

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 9-07-2019

Judgment delivered on 2-8-2019

FA No. 92 of 2003

- M/s Vijay Kotadiya, Bidi Patta Vyapari & Commission Agent through Proprietor Vijay Kotadiya aged 38 years s/o. Late Lalchand Kotadiya caste Jain, occupation business resident of Ramadhin Marg, Rajnandgaon, Tahsil and District Rajnandgaon (CG).

---- Appellant

Versus

- Shadik Bhai son of Mohd. Hussain, aged about 45 years, occupation Bidi business, Bidi No. 300, resident of Ismail Pura, Kamthee, Tahsil Kamthee District Nagpur (MH).

---- Respondent

For appellant : Mr. HB. Agrawal, Sr. Advocate with
Mrs. Prabha Sharma, Advocate.

For respondent : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 29-1-2003 passed by the First Additional District Judge, Rajnandgaon (CG) in Civil Suit No. 13-B/1997 wherein the said court dismissed the suit filed by the appellant/plaintiff against respondent/defendant for

recovery of the amount to the tune of Rs.96,156/- as selling price of Bidi leaves.

2) Appellant was doing the business of Bidi leaves and on 31-10-1995 the respondent/defendant purchased 291 bags of Bidi leaves for Rs.71,126.50. According to the condition, bill amount was to be paid within 15 days otherwise, 18% interest per annum was payable. On 6-9-1996 a notice for demand of amount was sent to the respondent but on 30-10-1996 he denied the transaction, therefore, suit was filed. The trial court recorded finding that no document or evidence has been produced regarding delivery of goods to the respondent at his place i.e., Kamthee that is why dismissed the suit.

3) Learned counsel for the appellant would submit as under:

- i) From the evidence of Vijay Kotadiya (PW/1) and Jayesh Chatwani (PW/2) it is established that Bidi leaves of 291 bags were transported which is supported by documents (Ex.P/5, D/1 and D/2) and there is no infirmity in their evidence, therefore, supply of Bidi leaves is established.
- ii) Mere denial by the respondent is not sufficient to discharge his burden. Respondent was under obligation to prove

that he has not paid the truck charges to the tune of Rs.4500/- but that is not proved.

- lii) Finding of the trial Court that no receipt was produced in the present case which is signed by the respondent, is not correct. Though driver of the truck was not examined but same is not sufficient to discard the positive evidence of the appellant.

4) I have heard learned counsel for the appellant and perused the record in which judgment/decree has been passed.

5) The core issue for consideration of this court is whether the respondent received 291 bags of Bidi leaves at Kamthee. Though Vinjay Kotadiya (PW/1) and Jayesh Chatwani (PW/2) deposed that Bidi leaves were dispatched vide Truck No.CPT 2271 and produced documents of dispatch Ex.D/1 and D/2 but the driver who transported through truck was not examined before the trial Court that he unloaded Bidi leaves in the place of respondent at Kamthee. As per averment truck was loaded at Rajnandgaon and it was to be unloaded at Kamthee which is State of Maharashtra but no transit pass was produced before the the trial Court that truck as mentioned above was travelled to Maharashtra. In

absence of transit pass of Maharashtra and in absence of examination of driver who transported the article, it is not established that the said truck was travelled upto Kamthee which is in the State of Maharashtra and articles were unloaded at the place of respondent at Kamthee. No acknowledgement of respondent was produced before the trial Court for fastening liability on him that he received Bidi leaves at Kamthee. The only evidence adduced by the appellant was regarding dispatch of article but no document was produced regarding receiving of article by the respondent. The liability can be fastened on respondent only when he received the article.

6) The trial Court after evaluating the entire evidence recorded that acceptance of article by the respondent is not established. In absence of any oral and documentary evidence, it is not established that the article in question was transported upto Kamthee and it was received by the respondent, therefore, liability cannot be fastened on respondent. This court has no reason to take a contrary view what is recorded by the trial Court.

7) The appeal is liable to be and is hereby dismissed. Accordingly, decree is passed in favour of respondent and against the appellants as under:

- (i) The appeal is dismissed with cost.

- (ii) Appellant to bear the cost of respondent through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju