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A.S.No.298 of 2015

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Judgment Reserved on : 31.10.2022

Judgment Pronounced on : **11.11.2022**

CORAM :

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

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M/s.Credence Logistics Ltd.,  
Having its Registered Office at Kolkata,  
Presently having its Branch Office at  
332/1A, Thiruvagoundanoor Bye Pass,  
Salem, rep. by its,  
DGM-South N.Madhusudhan Reddy .. Appellant

**Versus**

M/s.Mintech Inc.,  
A Partnership Firm,  
Rep. by its Managing Partner,  
A.G.Poovaraghavan,  
84/69, Junction Main Road,  
Near Office of the EE, TNEB,  
Salem - 5. .. Respondent

**Prayer :** Appeal Suit filed under Section 96 read with Order 41 Rule 1 of Civil Procedure Code against the judgment and decree, dated 15.12.2014 passed in O.S.No.51 of 2010 on the file the Court of the learned III Additional District-cum-Sessions Judge, Salem.

For Appellant : Mr.K.Govi Ganesan



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Mr.S.Vinoth Kumar

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For Respondent : No Appearance  
**JUDGMENT**

**A. The Appeal Suit :**

This Appeal Suit is filed against the judgment and decree, dated 15.12.2014 in O.S.No.51 of 2010, in and by which, the suit filed by the plaintiff for recovery of a sum of Rs.21,98,825/-, being the transport charges for transporting the minerals (Tundhish Mass, E.B.T Mass, Graded Olivine Sand) of the defendant from Salem to Bhilai (Chandigarh) and Belphar (Orissa), was dismissed by the Trial Court.

**B. The Plaintiff :**

2. The case of the plaintiff is that the plaintiff is a Logistics Transport Company, involved in arranging for transport of various kinds of goods. Upon the order of the customers, the plaintiff, by their own vehicles and also by vehicles arranged by them, transport materials on charges. While so, the plaintiff and the defendant entered into a letter of understanding, dated 24.04.2008 for providing Trucks for transport of Tundhish Mass, E.B.T Mass, Graded Olivine Sand) of the defendant from Salem to Bhilai (Chandigarh) and Belphar (Orissa). The defendant agreed to pay the



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prevailing market rate for the transport costs. Based on the letter of understanding, between 13.04.2008 to 08.08.2008, the plaintiff Company had transported 91 Truck loads of Tundhish Mass, E.B.T Mass, Graded Olivine Sand) of the defendant from Salem to Bhilai (Chandigarh) and Belphar (Orissa).

3. After the goods having been received by consignees and the consignees having made necessary endorsements, when the bill was sent to the plaintiff for transport charges, remained outstanding. On 10.08.2008, the defendant also admitted the statement of accounts that a sum of Rs.21,98,825/- was balance due. Even the payments made were irregular and were after the bouncing of cheques and filing of complaints in respect thereof. While so, in order to avoid further payment, the defendant lodged a complaint before the Central Crime Branch Police and the plaintiff's representative had to appear before them on 27.01.2009 and only thereafter, the proceedings were dropped. In this background, a legal notice was issued on 09.02.2009, for which, a reply with false averments was issued on 24.02.2009 and hence the suit is filed for recovery of the said sum of



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Rs.21,98,825/- with interest at the rate as the Court deems fit from the date of filing of the suit till the date of realisation of the entire amount.

### **C. The Written Statement :**

4. The defendant denied that it executed a letter of understanding to the plaintiff Company on 24.04.2008. The transactions are admitted. The defendant had paid a sum of Rs.2,00,000/- and after receiving the same, due voucher receipt has been issued on 19.06.2008. Similarly, for payment of Rs.70,000/- on 30.07.2008, a receipt has been given to the defendant. The defendant had also paid a sum of Rs.91,100/- on 04.07.2008 with due receipt. On 30.10.2008, the defendant had paid through four Demand Drafts. On 07.11.2008, a sum of Rs.3,00,000/- was paid as cash and receipt has been issued. On 26.11.2008, a sum of Rs.2,47,000/- has been paid with due receipt thereof. Finally, on 10.12.2008, a balance sum of Rs.15,37,452/- has been paid as cash and the plaintiff has duly acknowledged. All these receipts are duly signed by one *G.Sampath*, who is the Branch Head of the plaintiff. When the defendant produced all those documents before the plaintiff, it is only the plaintiff who lodged the Police complaint before the Central Crime Branch, Salem. Upon finding the truth,



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the Police have dropped further action and thereafter, the present suit has been filed.

#### **D. The Issues :**

5. On the strength of the above pleadings, the Trial Court framed the following issues:-

*(i) Whether the defendant had executed and delivered to the plaintiff the letter, dated 24.04.2008?*

*(ii) Whether the defendant is liable to pay the same as claimed in the plaint?*

*(iii) Whether the plaintiff is entitled for the same as prayed for by him?*

*(iv) To what relief?*

#### **E. The Evidence :**

6. On the pleadings, one *Madhusudhan Reddy* was examined on behalf of the plaintiff as P.W.1 and **Exs.A-1** to **A-7** were marked. On behalf of the defendant, one *Poovaraghavan* was examined as D.W.1 and **Exs.B-1** to **B-14** were marked.

#### **F. The Findings of the Trial Court :**



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7. The Trial Court, by a judgment dated 15.12.2014, found that when the defendant has produced the receipts and if the plaintiff claims that the money can never be paid to the plaintiff by way of cash and that the said *G.Sampath*, who was the employee of the plaintiff, was not authorised to receive the said amounts, the plaintiff ought to have taken steps to bring out the same by producing its own ledger accounts and other documents to falsify the receipts. In the absence thereof, the contention of the plaintiff that the defendant did not properly prove the receipts and the defendant did not examine the said *G.Sampath* is untenable and once the said *G.Sampath* is admitted to be the employee of the plaintiff who was incharge of the branch, then the onus lies on the plaintiff to disprove the receipts in **Exs.B-1** to **B-5** and **B-7** to **B-13** as false or concocted and in the absence of the same, the plaintiff's suit is bound to fail and accordingly answered all the issues in favour of the defendant and against the plaintiff.

#### **G. The Submissions :**

8. Heard *Mr.K.Govi Ganesan*, learned Counsel appearing on behalf of the appellant. In spite of service of notice, none appears on behalf of the respondent.



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9. *Mr.K.Govi Ganesan*, learned Counsel appearing on behalf of the appellant, taking this Court through the pleadings and the evidence on record, would submit that on the face of it, it can be seen that the defendant, in collusion with the said *G.Sampath*, has created receipts out of letter heads. The manner in which the letter heads are signed by itself would demonstrate that the same are concocted for the purpose of the suit. As a matter of fact, the plaintiff is a Logistics Company and the receipts for payment will be issued in due formats and will not be issued on letter head. Therefore, either in collusion with the said *G.Sampath* or by misusing the letter head, the exhibits are created by the defendant. The plaintiff was not at all in the habit of receiving such huge amounts as cash and therefore, the attempt of the defendant is nothing but to create a fake proof as to the repayment. Therefore, the Trial Court ought to have rejected the said receipts and decreed the suit.

10. The learned Counsel would further submit that as far as the onus of proof is concerned, it is the defendant who is asserting the factum as to the payment and therefore, the said *G.Sampath*, being a very necessary and



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important witness, it is the defendant who failed to examine him and bring the best evidence on record, the Trial Court ought to have held that the plaintiff has otherwise proved the suit claim and ought to have decreed the suit. The learned Counsel would submit that by examining P.W.1, the entire transaction and the balance amount due has been brought on record by the plaintiff. As a matter of fact, the defendant had also denied even execution of the letter of understanding which fact was disbelieved by the Trial Court and would itself adumbrate the false pleas of the defendant. Therefore, the learned Counsel would pray that the Appeal Suit may either be allowed in full or in any event, this Court finds that there is shortage of evidence, in view of the genuineness of the claim of the plaintiff, the matter can atleast be remanded back to the Trial Court with an opportunity to the plaintiff to prove the said facts.

11. The learned Counsel also relied upon the judgment in **Anita Rani Vs. Ashok Kumar and Ors.**<sup>1</sup>, more specifically relying on paragraph No.27, which reads as follows:-

" 27. As pointed out earlier, the respondents have admitted that the moneys as claimed by the appellant-plaintiff were either

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<sup>1</sup> 2021 SCC OnLine SC 1265



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*paid by the plaintiff or flown out of the plaintiff's account into their own account. Therefore, the onus was actually on the respondents to prove either a discharge by way of settlement of accounts or the gratuitous nature of the payment. The respondents miserably failed to discharge the onus of proof so cast upon them. Hence, the plaintiff-appellant is entitled to a decree despite a few discrepancies in her evidence, especially when the discrepancies have no bearing upon the payment/flow of monies from the plaintiff to the defendants."*

#### **H. Points for consideration :**

12. Upon consideration of the submissions made by the learned Counsel of the plaintiff and perusal of the material records of the case, the following points for consideration arise for determination in the present Appeal Suit:-

(i) Whether or not the plaintiff has proved that a sum of Rs.21,98,825/- is due from the defendant?

(ii) If so, to what relief the plaintiff is entitled to?

#### **I. Question Nos.1 and 2 :**

13. As far as the first point for consideration is concerned, admittedly, in this case, the factum as to the business of the plaintiff, the business of the defendant, the transport of the materials from Salem to Bhilai (Chandigarh)



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and Belphar (Orissa) are all admitted. The dispute is as to the fact as to whether the defendant has repaid the amount or not. Firstly, when the defendant is bringing a new fact of repayment in the written statement, it can be seen that no reply statement has been filed by the plaintiff. Be that as it may, when the plaintiff had let in evidence, their evidence was not clear as to whether the said *G.Sampath* had given the receipts in collusion with the defendant or whether the receipts are forged.

14. This apart, once it is the case of the plaintiff that the receipts will not be given in such a manner and that the amounts were not paid on the respective dates, the least expected of them is to produce their own books of accounts in proof of the fact that the said amounts were not paid on the said date. This apart, the plaintiff ought to have summoned the said *G.Sampath* and examine him as to whether the amounts were received or not. If the same is false according to the plaintiff, inspite of lodging a Police complaint, the reason for not following it up is not pleaded nor anything is stated in the evidence. As a matter of fact, it is the plaintiffs case that the defendant only lodged a police complaint. If that be so, the conduct of the plaintiff is strange that they have not lodged a Police complaint if any fraud



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or forgery has been committed either by its own employee or the defendant in collusion with him. In the absence of the same, when the defendant has produced receipts for payment and the same have been duly marked as **Exs.B-1 to B-5** and **B-7 to B-13**, the defendant has discharged its onus and it is the plaintiff's assertion that the said documents were unauthorisedly issued by its employee and it had failed and neglected to discharge its onus. Therefore, it can be concluded that the plaintiff has failed to prove its claim. It is not the contention of the plaintiff that the person who signed the receipts namely, G. Sampath, was not the person who was incharge of their branch at Salem. The Trial Court has also rightly rendered its findings in respect thereof.

15. The learned Counsel for the appellant, taking this Court through the manner in which those receipts have created, would vehemently contend that on the face of it, there is strong doubt about the case of the defendant and atleast in this case, the matter can be remanded back to the Trial Court so that the plaintiff would prove its case. Even for the said arguments, this Court had adjourned the matter so as to enable the plaintiff to atleast come up with any additional evidence that it may have in the form of ledger



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accounts etc., so that the said question can be considered. But, however, the appellant is also unable to even point out any other additional evidence that may be in its possession so that it can bring it before the Trial Court even if the matter is remanded back.

16. In that view of the matter there is no useful purpose remanding the matter back to the Trial Court and for the said prayer the appellant has not placed any material whatsoever before this Court. In that view thereof, no relief could be granted to the appellant. Accordingly, both the points for consideration are answered against the appellant and the finding of the trial court on all the issues are confirmed.



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**J. The Result:**

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17. In the result, the Appeal Suit in A.S.No.298 of 2015 shall stand dismissed. However, there shall be no order as to costs.

11.11.2022

Index : yes  
Speaking order  
grs

To

1. The III Additional District-cum-Sessions Judge,  
Salem.
2. The Section Officer,  
V.R.Section,  
High Court of Madras.



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**D.BHARATHA CHAKRAVARTHY, J.,**

grs

**Pre-Delivery Judgment in**

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