NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 69 of 2007

Reserved on : 12.07.2019

Delivered on : 02.08.2019

Dinesh & Company, Proprietor Deepak Kumar Deshlahra, S/o Shri Navratanlal Ji Deshlahra, aged about 47 years, R/o Sadar Bazar, Durg, Tahsil & District- Durg (C.G.)

---- Appellant

Versus

Deepak, S/o Vijaychand Dewangan, R/o Patan, Tahsil- Patan, District- Durg (C.G.)

---- Respondent

For Appellant	:	Mr. Shobhit Mishra, Advocate.
For respondent	:	Mr. Shobhit Koshta, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 13.03.2007 passed by Tenth Additional District Judge (F.T.C.), Durg (C.G.) in Civil Suit No. 10B/2005, wherein the said court dismissed the suit filed by the appellant/ plaintiff for recovery of amount to the tune of Rs. 87,000/-.

2. As per the appellant/ plaintiff, he is running his business of purchase and sale of silver and gold articles so also of its mortgaging. The appellant/plaintiff and respondent/defendant having very old good relationship. Father of the defendant used to mortgage the ornaments and after depositing the amount, he used to release the mortgaged

ornaments. On 31.01.2003, the respondent, purchased on credit the ornaments namely necklace valued at Rs. 40,500/-, Mangalsutra costing Rs. 21,150/- and Kangan Set costing to Rs. 25,150/- (total Rs. 86,800/-). The respondent signed on the bill and he was also asked to deposit the above debt amount within two months. The amount was not deposited then a written notice was issued on 17.02.2004, but he has not made the payment i.e. why the suit was filed. The respondent denied all the averments and pleaded that he visited shop of the appellant for clearing the old account of his father and cleared the same, but he did not purchase anything from the appellant and did not sign on any document.

3. Learned counsel for the appellant submits as under:-

(i) The respondent/ defendant has signed on Ex.P/1 on 03.01.2003 which is acknowledgment for balance amount and for that he has maintained a register and the same is mentioned as Ex.P/2 which is account of the appellant.

(ii) The entries were proved by regular register being maintained in the course of business which is unrebutted by the respondent, but the trial court recorded finding that the record of the appellant is under cloud which is not sustainable.

(iii) The trial court has not evaluated the evidence in its true perspective and no expert was called for examination of signature of the respondent, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondent submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same is not liable to be interfered with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6. First question for consideration before this Court is whether the ornaments were purchased by the respondent on 03.01.2003 from shop of the appellant. The appellant adduced evidence of himself as PW-1 and his brother Dinesh (PW-2). As against this, the respondent adduced his evidence as DW-1 and Vijay Dewangan (DW-2). Both sides have made oral statement on oath rebutting each other, therefore, oral evidence will not serve in adjudicating the matter. The claim of the appellant is based on register maintained by him. As per version of the appellant- Deepak (Para 22), there is no verification in the register as to how many pages in the said register. He deposed before the trial court (Para 9) that he has not maintained stock register. There is no document to show sales statement. There is no document that sales statement was submitted to any office. In absence of stock register and sales statement, it cannot be concluded as to how much stock of ornaments was in the shop of the appellant and how much was balance after selling the ornaments.

7. As per Section 34 of the Indian Evidence Act, 1872, the entries on register are relevant, but the same is not sufficient to fasten any

liability on the basis of such register. In the present case, transaction is denied by the respondent, therefore, the appellant was under obligation to prove transaction clearly. Register was maintained by the appellant, but looking to the fact that no stock register was maintained by him and no sales statement was prepared by him and further looking to the fact that he himself has not verified the register, the trial court recorded finding that sufficient evidence regarding transaction is not adduced before it and the evidence adduced on behalf of the appellant is under cloud. Looking to the entire evidence, this Court has no reason to take a contrary view. When the documents are under cloud and there is only oral evidence in rebuttal of oral evidence, finding of the trial court is not liable to be interfered with.

8. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondent on the following terms and conditions:-

(i) The appeal is dismissed with cost.

(ii) Parties to bear their own costs.

(iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.

(iv) A decree be drawn accordingly.

Sd/-

(Ram Prasanna Sharma)
Judge

Arun