IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 71 OF 2015

Mrs. Sharad Govind Ghode
wife of Mr. Govind Narayan Ghode
Proprietor of M/s Prasad Enterprises
Major, resident of Murmutti,
Comba, Margao, Salcete Goa. ... Appellant

V e r s u s

M/s Sellwell Foods & Beverages Pvt. Ltd.,
A Pvt. Limited Company incorporated
under the Companies Act, 1956 and
having its registered office at 144
Harinagar Ashram, New Delhi
and amongst other places
on of its administrative offices at
Arlem, P.O. Raia, Salcete Goa. ... Respondent

Mr. S. S. Kantak, Senior Advocate with Mr. A. Kamat, Advocate for the appellant.

Mr. C. A. Coutinho, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 22nd March, 2017

ORAL JUDGMENT

Heard Mr. S. S. Kantak, learned Senior Counsel

appearing for the appellant and Mr. C. A. Coutinho, learned counsel appearing for the respondent.

2. The above appeal came to be admitted by an order dated 02.09.2016 on the following substantial questions of law.

> (i) Whether merely because an amount is shown on the foot of a running account would absolve the plaintiff/respondent from establishing the amount due from the plaintiff/respondent under the contemporaneous evidence on record when both the Courts below have not given conclusive findings about existence of the crates as on the date of filing of the suit ?
>
> (ii) Whether the mandatory direction issued by the Courts below is sustainable in law ?

3. Mr. S. S. Kantak, learned Senior Counsel appearing for the appellant has assailed the impugned judgment on the ground that both the Courts below have placed liability on the appellant to pay the amount decreed merely on the basis of the

amount shown at the foot of the statement of accounts produced by the respondent. The learned Senior Counsel further pointed out that in terms of Section 34 of the Evidence Act merely showing an amount due in the statement of accounts would not by itself place a liability on the appellant. The learned Senior Counsel further submits that there was no corroborative evidence produced on record to substantiate the claim put forward by the respondent. The learned Senior Counsel further pointed out that the decree passed by the Court is on two counts, one is direction to pay a sum of Rs.2,18,076/- to the respondent and the direction to return 3959 crates to the respondent herein. The learned Senior Counsel further pointed out that there is no material produced by the respondent to substantiate their claim that 3959 crates were delivered to the appellant. The learned Senior Counsel further pointed out that admittedly the dealership of the appellant stands terminated and as such according to him the question of returning any crates as alleged by the respondent would not at all arise. The learned Senior Counsel further submits that as per the records of the appellant there was only one amount which was

shown to have been debited to the account of the appellant giving credit of amount received by the respondent from the appellant. The learned Senior Counsel further pointed out that a sum of Rs.33,287/- was not reflected in the statement of accounts. The learned Senior Counsel also brought to my notice the invoices to point out that though such amount is debited, there is no corresponding credit to the amount paid by the appellant to the respondent. The learned Senior Counsel as such points out that without prejudice to the stand taken, the appellant is entitled to at least deduct the said sum of Rs.33,287/- allegedly payable to the respondent. The learned Senior Counsel further pointed out that though both the Courts have awarded a sum of Rs.2,18,076/- payable to the respondent, nevertheless, the invoices produced on record would show the actual amount due works out to Rs.1,79,403/-.

4. Mr. C. A. Coutinho, learned counsel appearing for the respondent submits that the amount directed to be paid was after the accounts were reconciled between the appellant and the

respondent as in fact according to him the representative of the appellant had accepted the said amount being payable to the respondent. The learned counsel thereafter pointed out that both the Courts below upon appreciating the evidence on record have concurrently found that the respondent is entitled to the said sum of Rs.2,18,076/- payable by the appellant. The learned counsel further pointed out that as such the question of interference in such findings by this Court would not at all arise. The learned counsel further submits that as far as the contention of the learned Senior Counsel appearing for the appellant that there is no corresponding credit to Rs.33,287/- as shown in the invoices, the learned counsel upon instructions of the respondent points out that the said amount may be deducted from the amount so decreed. The learned counsel further submits that on perusal of the invoices produced on record, the respondent accepts the amount works out to a sum of Rs.1,79,403/-. The learned counsel further pointed out that there is no credit given to the appellant of the said amount of Rs.33,287/- as claimed by the appellant herein. The learned counsel as such points out that the decree

may be accordingly modified.

5. Mr. Kantak, learned Senior Counsel has also pointed out that as the dealership has been terminated, the appellant is not carrying out any business in the State of Goa and according to him the interest awarded by the learned Judge was not justified as there was no notice served on the appellant to pay such amount and as such the interest is to be fixed at the rate of 6% per annum.

6. I have considered the submissions of the learned counsel and I have also gone through the records. Section 34 of the Evidence Act reads thus :

> "**34**. ***[Entries in books of account including those maintained in an electronic form] when relevant***.—[Entries in books of accounts, including those maintained in an electronic form], regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with

liability.

7. On going through the said provisions, merely showing an amount at the foot of the statement of accounts would not by itself be sufficient evidence to place a liability on such person to pay such amount. In the present case, the Courts below upon appreciating the evidence on record have concurrently found that a specific sum of money is payable by the appellant to the respondent. No doubt, considering the contention of Mr. Kantak, learned Senior Counsel appearing for the appellant that based on the invoices produced on record the amount would work out the consolidated sum of Rs.1,79,403/- which is not disputed by Mr. Coutinho, learned counsel appearing for the respondent, the liability of the appellant would otherwise be restricted to a sum of Rs.1,79,403/-. Apart from that, it is also not disputed by the respondent that the credit of Rs.33,287/- has not been given to the appellant herein. In such circumstances, the amount payable by the appellant to the respondent works out to Rs.1,46,116/-. To that extent, the impugned judgment passed by the Courts below would have to be modified.

8. As far as the contention of Mr. S. S. Kantak, learned Senior Counsel appearing for the appellant with regard to the delivery of crates, it is an admitted position that there is no corroborative evidence produced on record to establish such aspect though there is a list of crates receivable from the appellant. But however, there is no evidence produced on record by the respondent to show that in fact the crates and the bottles were existing at the time of the filing of the suit. The appellant has disputed that she is liable to return any such crates nor the existence thereof. As the existence of the crates has not been established, the question of granting a mandatory injunction in the manner directed in the impugned judgments would not at all be justified.

9. As far as the interest is concerned, in the peculiar facts and circumstances of the case and as the dealership between the parties has already been terminated, I find that in the interest of justice, the interest payable be fixed at the rate of 8% per annum from 24.01.2005 up to the actual payment. In view of the above,

the substantial questions of law are answered accordingly.

10. In view of the above, I pass the following :

O R D E R

(i) The appeal is partly allowed.

(ii) The impugned judgment passed by the learned Trial Judge dated 30.01.2014 and the judgment passed by the learned Lower Appellate Court dated 14.10.2014 stands modified and the appellant is ordered to pay to the respondent a sum of Rs.1,46,116/- along with interest thereon at the rate of 8% per annum from 24.01.2005 up to the actual payment.

(iii) Remaining relief sought by the respondent in the suit stands rejected.

(iv) The appeal stands disposed of accordingly with no order as to costs.

F. M. REIS, J.

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