

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.10.2021

Pronounced on : **02.11.2021**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P (PD).No.2905 of 2016

and

C.M.P.No.14777 of 2016

M/s.Eden Exports Company,
M.C.Road, Ambur.

... Petitioner

Versus

M/s.Hind Process Private Ltd.,
New No.109, Triplicane High Road,
Chennai – 600 005.

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the dismissal of fair and decreetal order, dated 19.11.2015 passed in I.A.No.1111 of 2015 in O.S.No.10418 of 2010, on the file of the VII-Additional Sessions Court, Chennai, pending disposal of the above CRP.

For Petitioner : Mr.M.Sriram

For Respondent : Mr.S.Diwakar

ORDER

A. The Petition :

This Civil Revision Petition is filed by the defendant in the suit as against the Order of the Learned VII Additional City Civil Court, Chennai, dated 19/11/2015, in I.A. No. 11111 of 2015 in O.S. No. 10418 of 2015,

whereby the learned Judge allowed the application filed by the Respondent/ Plaintiff under Order 7 Rule 14 of the Code of Civil Procedure, to grant leave to produce 19 additional documents and mark them as exhibits in support of his case.

B.The Facts :

2.The above O.S. No.10418 of 2015, is filed by the plaintiff for recovery of a sum of Rs. 12,53,207/- with further interests and costs. The amount is claimed due towards the supply of goods namely 'laminated show boxes' as per the statement of accounts maintained between the plaintiff and the defendant. The defendant is contesting the suit. While admitting that it had business transactions, it is the defendant's case that the dues would be paid then and there and there are no dues. And that the suit is speculative and the invoices relied upon have nothing to do with them. The further contention is that the suit is barred by limitation and the alleged payment of Rs. 2,00,000/- made on 3/10/2007 was not made by them towards the balance outstanding but the plaintiff had misused the cheque.

3.Originally along with the plaint four documents, that is, (i) Statement of Accounts; (ii) 34 Nos of Invoices, (iii) Legal notice caused by the plaintiff and (iv) the postal acknowledgment were produced by the plaintiff.

4. On verification of the suit papers by this court, it is seen that on behalf the plaintiff one Mr. Giriraj, was examined as PW-1. He was cross examined on 02/07/2015, 06/07/2015, 09/07/2015 and 15/07/2015. On 15/07/2015, the plaintiff was specifically posed the following question “ஆவணங்களும் 2 statements of accounts-ன் மூல ஆவணங்களை அனைத்தையும் நீங்கள் produce பன்னவிலலை செய்யவேண்டுமென்றால் தாக்கல் செய்கிறேன்”. The cross examination was completed on 15/07/2015 and the matter was posted for further evidence of the plaintiff. On 24/07/2017, the plaintiff filed an application to receive the additional documents and the application was ordered and the matter was posted for examination of the plaintiff to mark the additional documents on 21/09/2016, on which date, it was informed to the Lower Court that a stay has been granted by this Court in the Civil Revision Petition and the matter is pending at this stage.

C. The Submissions :

5.Mr. Sriram, the learned counsel appearing for the petitioner/defendant, would submit (a) the document Nos. 1 and 2, sought to be produced as additional documents are Ledger Accounts and as such, as per Order VII, Rule 17 of Civil Procedure Code, the same ought to have produced along with plaint or the original ledgers ought to have been produced and got

compared at the stage of the filing of the plaint itself and therefore, as per Order VII, Rule 17, read with Rule 14, the plaintiff is barred in law to produce the said documents as additional documents and they cannot be received as evidence at this stage; (b) the application is belated and the plaintiff in spite of being put the stand of the defendant to notice in the written statement and in spite of being cross examined, omitted to produce the documents and belatedly cannot be permitted to produce the same.

6. Per contra, Mr.S.Diwakar, learned counsel appearing for the respondent/plaintiff would submit that (a) that the provision contained in the Order VII, Rule 17, was relevant to the yesteryear, wherein, the ledgers were physically maintained in the shop and is no longer relevant, since now the statement of accounts are all maintained digitally through accounting software and only computer generated printouts are sought to be marked and therefore the bar under Order VII Rule 17 will not apply; (b) In view of the provision under Order VII Rule 14 only he is seeking the leave of the Court and as such, considering substantial justice, the plaintiff must be permitted to produce these ledger accounts and also the delivery notes as further proof of supply of goods; (c) That the application is not belated and immediately upon the cross examination, the application was filed and already the Court below re-opened

the matter and the plaintiff is still in the box and only because the plaintiff was unable to produce the documents at the time of plaint, they are produced as additional documents.

D. The Questions :

7.The following questions therefore arise in the present civil revision petition for consideration :-

- (i) Whether by virtue of the provisions under Order VII Rule 17, read with Order VII Rule 14, a plaintiff would be barred to produce the ledger accounts as evidence, if it is not produced originally along with plaint ?
- (ii) Whether the additional documents are to be permitted in view of the delay in producing the same ?

E. Question -I :

8.To consider the first question, it is useful extract Order VII, Rule 17 CPC, which reads as follows:-

“17. Production of Shop-Book:

(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891), where the document on which the plaintiff sues is an entry in shopbook or other account in his possession or power the plaintiff shall produce the book or account at the time of filing the plaint,

together with a copy of the entry on which he relies.

(2) Original entry to be marked and returned - The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.”

9. Order VII Rule 17 CPC clearly states that the ledger note book, which is maintained in the shop, in the course of business, in a systemic manner is considered as an exception to the Rule that no man can be a judge for his own cause. In the course of the business, if the entries are made in the books kept in the shop, it gives sanctity that it would reflect the fact with regard to any interpolation or addition. That is why, specifically Rule 17, envisage that such ledger book be produced along with the plaint and even if the ledger is voluminous documents, the original has to be produced and after comparing the copy of the ledger book, the same shall be returned to the petitioner.

10. To understand the nature of this evidence, in ***Chandradhar Goswami and others -Vs- The Gauhati Bank Ltd***^[1], the Hon'ble Supreme

¹ AIR 1967 SC 1058 ;

Court of India, has held thus :-

“Section 34 is in these terms:-"Entries in books of account, 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."

It is clear from a bare perusal of the section that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them.”

11.The Kerala High Court in **Shambhu Bhat v. Karnataka Vyavasaya Varthaka Sangha Ltd^[2]**, has held thus :-

"The finishing words of the section "shall not alone be sufficient evidence to charge any person with liability" certainly indicate that the evidence of the entries in books of account, though are relevant, cannot be treated as independent and substantial evidence. The evidentiary value of the entries in the account book must

2 1987(1) KLT 768

therefore be corroborative, supportive or confirmatory in nature. So, if an entry in the Books of Account regularly kept in the course of business, is proved, it is merely corroboration of the evidence given by witnesses who have spoken to the facts of the claim. This Section evidently makes an exemption to the doctrine that "a man cannot make evidence for himself ". Wigmore says "the principle of admissibility of parties' account books shows a recognition of the two traditional features of hearsay exceptions in general, namely, the Necessity Principle and the Circumstantial Guarantee of Trustworthiness." To attract this section, it has to be proved that the accounts are written in a book and that book must be a book of account and that account must be one regularly kept in the course of business. To say that the account is regularly kept in the course of business, it requires that the accounts are kept according to a set of rules or a system."

12. Again, the Kerala High Court in ***Sankaran Ezhuthachan v. Velayudhan Ezhuthachan***^[3], has held thus :-

".....law presumes that when accounts are maintained systematically, that is to say, following an established practice, or in the language of the statute, where they are kept 'regularly in the course of business', the regularity in

3 ILR 1978 (1) Kerala 619

or the systematic manner of maintaining such accounts would ensure their general accuracy and would prevent chances of misstatements and falsification. Therefore, if disputed, it has first to be ascertained whether the books of account have been regularly kept in the course of business. The enquiry here is not whether the particular entry is correct and true but as regards the regularity of keeping accounts or in other words the system or practice of maintaining them."

13. But, it is to be noted that, with efflux of time, these ledger books have given way to digital software, now a days, physical books are no more maintained and statements of accounts or entries are made in the computers. While so, the original purpose of giving an additional sanctity that any interpolation or correction can be noted are no longer relevant, in as much as these entries can be entered, deleted, re-entered any number of times in the digital documents.

14. This apart, the Tripura High Court in ***Sri Arindam Gosh -Vs- Shri Abhijit Debnath***^[4], after considering the nature and purpose of the Rule, has held that Order VII Rule 17 is not a tyrant but is in aid of justice and held that it

⁴ <https://indiankanoon.org/doc/146171336/>

is directory and not mandatory and I am in respectful agreement with the same, especially, when the ledger accounts are maintained in a digital form.

15. Even as per the Order VII, Rule 14(3) any document, which is not originally produced along with the plaint can be received in evidence with the leave of the Court and the Court is empowered to grant leave to provided that the plaintiff adduces sufficient reason for not producing the additional documents, originally along with the plaint. Therefore, I answer the question that it cannot be held that there is a bar of Order VII, Rule 17 read with Order VII, Rule 14 of CPC., for the plaintiff to produce the said documents.

F. Question: No.2:

16. The second submission of the learned counsel for the petitioner is that inspite of the cross-examination and inspite of the stand being made clear in the written statement, the plaintiff chose to causally produce these documents belatedly. I am impressed by the submission made on behalf of the respondent that these documents were not traceable, at the time of filing of the plaint and that only subsequently, they got hold of the documents especially, when the plaintiff answers in the cross-examination by the defense that even giving an opportunity, he is willing to produce the documents and immediately,

he sought to produce these documents, though not during the cross-examination itself, but, immediately, after the cross-examination was concluded. However, considering the nature of the claim, the nature of the defense made in the written statement, the documents being relevant and essential for the disposal of the suit, I hold that as extracted in paragraph No.3 of the above, the plaintiff also immediately produced the documents, after such plea was categorically made in the cross-examination. It is to be noted that these procedural nuances, should always be read in the manner, so as to advance substantial justice and when these additional documents brought light and truth and the facts relevant to the issue, which is being tried in the suit, it would be in the interests of the justice to allow the same.

17. In ***Sardar Amarjit Singh Kalra -Vs- Promod Gupta & others***^[5], the Constitution Bench of the Hon'ble Supreme Court of India has in paragraph No.26, laid down as under :-

"Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even in adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the

5 2003 (3) SCC 272

handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice."

I therefore, answer question no.2, in favour of the respondent/ plaintiff and hold that the additional documents are to be permitted. However, the plaintiff has to be put on costs for causing inconvenience to the defendant/respondent and I am of the view that costs of Rs.5,000/-, shall be paid by the plaintiff to the defendant/respondent, within a week, from the date of receipt of a copy of the order. Whether mandatory or directory, if only parties diligently and scrupulously follow the Rules of the Civil Procedure Court, effective and timely adjudication of the disputes will be possible.

G. The Decision :

18.For the foregoing reasons, I am unable to interfere with the order of the Trial Court, allowing the application for additional documents. However, the plaintiff shall pay costs for a sum of Rs.5,000/- to the defendant, within 10 days from the date of receipt of the copy of this order, failing which, the application for additional documents shall stand automatically dismissed.

19.Considering the suit is of the year 2010, the Trial Court is requested to dispose off the same, as expeditiously as possible, in any event, within a period of three months, from the date of receipt of a copy of this order.

20.With the above observations and directions, this Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

.11.2021

Index : yes/no
Internet :yes/no
Speaking/Non-Speaking order

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To

The VII-Additional Sessions Court, Chennai.

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C.R.P (PD).No.2905 of 2016

D.BHARATHA CHAKRAVARTHY. J.,

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Pre- Delivery Order in
C.R.P (PD).No.2905 of 2016
and
C.M.P.No.14777 of 2016

.11.2021

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