IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2019

PRONOUNCED ON : 24.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1950 of 2003

1.R.Venkateswaran
2.M.Murugesan
3.V.R.Venkituswamy ...Appellants/Respondent/Defendant
(Partner of Erode Kamadenu spinners)

Vs.

V.P.M.V.Periaswami and Company
representated by its Partner
P.Ramasubramaniam. ...Respondents/Appellant/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 25.10.1990 passed in A.S.No.148 of 1989 on the file of the Principal District Court, Erode, reversing the judgement and decree dated 31.08.1989 passed in O.S.No.352 of 1985 on the file of the 2nd Additional Subordinate Court, Erode.

For Appellants : Mr.E.Sampath Kumar

For Respondent : No appearance set exparte vide order dated 08.04.2019

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 25.10.1990 passed in A.S.No.148 of 1989 on the file of the Principal District Court, Erode, reversing the judgement and decree dated 31.08.1989 passed in O.S.No.352 of 1985 on the file of the 2nd Additional Subordinate Court, Erode.

2.The second appeal has been admitted on the following substantial questions of law:

"(i).Whether under Section 34 of the Evidence Act the production of the Ledger without producing the corresponding day book and journal be admissible in evidence?

(ii).The Cheque Ex.A-6 given to father of the first appellant has been given by him to the respondent. Even assuming without admitting that it was dishonoured, can it be automatically taken to be dishonour of cheque issued directly by the appellants to the respondent?”

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5.Suit for recovery of money.

6.Briefly stated, according to the plaintiff, the defendants used to purchase yarn on credit from the plaintiff and accordingly, they had been dealing with the plaintiff in respect of the same commencing from 25.04.1981 to 01.11.1983 and as per the accounts maintained in the regular course of business, the defendants owe a sum of Rs.15,875/- and accordingly, the defendants are liable to pay the same and as they had failed to pay the same, despite repeated demands, it is stated that the plaintiff had been necessitated to institute the suit against the defendants for recovery of the said amount.

7.The defendants resisted the plaintiff's case contending that they are not having any dealing with the plaintiff after 04.12.1981 and false to state that the defendants have paid the amount to the plaintiff in connection with the dealings with the plaintiff on 16.03.1983, 16.09.1983, 22.09.1983 and 18.10.1983 and further, stated that the dealings as found in the account books of the plaintiff pertaining to the year 1983 are false and concocted for the purpose of the case and accordingly, it is put forth that the suit laid by the plaintiff is helplessly barred by limitation and hence, liable to be dismissed.

8.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A18 were marked. On the side of the defendants, DW1 was examined and Ex.B1 has been marked.

9.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit. On appeal by the plaintiff, the first appellate Court was pleased to set aside the judgement and decree of the trial court and decreed the suit in favour of the plaintiff as prayed for.

Challenging the same, the present second appeal has been preferred.

10.The plaintiff has laid the suit against the defendants for the amount due to it in respect of the yarn dealings, which the defendants had with the plaintiff from 25.04.1981 to 01.11.1983. It is not the case of the defendants that they had no yarn dealings with the plaintiff at any point of time. On the other hand, the defendants have admitted in the written statement itself that they had been not having the yarn dealings with the plaintiff after 04.12.1981, impliedly thereby, it is evident that the defendants had been having yarn dealings with the plaintiff prior to 04.12.1981.

11.The only issue raised by the defendants for challenging the plaintiff's case is that the suit laid by the plaintiff is barred by limitation. In this connection, according to the defendants, the entries in the account projected by the plaintiff during the year 1983 are not true and on that basis, the plaintiff is not entitled to lay the suit and hence, the suit laid by the plaintiff in the year 1985 is barred by limitation. As abovenoted, the claim had been made by the plaintiff against the defendants for the yarn dealings for the period from 25.04.1981 to 01.11.1983. As could be seen from the available materials on record, particularly, Ex.A5, the account entries, it is found that the defendants owe a sum of Rs.27,875/- to the plaintiff in respect of yarn dealings and it is also noted that the plaintiff had handed over the goods to the defendants with reference to the same. Thereafter, as could be seen from the various entries found in the accounts projected by the plaintiff, it is found that the defendants had paid a sum of Rs.1000/- on 22.09.1983 through the father of the first defendant viz., Ramasamy, which could be gathered from Ex.A11 and furthermore, it is also found that the defendants had tendered a cheque in a sum of Rs.2,750/- by way of Ex.A6 cheque and the same on presentation had been dishonoured, which could be seen from the return of the cheque vide the receipt marked as Ex.A7. Furthermore, it could also be seen that the cheque presented by the defendants marked as Ex.A8 towards the transaction had been dishonoured vide the receipt marked as Ex.A9 and furthermore, from Ex.A10 cheque issued by the defendants, it is seen that towards the yarn dealings, they had issued a cheque for a sum of Rs.7,875/- and also it could be gathered that by way of Ex.A12 cheque, the defendants had paid a sum of Rs.1000/- on 16.09.1983 and the same had also been dishonoured. It is thus found that in respect of the yarn dealings, there had been several transactions between the parties concerned even during the year 1983 and accordingly, the cheques had come to be issued by the defendants with reference to the same and the amounts had also been passed on by the defendants through Ramasamy, the first defendant's father and accordingly, the entries had been reflected with reference to the same in the accounts projected by the plaintiff. The defendants, in the written statement, had not contended or refuted that the plaintiff is not maintaining the account in the regular course of business. On the other hand, it only is stated that the entries in the account projected by the plaintiff pertaining to the year 1983 are not true. On the other hand, PW1 examined on behalf of the plaintiff had tendered clear evidence that the accounts projected by the plaintiff marked in the proceedings are true and accordingly, only with reference to the payments made by the defendants on various dates through cheques and through Ramasamy, the same had been reflected in the accounts and accordingly, it is found that when the evidence of PW1 has not been shown to be unacceptable in any manner and considering the various payments made by the defendants during the year 1983, particularly, from Exs.A11 and A12, in all, it is found that the defendants are found to have been having transactions in the yarn dealings with the plaintiff during the year 1983 also and accordingly, the entries are reflected in the accounts maintained by the plaintiff with reference to the same as projected in the matter. Though the argument has been put forth by the defendants that the plaintiff has not examined the clerk, who had been maintaining the accounts and not produced the day book and the bills pertaining to the payment etc., however, when the accounts projected by the plaintiff are found to be true and entered in the regular course of business and there is nothing projected on record to disbelieve the same and when PW1 is competent to speak about the same, in such view of the matter, the non - examination of the accountant or the non-production of the day book, bill pertaining to the same would not in any manner, as rightly determined by the first appellate Court, affect the plaintiff's case.

12.Not only that, claiming the amount due to it, the plaintiff is found to have issued Ex.A13 notice dated 28.06.1983 and the same had come to be received by the defendants 1 & 2 and returned by the third defendant. Subsequently, on 24.04.1984, the plaintiff had issued another notice marked as Ex.A14 claiming the amount due to it. In between Exs.A13 & A14, it is found that the defendants 1 to 3 have paid a sum of Rs.2,000/- acknowledging the transactions they had with the plaintiff, however, despite having received Exs.A13 and 14 notices, the defendants have not refuted the claim of the plaintiff made therein by sending a reply to the plaintiffs. On the other hand, as abovenoted, the defendants have acknowledged the factum of their dealings with the plaintiff even after the issuance of the notice by paying certain sum and in such view of the matter, when it is seen that in respect of the yarn dealings, the defendants had made payments to the plaintiff even during the year 1983 as above pointed out and the same are reflected in the accounts projected by the plaintiff and when PW1 had clearly spoken about the same, in all, it is found that the first appellate Court has correctly determined that the suit laid by the plaintiff is not hit by the law of limitation.

13.Furthermore, as could be seen from the accounts maintained by the plaintiff in respect of the defendants marked as Ex.B1, the various entries reflected in Ex.B1 also would point out the amounts due to the plaintiff from the defendants in respect of yarn dealings on various dates and the first appellate Court has assessed the various entries in Ex.B1 and found that the defendants had acknowledged to pay the amount to the plaintiff by making various payments in piecemeal even during the year 1983 and accordingly, the entries pointing to the same are reflected both in Ex.B1 and Ex.A1. In such view of the matter, when the suit had been laid by the plaintiff within the period of time stipulated by law for the recovery of the amount from the last date of the transaction, which the parties had been dealing with in respect of the subject matter, in such view of the matter, the first appellate Court is found to be fully justified in determining that the plaintiff's suit is not barred by limitation.

14.In the light of the abovesaid discussions, the plaintiff has established that the accounts projected by it are maintained in the regular course of business and when PW1 has tendered evidence in a clear manner pointing to the same and when the accounts projected by the plaintiff are also found to be reflected in Ex.B1 in toto, it is found that the first appellate Court is justified in accepting and relying upon the same and also rightly determined that the entries in the accounts need not be sustained by the plaintiff by the production of the day book and bills pertaining to the same and when the materials placed on record go to show that the cheque had been presented by the first defendant's father only in connection with the yarn dealings, which the defendants had been having with the plaintiff and not in his personal capacity, in such view of the matter, the dishonour of the said cheques presented by the first defendant's father would only go to show that it is only the defendants, who are liable to pay the amount due to the plaintiff and in such view of the matter, when the defendants are found to be having the transactions with the plaintiff in connection with the yarn dealings even during the year 1983 as put forth and established by the plaintiff, the plaint is found to be not barred by limitation. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

In conclusion, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Principal District Court, Erode.
2.The 2nd Additional Subordinate Court, Erode.
3.The Section Officer,
V.R. Section, High Court, Madras.

S.A.No.1950 of 2003

AD(CO)
SP(08/07/2019)