram: Smt.R.P.SondurBaldota, J.

Date : 16th January, 2015.

<u>P.C.</u> :

1 This second appeal challenges the judgment and order dated 18th August, 1991, passed by the lower Appellate court allowing the appeal preferred by the respondent against the decree of the trial court.

2 The appellant filed Special Civil Suit No.340 of 1977 for recovery of amount of Rs.45,728/- together with interest thereon towards the price of the goods sold and delivered to the respondent. In addition to the written statement to oppose the suit, the respondent filed counterclaim for recovery of sum of Rs.53,575.67 paise together with interest thereon. The trial court, by it's judgment and order dated 30th December, 1985, allowed the suit claim and dismissed the counterclaim. Aggrieved by the order of the trial court, the respondent preferred Regular Civil Appeal No.89/B of 1989 to the District court, Pune. By the impugned order the District court allowed the appeal of the respondent. It rejected the claim of the appellant and granted a sum of Rs.6116.99 paise to the respondent by way of counterclaim with interest at the rate of 4 percent per annum.

3 This Second Appeal was admitted on 21st October, 1992, on the following three questions of law, as stated in Grounds (e), (g) and (s) that read as follows :

(e) The lower Appellate court ought to have held that the suit of the plaintiff was based on account book and that the defendant had not shown any irregularity or illegality in the accounts;

(g) The lower Appellate court failed to appreciate that the provisions of Section 34 of the Indian Evidence Act, did attract to the suit transactions;

(s) The lower Appellate court ought to have held that the account of M/s.Pravinchandra M Shah was not reliable and that the respondent – defendant has not maintained any account. In the wake of the above, the observations made in paras 24 and 25 by the lower Appellate court are totally wrong.

Bare reading of the questions raised at grounds (e) and (s) shows that the same are clearly the questions of facts, and hence, beyond the purview of the second appeal. As regards the applicability of Section 34 of the Evidence Act raised in ground (g), the books of accounts have been produced by the appellant himself. As such, there was no question of the appellant contending that the same were not admissible in evidence. Section 34 of the Evidence Act provides for relevancy of statements made under special circumstances i.e. relevancy of entries in the books of accounts. It provides that the entries in books of accounts, regularly kept in course of business are relevant whenever they refer to the matter into which the court has been enquiring. It further provides for the caution that such statements shall not be sufficient by themselves to charge any person with liability. The courts below, in the impugned judgments, have observed that the books of accounts have been regularly maintained in the course of business and have also been sufficiently corroborated. In that circumstance, there can be no substance in the ground (g) also. The second appeal is, therefore, dismissed.

(Smt.R.P.SondurBaldota, J.)