HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A.No.106 OF 2008

JUDGMENT:

Defendant in O.S.No.634 of 2006 on the file of learned III Senior Civil Judge, City Civil Court, Secunderabad, preferred the present appeal, under Section 96 of the Code of Civil Procedure, 1908, aggrieved over the judgment and decree, dated 17.01.2008, rendered in the said O.S.

2. The learned trial Judge passed the decree under challenge directing the appellant - defendant to pay a sum of Rs.4,67,000/-, which consists of Rs.3,13,122/- towards principal amount and the rest towards interest computed at the rate of 18% per annum, with interest at 12% per annum on the principal amount of Rs.3,13,122/- from the date of Suit till realization.

3. Heard Sri Peri Prabhakar, learned counsel for the appellant, and Sri T.V. Rajeevan, learned counsel for the respondent.

4. A few facts, which are relevant to adjudicate upon the controversy in the present appeal, are adverted to.

5. Respondent – plaintiff is a registered partnership firm and authorized PW.1, one of the partners of the firm, to lay the Suit for realization of the amount due from the appellant - defendant. The respondent – plaintiff is a wholesale – cum – retail seller of car accessories. The appellant - defendant is also a firm carrying on

business as dealer in Maruthi Cars at Tirumalgiri Cross Roads, Secunderabad. During the course of business, the appellant – defendant approached the respondent – plaintiff requesting for supply of car accessories to their vehicles on credit basis. Since the year 2003, the appellant – defendant had been maintaining accounts with the respondent – plaintiff firm till some time before the Suit was laid. There was an oral understanding between them that the amount for the goods received by the appellant – defendant shall be paid within 30 days and in case of default, interest at the rate of 18% per annum shall be charged on the amount due. According to the respondent – plaintiff, on receipt of goods, the appellant – defendant had been paying the amounts through cheques.

6. The respondent – plaintiff claims that the appellant – defendant under account for the goods received by it lastly on 08.01.2004 under acknowledgement and thereby, left outstanding amount of Rs.3,13,122/- with interest at 18% per annum. Despite legal notice got issued to the appellant – defendant by phonogram on 25.09.2006 and despite receipt of the same, it stood unanswered. Hence, the Suit.

7. The appellant – defendant denied certain allegations in the plaint, more particularly, the oral understanding/agreement between it and the respondent – plaintiff to pay the amount for the goods received within 30 days and agreeing to pay interest at 18% per

annum, as claimed by the respondent – plaintiff. It also denied the receipt of goods for the last time on 08.01.2004 and the outstanding of Rs.3,13,122/- payable with interest at 18% per annum. The other allegations were also completely denied by it.

8. In paragraph Nos.6 to 10 of its written statement, the appellant – defendant sets out its case stating that the respondent – plaintiff is supplier of car accessories, but, strangely, comes out with the denial that both the parties were well acquainted with each other since 1993, as alleged by the respondent – plaintiff, on the ground that it had started its business only in the month of February, 2002. It denied promising to pay interest at 18% per annum compoundable yearly, as pleaded by the respondent – plaintiff. It denied the receipt of notice, more so the phonogram, dated 25.09.2006, sent by the respondent – plaintiff. The appellant - defendant claims that it reserves its right to take appropriate action against the respondent – plaintiff for making defamatory remarks against it. It also mentions that except filing the statement of account, no supporting documents were filed and, therefore, denied the genuineness of the entries in the statement of account. It alleges that the respondent – plaintiff has failed to file invoices and delivery challans, more particularly, in proof to show that all the material, which was claimed in the statement of account, was supplied by the respondent – plaintiff and so received by it. Stating that the respondent - plaintiff failed to even

establish *prima facie* case, sought to reject the Suit claim and dismiss the Suit.

9. On the aforesaid pleadings, the learned III Senior Civil Judge, City Civil Court, Secunderabad, settled the following two issues on 11.06.2007 for trial:

> "1. Whether the plaintiff is entitled to decree for the suit claim?
> 2. To what relief?"

10. During trial, on behalf of the respondent – plaintiff, one of the partners of the respondent – plaintiff's firm, by name Sajjan Raj Jain, who was authorized by the other partners of the firm to lay the Suit, was examined as PW.1. One Dwaraka Prasad, who was working as salesman in the respondent – plaintiff's firm, was examined as PW.2, to prove the agreement between the respondent – plaintiff and the appellant – defendant in regard to the payment to be made within 30 days, in default, to pay with interest at 18% per annum, for the supply of goods. Yet another partner of the respondent– plaintiff's firm, by name Kishore Kumar, who is conversant with the documents filed and marked as Exs.A1 to A96, was examined as PW.3, as he has been looking after the day-to-day affairs of the respondent - plaintiff's firm, as could be seen from his evidence. Exs.A1 to A96 were marked on its behalf. The relevant document is Ex.A96 - statement of account, which contains relevant details relating to the transactions between the

respondent – plaintiff and the appellant – defendant. To substantiate the entries made therein, Exs.A10 to A86, which are the account bills, have been marked and ledger books are marked as Exs.A87 to A94 to prove the entries made relating to Exs.A10 to A86, which all find place again in Ex.A96, statement of account. On behalf of the appellant – defendant, no evidence, either oral or documentary, was let in.

11. The learned trial Judge, referring to the evidence of PWs.1 to 3, after deliberating on the submissions made by the learned counsel respectively, relying on the statement of account, which reflects the balance claim, and the delivery challans, filed by the respondent – plaintiff to support its claim, and believing the entries made therein, and the evidence of PWs.1 to 3, observing that the appellant - defendant did not even file a single document to contradict the entries made in the statement of account, drawn inference that the entries in the statement of account are to be presumed as true and correct.

12. Concerning the specific agreement for payment of interest, the learned trial Judge observed that, admittedly, the transactions between the parties are commercial transactions and payment has to be made within a reasonable time for the goods supplied and unless there is a specific agreement for grant of more than 30 days' time, and referring to the denial of the appellant – defendant, opining that when

there is liability on the appellant – defendant to pay the amount due, if he fails to pay the same, he is bound to pay interest on the amount due, and that the interest at the rate of 18% per annum was reasonable for a commercial transaction, held that the respondent – plaintiff is entitled to interest.

13. The trial Judge, referring to the submission made by the learned counsel for appellant – defendant before him that an obligation was cast on the respondent – plaintiff to establish its claim on its own and it cannot stand on the weakness of the appellant – defendant, would observe, while holding that there is substance in the submission made by the learned counsel for appellant – defendant, that there is also a rule of evidence that a person who is in possession of best evidence has to adduce the same and in case of failure, an adverse inference has to be drawn against him. The said observation was made in the context of appellant – defendant not stepping into the witness box and not submitting account books or registers to rebut the entries in Exs.A4 to A96. Thus, basing on the discussion made by him, arrived at the conclusion that the respondent – plaintiff established the Suit claim and the rate of interest and thereby, decreed the Suit directing the appellant – defendant to pay a sum of Rs.4,67,000/- with interest at 12% per annum on the principal amount of Rs.3,13,122/- from the date of Suit till realization.

14. Learned counsel for the appellant raises certain submissions. First is, the evidence on record would not reflect the amount for supply of the goods, under which all the bills were based. His further submission is that no invoices at all were filed. His next submission is that the agreement between the parties was to the effect that on supply of articles or the goods, the demand has to be met immediately and, therefore, the case set out by the respondent – plaintiff that the payment has to be made on monthly basis is without any proof and the Court below, somehow, overlooked the said aspect of the case. It is also his submission that there was no stipulation as to calculation of interest and, therefore, the respondent – plaintiff was not right in charging the rate of interest at 18% per annum and in fact, the payment of interest does not arise at all for the reason, the amounts due were immediately paid on supply of goods and, therefore, there was no outstanding amount at all to be paid to the respondent – plaintiff under any of the bills and the statement of account is not correct, as it is coming from the custody of the respondent – plaintiff, and the ledger books are also not correct, as they were not put to the notice of the appellant – defendant.

15. Ex.A96 is the statement of account for the period from 01.04.2003 to 31.01.2004 maintained by the respondent – plaintiff with the Secunderabad Mercantile Co-operative Urban Bank Limited. The said statement was furnished by the said Co-operative Bank, which shows the deposits by way of cheques. In case, the appellant –

defendant has repaid the amounts through cheques, certainly, a duty is cast on the appellant – defendant to show which of the said cheques relate to the payments made by it towards the goods supplied. The respondent – plaintiff, certainly, cannot be asked to put-forth the negative evidence and it is for the appellant – defendant, when he pleads discharge or immediate payment, to point out the cheques, which relate to the payment made. The appellant – defendant did not deny the transactions between itself and the respondent – plaintiff. Therefore, it cannot be said that the respondent – plaintiff is totally obligated to show by which entry in the account sheet the amount was paid, when cheques were not at all finding place therein relevant to the payment said to have made by the appellant – defendant.

16. Now turning to whether the entries made in the account sheet are genuine or not, a perusal of the delivery challans, marked as Ex.A7 and A10 to A86, would clearly show the supply of goods to the appellant – defendant and each challan would contain the seal of the appellant – defendant's firm and the signature of a person, who received the goods therein. The ledger books, which were marked as Exs.A87 to A94, would show the relevant entries as to supply of goods with reference to the delivery challans marked as Exs.A7 and A10 to 86. When such overwhelming evidence is placed on record by the respondent – plaintiff, more particularly, the evidence of PW.3, and when there is absolutely nothing in the cross-examination of PWs.1 to 3 to show that the entries in Exs.A7 and A10 to A86 bills

and Exs.A87 to A94, ledger books, are not genuine, it is difficult to hold that there is substance in the submission made by the learned counsel for appellant that Exs.A7 and A10 to A94 were created or got up for the purpose of laying Suit claim. Therefore, the finding recorded by the Court below holding that the respondent – plaintiff proved the Suit claim through the evidence of PWs.1 to 3 and the entries in Exs.A1 to A96 does not suffer from any legal infirmity. Even the observation made by the Court below that the appellant – defendant shirked to examine any one concerned with its business and failed to file ledgers or account books maintained by it in the course of its regular business, would all give rise to an inescapable inference adverse to the stand put up by the appellant – defendant.

17. So far as PW.1 being authorized to sign the plaint and prosecute the Suit is concerned, there is valid authorization, marked as Ex.A9, given by other partners of the respondent – plaintiff firm. Even on independent analysis of evidence on record, an invariable conclusion that is to be arrived at is that the respondent – plaintiff has positively proved the Suit claim and the appellant – defendant, in fact, though, obligated with the duty to submit the statement of account or the account books in a case of this nature where business transactions constitute the basis for the Suit claim, failed to submit the same would vitally affect its stand and, therefore, it has to be held that there is no merit in the present appeal.

18. Hence, the appeal is dismissed upholding the judgment and decree, dated 17.01.2008, passed by the learned III Senior Civil Judge, City Civil Court, Secunderabad, including the rate of interest at 12% per annum on the principal amount from the date of Suit till realization.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

March 02, 2018.
MD

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A.No.106 OF 2008

March 02, 2018

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