

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 182 of 2017

M/s S M C Power Generation Ltd. A Company Incorporated Under The Companies Act, 1956, Having Its Registered Office At E-13/29, Second Floor, Harsha Bhawan, Connaught Place, New Delhi, Through Its A G M Corporate Affairs Namely Vikas Rawal And Works At Village Hirma, Distt. Jharsuguda, OrissaDefendant, Orissa

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Versus

Dilip Bhai Patel S/o Sh. Raoji Bhai Patel, Aged About 63 Years Proprietor, M/s Patel Road Lines, Namnakala, Ambikapur, Distt. Surguja, ChhattisgarhPlaintiff, Chhattisgarh

---- Respondent

For Appellant	:	Dr. Anurag Kumar Agrawal, Mr. Prateek Sharma and Mr. Tushar Dhar Diwan Advocates
For Respondent	:	Mr. A.K. Prasad with Mr. Rishikant Mahobia, Advocates

D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mr. Justice Ram Prasanna Sharma

C A V Judgment

15/05/2020

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the impugned judgment and decree dated 8.2.2017 passed in Civil Suit No.41-A of 2015 by which the learned trial Court has decreed the suit of the respondent-plaintiff awarding him Rs.60,70,551.25 towards transportation charges along with interest @ 6% per annum from the date of institution of the suit till the date of recovery, as also costs.
2. Respondent-plaintiff filed a suit seeking money decree on the pleadings, inter alia, that the plaintiff runs the business of supply of coal in the name

of Nitesh Traders and also engaged in the business of transportation in the name of firm -Patel Road Lines. He has been dealing with the defendant since two years. According to the plaintiff, defendant purchased coal from Coal Dealer Firms, namely Nitesh Traders, Kuber Coal Traders, Kuber Trading Company and Laxmi Coal Traders on credit between the period from July 2007 to September 2007. For the purpose of transportation of coal, it was pleaded, the defendant telephoned plaintiff on 27.07.2007 for transportation at a rate of maximum Rs.700/- per MT which was accepted by the plaintiff at Ambikapur and thus, on the basis of this concluded contract, plaintiff transported coal from Namnakala, Abmikapur to Hirma, Jharsuguda through his transport service. The quantity of coal transported by the plaintiff and transport charges were payable under Schedule-"A" appended to the plaint. Further case of the plaintiff was that in the course of transportation, there was a shortage of 12.320 MT equivalent to Rs.32,000/- in respect of which ,the defendant had settled that as the plaintiff is to be paid transportation charges, no deduction at that stage towards short supply would be made. Further case of the plaintiff was that towards transportation charges, an amount of Rs,60,94,173.50/- was payable to the plaintiff by the defendant within a period of one month but defendant could not make payment looking to its financial stress. Further pleading was that though, in the month of October 2007, demands were made for payment of transportation charges, but defendant avoided. Later on, dispute was raised that coal received through sellers- Kuber Trading Company and Kuber Coal Traders was not as per approved quality. Later on ,deductions were made @ Rs.225/- per MT in so far as coal rate is concerned. Plaintiff was informed that after such deduction, only coal transportation charges would be paid. Finally, when payments were not made, plaintiff gave a notice on 02.01.2008 and suit was filed.

3. Defendant, in denial of case of the plaintiff, stated that no oral agreement, as pleaded by the plaintiff, had taken place between the parties. Defendant, instead, came out with a different version that the plaintiff had come to Hirma, Jharsuguda where he met with Managing Director of defendant- company and oral agreement was entered into between the parties under which ,the plaintiff was to supply coal at Hirma and coal rate included transportation charges. Defendant denied that there was any agreement over telephone, as pleaded by the plaintiff.
4. The defendant also raised an issue of territorial jurisdiction which issue was decided by the learned trial Court during the course of trial in favour of plaintiff and against the defendant. Learned trial Court framed following issues for its decision :

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1. क्या वादी एवं प्रतिवादी के मध्य 700/— रुपये प्रति टन भाड़ा की दर से कोयला परिवहन की मौखिक संविदा हुई थी ?
2. क्या वादी के द्वारा परिवहन किये गए कोयला का परिवहन भाड़ा, उस कोयला के क्रय मूल्य में सम्मिलित था ?
3. अ. क्या प्रतिवादी के द्वारा कोयले के परिवहन भाड़ा का भुगतान नहीं किया गया है, यदि हाँ तो राशि ?
ब. क्या उक्त राशि पर ब्याज देय है, यदि हाँ तो किस दर से एवं कब से ?
4. क्या वाद कारण के अभाव में वादी द्वारा प्रस्तुत यह वाद खारिज किये जाने योग्य है?
5. क्या वाद कारण हिरमा, जिला— झारसुगड़ा, उड़ीसा में उत्पन्न होने के कारण इस वाद की सुनवाई का क्षेत्राधिकार इस जिला न्यायालय को न होकर हिरमा, जिला— झारसुगड़ा, उड़ीसा स्थित न्यायालय को सुनवाई का क्षेत्राधिकार प्राप्त है?
6. सहायता एवं व्यय ?”

5. After allowing the parties to lead oral and documentary evidence, learned trial Court recorded a finding in favour of the plaintiff that plaintiff succeeded in proving oral agreement between him and the defendant and that the plaintiff was entitled to be paid transportation charges towards supply of coal made to defendant- Company by various firms. Learned trial Court also held that in view of its order dated 7.4.2011, the Court at Ambikapur had territorial jurisdiction. It also held that the defendant failed to prove that transportation charges were included in rates of coal. It awarded an interest @6% per annum to the plaintiff. Aggrieved by this judgment and decree, this appeal has been preferred by the appellant-defendant.
6. Learned counsel appearing for the appellant-defendant argued in extenso and contended that the suit of the plaintiff was liable to be dismissed on all counts. He argued that the plaintiff's plea of so called oral agreement dated 27.7.2007 is an afterthought. He argued that the pleadings, as originally contained in plaint and later on, added by way of amendment, in so far as oral agreement is concerned, are not only vague but inconsistent and suffer from inherent contradiction. He would argue that the plaintiff has not come out with any written agreement, therefore, there was a very high burden of proof cast upon the plaintiff to prove oral agreement, as pleaded by him. He would argue that pleadings in this regard are vague, evasive and not specific with regard to rate and do not even state as to how the transportation was to be made and its other details. His further argument is that the plaintiff's case is based on invoices Ex.P-360 to Ex.P-365 which are prepared after filing of the suit. These invoices do not bear any acknowledgment of receipt of the defendant. Though, the dates of these invoices are different in different months, the invoices are in seriatim. Further argument is that in the legal

notice dated 2.1.2018, no specific detail of these invoices have been given which proves that invoices are subsequently prepared. Further argument is that the evidence of the plaintiff is at variance with the pleadings made with regard to so called oral agreement dated 27.07.2007. The plaintiff suppressed the fact, which was disclosed from the written statement of the defendant and also admitted during evidence by the plaintiff himself that the supplier firms and transportation firms were all being run by the plaintiff only. Some of those firms are registered in the name of his wife and the son. The plaintiff in his evidence has admitted that all supplies were made by the plaintiff and he was dealing not only with the supply but rates of transportation and all business dealings between various coal transporting company on one hand and the defendant on the other. Further argument is that defendant has not only come out with specific plea but has led cogent and reliable evidence that the agreement with regard to supply of coal and its rates was concluded between the parties at Hirma, Jharsuguda in the presence of plaintiff and defendant –Mr. Mulchand Agrawal and other witnesses in which plaintiff had agreed to supply coal at Hirma and parties had also agreed for rate of supply which included transportation charges also. Further argument is that while making supply of coal not only short supply but the quality of coal was also not as agreed to between the parties which led to certain disputes and finally agreement was executed on 6.11.2007 and 7.11.2007 vide Ex.D-5 and Ex.D-6 respectively . If at all ,plaintiff had any grievance with regard to non-payment of transportation charges, the natural conduct of the plaintiff would have been to get this dispute also settled between the parties. But as there was no such dispute, plaintiff did not raise any further claim at the time of settlement of dispute between the parties under two agreements and long thereafter ,in the month of January 2008, he sent legal notice only to extract money from defendant in lieu of what

he had to pay under two agreements Ex.D-5 and Ex.D-6. Plaintiff also failed to plead and prove that in earlier supply also, he had been receiving separate invoices towards transportation charges and was receiving payment separately from rates. According to learned counsel for the appellant, learned trial Court gave undue weightage to bilties (transportation bills). The plaintiff case was not based on transportation bills (bilties) but on five invoices Ex.P-360 to Ex.P-365, which the plaintiff failed to prove.

Learned counsel for the appellant-defendant, referring to the definition of sale price, as contained in Central Sales Tax Act and C-Forms, filed as documentary evidence, submits that there is nothing in law which leads to an inference that if transportation charges are not separately mentioned in C-Forms, the sale price as mentioned would not be accepted as such. Learned trial Court misdirected itself in drawing an inference in favour of the plaintiff and against defendant on such consideration. Learned trial Court ought to have appreciated that transportation clause stated in transportation bills does not confer exclusive jurisdiction. His argument is that the defendant's plea of place of agreement between the parties as proved by him, being at Hirma, Jharsuguda, no part of cause of action arose at Ambikapur and, therefore, the learned Court at Ambikapur had no territorial jurisdiction to entertain suit and adjudicate upon plaintiff's claim and, therefore, the suit was liable to be dismissed only on this count.

7. Next submission of learned counsel for the appellant is that the balance sheet led by the plaintiff was prepared after filing of suit, therefore, learned trial Court was not correct in basing undue heavy reliance upon such subsequently prepared self serving document.
8. In reply, learned counsel for the respondent-plaintiff argued that the pleading with regard to oral agreement dated 27.7.2007, as contained in

the plaint, as originally filed and pleading ,as contained in the subsequent amendment do not weaken the case of the plaintiff as the subsequent pleading by way of amendment, only aimed at giving better particulars. The date of agreement, the manner in which the agreement was entered into, the rates at which, the parties had agreed, have been consistently and coherently pleaded by the plaintiff, both in original as well as amended pleading. His next submission is that plaintiff has not only clearly stated in the plaint but also led clinching evidence ,both oral and documentary, to prove oral agreement between the parties. His further submission is that while the plaintiff in support of his case of oral agreement has proved documents Ex.P-360 to P-365, the transportation bills, which have been admitted as having been received by the defendant, clearly contained specific recital with regard to transportation charges with the noting "To-Pay". Defendant never raised any dispute with regard to receipt of coal along with the aforesaid transportation charges. If defendant's case was that coal rate include transportation charges, the defendant ought to have immediately raised objection upon receipt of transportation bills which contained transportation details with endorsement of "To-Pay". Defendant kept on receiving supply of coal for long period with hundreds of such transportation bills filed along with the plaint and duly proved on the basis of admission of the defendant ,marked as Ex.P-1 to Ex.P-348. This documentary evidence fully supports the plaintiff's case of oral agreement dated 27.7.2007. His further argument is that in fact ,the defendant in reply to para 8-B of the plaint ,has clearly admitted oral agreement between the parties. Though plaintiff, upon such admission, was not required to further prove, as the agreement was admitted, yet the plaintiff led evidence because in the written statement, the defendant had also come out with an afterthought plea of another oral agreement between the parties at Hirma, Jharsuguda which the

defendant failed to prove. Further argument is that defendant's case of there being agreement between the parties at Hirma, Jharsuguda is neither supported by specific pleading nor proved by any specific evidence. Both pleadings and evidence do not contain any details of the rate of coal, rates of transportation charges and other details. A general statement of agreement having been entered into between the parties, has been pleaded and also stated in the evidence. Next submission is that the plaintiff case is that Mr. Mulchand Agrawal, the Managing Director of the appellant-Company talked to him over telephone on 27.7.2007 and oral agreement was concluded. This fact could be denied only by said Mr. Mulchand who did not enter the witness box. The defendant witness could not deny oral agreement between the plaintiff and Mulchand, as this could only be a matter of personal knowledge, it could be denied only by Mulchand and not by other defence witnesses who were his subordinates in the appellant-company. Learned counsel for the respondent –plaintiff further argued that the defendant case that rate of coal included transportation charges is liable to be disbelieved for yet another weighty reason that according to defendant, he had paid sales tax against C-Form wherein transportation charges have not been separately mentioned. According to him, this version is liable to be disbelieved because a prudent businessman would not invite higher tax liability which is not leviable by him under the law. As the sale price does not include transportation charges, the defendant would have separately mentioned transportation charges in C-Form to avoid unnecessary inflated tax liability of paying tax not only upon actual sale price of coal but also transportation charges. Defendant being a company incorporated under the Companies Act, it could have filed IT Return to prove payment of transportation charges but no such documentary evidence was led in evidence. Agreement dated 6.11.2007 and 7.11.2007 Ex.D-5 & D-7

respectively, are with regard to settlement of dispute regarding short supply and inferior quality and there was no occasion while entering into agreement with dealers firms to deal with issue of transportation charges.

9. Learned counsel for the appellant-defendant, in reply to argument of learned counsel for the respondent-plaintiff, also added to his argument earlier made, by submitting that no case of admission is made out. Referring to averment made in the written statement, inducing averment made in the amended paragraph, it is submitted that averment made in para-8-B were only assumptive statement. While replying to jurisdictional issue, he submits that in order to make out admission, pleading cannot be looked into in isolation but the entire pleading ,as a whole ,have to be examined. In para-1 and 4 of the written statement, the defendant has made emphatic pleading with regard to place where agreement was made and there is specific denial of any telephonic conversation as pleaded by the plaintiff. Defendant's case in para-7 and 11 also clearly shows that defendant case has been that of complete denial of so called agreement dated 27.07.2007. In support of various submissions made by him, he has relied upon **Privy Council (Calcutta Weekly Notes) Volume- XXXIV page -933 (Baba Jwala Das Vs. Pir Sant Das), United India Insurance Co. Ltd.Vs. Samir Chandra Chaudhary (2005) 5 SCC 784, Devasahayam (dead) By LRs. Vs.P. Savithramma and Ors. (2005) 7 SCC 653, Shri Udhav Singh Vs. Madhav Rao Scindia (1977) 1 SCC 511 Hindustan Sugar Mills Vs. State of Rajasthan (1978) 4 SCC 271 and New Moga Transport Co. through ITS Proprietor Krishanlai, Jhanwar Vs. United India Insurance Co. Ltd. and Ors. (2004) 4 SCC 677.**
10. In support of his submissions, learned counsel for the respondent-plaintiff placed reliance upon **Bhagwati Prasad Pawan Kumar Vs. Union of India (2006)5 SCC 311, Bharat Petroleum Corporation Ltd. Vs. Great**

Eastern Shipping Co. Ltd. (2008) 1 SCC 503, Indore Rolling Mills and Anr. Vs. State of M.P. 2007 (1) MPHT 522, AVM Sales Corporation Vs. Anuradha Chemicals Pvt. Ltd.(2012) 2 SCC 315 and Laxman Prasad Vs. Prodigy Electronics Ltd. & Anr. (2008) 1 SCC 618.

11. Respondent- plaintiff has also filed cross-appeal claiming interest @ 24%.

Learned counsel for the respondent-plaintiff argued that the plaintiff had claimed interest @ 24% but has been awarded only 6%. Referring to provision contained in Section 34 CPC, he submits that as the present one is a case of commercial transaction, therefore, appropriate commercial rates as applicable were liable to be awarded in favour of the plaintiff. Plaintiff specifically pleaded and also led evidence that he was entitled to rate of interest @24%. In support of this submission, he placed reliance on **Punjab & Sind Bank Vs. Allied Beverage Company Pvt. Ltd. & Ors. (2010) 10 SCC 640, Bhagawati Oxygen Ltd. Vs. Hindustan Copper Ltd.(2005) 6 SCC 462 and Clariant International Ltd. & Anr., Vs. Securities & Exchange Board of India (2004) 8 SCC 524.**

12. In reply to said submission, learned counsel for the appellant-defendant argued that the plaintiff failed to plead and prove that in the so called agreement dated 27.7.2007, parties had agreed that in case of non-payment within stipulated time, it will carry interest @ 24% . Further argument is that plaintiff did not lead any specific evidence with regard to rates of interest prevalent at the time. Therefore, his claim for higher rate of interest @24% per annum is without any pleading and evidence. In support of this submission, he placed reliance upon **Sri Srinivasa Co. Vs. Firm, Vitta Dodda Hanumanthappa Anjayya Setti (AIR 1985 AP 21).**

13. Having heard learned counsel for the parties, following issues arose for

determination in this appeal:

1. Whether learned Court below committed error of law and fact in recording a finding that plaintiff proved oral agreement dated 27.7.2007 ?
2. Whether defendant succeeded in proving oral agreement at Hirma ?
3. Whether the learned trial Court at Ambikapur had territorial jurisdiction to decide plaintiff's suit ?
4. Whether plaintiff is entitled to interest @ 24% per annum on the claimed amount from the date of institution of suit till date of payment ?

Points No. 1 & 2

14. To begin with, plaintiff-respondent argument that the appellant-defendant has admitted plaintiff's case cannot be accepted. If we look into pleading made by the defendant in para-1 to 4 and para-7 to 11 as also para-8-B in his written statement, it is more than clear that the defendant has emphatically and specifically denied the oral agreement dated 27.7.2007. It is well settled legal position that if statement is to be looked as an admission, the whole statement must be taken into consideration. The pleading contained in para-8-B in the written statement is based on assumptive statement while replying to plea with regard to territorial jurisdiction. The defendant, at more than one place, in his written statement, has clearly and emphatically denied the agreement as pleaded by the plaintiff. The legal position settled with regard to admission has been well settled in plethora of decisions. Though, learned counsel for the respondent-plaintiff has cited several decisions on this aspect, on the aspect of admission, we do not consider it necessary to deal with this aspect any further, in view of specific denial made by the defendant in his

written statement.

15. In the present case, as is seen from the pleading of the plaintiff and defendant, it is not in dispute that the defendant-company had received supply of coal. The pleadings and evidence led by both the parties make out a clear case of admission of this aspect that there was supply of coal made to the defendant. While case of the plaintiff is that the coal was supplied to the defendant between July 2007 to September 2007 from Ambikapur to Hirma, Jharsuguda by coal dealers- Nitesh Traders, Kuber Coal Traders, Kuber Trading Company and Laxmi Coal Traders which was transported by Patel Road Lines, of which the plaintiff is the proprietor, the defendant's case has been that defendant, while admitting supply of coal states that, though, supply were made in the name of different trading firms, all belong to the family of plaintiff and it is the plaintiff who is virtually running the business of trading in coal in the name of different firms, some of which are registered in his own name and some in the name of his wife and the son. However, supply of coal is not in dispute. Further, the defendant has stated in the written statement that it has paid towards the supply of coal. To this, plaintiff has also not raised any dispute.

16. However, the dispute between the parties is with regard to the agreement towards supply of coal and the main dispute between the parties is as to whether the rates of coal included transportation charges also. While the plaintiff's case has been that an oral agreement was entered into between the plaintiff and Mr. Mulchand Agrawal, the Managing Director of appellant-Company on 27.7.2007 over telephone wherein Mr. Mulchand offered to pay and plaintiff accepted offer of payment of transportation charges with maximum of Rs.700/- per MT, according to defendant's pleading, the place of agreement and nature of agreement both were different. According to defendant, this oral agreement has taken place not

at Ambikapur but at Hirma, Jharsuguda. According to defendant, plaintiff had come to Hirma and it was agreed by the plaintiff that he will supply coal to defendant company at Hirma and further that the parties had agreed for a rate of coal which included transportation charges also and no separate transportation charges were payable by the defendant to the plaintiff against supply of coal. Learned trial Court recorded finding in favour of plaintiff holding that plaintiff has succeeded in proving its agreement, whereas defendant failed to prove the agreement as pleaded by him. In the plaint, plaintiff has pleaded that there has been dealing between plaintiff and defendant for last two years and the plaintiff has been entertaining various dealers regarding supply of coal with Mr. Mulchand who is the Chief Managing Director of the defendant-Company. Plaintiff has pleaded that supply of coal had taken place on credit basis between the period from July 2007 to September 2007 from firms- Nitesh Traders, Kuber Coal Traders, Kuber Trading Company and Laxmi Coal Traders. It was further specifically pleaded that on 27.7.2007, defendant telephoned the plaintiff and offered to pay transportation charges at a maximum of Rs.700/- per MT which was accepted by the plaintiff at Ambikapur. Plaintiff has further pleaded that it was also agreed to between the parties that defendant shall obtain the supply of coal from the supplier firms at Ambikapur at his own risk and would entrust the same to the plaintiff for being transported and the transport would be at the risk of the plaintiff. Plaintiff's further case is that entire coal was transported by the plaintiff, the transporter firm between the period July 2007 to September 2007 from Namnakala, Ambikapur to Hirma, Jharsuguda through his transport service along with gate pass, challan, transport bill. These goods at the destination point at Hirma were again weighed and upon due grade check, delivery accepted and acknowledgment of bilties (transport bills) were also given in respect of supply of coal, though there

was shortage of 12.320 MT.

In respect of its plea of oral agreement dated 27.7.2007, plaintiff led oral as well as documentary evidence both. Dilip Bhai Patel (PW1), plaintiff himself has stated in his evidence under Order 18 Rule 4 CPC regarding the said oral agreement dated 27.7.2007 that the oral agreement was arrived at between him and Mr. Mulchand over telephone and the parties had agreed for maximum Rs.700/- per MT as transportation charges. At this juncture, it is relevant to take note of the submission of learned counsel for the appellant that the pleading as originally made in the plaint with regard to agreement and what has been added by way of amendment, there is inconsistency and inherent contradiction. Upon close scrutiny of the pleadings in this regard as contained in the main pleading as well as in amended pleading, we do not find any such inconsistency. In fact, in subsequent pleading, the plaintiff has come out with some more details of talk between the parties before reaching to an agreement of transportation at the maximum rate of Rs.700/- per MT. Merely because plaintiff had given better particulars with regard to the agreement entered into between him and the defendant by stating regarding higher rate demanded by the plaintiff but finally Rs.700/- per MT was accepted as the maximum rates, it cannot be said that the plaintiff pleading in this regard is, in any manner, inconsistent or suffer from inherent contradiction.

17. Plaintiff- Dilip Bhai Patel (PW1) has stood firm on his evidence and despite detailed cross-examination, nothing could be elicited to controvert the emphatic evidence in this regard as led by the plaintiff. Plaintiff's case is further supported from documentary evidence of the transportation bills which have been led in evidence by the plaintiff as Ex.P-1 to Ex.P-348. On perusal of this transportation bills, it is clear that these transportation bills not only contain specific rates of transportation but also total amount

of transportation charges. Most importantly, all these transportation bills contained specific endorsement "To-Pay". This emphatic documentary evidence led by the plaintiff in support of his pleading of oral agreement of payment of transportation charges, has been admitted by the defendant. The defendant witness have clearly admitted that these document of transportation bills from Ex.P-1 to Ex.P-348 were received under acknowledgment of receipt by the defendant at the time of supply of coal. If that be so, what prevented the defendant from disputing these transportation bills if at all ,case of defendant was that rate of coal included transportation charges. The defendant have admitted and documentary evidence in this regard has also been admitted by both parties that against bills raised by various supplier firms, defendant paid huge amount towards cost of coal supplied to it. If defendant case is to be accepted that rate of coal included transportation charges as well, natural conduct of the defendant would have been to immediately dispute the very first transportation bill at the time of receiving coal. But the defendant did not dispute, having accepted these documents. Defendant has examined three defence witnesses namely Shyam Ji Mishra (DW1), Vimal Kumar Swai (DW2) and Vijay Sharma (DW3). Shyam Ji Mishra (DW1) is an officer in the personnel department of defendant – company. Though ,in his evidence under Order 18 Rule 4 CPC, he has stated that coal rate included transportation charges, in para-20 & 21 of his cross-examination, he admits that the bilties (transportation bills) in respect of supply of coal, led in evidence in the case, are of "To-Pay" bills. He also admits that in all these documents, the transportation rates has been mentioned. In para-32, he admits that the supplier company had supplied the entire quantity of coal between the period July 2007 to September 2007. In para-37 of his cross-examination, he admits that plaintiff had transported coal to defendant company through it's transport service

namely, Patel Road Lines and it was through this transport service that the defendant received supply of coal.

18. The other defence witness Vimal Kumar Swai (DW2) has stated in para-31 of his cross-examination that while receiving coal supply, one copy of transportation bill is returned to the truck driver and one copy is retained by the company. He has further stated that such copy is retained for the purpose of audit. He admits that in all the bilties, transport charge has been mentioned. He further deposes that no letter was sent to the plaintiff by the defendant mentioning as to why separately ,transportation bills are being sent. He, however, seeks to explain by deposing that if transportation bills are not there, the truck are not allowed to cross the State border. However, this statement appears to be more in the nature of self serving and no specific evidence in this regard has been led.

19. Thus, the plaintiff's case of oral agreement dated 27.7.2007 is also proved from transportation bills. Ex.P-1 to Ex.P-348, which are all admitted documents. There is no evidence led by the defendant, oral or documentary, that immediately upon receipt of the transportation bills, defendant raised any objection to sending separate transportation bills on the ground that rate of coal included transportation charges, therefore, the plaintiff was not required to send separate transportation bill.

20. In the present case, in the evidence, it has come that the defendant has received supply of coal against 'C-Form', which related to payment of inter-State sales tax. Shyam Ji Mishra (DW1) admits in para 22 of his cross-examination that supply of coal was made against 'C-Form' which used to be obtained by the defendant company from the Department of Sales Tax. He also admits that sales tax is payable on goods.

Vimal Kumar Swai (DW2) admits in para-21 of his cross-examination that no sales tax or VAT is payable on transportation

charges. He further admits that 'C-Form' used to be issued by the company in respect of supply of coal by the coal supplier company and under 'C-Certificate' tax is paid on the rates of goods. This witness is also confronted with 'C- Certificate' signed by him and exhibited as Ex.P-721, Ex.P-722, Ex.P-723 and Ex.P-724 and the receipt as Ex.P-721/A, Ex.P-722/A, Ex.P-723/A and Ex.P-724/A. He has admitted his signature on Ex.P-721, Ex.P-722, Ex.P-723 and Ex.P-724. Further admission is that 'C-Forms' were issued without any deduction. When this witness was put a specific question that 'C-Form' ought to be issued by separately showing rates of transportation charges and rate of coal, in reply, witness deposed that bill has been prepared and submitted by adding rate of coal transportation charge and on that, additional CST @ 2% has been added. He clarifies that 'C-Certificate' was not issued in respect of the entire amount of bill. He further admits that bill Ex.D-10, in respect of Kuber Coal Traders, does not mention transportation charges and he admits that he had not issued any notice to coal supplier company for adding transportation charges in the rate of coal which he explains by stating that no agreement in that regard was entered into between the coal supplier and defendant company.

21. From the aforesaid evidence, it is clear that all the 'C-Forms' against which supply of coal was taken by defendant company, did not separately mention transportation charge. That means, the defendant, while receiving supply of coal from plaintiff, allowed transportation charges to be added in the sale price, thereby incurring higher tax liability. According to defendant witness, transportation charges are not taxable. If that be so it goes against the defendant that as a prudent businessman, that he would not get separately mentioned transportation charges in the 'C-Forms' and unnecessary invite higher burden of tax by allowing transportation charges to be included in sale price.

22. Learned counsel appearing for appellant- defendant has argued that defendant case that the parties had entered into rate of coal which included transportation charge could not be doubted only on this count, relying upon **Hindustan Sugar Mills** (supra). Relying upon observations made in para 7-8 of the aforesaid judgment, he would submit that it is immaterial to enquire as to how the amount of consideration is made up ,whether it included excise duty or sales tax or freight. He would submit that it is only when such cost are separately charged, a party may find out necessary to separately mention the same in 'C-Form'. The issue is not whether it was permissible under the law for defendant to separately show transportation charge but whether in the present case, non-mention of transportation charges separately, when according to defendant own evidence, transportation charge is not leviable to tax, renders case of the defendant improbable, as compared to that of the plaintiff case. Even if it is accepted for the sake of argument that transportation charges were included in the rate of coal, when occasion arose for the defendant to pay sales tax against supply of coal by obtaining 'C-Forms', as a prudent businessman, the defendant would have separately mentioned transportation charges and claimed payment of sales tax only on the price of coal, minus transportation charges. Therefore, on this count also, the plaintiff case is strengthened.

23. As against plaintiff's case of there being an oral agreement dated 27.7.2007, defendant has come out with plea of oral agreement, entered between the plaintiff and Mr. Mulchand at Hirma, Jharsuguda. However, neither in the pleadings nor in the evidence of any of the defence witness, it has anywhere been stated as to what were the terms, at what rate of transportation charges parties had agreed. Even the date on which ,such agreement was entered into has not been stated in the pleading and evidence of the defendant. The defendant witnesses have been cross-

examined on the aspect as to whether defendant have led any documentary evidence of entry of plaintiff in the defendant's guest house. No documentary evidence of arrival of the plaintiff could be led by the defendant.

24. Importantly, in the present case, as against the plaintiff plea that he had entered into oral agreement with Mr. Mulchand over telephone on 27.7.2007, Mr. Mulchand has not entered into witness box. While denying plaintiff case of oral agreement dated 27.7.2007, defendant has come with the pleading that there was oral agreement not at Ambikapur but at Hirma, Jharsuguda. Thus, defendant while denying oral agreement dated 27.7.2007, as pleaded by the plaintiff, has come out with their own pleading of oral agreement at Jharsuguda. Shyam Ji Mishra (DW1) admits in his cross-examination that ,in written statement, it has not been pleaded that in respect of supply and transportation of coal, agreement was entered into by any person other than Mr. Mulchand. He admits that Mr. Mulchand resides at Delhi and healthy and he has knowledge of transaction with the plaintiff. He further admits that in the verification clause of written statement, it has not been mentioned that the written statement has been prepared on the basis of information given by Mr. Mulchand.

It would thus be seen that Mr. Mulchand himself did not enter into witness box to either specifically deny the fact of agreement ,as pleaded and deposed by the plaintiff nor did he enter into witness box to prove agreement as pleaded in the written statement. The employee of defendant company who claimed to be present at the time of agreement namely Shyam Ji Mishra (DW1) has been examined as witness of proof of agreement at Hirma. The other defence witness Vimal Kumar Swai (DW2) has also been examined to prove the defendant's case of there being an oral agreement between the plaintiff and Mr. Mulchand, Chief

Managing Director of the defendant company. Both these witnesses in their evidence do not say that agreement was entered into by the plaintiff with them but according to them ,agreement was entered into between the plaintiff and Mr. Mulchand, the Chief Managing Director of the defendant-company. Thus these person only claimed to be witness and not the person with whom the plaintiff claimed to have entered into agreement. Moreover, the defendant Mr. Mulchand did not enter into witness box to prove so called agreement with plaintiff at Hirma. Viewed from this angle also, finding of learned trial Court holding that plaintiff succeeded in proving oral agreement dated 27.7.2007 and defendant failed to prove any such agreement at Hirma does not call for any interference.

Point No.3

25.Once this Court held that oral agreement dated 27.7.2007 is proved, in view of provision contained in Section 20 (c) CPC and the settled legal position, acceptance having taken place at Ambikapur, a part of cause of action can certainly be said to have arisen at Ambikapur itself. It is not necessary for us to go into other aspect of territorial jurisdiction.

Point No.4

26.As far as respondent –plaintiff's cross-appeal with regard to claim of interest @24% is concerned, we do not find that learned trial Court has committed any illegality in awarding interest @6% per annum. Even according to plaintiff's pleading, there was no term of oral agreement between the parties that in the event of non-payment of transportation charges within a stipulated period, it will carry interest @24%. Moreover, plaintiff has not led any specific evidence with regard to available commercial rates. Therefore, in these circumstances, the award of

interest @6% does not call for any interference.

27. In the result, the defendant's appeal and plaintiff's cross-appeal both are dismissed. No order as to costs.

28. Let appellate decree be drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge

Praveen