THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.1397 OF 2012

JUDGMENT:

This unsuccessful plaintiff throughout in O.S.No.264 OF 2006 on the file of the Court of Principal Junior Civil Judge, Machilipatnam, and in A.S. No.96 of 2007 on the file of the Court of VI Additional District Judge, (FTC), Krishna at Machilipatnam, preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC') on various grounds.

02. The ranks given to the parties in O.S. No.264 of 2006 will hereinafter be adopted throughout this Judgment, for convenience of reference.

03. The plaintiff, who is appellant herein, filed the suit for recovery of Rs.50,955/- based on entries in the ledger (khatha) alleging that he is carrying on fertilizer business under the name and style Sri Venkateswara Fertilizers and Insecticides, Nidumolu, used to sell pesticides and fertilizers on credit and the defendant purchased pesticides and fertilizers on credit (khatha) opened with the plaintiff. There were mutual transactions between the plaintiff and defendant. But as on 31.03.2003 the defendant became indebted to a tune of Rs.29,625/- as per Khatha. On 31.03.2003 the defendant settled the account with the plaintiff and signed in the ledger acknowledging his liability to pay Rs.29,625/-. The defendant failed to discharge the debt due under khatha. The plaintiff got issued legal notice dated 16.03.2005 demanding the defendant

to pay debt due together with interest, acknowledging receipt of notice, the defendant did not reply and failed to pay the amount. Hence, the suit.

04. The defendant filed written statement denying material allegations in the plaint *inter alia* contending that he never opened any account with the plaintiff and never purchased fertilizers or pesticides and he never signed in the books of accounts maintained by the plaintiff and thereby question of payment of any amount to the plaintiff does not arise, as such the defendant denied the entire transaction and prayed for dismissal of the suit.

05. Based on the above pleadings, the trial court framed the following issues:

1. Whether the Khata was not opened by the defendant?
2. Whether the defendant has not purchased the insecticides from the plaintiff/ shop?
3. Whether the plaintiff is not entitled to get the decree passed as prayed for?
4. To what relief?

06. During trial, the plaintiff himself was examined as P.W.1 and Exs.A.1 to A.11 were marked on his behalf. The defendant himself was examined as D.W.1, no exhibits were marked.

07. Upon hearing argument of both the counsel, the trial court held that the plaintiff failed to prove his case by producing necessary records i.e. books of accounts maintained in his business and dismissed the suit.

08. Aggrieved by the Decree and Judgment of the trial court, the unsuccessful plaintiff preferred appeal in A.S. No.96 of 2007 before the VI Additional District Judge, (FTC) Machilipatnam, and by its Judgment dated 24.01.2012 affirmed the finding recorded by the trial court and dismissed the appeal.

09. Aggrieved by the concurrent finding recorded by the trial court in suit and the first appellate court in first appeal, the present second appeal is filed raising several contentions and the substantial questions of law formulated by the appellant are pertaining to an admission of acknowledgment of debt by the defendant by signing in the book and relevancy of books maintained in the regular course of business under Section 34 of Indian Evidence Act, 1872 and other questions. But none of the questions formulated by the counsel for the appellant are substantial questions of law. However, it is evident from the record that the plaintiff based his claim on the credit transactions between himself and the defendant and final settlement of accounts dated 31.03.2003.

10. In support of his claim, the plaintiff produced ledgers and entries therein, including signature of defendant in the ledger, which are marked as Exs.A.4 to A.11. They are only relevant entry in the ledger and ledger book for different years commencing from 2002 to 2006. The basis for entries in the ledger is day book maintained regularly in the ordinary course of business by the plaintiff. They form the basis for entries in the ledger. But for the reasons best known to the plaintiff, he did not produce the day books pertaining to the relevant entries

marked as Exs.A.5, A.7, A.9 and 11. The only contention of the plaintiff/appellant before this court is that the entries in the books maintained in the regular course of business are relevant and on the strength of such entries, the Court can pass a decree in his favour.

11. Section 34 of the Indian Evidence Act, 1872 deals with entries in books of account, including those maintained in an electronic form, if they are kept in the course of business regularly. But the entries in the ledger by itself are not sufficient to fasten liability on the defendant, unless they are supported by day books and proof of those entries by examining the competent witness to speak about the entries. Even if the entries in the books are correct and authenticate such books of accounts can fix liability upon the person independently where credible independent evidence as held by the Apex Court in **CENTRAL BUREAU OF INVESTIGATION VS V.C. SHUKLA & ORS[1].** Therefore, independent evidence is required to establish liability of the defendant. But, in the present case, only the plaintiff was himself examined without producing the entries in the day books, which are basis for preparation or making entries in the ledger. The first appellate court based on the Judgment of this Court in **N. SATYANARAYANA RAJU v. CHEKURI GOPALA KRISHNA RAJU[2]** wherein it was held that mere books of account are not sufficient to charge any person with liability and the books of account must be corroborated by some other evidence such as receipts and vouchers and the burden is on

[1] 1998 Cri..LJ 1905 (SC)
[2] 2004(2) ALT 117

the plaintiff to prove the circumstances in which the debt came into existence. In the present facts of the case, the plaintiff did not produce any corroborative evidence like receipts and vouchers and day book maintained in the regular course of business of the plaintiff, except producing entries in the ledger and alleged acknowledgment of liability to the defendant. Those documents are insufficient to fasten the liability on the defendant, since those entries are not supported by corroborative evidence. Hence, the trial court and the first appellate court rightly dismissed the suit.

12. On overall consideration of the Judgment of the trial court and the first appellate court in first appeal, I find no substantial question of law to be decided by this Court, since the plaintiff miserably failed to establish his claim by producing evidence in support of claim except the entries in ledgers which are insufficient to establish his claim. Therefore, I find no ground to interfere with the finding of the trial court and consequently the second appeal is dismissed, at the stage of admission, but in the circumstances without costs.

13. Miscellaneous petitions, if any, pending in this second appeal, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 31.08.2016
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