AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

F.A No.39 of 2006

Reserved on 21.05.2020
Pronounced on 25.06.2020

Firm: Narmada Prasad Rajesh Kumar, Gole Bazar Bilaspur, Res. Near, Hardev Lal Mandir, Bilaspur, Distt Bilaspur **---- Appellant**

Versus

Firm: Kailash Chand Ramesh Kumar Chandrapur, To -Bhagidoor Kailash chand, S/o Late Ram Kumar Agrawal, aged 45 years, Res Chandrapur Block Dabhra, Distt. Janjgir-Champa **---- Respondent**

For Appellant:	Shri Ravish Verma along with Shri Shiv Kumar Shrivastava, Advocates.
For Respondent:	None, though served.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
C A V Judgment

1. This Appeal has been preferred by the Defendant under Section 96 of the Code of Civil Procedure, 1908 (for short 'the Code of 1908') questioning the legality and propriety of the judgment and decree dated 30.11.2005 passed by the Additional District Judge, Sakti, in Civil Suit No.06-B/2004 whereby, the Plaintiff's claim for recovery of sum of Rs.42,150/- along with interest @ 6% per annum with effect from 03.04.2002 up to 20.03.2004 has been decreed. The parties to this Appeal shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated, the facts of the case are that the Plaintiff, registered Firm-rice miller and engaged with the business of sale of rice, *rafi kanki* etc, instituted a suit claiming a sum of Rs.52,650-/- along with interest @ 12% per annum from the date of filing of the claim till its realization. According to the Plaintiff, the Defendant had purchased 150 quintals of *rafi kanki* (hereinafter referred to as 'the subject matter') on 03.04.2002 on credit from him under Bill

No.2/1 @ Rs.281/- per quintal amounting to Rs.42,150/-, which was delivered to him at Bilaspur. It is pleaded further that the Defendant had assured for its payment within a period of 15 days, else, he would be liable to pay interest @ 12% per annum. Further averment made in the Plaint is that despite several requests being made for its payment and even upon issuance of a demand notice dated 24.02.2004, the same was not paid. Therefore, a suit has been instituted in the instant nature on 26.03.2004.

3. The Defendant has contested the aforesaid claim and denied specifically that the alleged subject matter was ever purchased by him on credit.

4. After considering the evidence led by the parties, it has been held by the trial Court by placing its reliance upon the Bill (Ex.P-1C) and "Book of Accounts" (Ex.P-2C and Ex.P-3C) that the alleged subject matter was purchased by the Defendant on 03.04.2002 on credit and is, therefore, liable to pay the alleged amount of Rs.42,150/- with interest @ 6% per annum with effect from 03.04.2002 up to 20.03.2004 along with the cost of legal notice of Rs.50/-.

5. Learned Counsel for the Appellant, while assailing the aforesaid finding of the trial Court, submits that by decreeing the Plaintiff's claim as such, the Court below has committed a serious illegality in placing its reliance upon the documents which were marked as Ex.P-1C to Ex.P-3C, as those are the carbon copies of the originals and in absence of the production of their originals, the same cannot be held to be admissible in evidence. In support, he placed his reliance upon the decision rendered in the matter of *Ishwar Das Jain (Dead) through Lrs. vs. Sohan Lal (Dead) by Lrs.* reported in **(2000) 1 Supreme Court Cases 434.**

6. No one appears on behalf of the Respondent, despite service of notice.

7. I have heard learned Counsel for the Appellant and perused the entire record carefully.

8. A suit for recovery of sum of Rs.52,650/- has been made by the Plaintiff on the premises that the Defendant had purchased the alleged subject matter on 03.04.2002 under Bill No.2/1 on credit and despite the assurance given for its payment within a period of 15 days, the same has not been paid. In order to establish the said fact, the Plaintiff has placed his reliance upon the Bill marked as Ex.P-1C and “Book of Accounts” which were marked as Ex.P-2C and Ex.P-3C.

9. Upon examination of the aforesaid documentary evidence, vis-a-vis the statement of Kailashchand Agrawal (PW-1), it is evident that these are the carbon copies of the original and perusal of the record would reveal further that at the time of exhibition of these documents, neither the originals were placed on record nor any explanation was given for its non-production despite the objection being raised regarding its admissibility. It appears further from the evidence of the said witness, particularly paragraph-12 of his testimony, that the entries pertaining to dispatch of the alleged subject matter was made in Entry Register, yet, the same was also not produced nor any explanation was made for its non-production. In absence of those materials showing the dispatch and/or selling of the alleged subject matter on credit, the alleged carbon copies of “Bill” and “Book of Accounts” cannot be held to be admissible in evidence.

10. Pertinently to be noted here further, as reflected from the evidence of the said witness (PW-1), that the entire alleged transaction was made through the broker namely Tarachand, however, for the reasons best known to the

Plaintiff, he was not examined in order to establish the alleged fact. However, without considering the said facts, the claim has been decreed by the trial Court by holding that those documentary evidence are admissible in evidence after placing its reliance upon the provisions prescribed under Section 34 of the Evidence Act.

11. Section 34 of the Evidence Act, which is relied upon for the purpose reads as under:-

> "34. [Entries in books of account, including those maintained in an electronic form] when relevant.- [Entries in books of account, including those maintained in an electronic form], regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability".

12. From a bare perusal of the aforesaid provision, it is clear that the entries in Books of Account relating to a matter in issue regularly kept in the course of business are relevant, but such entries alone are not sufficient to charge anyone with the liability. Meaning thereby, no decree can be passed on the basis of said entries alone, unless and until some independent evidence of the transaction relating to those entires are produced. The aforesaid provision, thus lays down that a Plaintiff cannot obtain a decree by merely proving the existence of certain entries in his Books of Account as those are not by themselves sufficient to charge any person with the liability. In order to get the decree based upon those entries, the Plaintiff has to show some independent evidence that the entries made in his Books are with respect to the real transaction. In other words, to make Account Books admissible in evidence under this provision, it was necessary for the Plaintiff to give other substantive piece of evidence in support of the fact sought to be established. However, as found hereinabove, the Plaintiff has tried to set up its claim only on the basis of the carbon copies of the originals and has failed to produce the same despite

the specific objection being raised.

13. At this juncture, while referring to the aforesaid provision, it has been observed by the Supreme Court in the matter of Ishwar Das Jain (Dead) through Lrs. vs. Sohan Lal (Dead) by Lrs. (supra) at paragraphs-23. 25 and 26 as under:

> "23. …..
>
> It will be noticed that sanctity is attached in the law of evidence to books of account if the books are indeed "account books i.e. in original and if they show, on their face, that they are kept in the "regular course of business". Such sanctity, in our opinion, cannot attach to private extracts of alleged account books where the original accounts are not filed into Court. This is because, from the extracts, it cannot be discovered whether the accounts are kept in the regular course of business or if there are any interpolations or whether the interpolations are in a different ink or whether the accounts are in the form of a book with continuous page-numbering. Hence, if the original books have not been produced, it is not possible to know whether the entries relating to payment of rent are entries made in the regular course of business."

> "25. In the recent judgment of this Court in *Central Bureau of Investigation Vs. V.C. Shukla* **(1998) 3 SCC 410)**, it has been laid down that for purposes of Section 34, "Book" ordinarily means a collection of sheets of paper or other material, blank, written or printed, fastened or bound together so as to form a material whole. Loose sheets of paper or scraps of paper cannot be termed as "book" for they can be easily detached and replaced. It has also been held that:
>
> > 'The rationale behind admissibility of parties' books of account as evidence is that the regularity of habit, the difficulty of falsification and the fair certainty of ultimate detection give them in a sufficient degree, a probability of trustworthiness'.
>
> When that is the legal position, extracts of alleged account books, in our view, were wrongly treated as admissible by the courts below though the original books were not produced for comparison nor was their non-production explained and nor was the person who had prepared the extracts examined."
>
> "26. Therefore, the private extracts of alleged account books like Exs.D-2 to D-5 are not admissible. The principal evidence relating to the alleged payment of rent disappears and the foundation for the alternative plea of tenancy crumbles. This is one reason why the finding relating to tenancy is vitiated being based on inadmissible evidence."

14. Applying the aforesaid principles to the case in hand, wherein, as observed hereinabove, that in order to establish the alleged transaction, the Plaintiff has placed his reliance upon the carbon copies of the Bill (Ex.P-1C) and Books of Account (Ex.P-2C and Ex.P-3C) even in absence of producing the originals of those documents. The trial Court has, thus, erred in decreeing the Plaintiff's claim by placing its reliance upon those inadmissible evidence.

15. Consequently, the Appeal is allowed and the judgment and decree dated 30.11.2005 passed by Additional District Judge, Sakti in Civil Suit No.06-B/2004 is hereby set aside and the Plaintiff's claim is accordingly dismissed. No order as to costs.

16. Decree be drawn accordingly.

Sd/-
(Sanjay S. Agrawal)
Judge

Priya