



A.S.No.658 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on:	Judgment delivered on:
22.08.2022	.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.658 of 2016
and
C.M.P.No.11842 of 2022

M/s. Narasu's Roller Flour Mills,
Represented by its Partner
M.V.Balasubramaniam,
S/o. M.V.Rajasekaran, aged 54 years,
P.B.No.725, Door No.16, Court Road,
Johnsopet, Salem – 7
duly represented by
Power Agent R.Subash,
S/o. Ramanathan, 59 years,
Manager at the above address.

.. Appellant

Vs.

1.M/s. Narasu's Coffee Company,
A partnership firm by its partner
P.Sivanatham,
S/o. R.P.Sarathy, 43 years,
Residing at 16, Court Street,
Salem – 636 007.

2.P.Sivanatham

.. Respondents



Prayer: This First Appeal is filed under Order XLI Rule 1 Read With Section 96 of C.P.C., against the judgment and decree dated 01.06.2016 made in O.S.No.73 of 2007 on the file of the III Additional District Court, Salem.

For Appellant : Mr.V.Sekar

For Respondents : Mr.V.Manohar

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

The unsuccessful plaintiff has filed the present appeal challenging the judgment and decree dated 01.06.2016 made in O.S.No.73 of 2007 on the file of the III Additional District Court, Salem.

Case of the appellant:

2.The appellant is partnership firm manufacturing top brand Maida, Sooji, Whole wheat atta and wheat products and trading them into wholesale and retail sellers directly and through agents and sub-agents throughout Tamil Nadu. The 1st respondent is a partnership firm and 2nd respondent is partner of 1st respondent firm. The 1st respondent is mainly dealing in sale of coffee powder and also selling the items manufactured by the appellant in their retail shops throughout Tamil



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2(a). The appellant supplied wheat products to the 1st respondent on credit basis and entered the same in their books of accounts maintained in ordinary and regular course of business to the respondents and payments received from respondents. As on 20.03.2007, the respondents were in outstanding to a sum of Rs.32,25,637/-.

2(b). The 2nd respondent as partner of 1st respondent, on 21.03.2007 issued a cheque for a sum of Rs.11,68,257/- drawn on Lakshmi Vilas Bank, towards part satisfaction of the amount due by the respondents. On presentation, the said cheque was returned on 23.03.2007 with endorsement as “stop payment”. The respondents by their letter dated 27.03.2007 enclosed three debit notes without stating any reason for raising the debit notes. The appellant informed the respondents and other customers that once goods are sold and delivered, the appellant is not responsible for any damage or shortage, etc., and it is at the risk of buyers. The respondents are not entitled to send any debit notes and it is an after thought.

2(c). The appellant issued notice dated 29.03.2007 to the respondents calling upon them to pay the amounts due and failing which,



proceedings will be initiated under Negotiable Instruments Act, 1881.

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2(d). The respondents sent a reply dated 10.04.2007 denying their liability to pay the amount of Rs.32,25,637/-. The respondents made false claim that appellant sold the goods to the respondents on higher rate than the market rate and respondents have suffered loss of Rs.40,00,000/- and entire amount due to be set off against the loss caused by the appellant. The respondents sent a demand draft dated 10.04.2007 for a sum of Rs.11,68,257/- and called upon the appellant to return the cheque. The appellant sent a rejoinder dated 21.05.2007 denying the allegations and that demand draft was received as part satisfaction of amount due and turned down the request of the respondents to return the cheque.

2(e). The appellant was selling goods to respondents at the rates less than the market rate. The respondents were purchasing the goods without any objection. The respondents have taken such a stand only when the appellant stopped supply as they cannot lose valuable money due to whims and fancies of respondents. The respondents agreed to pay the interest at 18% per annum for delayed payment.

2(f). The appellant has filed the suit against the defendants for recovery of Rs.20,57,380/- and a sum of Rs.11,68,257/- being interest,



totally a sum of Rs.32,25,637/-.

Case of the respondents:

3.The respondents filed written statement and denied all the allegations made by the appellant. The respondents denied that appellant is manufacturing top brand wheat products. Till the 2nd respondent and his brother Murali Krishna were partners of appellant, the appellant was manufacturing top brand wheat products and was maintaining the quality so long the 2nd respondent was taking part in the affairs of appellant. After their exist, M.V.Balasubramaniam, partner of appellant is not maintaining the quality and over all efficiency of appellant dwindled.

3(a). The accounts now maintained by the appellant are not true and proper and its truthfulness is disputed. The respondents deny that they were in due of a sum of Rs.32,25,637/-.

3(b). The appellant cannot claim that they are not responsible for damages, shortage, etc,. after delivery to the purchasers. The liability due to damages cannot be fastened on the purchasers. The respondents have supplied packing materials. The appellant failed to give credit to the value of packing materials and loading and unloading charges. The appellant



used the packing materials supplied by respondents with names of 1st respondent to supply the goods to their agents and sub-agents as though the goods were supplied by the respondents.

3(c). The appellant supplied the goods to the respondents at a higher price than the market price while supplying the goods at a lower price to others. Due to the higher price charged by the appellant, the respondents suffered loss of Rs.40,00,000/-.

3(d). The respondents sent a Demand Draft for a sum of Rs.11,68,257/- only to give quietus and not to precipitate the issue. The said amount was not paid as part payment of the amount claimed by the appellant.

3(e). The appellant did not maintain the accounts properly. The account is not genuine and not maintained in regular day-to-day transactions. The appellant has produced incorrect false statement with a view to make unlawful gain. The appellant did not give credit to damaged goods as per bills dated 19.02.2007, 20.02.2007, 24.02.2007, 06.03.2007, 10.03.2007 and 17.03.2007. The amounts covered under



these bills were not reflected in accounts produced by the appellant.

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3(f). The appellant adopted unethical practice in the matter of price, quality of goods and packagings.

3(g). The appellant did not send a notice dated 29.03.2007, but issued notice dated 05.04.2007. The respondents sent a reply dated 10.04.2007. The appellant sent a rejoinder dated 21.05.2007, which is false and vexatious. The respondents ignored the said rejoinder notice as a piece of falsehood.

3(h). The respondents denied that they were in outstanding for a sum of Rs.32,25,637/-. Nothing is payable by the respondents as outstanding to the appellant. The amount claimed by the appellant is baseless.

3(i). The respondents extensively mentioned about the formation of firms and fraud played by M.V.Balasubramaniam and prayed for dismissal of the suit with exemplary cost.

4. Based on the above pleadings, the following issues were framed.

(I) Whether the contention of the defendants that the plaintiff has



supplied the wheat products in the packing materials supplied by the defendants to the dealers and sub-dealers prior to 20.03.2007 is true and correct?

(II) Whether the contention of the defendants that the plaintiff had not valued and deducted the cost of the damaged goods and supplied the products to the defendants higher than the price of goods supplied to other dealers thereby caused loss Rs.40 lakhs to the defendants is true and correct?

(III) Whether the plaintiff is entitled to claim Rs.21,54,076.85 together with interest at 18% per annum and costs?

(IV) To what other relief, the plaintiff is entitled to?

5.Before the learned Judge, one Subash, power of attorney of M.V.Balasubramaniam, partner of appellant was examined as P.W.1 and marked 20 documents as Exs.A1 to A20. On behalf of respondents, one T.G.Pushparaj was examined as D.W.1 and marked 13 documents as Exs.B1 to B13.

6.The learned Judge considering the pleadings, oral and documentary evidence and issues framed, by the judgment and decree



dated 01.06.2016, dismissed the suit in O.S.No.73 of 2007.

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7.Challenging the said judgment and decree dated 01.06.2016 made in O.S.No.73 of 2007, the appellant / plaintiff has come out with the present appeal.

8.The learned counsel appearing for the appellant referred to the pleadings, evidence and impugned judgment and submitted that

(a) The learned Judge dismissed the suit holding that computerized ledger marked as Exs.A2 to A11 is not in consonance with provisions of Section 65(B) of the Indian Evidence Act, 1872. The learned Judge failed to consider the other materials namely intend, invoices and lorry despatch receipts Exs.A12 to A16.

(b) In the present appeal, the appellant has filed C.M.P.No.11842 of 2022 to receive the certificates by way of deponent affidavit separately for Exs.A2 and A11, signed by Managing Partner M.V.Balasubramaniam to be attached to Exs.A2 & A11.

(c) There is no time limit fixed under Section 65(B) of the Indian Evidence Act, 1872 for furnishing the said certificate unless like in a criminal case where all the documents relied on by the prosecution are to be furnished to the accused before commencement of trial.



(d) The certificate as contemplated under Section 65(B) of the Indian Evidence Act, 1872 can also be furnished at the appellate stage.

The receipt of certificates for Exs.A2 & A11 does not fill up the lacuna.

(e) The learned Judge failed to consider that appellant proved the despatch of goods, receipt of goods which had been acknowledged in Exs.A14 to A16.

(f) The certificate under Section 65(B) of the Indian Evidence Act, 1872 to prove the evidenciary value of Exs.A2 & A11 corroborated by lorry receipts, invoice and purchase orders, Exs.A12 to A16.

(g) The learned Judge erred in holding that apart from Exs.A2 & A11, there is no other evidence, but failed to take note of Exs.A12 to A16.

(h) The learned Judge failed to see that P.W.1 / power of attorney of M.V.Balasubramaniam, partner of the appellant firm is Manager of appellant concern and he is fully conversed with over all business of the appellant's firm.

(i) The learned Judge failed to see that P.W.1 has clearly answered all the questions in the cross examination about the transaction. P.W.1 also denied the adjustment of Rs.2 lakhs of alleged debit note.

(j) D.W.1 during cross examination admitted the receipt of invoices and despatch of goods supplied by the appellant under Exs.A14 to A16



and the learned Judge erroneously held that said admission cannot be concluded as a supportive documents to the statement of accounts relied on by the appellant.

(k) The respondents in the written statement raised objection only with regard to supply of defective goods and over pricing as such the Court below ought to have placed onus on the respondents to prove the same.

(l) The procedure for supply of goods is respondent sends purchase indent mentioning the items, quantity required by them. The appellant raises invoices and when the goods are loaded in the vehicle belonging to 1st respondent, acknowledgment is obtained in despatch document. This procedure has been complied with.

(m) If really the appellant has delivered defective materials and goods in damaged packages, the 1st respondent must raise the issue within a reasonable time. The appellant considered the debit notes raised by the 1st respondent and given credit to the said amount, which is admitted by the appellant even though the 1st respondent has raised debit note for larger amount.

(n) As per Section 32 of Sales of Goods Act, as and when the seller delivers the goods, the purchaser must pay the value of the goods so



supplied. The supply of goods and payment of value of the goods so supplied are concurrent conditions. When the appellant performed his part of contract by sending the goods in the vehicle provided by the 1st respondent, the appellant has complied with Sections 35 and 36 of Sale of Goods Act. The respondents also acknowledged the receipt of goods and appellant has complied with Section 39(i) and (ii) of Sale of Goods Act, when the goods were despatched to the 1st respondent.

(o) The learned Judge failed to consider these provisions, but considered only the certificate to be produced under Section 65(B) of the Indian Evidence Act, 1872 and for non-furnishing of said certificate, dismissed the suit. The Manager of the 1st respondent, examined as D.W.1 admitted the supply of goods. D.W.1 admitted that Maida was supplied to the 1st respondent for a price of Rs.266.80, while the appellant supplied to others at Rs.348.37. In view of the admission by D.W.1, the contention of the 1st respondent that the appellant supplied goods at a price higher than market price is not correct.

(p) The respondents did not object to marking of Exs.A2 & A11, statement of accounts and they cannot object for the same at a later stage. The appellant has complied with Sections 32, 39(i) & (ii) of Sale of Goods Act. In view of the same, there is a presumption that *prima facie*



the goods were delivered to the buyer. The learned Judge without considering Exs.P14 to P16, Lorry despatch note books, dismissed the suit on the ground that appellant failed to comply with Section 65(B) of Indian Evidence Act, 1872, in respect of Exs.A2 & A11.

(q) The respondents claim in the written statement a set off of Rs.15,00,000/-, but failed to produce any evidence to substantiate the same. The respondents claimed loss of Rs.40,00,000/- by the letter dated 10.04.2007, but in the written statement claimed a sum of Rs.15,00,000/- only as set off. Even for this Rs.15,00,000/- there is no evidence by the respondents.

(r) The 1st respondent used to send purchase indents mentioning the items and quantities required by them. As per their requirement, invoices are raised and goods are supplied to the 1st respondent. Acknowledgment is obtained from the lorry driver on the backside of the lorry despatch. The 1st respondent has not disputed the receipt of goods as ordered by them.

(s) The appellant is entitled to interest at the rate of 18% per annum for delayed payment as per the agreed term in the invoice and also Section 61 of Sale of Goods Act. The appellant is entitled to interest from the date of sale, but the appellant is claiming interest only from the date



of 20.03.2007, after the date of frustration of contract.

(t) The Trial Court is not correct in holding that the formalities under Section 34 of Indian Evidence Act, 1872 was not complied with and suit is barred for non-compliance under Order VII Rule 17 of the Code of Civil Procedure. The statement of accounts generated from the entries of debits and credits stored in the computer and Section 34 of the Indian Evidence Act, 1872 is not acceptable.

In support of his contention, the learned counsel appearing for the appellant relied on the following judgments:

(i) 2019 (2) CTC 1 [R.Subramanian Vs. ICICI Bank Ltd., ICICI Bank Towers, Ambattur Industrial Estate, Chennai 58]:

“11. The petitioner relied upon the judgment reported in 2014(10) SCC 473 (cited supra) to support his contention that the statement of accounts marked as Ex. A-58, should accompany the certificate issued by the concerned officer under section 65-B of the Indian Evidence Act. Whereas, the learned Senior Counsel appearing for the respondent No. 1 replied upon the judgment reported in 2017 (8) SCC 570 (cited supra) to support his case that the mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage.

12. In the case on hand, the petitioner has not raised any objection at the time of marking the document. Even, the entries made in the statement of accounts were also not disputed by the



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petitioner in any manner whatsoever. The Debt Recovery Appellate Tribunal also took into consideration the said fact while reversing the order passed by the Debts Recovery Tribunal. When the learned Senior counsel appearing for the respondent No. 1 has relied upon the Apex Court judgment only for the purpose of supporting the case of the respondent No. 1, the petitioner cannot raise objections with regard to marking of the document at a later stage, when he did not object to the marking of the document at the earliest point of time. The contention raised by the petitioner that the judgment relied upon by the learned Senior Counsel appearing for the respondent No. 1 should not be applied cannot be accepted. Both the judgments, 2014 (10) SCC 473 (cited supra) and 2017 (8) SCC 570 (cited supra) were relied upon by the respective parties for different purpose. No doubt, in the judgment reported in 2017 (8) SCC 570 (cited supra), two-Judge Bench of the Apex Court also took into consideration the issue involved in Anvar case (cited supra) and ultimately, left the issue with regard to Section 65-B open, to be decided in an appropriate case, by a three-Judge Bench.

13. On a perusal of the Anvar case (cited supra), it could be seen that the issue involved in the said judgment is only with regard to Sections 62, 65-A and 65-B of the Indian Evidence Act and not with regard to the rejection of documents marked at the time of trial. Therefore, we are of the considered view that the ratio laid down by the two-Judge Bench of the Apex Court is applicable to the present case. In the said judgment, the Apex Court has categorically stated that if objections with regard to marking of a particular document is not taken at the time of trial, the party cannot be permitted to raise objections with regard to marking of the document at the appellate stage.



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14. In the case on hand, though the petitioner had every opportunity to raise objections with regard to marking of Ex. A58 document, for the reasons best known to him, he did not do so. That apart, even the entries made in the statement of accounts were not denied or disputed by the petitioner before the Debts Recovery Tribunal. In these circumstances, the petitioner cannot be allowed to raise objections with regard to the marking of the documents at any time he wishes.”

(ii) AIR 2020 SC 4908 [Arjun Panditrao Khotkar Vs. Kailash

Kushanrao Gorantyal and others]:

“50. We may hasten to add that Section 65B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. (supra), this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the concerned person, the Judge conducting the trial must summon the person/persons referred to in Section 65B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to



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keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the Cr.P.C.”

(iii)AIR 1996 SC 376 [M/s.Shree Bajarang Jute Mills Ltd.,

Guntur Vs. State of A.P., represented by Dy. Commissioner of Commercial Taxes, Guntur]:

“9. Counsel for the respondent-State relied upon s. 39ofthe Indian Sale of Goods Act, 1930, which provides inso far as it is material, by the first sub-section that where,in pursuance of a contract of sale, the seller is authorisedto send the goods to the buyer, delivery of the goods toa carrier, for the purpose of transmission to the buyer, is prima facie deemed to be delivery of the goods to the buyer. But that provision will not make mere delivery of the railway receipts representing title to the goods, actual delivery of goods for the purpose of Art. 286. The rule contained in s. 39(1) of the Indian Sale of Goods Act raises a prima facie inference that the goods have been delivered if the conditions prescribed thereby are satisfied: it has no application in dealing with a constitutional provision which while imposing a restriction upon the legislative power of the States entrusts exclusive power to levy sales tax to the State in which the goods have been actually delivered for the purpose of consumption.”

(iv)2018 (4) CTC 419 [Renganathan Vs. Saravana Store, rep. By its Partner, T.Ellappan]:

“28. It is to be pointed out that in the written statement,



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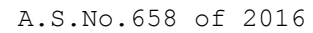
the defendant has taken a plea of total discharge of the amount due to the plaintiff. But, DW1 has stated in his evidence that as per their account, the defendant is liable to pay a sum of Rs. 4,93,922.30/- as on 31.05.2007. As already stated that no reliance can be placed upon the statement of accounts produced by the defendant (Ex. D3) as it contains so many corrections. Apart from Ex. D3, the defendant has not produced any other document to show that he has paid all the amount due to the plaintiff. The oral evidence of PW1 Ex. P2 to Ex. P4 series and Ex. D1 series would clearly establish that a sum of Rs. 17,16,702/- was due as on 31.05.2007.”

9.The learned counsel appearing for the respondents contended that originally the respondents' firm was established by Late Narasimman. The appellant's firm was established by the respondents. In both firms, sons and daughters of one S.P.Sarathy were partners. Subsequently, the appellant and 1st respondent's firm were managed separately. Initially, the 2nd respondent and his brother sons of S.P.Sarathy were partners in the appellant firm. They retired from appellant firm. One M.V.Balasubramaniam, son-in-law of S.P.Sarathy was inducted as partner. There arose many disputes among the family members. Many suits and criminal proceedings were initiated against each other and the present suit is one such legal proceedings. The 2nd respondent is not a necessary party in the present suit in his individual capacity. Only to



harass the 2nd respondent, he is made as 2nd defendant leaving other partners. The appellant's partnership firm is no longer in existence. The appellant has been incorporated as a Private Limited Company and necessary amendments were not made and appeal is liable to be dismissed *in-limini* on this ground itself.

(a) The contention of the learned counsel appearing for the appellant that the appellant is entitled to suit claim as per the provisions of Sale of Goods Act is without merits. The goods were not sold on cash basis. In view of the same, the reference to Section 32, 39 (i) & (ii) are not applicable to the facts of the present case. As far as the goods sold and delivered by the appellant, the 1st respondent has raised various objections, namely the goods were sub-standard quality, packing was not proper and price also is not correct. The 1st respondent supplied packing materials and appellant did not give credit to the value of the packing materials. Further, the appellant used the packing materials supplied by the 1st respondent with 1st respondent's name to supply goods to various third parties, as though the 1st respondent was / is supplying the goods to them. The appellant has not deducted the lorry charges for the lorries supplied by the 1st respondent. The 1st respondent raised various debit notes and appellant has not considered the same and given credit to the



(b) Originally the appellant firm was established by the 1st respondent. The 1st respondent was manufacturing and marketing wheat products with the trade name Narasu's and the device of lady sipping from a cup from the year 1989. Further, the appellant was manufacturing and marketing wheat products with the trade name Ullash and doing job work to the 1st respondent with the respondents' registered trade name Narasu's and device later to the year 1997. All the printed packaging materials with the brand name Narasu's and logo were supplied to the respondents for their job work. In the month of May 2007, the appellant directly marketed the packed wheat products printed with the trade name Narasu's and logo without the knowledge and consent of the



respondents which was registered by the respondents in the year 1997 vide TM No.733370 and supplied by the respondents. When the infringement of the trademark and passing off activities was questioned by the respondents, in order to harass the respondents, the suit was filed by the appellant.

(c) The respondents in the written statement have taken a specific plea that the appellant has not maintained correct and regular statement and correct credit and debits were not made. According to their whims and fancies, the appellant has made entries in the alleged computerized account. When the respondents have challenged the correctness and genuineness of Exs.A2 & A11, the appellant ought to have proved that the said computerized statement was maintained in ordinary regular course of business. The appellant has produced the computerized statement of accounts and the same can be considered by the Court only when the appellant complied with Section 65(B) of the Indian Evidence Act, 1872. Only when the certificate is as required by said Section, Exs.A2 & A11 can be considered by the Court. The appellant is a business firm and deliberately did not furnish the said certificate. The learned Judge has given reasons for rejecting Exs.A2 & A11 and the appellant has not made out any case for interfering with said reasoning.



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(d) The certificate now produced is signed by M.V.Balasubramaniam, in his capacity as partner of non-existing partnership firm. The said partnership firm has been converted and incorporated as Private Limited Company. The appellant has not produced any materials to show that Private Limited Company has authorized the said M.V.Balasubramaniam to issue the two certificates now sought to be produced and marked. Additional evidence can be produced in the appellate stage only when any one of the conditions mentioned in Order XLI Rule 27 of the Code of Civil Procedure is made out. The appellant has not given any reason for not producing the certificates along with Exs.A2 & A11 before the Trial Court. The appellant failed to satisfy any one of the conditions in Order XLI Rule 27 of the Code of Civil Procedure and application is liable to be dismissed as devoid of merits.

(e) When the appellant is claiming the value of goods supplied up to 20.03.2007, the statement produced to substantiate the claim up to 20.06.2007 on the face of it proves not to be genuine. When Exs.A2 & A11 are not reliable, Exs.A12 to A14 filed to corroborate the claim based on the accounts will not prove the claim of the appellant. The appellant supplied goods to the 1st respondent claiming value more than the market



price. The appellant produced certain self-serving invoices to show that goods were supplied for less price than the market price. Exs.A2 & A11 were not furnished to the 1st respondent to confirm the correctness of accounts claimed therein to be correct. Mere making entries in the ledger or computerized accounts will not be sufficient to accept the existence of liability of 1st respondent.

(f) As per Section 34 of the Indian Evidence Act, 1872, the entries made in the accounts must be proved by the person who is claiming amounts from the other party. The appellant examined P.W.1, Manager of the Firm and the appellant has not examined anybody from Accounts Section to prove the entries in Exs.A2 & A11 and amounts claimed therein are correct. Exs.A2 & A11 are manipulated documents and there is no correlation between the accounting period as mentioned in the plaint. P.W.1 in the cross examination has stated that there was resolve of accounting as on 30.11.2006 to the tune of Rs.1,39,862/-, but the same is not reflected in Ex.A2. This one incident itself is sufficient to prove that accounts produced by the appellant were not correct and true and not maintained in the regular course of business. The learned counsel appearing for the respondents further submitted that the claim of the appellant as interest of Rs.11,68,257/- on the principal sum of



Rs.20,57,380/- is not correct. The interest at the rate of 18% for three months for Rs.20,57,380/- will be only Rs.92,580/- and not Rs.11,68,257/-.

(g) The learned counsel appearing for the respondents contended that M.V.Balasubramaniam is not a competent person to issue the certificate under Section 65(B) of the Indian Evidence Act, 1872. The appellant has not filed C.M.P.No.11842 of 2022 along with the appeal, but filed CMP after a period of six years only when the appeal was taken up for arguments. The claim of the appellant in the suit is a manipulated claim and appellant is not entitled to any amount. In any event, the certificates now produced are not in computerized as contemplated under Section 65(B)(2) & (B)(4) and prayed for dismissal of the appeal as well as C.M.P.No.11842 of 2022. In support of his case, the learned counsel relied on the following judgments:

(i) *AIR 2022 SC 2726 (Ravinder Singh alias Kaku Vs. State of Punjab)*:

“20.Lastly, this appeal also raised an important substantive question of law that whether the call records produced by the prosecution would be admissible Under Section 65A and 65B of the Indian Evidence Act, given the fact that the requirement of certification of electronic evidence has not been complied with as contemplated under the Act. The uncertainty of



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whether Anvar P.V. v. P.K. Basheer and Ors. (2014) 10 SCC 473] occupies the filed in this area of law or whether Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801 lays down the correct law in this regard has now been conclusively settled by this Court by a judgment dated 14/07/2020 in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal(2020) 7 SCC 1] wherein the court has held that:

We may reiterate, therefore, that the certificate required Under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and incorrectly "clarified" in Shafhi Mohammed (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor (1876) 1 Ch.D 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose.

Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

The clarification referred to above is that the required certificate Under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained



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in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate Under Section 65B(4).

21. In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law. As rightly stated above, Oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law.”

(ii) AIR 1978 Madras 56 (V.K.Abraham Vs. N.K.Abraham):

“15. In Sundararajulu Nadar v. Kuppamma alias Bhagirathi, 1936 Mad WN 472, a learned Judge of this court sitting singly observed as follows-

"The entries in the account books do not prove themselves, they are at most when proved, corroborative evidence - See Babu Ganga prasad v. Boboo Inderjit Singh, (1875) 23 Suth WR 390 and unless there is proof that the entitles represent real transactions, they will not suffice to charge any person with liability thereunder."

The effect of the decisions is that the, account, books are not by themselves sufficient to charge any person with liability, that the plaintiff has to show by some independent evidence that the entries in his books represented real and honest transactions and that the moneys paid or the transactions took place in accordance with those entries.”

(iii) AIR 1999 Kerala 279 (Arakkan Narayanan Vs. M/s.Indian

**Handloom Traders and others):**

“6.Ext.B1 is a stamped receipt executed by the plaintiff in favour of the defendants for Rs. 16,040/-. In Ext. B1 it is stated that there was no balance. The plaintiff contended that the last portion in Ext. B1 was a subsequent addition. Excepting for the testimony of PW 1, there was nothing to show what was the addition in Ext. B1. A plain reading of Ext. B1 does not show that the last line was written later. Burden was on the plaintiff to show that this was wrong. Learned counsel for the appellant relied on Ext. A6 to show that the balance as on 3-3-1988 was Rs. 16,239.50. Section 34 of the Indian Evidence Act states that entries in the 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 should not alone be sufficient evidence to charge any person with liability. This section makes it clear that all entries in the books of account regularly kept in the course of business are relevant. But it must be shown that the accounts are in the books, the book must be book of accounts and the accounts must be regularly kept in the course of business. The entries are, however, not by themselves sufficient to charge any person with liability. It is a piece of evidence which the Court may take into consideration for determining whether the amount referred to therein was in fact paid by the plaintiff to the defendant. The regular proof of books and accounts requires that the clerks who have kept those accounts, or some person competent to speak to the facts, should be called to prove that they have been regularly kept and to prove their general accuracy. The quantum of evidence required for corroboration would vary in each case.”



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(iv)**AIR 1981 Bombay 446 (Zenna Sorabji and others Vs.**

Mirabelle Hotel Co. (Pvt.) Ltd., and others):

“27. I also find no difficulty in agreeing with Mr. Rane that the ledger which is sought to be produced and relied upon is not a book of account in the real sense of the term as contemplated by Section 34 of the Evidence Act. In order that a document could be relied upon as a book of account, it must have the characteristic of being fool-proof. A bundle of sheets detachable and replaceable at a moment's pleasure can hardly be characterised as a book of account. Moreover what Section 34 of the Evidence Act demands is a book of account regularly maintained in the course of business. A ledger by itself could not be a book of account of the character contemplated by the said Section 34. Even assuming that the book of account produced was a duly bound book of account, unless the other books for checks and cross-checks were made available and unless the primary books of account are produced, the ledger by itself could have no evidentiary value. But taken this fact in conjunction with the fact that what is produced by defendant No. 3 in the Court is a bundle of sheets and nothing else, the so called book of account loses all its evidentiary value. It loses its evidentiary value on both the counts. Firstly, on account of the fact that it is not a book of account at all and secondly, on account of the fact that it is a sham document. I, therefore, agree with Mr. Rane and hold that what is relied upon by the lower Court as corroborative piece of evidence cannot be



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person who had written the said accounts and signed the said bills. Now, so far as the bills were concerned they were signed by Habib Hussein. Habib Hussein is dead. This means that some secondary evidence would have been required to be given as regards the signature of Habib Hussein. In the instant case the signature of Habib Hussein could be proved by Tarachand himself. But, likewise, any other person who could identify the signature of Habib Hussein, but was wholly unacquainted with any relevant facts of the case, could have proved it and that much would be enough for the document going on record. Nothing could be elicited from such witness in cross-examination as regards the contents of the documents. Can such document by itself have any evidentiary value merely because it has gone on record as an exhibit? Could the document have evidentiary value merely because the fact that its execution is proved, even though the document was sham on the face of it? In other words, does the proof of its execution invest the document with any probative or evidentiary value if otherwise it has none? The answer to these questions must be in the negative. A -proof of a document is something which is independent from the evidentiary value of the document.

34. Moreover by consent, proof of the document may be dispensed with, but if the document is intrinsically inadmissible in evidence, no amount of consent by any party can confer the status of admissibility upon the said document. If an authority is necessary for this proposition, it is to be found from the judgment of the Madras High Court in Kamulammal Avergal v. Athinkari Sangali Subha Pillai (1918) 35 Mad LJ 11 : AIR 1919 Mad 758 (of Mad LJ) : at p. 760 of AIR of the said judgment, the learned Judges state as follows :--



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"Mr. Justice Benson and Mr. Justice Sundaram Aiyar after reviewing all the authorities on the question point out in *Shri Rajah Prakasarayanam Garu v. Venkata Rao* ILR (1912) Mad 160 "consent or want of objection to the reception of evidence which it irrelevant cannot make the evidence relevant".

The ledger book which is sought to be produced becomes relevant only under the provisions of Section 34 of the Evidence Act and if the document does not qualify as relevant document within the contemplation of the said section, then the document is wholly irrelevant and any amount of consent by the plaintiffs would not convert the irrelevancy into relevancy."

(v) 2020 5 SCC 178 (Jagmail Singh and Ors. vs. Karamjit Singh

and Ors.):

*"14. It is trite that under the Evidence Act, 1872 facts have to be established by primary evidence and secondary evidence is only an exception to the Rule for which foundational facts have to be established to account for the existence of the primary evidence. In the case of *H. Siddiqui (dead) by LRs v. A. Ramalingam* 2011 (4) SCC 240, this Court reiterated that where original documents are not produced without a plausible reason and factual foundation for laying secondary evidence not established it is not permissible for the court to allow a party to adduce secondary evidence.*

17. Needless to observe that merely the admission in evidence and making exhibit of a document does not prove it automatically unless the same has been proved in accordance with the law."

(vi) AIR 1953 SC 431 (Mahasay Ganesh Prasad Ray and another



Vs. Narendra Nath Sen and others):

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“3. The Subordinate Judge, according to his judgment, felt compelled to hold against the respondent because of the accounts (Exh. 32 series) and the entries in the almanac. The High Court has considered these entries carefully and we agree with their line of reasoning in holding that they are not of such a nature and character as to compel the conclusion which the Subordinate Judge thought he was forced to come to. Exhibit 32 series as noticed by the High Court, consists of loose sheets of papers. They have not the probative force of a book of account regularly kept. Being old documents, naturally, the writer is not called and barring the fact that they were produced from the Receiver's possession there is nothing to show their genuineness. Section 90, Evidence Act, does not help the appellants because this is not a case where the signature of a particular person is in question or sought to be established.

We do not propose to repeat the reasons given by the High Court to show why these documents are not of that compelling nature as thought by the Subordinate Judge. They are all well summarized in the judgment of the High Court. In its judgment the High Court has also pointed out the circumstances under which these account sheets, contended to be of the year 1287, were produced and the way in which they came to be noticed in the Receiver's possession. Bearing in mind these circumstances and the material fact that the important document is not convincingly proved to be of the year 1287 as the figure '8' appears to be torn, we are unable to consider this document as proved of the year 1287.

The appellants relied on the account sheets of the year 1297 and the entries therein to support their case that these



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sheets contained entries of the birth of Indubala. From these sheets it was sought to be argued that they contain entries in respect of the birth of the only two daughters of Govind Ballab, namely Sabitri and Indubala, and therefore Binodini could not be his natural daughter. As pointed out by the High Court, however these account sheets of 1297 have the appearance of fresh ink and are unreliable. No argument could therefore be based on their genuineness.

4. As regards the entries in the almanac, it is necessary only to point out, as has been done by the High Court, that these are again loose sheets of papers with blanks left at different places. The writer is of course not available and therefore the weight which could be attached to documents which on the face of them are regularly kept cannot attach to these papers. The sheets and entries could be substituted or interpolated at different places, if one were so minded. Having regard to these defects therefore it is not possible to say that the entries have been made in the regular course of business and have the necessary probative value. In our opinion therefore the conclusion of the High Court is correct.”

(vii) 2017 1 SCC 257 (Ramesh Verma (D) tr. L.Rs. vs. Lajesh

Saxena (D) by L.Rs. and Ors.):

“13. A Will like any other document is to be proved in terms of the provisions of Section 68 of the Indian Succession Act and the Evidence Act. The propounder of the Will is called upon to show by satisfactory evidence that the Will was signed by the testator; that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and



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effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement.

.....

15. It is not necessary for us to delve at length to the facts of the matter as also the evidence adduced by the parties before the High Court. Suffice it to note that the execution of the Wills has to be proved in accordance with Section 68 of the Indian Evidence Act.”

10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents and perused the entire materials on record.

11. Based on the pleadings and arguments of the learned counsel appearing for the appellant and respondents, the following points have arisen for consideration in this appeal:

(I) Whether appeal filed by the partnership firm represented by M.V.Balasubramaniam is maintainable?



(II) Whether Exs.A2 & A11 have any evidenciary value?

(III) Whether appellant has proved their claim through Exs.A2, A11 to A14?

(IV) Whether appellant has deducted the cost of packing materials supplied by 1st respondent and whether has given credit to the transport charges for the vehicles provided by the 1st respondent?

12.Before proceeding to consider and decide the points for consideration, we are proceeding to decide C.M.P.No.11842 of 2022, filed by the appellant for permission to produce additional documentary evidence in the appeal.

13.The appellant has filed the above CMP to receive the certificate to the Ledger copy for the period from 01.04.2006 to 23.03.2007 in Ex.A2 and the Certificate to the Ledger copy for the period for the period from 01.04.2007 to 11.04.2007 in Ex.A11 and to mark the same as an additional evidence.



14.The appellant has filed the present CMP under Order XLI Rule 27 of the Code of Civil Procedure. The Appellate Court has power to permit the appellant or respondent to produce the additional evidence. A party can produce additional evidence in the appeal, but the party seeking permission to produce additional evidence in the appeal must satisfy any one of the conditions contained in Order XLI Rule 27 of the Code of Civil Procedure. The said Rule is extracted herein for better appreciation.

“THE CODE OF CIVIL PROCEDURE, 1908:

ORDER XLI : Appeals from Original Decrees.

27. Production of additional evidence in Appellate Court.—

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

1 [(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]



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(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

As per this Rule, the Court can permit appellant or respondent to produce additional evidence, if the Lower Court has refused to admit the evidence which ought to have been admitted, in spite of due diligence, the party could not produce such evidence before the Trial Court and lastly if Appellate Court requires any oral or documentary evidence to pronounce the judgment or for any other substantial cause. A reading of the affidavit filed in support of the CMP shows that appellant has not given any reason for not filing the certificate as contemplated under Section 65(B) of the Indian Evidence Act, 1872. In the affidavit, the appellant has stated that Exs.A2 & A11 were certified as true copy, but did not furnish the required certificate under Section 65(B) of the Indian Evidence Act, 1872, which is neither wilful nor wanton. During arguments, the learned counsel appearing for the appellant submitted that certificate under



Section 65(B) of the Indian Evidence Act, 1872 can also be filed in the appeal and by filing the said document, the appellant is not filling up any lacuna. It is no doubt true that additional evidence both oral and documentary can be permitted by Appellate Court, only if any one of the conditions mentioned in Order XLI Rule 27 of the Code of Civil Procedure is satisfied.

14(i). In the present case, the appellant is not seeking permission for additional evidence based on any one of the conditions mentioned in Order XLI Rule 27 of the Code of Civil Procedure. On the other hand, the two grounds raised by the learned counsel appearing for the appellant during arguments based on which the appellant is seeking permission for additional evidence are not contemplated in Rule 27. In as much as the appellant has not satisfied any one of the conditions as mentioned in Order XLI Rule 27 of the Code of Civil Procedure and the materials on record are sufficient to pronounce the judgment and there is no substantial cause as contemplated under Rule 27 (1)(b) of the Code of Civil Procedure, C.M.P.No.11842 of 2022 is dismissed as devoid of merits.



Point-(I)

“Whether appeal filed by the partnership firm represented by M.V.Balasubramaniam is maintainable?”

15.Originally, the appellant was a partnership firm. The suit was filed by the partnership firm represented by its partner M.V.Balasubramaniam. The said M.V.Balasubramaniam, in his capacity as a partner, appointed R.Subash, Manager of appellant's firm as his Power of Attorney to represent the firm. As a Power Agent, R.Subash filed the suit and also present appeal. In the appeal, the partnership firm is the appellant. It is seen that while the suit filed by the partnership firm was pending, the said partnership firm was converted into a private limited company and is carrying on business in the name and style of Narasu's Sarathy Private Enterprises Limited. P.W.1 in his evidence, has stated as follows:

“இந்த வழக்கை தாக்கல் செய்யும்போதும் வாதி நிறுவனம் கூட்டு நிறுவனமாகத்தான் இருந்தது. தற்போது வாதி நிறுவனத்தின்பெயர் நரசுஸ் சாரதி பிரைவேட் எண்டர்பிரைசஸ் லிமிடெட் ஆகும். தாவா தாக்கல் செய்தபிறகு 4,5 ஆண்டுகளுக்கு முன்பாகவே கூட்டு நிறுவனமானது பிரைவேட் லிமிடெட் நிறுவனமாக மாறிவிட்டது. ஏற்கனவே இருந்த பங்குதாரர்கள் தற்போது இல்லை. தற்போது வாதி நிறுவனம் கூட்டு நிறுவனமாக இல்லாத காரணத்தினால் தாவாவில் கண்ட தொகையை வசூல் செய்ய வாதி நிறுவனத்திற்கு உரிமை இல்லை என்று சொன்னால்



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சரியல்ல. கூட்டு நிறுவனமானது தனிப்பட்ட நிறுவனமாகும்போது
அதன் சொத்துக்கள் என்ன ஆனது என்பது பற்றி எனக்குத்
தெரியாது.”

This evidence shows that appellant partnership firm M/s. Narasu's Roller Flour Mills was no longer in existence even during pendency of suit and in its place, “Narasu's Sarathy Private Enterprises Limited” has come into force. The appellant has not taken any steps to amend the cause title in the suit to substitute the private limited company as plaintiff. Similarly, on the date of filing of the appeal, the appellant partnership firm M/s. Narasu's Roller Flour Mills was not in existence. It is the contention of the learned counsel appearing for the respondents that the appellant partnership firm ceased to exist even during the pendency of suit and also at the time of filing of appeal and therefore, the appeal filed by the non-existing partnership firm is not maintainable. The learned counsel appearing for the appellant did not dispute the fact that the partnership firm was converted into a private limited company and business is carried on in the name and style of “Narasu's Sarathy Private Enterprises Limited”. In view of the admitted position, the appeal filed in the name of non-existing partnership firm viz., M/s. Narasu's Roller Flour Mills is not maintainable. This point is answered accordingly.



Points (II) & (III) -

“(II) Whether Exs.A2 & A11 have any evidenciary value?

(III) Whether appellant has proved his claim through Exs.A2, A11 to A14?”

16(i).Earlier, the firms and companies maintained their accounts through ledgers. All the transactions, both debit and credit, were entered in the ledger manually. Many enterprises maintained a separate page for each customer. When a suit is filed claiming amount based on accounts as reflected in ledger entries, the ledger so maintained is to be produced at the time of filing of the suit.

16(ii).As per Order VII Rule 17(1) of C.P.C., the plaintiffs shall produce the Books of Account at the time of filing of the suit together with copy of the entry on which the plaintiff rely. As per Order VII Rule 17 (2) of C.P.C., the Court or Officer has to mark the document for the purpose of identification and after examining and comparing the copy with the original and if found correct, certify it to be correct and return the book to the plaintiff.

16(iii).As per Section 34 of the Indian Evidence Act, 1872, the



entries in the books of account including those maintained in electronic form regularly kept in the course of business are relevant for the Court to inquire the matter, but such statements alone shall not be sufficient evidence to fasten liability on any person. The said Section 34 of the Indian Evidence Act, 1872 is extracted hereunder for easy reference:

"34.Entries in books of account when relevant

- [Entries in the 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."

The scope of Section 34 of the Indian Evidence Act, 1872 was considered by the Division Bench of this Court in the judgment reported in ***AIR 1978 Madras 56*** and the relevant paragraphs have been extracted supra. As per the above judgment of the Division Bench of this Court, the plaintiff has to show by some independent evidence that entries in the books represent real and honest transaction and transaction took place in the account with those entries. The appellant has not let in any evidence to substantiate the entire in Exs.A2 and A11, representing the transaction that took place between the appellant and 1st respondent in



respect of those entries.

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16(iv).Chapter V of the Indian Evidence Act, 1872, relates to "*Of documentary evidence*". As per Section 61, the contents of documents may be proved by primary or secondary evidence. Section 62 defines 'Primary evidence', while Section 63 defines 'Secondary evidence'. As per Section 64, documents must be proved by primary evidence, except the cases mentioned in Section 65.

16(v).Over the period of time, technology developed and most of the enterprises started maintaining the accounts by Electronic Records, dispensing with maintaining the accounts through ledgers. Taking into account this developments Sections 65A and 65B were incorporated by Act 21 of 2000, Section 92 and the Second Schedule with effect from 17.10.2000. The said Sections are extracted hereunder:

"65A.Special Provisions as to evidence relating to electronic record – The contents of electronic records may be proved in accordance with the provisions of Section 65B.

65B.Admissibility of electronic records – (1)
Notwithstanding anything contained in this Act, any



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information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed



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into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant



activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment. "

16(vi).These Sections are incorporated to enable the enterprises to produce the electronic records to substantiate their claim. At the same time, condition is imposed in Section 65 B (4) of the Indian Evidence Act, 1872 on the enterprises to issue a certificate by a person occupying responsible official position in relation to the operation of the relevant device or the management of the relevant activities. Unless the certificate as contemplated in Section 65 B (4) is included along with the electronic record, the said record cannot be looked into and accepted by the Court.



The said certificate mentioned in Section 65 B (4) is to prevent manipulation in the Electronic Records. When an account is maintained by electronic device in the regular course of business, it is possible for manipulation of the entries and producing incorrect statement of accounts. The statement of account maintained in Electronic device is akin to the statement of account maintained earlier by some enterprises in loose sheets. Loose sheets can be removed or new sheets can be added in the statement of accounts. The Courts have deprecated the practise of maintaining the accounts in loose sheets and accepted the same only after careful consideration of all the facts and circumstances.

16(vii).In the present case, the appellant is claiming the suit amount based on Exs.A2 and A11, electronic statement of account maintained in computer. In addition to the same, the appellant is relying on Exs.A12, 13 and 14, purchase indents, invoices and despatch receipt. The respondents have denied their liability to pay the amount to the appellant as claimed in the suit. The respondents have taken a specific stand that the appellant is not maintaining the statement properly and in many debit notes raised by them, value of the packing materials and lorry charges were not given credit to. In view of such stand taken by the



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respondents, onus is cast on the appellant to prove the correctness of the statements, Exs.A2 and A11 by complying with the conditions imposed in Section 65 B (4) of the Indian Evidence Act, 1872, by issuing necessary certificate by the responsible official for maintaining the electronic device in which the statements were stored. The appellant did not produce such a certificate along with Exs.A2 and A11. The certificate contemplated is mandatory and without such certificates, Exs.A2 and A11 do not have any evidenciary value. Further, P.W.1 is a Manager of the appellant's firm. P.W.1 admitted that account is maintained in electronic device by accounts section. The appellant has not examined any person from the account section, especially person/persons who maintained the electronic device. As per Section 114 (g) of the Indian Evidence Act, adverse inference also has to be taken against the appellant. The learned Judge has elaborately considered the above materials and by giving cogent and valid reasons, rejected Exs.A2 and A11. There is no reason for interfering with the said finding.

16(viii).As far as Exs.A12, A13 and A14 are concerned, they are indents issued by the 1st respondent and invoices and despatch receipts issued by the appellant. P.W.1, in his evidence, has stated that Exs.A13



and A14 were prepared by a Clerk. P.W.1 is not the author of Exs.A13 and A14. The appellant has not examined the Clerk who prepared Exs.A13 and A14. The appellant has withheld best evidence by not examining the Clerk who prepared Exs.A13 and A14. As per Section 114 (g) of the Indian Evidence Act, adverse inference has to be taken against the appellant. Section 114 (g) reads as follows:

“114.Court may presume existence of certain facts - The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The Court may presume —

.....

.....

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;”

16(ix).In view of Section 114 (g) of the Indian Evidence Act, due to non-examination of the Clerk who prepared Exs.A13 and A14, adverse inference has to be drawn against the appellant. The appellant has deliberately with held the best evidence available with appellant and



failed to prove Exs.A13 and A14. P.W.1 has no personal knowledge about Exs.A13 and A14. For the above reason, the appellant is not entitled to rely on these exhibits to prove its claim. For the above reason, Points II and III are answered against the appellant.

Point IV-

“Whether the appellant has deducted cost of packing materials supplied by the 1st respondent and whether has given credit to transport charges for the vehicles provided by the 1st respondent?”

17.The respondents have claimed that they have supplied packing materials and also provided Lorry for transporting the goods. P.W.1 spoke about the claim made by the respondents. P.W.1 has not denied that the 1st respondent supplied packing materials and that goods were transported in the vehicle provided by the 1st respondent. The 1st appellant has not let in any evidence to show that value of packing materials and Lorry charges were deducted from the value of the goods supplied to the 1st respondent and the said claim was rejected by giving any reason for such rejection. For the above reason, we hold that the appellant has not given credit to the packing materials and transport charges as claimed by the 1st respondent. Point IV is answered in favour of the respondents.



18.Learned counsel appearing for the appellant and the learned counsel appearing for the respondents relied on the judgments and relevant portions are extracted above.

19.The learned counsel appearing for the appellant relied on the judgment of the Hon'ble Apex Court reported in *AIR 2020 SC 4908* cited supra. In the said judgment, the Hon'ble Apex Court held that Electronic Record must accompany the certificate and if the person produced defective certificate or when such certificate is demanded and is not given, the Judge conducting the trial must summon the person/persons referred to in Section 65B(4) of the Indian Evidence Act, and require that such certificate be given by such person or persons. At the same time, the Hon'ble Apex Court held that the same is subject to discretion being exercised in accordance with law and in accordance with the requirements of justice on the facts of each case. In the present case, the learned Judge exercising discretion did not call upon the appellant to produce the certificate. In the facts and circumstances of the present case, there is no error in the learned Judge not calling upon the appellant to produce such certificate.



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20.Further, paragraph 21 of the judgment of the Hon'ble Apex Court reported in ***AIR 2022 SC 2726*** cited supra extracted above, relied on by the learned counsel appearing for the respondents is squarely applicable to the facts and circumstances of the present case. The learned counsel appearing for the respondents relied on the judgments reported in ***Manupatra/RH/0703/2007 decided on 25.10.2007 [Fateh Lal vs. Bhagwati Lal]***, ***AIR 1981 Bombay 446 (Zenna Sorabji and others Vs. Mirabelle Hotel Co. (Pvt.) Ltd., and others)***, ***AIR 1999 Kerala 279 (Arakkan Narayanan Vs. M/s.Indian Handloom Traders and others)*** and ***2017 1 SCC 257 (Ramesh Verma (D) tr. L.Rs. vs. Lajesh Saxena (D) by L.Rs. and Ors.)*** to substantiate his contention that mere entries in the Account Book or Electronic Record are not sufficient to fasten the liability on the respondents.

21.The contention of the learned counsel appearing for the respondents is that as per Section 34 of the Indian Evidence Act, entries in the Electronic Record must be proved by corroborating evidence. From the judgments referred to above and the relevant portions extracted above, it is clear that the Clerks who have kept those accounts or some persons competent to speak about the facts namely, the entries, should be called



to prove that they have been regularly kept and to prove their general accuracy. In the judgment reported in **2017 1 SCC 257 cited supra**, the Hon'ble Apex Court dealing with proof of Will, has held that Section 68 of the Indian Evidence Act and Succession Act 1925, mandates the method of proof which is mandatory, which has to be complied with to accept the Will as genuine Will. In the present case, the appellant did not furnish the certificates as contemplated under Section 65B(4) of the Indian Evidence Act, which is mandatory and has not examined the person who made entries in the Electronic Record Exs.A2 and A11. In view of the same, the learned Judge has rightly rejected Exs.A2 and A11 and the appellant has not made out any case to interfere with such finding by this Court.

22. In view of the above finding with regard to Points I to IV, the judgments relied on by the learned counsel appearing for the appellant do not advance the case of the appellant and the judgments relied on by the learned counsel appearing for the respondents are squarely applicable to the facts and circumstances of the present case and there is no reason to set aside the impugned judgment of the trial Court.



23.In the result, we hold that:

(1) Appeal filed in the name of the partnership firm is not maintainable as the partnership firm had been converted into a private limited company and the partnership firm was not in existence on the date of filing Appeal Suit.

(2) In view of the failure on the part of the appellant to furnish certificates in respect of Electronic Records namely Exs.A2 and A11 as contemplated in Section 65 B (4) of the Indian Evidence Act, 1872, the same have no evidenciary value and cannot be looked into.

(3) The appellant has failed to prove Exs.A13 and A14, as they failed to examine the Clerk who prepared the same and adverse inference against the appellant is drawn as per Section 114 (g) of the Indian Evidence Act, 1872.

(4) The appellant has failed to prove that the respondents are liable to pay the sum of Rs.32,25,637/-.

24.In view of the above finding, the appellant is not entitled to the relief sought for and the appeal is dismissed as devoid of merits. C.M.P.No.11842 of 2022 is dismissed. No costs.



A.S.No.658 of 2016

(V.M.V., J) (S.S., J)
.10.2022

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Index : Yes / No

Internet : Yes / No

To

1.The III Additional District Judge,
Salem.

2.The Section Officer,
VR Section,
High Court,
Madras.



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A.S.No.658 of 2016

V.M.VELUMANI, J.
and
S.SOUNTHAR, J.

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Pre-delivery judgment in
A.S.No.658 of 2016

.10.2022