

* HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

+ CCCA No.169 of 1999

% 09-11-2017

M/s. Plywood Syndicate,
a partnership firm
and 2 others

... Appellants/
Defendants

Vs.

\$ M/s. National Ply Wood Industries Limited,
Hyderabad.

... Respondent/
Plaintiff

! Counsel for the appellants: V.S.R. Anjaneyulu

Counsel for the Respondents: None appeared.

< Gist:

> Head Note:

? Cases referred:

¹ 2010 (6) ALD 484

² AIR 1973 AP 149

³ AIR 1983 SC 684

⁴ (1982) 2 SCC 202

⁵ MANU/TN/3504/2010

⁶ AIR 1989 SC 1269

⁷ 2004 (1) ALD 269 (DB)

⁸ AIR 1966 SC 275



HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CCCA No.169 of 1999

JUDGMENT:

CCCA No.169 of 1999 is filed against the judgment and decree of the IV Senior Civil Judge, Hyderabad, dated 29.10.1998 passed in O.S.No.297 of 1989.

2. The suit was filed by Pioneer Wood Products Pvt. Ltd., initially and later as per the orders dated 21.02.1997 in I.A.No.878 of 1996 in O.S.No.297 of 1989, the plaintiff's name was amended to National Plywood Industries Ltd. The defendants are Plywood Syndicate, a partnership firm and its two partners. The suit was filed for recovery of money due towards the goods supplied by the plaintiff to the first defendant with interest and costs. The defendants filed the written statement denying the suit claim and stating that if the accounts are actually taken and credit was given certain claims of the defendants, the suit will have to be dismissed and the plaintiff will have to pay the amount back. After the amendment to the plaint in the cause title and additional written statement were also filed.

3. The lower Court framed issues and also framed an issue of territorial jurisdiction. Ex.A.1 to A.107 were marked for plaintiff. Exs.B.1 to B.21 were marked for defendants. One witness each was examined by plaintiff and defendants. After trial, the suit was decreed with costs. Aggrieved by the same, the defendants preferred the present appeal.

4. As it is a first appeal, the parties are hereinafter referred to as plaintiff and defendants only, for the sake of convenience.

5. Heard Sri V.S.R. Anjaneyulu, learned counsel for the appellants. None appeared for the respondent/plaintiff.

6. The first and foremost point that was urged by the learned counsel for the appellants/defendants is that the Court at Hyderabad did not have the territorial jurisdiction to entertain the suit. As per the defendants, the entire transaction took place in Vijayawada and merely because the plaintiff's head office is at Hyderabad, the suit is not maintainable. The defendants also pleaded that the plaintiff had a depot in Vijayawada in which orders were placed by the defendants and material was also supplied from the said depot to the defendants, who admittedly are carrying with business in Vijayawada. Hence, learned counsel argued that the entire cause of action arose at Vijayawada alone and that no part of the cause of action arose at Hyderabad or within the jurisdiction of Senior Civil Judge, City Civil Courts, Hyderabad. The lower Court also framed an issue on this point. The learned counsel cited the judgment reported in ***Tirumala Tirupathi Devasthanam, Tirupati v. Shree Distributors, Hyderabad***¹ in support of his submission.

7. However, a reading of the entire evidence reveals that the plaintiff stated that the defendants used to purchase

¹ 2010 (6) ALD 484

the plywood from the office at Hyderabad and that the payments were made sometimes by cash and sometimes by cheques and demand drafts. The defendants in their written statement in page-2 at para-3 state that correspondence with Hyderabad office and making of payments to Hyderabad office for the sake of convenience will not enable the plaintiff to file the suit at Hyderabad. Thus, the defendants admitted the payments were made at Hyderabad. The witness examined on behalf of the defendants as DW.1 is the partner of the first defendant firm. On 31.07.1998 during the course of his cross-examination, he clearly admits that he used to make payments to the plaintiff at Hyderabad office and also correspondence was with Hyderabad office. In addition, the correspondence clearly shows that the issues relating to the suit transaction alone were discussed in the exhibits filed and most of the letters are addressed to the plaintiff's office at Sultan Bazar, Hyderabad.

8. It is, therefore, clear that issues relating to this suit; the transactions covered therein and issues pertaining to the cause of action for this Court including the payments were made at Hyderabad. Therefore, a part of the course of action definitely arose at Hyderabad. Consequently, the Court at Hyderabad had the jurisdiction to decide this matter and this issue is decided in favour of the plaintiff and against the defendants. The lower Court did not commit any error on the issue of the territorial jurisdiction. Therefore, the finding in

para-15 of the judgment on additional issue framed on 13.02.1996 is confirmed. The case law cited in ***Shree Distributors, Hyderabad*** (1 stated supra) is not applicable to the facts of the present case for the reason that in that case there there was a written contract and the goods were supplied to Tirupati. The appellant in that case is Tirumala Tirupati Devasthanam. The learned single Judge rightly held that the Court at Hyderabad does not have jurisdiction and that the parties by a contract cannot confer jurisdiction on a Court. Hence, the said judgment is not applicable to the facts of the present case.

9. The learned counsel for the appellant/defendants also argued that the lower Court failed to frame an additional issue on the point whether the new plaintiff substituted in place of the original plaintiff could pursue the suit. He argued that there was no proof of the amalgamation. National plywood Industries Ltd with its registered office at Makkum Road, Tinsukia, District Tinsukia, Assam was substituted as a plaintiff in place of Pioneer Wood Products Ltd. The plaintiff was substituted by virtue of the orders passed in I.A.No.878 of 1996 in O.S.No.297 of 1989 dated 21.02.1997. Apparently, there was no revision preferred against the said order and the same has become final. The learned counsel also argued that no evidence was placed with regard to the amalgamation of the original plaintiff with the substituted plaintiff. This submission does not appear to

be correct since Ex.A.61 was filed by the plaintiff and it is an order of the Hon'ble Assam High Court in Company Petition No.3 of 2013 dated 18.12.1992 under which Pioneer Wood Products Ltd was amalgamated with a National Plywood Industries Ltd. There was no cross-examination whatsoever on this exhibit nor on the contents of this exhibit. Therefore, this Court does not find any substance in the submission of the learned counsel that there is no proof that the current plaintiff is entitled to prosecute the suit.

10. On the merits of the claim, the learned counsel for the appellants/defendants submitted in the written statement that they have raised a plea that as the goods are supplied on credit and that as there are debits and credits in the accounts, the plaintiff will not be entitled to suit claim and certain adjustments have to be made under the five heads which are described in the written statement. As per the learned counsel for the defendants if these five heads of claim are considered, nothing will remain to be paid to the plaintiff in the suit.

11. The learned counsel argued that the finding of the lower Court that they did not prove this aspect was not correct and stated that they have filed correspondence to this effect. However, a perusal of the correspondence filed does not support the monetary claim raised by the defendants. In the course of the business, many letters are exchanged but when it comes to a proof in a court, the defendant will not

have proved their case with reasonable certainty at least. The five claims of the defendants are discussed in paras 17 to 20 of the impugned judgment and as rightly noticed by the lower Court, the monetary aspect of the claim is not clearly borne out in the record and more so the correspondence.

12. In the written statement, among various heads pointed out, they have claimed a sum of Rs.1,58,125/- as differential credit amount for two trucks of unwanted goods sent through Kaleswari Lorry Service. The learned counsel for the appellants/defendants argued that Exs.B.15 to B.17 read with Exs.B.20 & 21 would prove this claim. Ex.B.15 is a letter stating that two trucks of plywood with two delivery challans are sent back. The two delivery challans are Exs.B.16 and B.17. Ex.B.20 is an acknowledgement of receipt by the plaintiff's office at Hyderabad. These documents do not establish the monetary claim of "Rs.1,58,123/-."

13. Similarly, there is another claim of Rs.94,741/-, and as per the appellant, credit is not given for wrongful supply of "pionex" brand instead of pioneer brand. The learned counsel for the appellants/defendants pointed out that Ex.B.4 is the document in support of the same. Ex.B.4 is a letter dated 26.04.1984 regarding defective material. It does not establish the value of the material particularly the value that is claimed in the written statement. The same is the case with regard to the other three

issues raised in the written statement and the learned counsel pointed out the correspondence relating to each of the sub-heads, which according to him have a bearing on this issue. He also pointed out that they have filed Exs.B.21 & 22 to prove the 5 claims they have. Exs.B.21 and B.22 were marked subject to the objection in the lower Court. Ex.B.21 is a statement. It particularly appears to have been prepared after the suit is filed and it bears the suit number and the cause title of the suit. There is no supporting material filed for the entries in Ex.B.21. It is clear as per settled law that documents prepared subsequent to the filing of the suit are to be scrutinized with greater care when compared to documents which are prior to the suit. The case law reported in **Chakicherla Audilakshamma v. Atmakaru Ramarao and others**², **State of Bihar v. Radha Krishna Singh**³, **Umesh Chandra v. State of Rajasthan**⁴ and **P. Kumar v. the State of Tamilnadu**⁵ is relevant, wherein the Hon'ble Supreme Court clearly held that the documents *ante litem motam* should be scrutinized with greater care because they may be prepared with the litigation in mind. Therefore, Ex.B.21 cannot be treated as true and correct, more so when there is no corroboration for the entries thereon.

² AIR 1973 AP 149

³ AIR 1983 SC 684

⁴ (1982) 2 SCC 202

⁵ MANU/TN/3504/2010

14. As far as the account copy marked as Ex.B.22 is concerned. it is a computerized printout which is merely signed by DW.1. No supporting data like books/ledgers/invoices etc. to support the entries in Ex.B.22 are produced. As per the decision reported in **Smt. Chandrakantaben and another v. Vadilal Bapalal Modi and others**⁶ the Hon'ble Supreme Court of India held that entries in account books should be supported by documents like ledgers etc. and somebody should take care to explain the entries also. In this case, a computerized sheet is filed and marked as Ex.B.22. Therefore, this Court is of the opinion that neither Ex.B.21 nor Ex.B.22 are adequately proved as required by law and the lower Court is right in not giving due weight with these two documents. Even DW.1 admits "ExsB.1 & B.2 do not reflect in our ledger" (last line of cross-examination)

15. In contra distinction to this, the plaintiff filed his document and also filed exhibits like bills, ledger and statement of accounts etc. It is also a fact that the defendants issued cheques towards part payment of the debt due to the plaintiff which were also dishonoured. The same is borne out by the oral and documentary evidence. In addition to the above, DW.1 also admits in his cross-examination on 03.08.1998 in page-8 as follows:

"it is true as per our ledger, we have to pay a sum of Rs.3,51,383.10 to plaintiff towards supply of material."

⁶ AIR 1989 SC 1269

16. The admission of the defendants is thus clear. It is also noticed that the plaintiff issued a legal notice demanding the said sum from the defendants and the defendants did not reply to the same and the defendants did not also issue a notice demanding the sums mentioned in their defence statement. They did not make a counter claim or claim set off etc. Hence, the lower Court rightly disbelieved the version set up by the defendants

17. However, the learned counsel is right in pointing out that the lower Court erred in holding that the failure to reply to the notice is an admission. This finding of the lower Court in para-21 is not correct. Mere failure to reply to a notice does not amount to an admission. The learned counsel for the appellants/defendants drew the attention of this Court to a Division Bench of this Court in ***Manepalli Udaya Bhaskara Rao v. Kamboyina Dharmaraju***⁷. The Division Bench considered the judgment of the Hon'ble Supreme Court in ***Union of India v. Watkins Mayor and Company***⁸ and came to a conclusion that the failure to reply to the notices is not an admission.

18. A perusal of the judgment of the lower Court reveals that it considered all the aspects in detail and came to a conclusion that the suit claim is proved. There is no evidence to contradict the said claim nor are any grounds spelt out to come to a different conclusion.

⁷ 2004 (1) ALD 269 (DB)

⁸ AIR 1966 SC 275

19. For all the above reasons, the appeal is dismissed and the judgment and decree of the lower Court dated 29.10.1998 in O.S.No.297 of 1989 are confirmed. In the circumstances of the case, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 09 .11.2017
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Note: L.R. Copy marked.

