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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2022

Pronounced on : 19 .04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

A.S.No. 102 of 2018

M/s. Acura Automation Engineers (P) Ltd.,  
Functioning at No.103, Sastri Nagar,  
Civil Aerodrome Post  
Coimbatore. ... 1<sup>st</sup> Defendant/Appellant

Vs

1. Mr.C.Krishna Kumar ... Plaintiff/Respondent

2. B.Suresh

3. B.Vijayanand ... Defendants 2 and  
3/Respondents 2 and 3

(Respondents 2 and 3 are only formal parties and hence given up)

PRAYER: Appeal filed under Section 96 C.P.C., against the  
Judgment and Decree dated 20.01.2017 made in O.S.No. 46 of 2014  
on the file of the Third Additional District Sessions Judge, at  
Coimbatore.

For Appellant : Mr. A.E.Ravi Chandran

For 1<sup>st</sup> Respondent: Mr. C.D.Johnson

For 2<sup>nd</sup> and 3<sup>rd</sup>  
Respondents : No appearance

JUDGMENT

The first defendant in O.S.No. 46 of 2014 which was on the  
file of the III Additional District Court at Coimbatore is the  
appellant herein.



2. The said suit in O.S.No. 46 of 2014 had been filed by the plaintiff C.Krishnakumar against three defendants, M/s. Acura Automation Engineers (P) Ltd., and the two Directors of the first defendant, B.Suresh and B.Vijayanand, seeking a Judgment and Decree to pay to the plaintiff jointly and severally, a sum of Rs.16,88,198/- together with interest at 18% p.a., from the date of filing of the suit till the date of realisation and for costs of the suit.

3. By Judgment dated 20.01.2017, the III Additional District Judge, Coimbatore decreed the suit as against the first defendant and had dismissed the suit as against the second and third defendants. Questioning that particular Judgment, the first defendant M/s. Acura Automation Engineers (P) Limited., has filed the present First Appeal.

4. In the plaint in O.S.No. 46 of 2014, the plaintiff had stated that he is the proprietor of M/s. Sree Krishna Electronics at Coimbatore and his company had direct business transactions with the defendants/M/s. Acura Automation Engineers (P) Ltd., and its two Directors B.Suresh and B.Vijayanand and had supplied electronic components. It was stated that there was an outstanding of Rs.12,73,687/- to be paid by the defendants. Thereafter, the second and third defendants had jointly issued a cheque dated 15.04.2012 bearing No. 064001 drawn at ICICI Bank Ltd., Coimbatore, for Rs.12,65,646/- in their capacity as Directors / authorised signatories of the first defendant. The cheque was presented for collection on 11.06.2012 by the plaintiff through his bank M/s. Kotak Mahindra Bank Ltd., Avinashi Road, Coimbatore, but it was returned on the ground 'insufficient funds'. The plaintiff then issued a notice and then filed C.C.No. 413 of 2012 before the learned Judicial Magistrate No.III, which was later transferred to the file of the learned Judicial Magistrate No.I, Coimbatore.

5. The defendants then filed CrI.O.P.No. 1309 of 2013 before this Court under Section 482 of Cr.P.C., and C.C.No. 413 of 2012 was quashed on the ground that the company / M/s. Acura Automation Engineers (P) Ltd., had not been shown as an accused in the said calendar case. The plaintiff further stated that however the issuance of cheque reflected the fact that the defendants are liable to pay the amount and therefore had instituted the suit seeking the relief as stated above.

6. The defendants filed a written statement denying that the second and third defendants had jointly issued a cheque for



Rs.12,65,646/- in their capacity as Directors/authorised signatories of the first defendant. They also stated that C.C.No. 413 of 2012 before the Judicial Magistrate No.I, Coimbatore, had been quashed by this Court in Crl.O.P.No. 1309 of 2013 by order dated 10.12.2013. It had been stated that it was false to state that the defendants had issued a letter of acceptance of liability by letter dated 14.04.2012. It had also been stated that there has been continuous transactions between the plaintiff and the defendants. It had been therefore stated that the cheque had been handed over only for security purposes and had been filled up by the plaintiff. It had been stated that the defendants are not connected with the letter of acceptance dated 14.04.2012. It had been stated that the defendants had been regularly paying the invoice amounts without any default. It was stated that the plaintiff supplied faulty goods and further, enmity had arisen between the plaintiff and the defendants, since the defendants purchased electronic goods from other dealers. It was stated that according to the statements of accounts, as on 11.01.2013, the defendants are due to pay only Rs.16,505.25. It was stated that the interest claimed is exorbitant and it was finally stated that the suit should be dismissed.

7. On the basis of the above pleadings, the III Additional District Judge, Coimbatore, had framed the following issues:-

“(i) Whether the defendants are liable to pay the suit claim to the plaintiff?;

(ii) Whether the letter dated 14.04.2012 is forged and fabricated as claimed by the defendants?;

(iii) Whether the plaintiff is entitled for the suit claim?; and

(iv) To what other reliefs the plaintiff is entitled?”

8. During the course of trial, the plaintiff examined himself as PW-1 and marked Exs. A-1 to A-10. Ex.A-1 was the copy of cheque issued by the defendants, Ex.A-3 was a copy of legal notices, Ex.A-6 dated 14.04.2012 is a letter of acceptance of liability said to have been issued by the defendants and Ex.A-8 was a certified copy of the Memorandum of Deposit of Title Deeds executed by the first defendant in favour of Centurian Bank of Punjab Ltd.



9. On the side of the defendants, the third defendant was examined as DW-1 and he marked Exs. B-1 to B-9. Ex.B-1 was a ledger summary of the account of the plaintiff, Ex.B-2 was the customer bank details of the first defendant, Ex.B-4 was the account statement maintained by the first defendant, Ex.B-5 was the letter head and seal of the first defendant. Ex.B-6 were invoices, Ex.B-7 to B-9 related to C.C.No. 413 of 2012.

10. On the basis of the pleadings and the oral and documentary evidence adduced, the learned III Additional District Judge had taken up for consideration all the issues together. It was first held that the plaintiff had stated that they had supplied electronic goods only to the first defendant and it was not their claim that the second and third defendants had stood guarantee for payment of the invoice amounts. There was also no evidence that the goods were supplied to the second and third defendants. It was stated that the first defendant was a separate entity. It was also stated that there was no materials to maintain the claim against the second and third defendants. The suit was therefore dismissed against the second and third defendants.

11. Thereafter, the learned III Additional District Judge examined the transaction between the plaintiff and the first defendant and placed reliance on Ex.A-6 the letter of acceptance of liability dated 24.02.2012. It was stated that the defendants had taken a stand that the said letter was forged and fabricated. The defendants also produced Ex.B-5 a letter head said to be used by them and had stated the Ex.A-6 was prepared in a letter head which was no longer in use. It was observed that it was the case of the defendants one of the employees of the first defendant had been removed from service and he had taken away blank letter heads and seals and these had been misused by the plaintiff to prepare Ex.A-6.

12. The learned III Additional District Judge however found that these facts had not been stated in the written statement and therefore rejected such evidence in the absence of pleadings. The learned III Additional District Judge placed reliance on Ex.A-6. He also found that Ex.A-9 series, invoices filed by the plaintiff reflected that the amounts will have to be paid within 30 days. The III Additional District Judge also examined Ex.B-6 series, invoices by which the first defendant had purchased the materials from other third parties. However, it was observed that those suppliers were not been examined as witness. It was also observed that in Ex.A-10, the monthly returns filed by the Commercial Tax Department, the invoices



marked as Ex.A-9 were reflected. It was finally held that the plaintiff had discharged his burden by producing Ex.A-6, A-9 to A-10. It was also stated that the onus to disprove the documents therefore shifted to the defendants, who failed to discharge such onus. Finally, by Judgment dated 20.01.2017, the suit was decreed against the first defendant with costs and dismissed against the second to third defendants. Questioning that particular Judgment, the first defendant had filed the present Appeal.

13. Heard arguments advanced by Mr. A.E.Ravi Chandran, learned counsel appearing for the appellant/first defendant and Mr.C.D.Johson, learned counsel appearing for the first respondent/plaintiff. The second and third respondents/second and third defendants did not choose to appear before this Court.

14. It was the contention of Mr.A.E. Ravi Chandran, learned counsel for the appellant that the plaintiff had failed to produced the statement of accounts which if produced, would have evidenced supply of electronic goods and the corresponding payments made by the first defendant. The learned counsel pointed out the evidence that PW-1, who, during cross examination stated that he could produce the statements of accounts but learned counsel stated that such statement of accounts had not been produced, inspite of such statement in the witness box. The learned counsel very seriously assailed Ex.A-6 and pointed out that at the time, it was issued, there was no TNGST in the year 2012. It was the assertion of the learned counsel that Ex.A-6 had been created by the plaintiff using a letter head of the first defendant already in their possession. The learned counsel stated that an employee had been dismissed from service from the first defendant and he had in his possession rubber seals and letter heads and they were used by the plaintiff to prepare Ex.A-6. The learned counsel stated that since the statements of accounts had not been produced by the plaintiff, the suit will necessarily have to be dismissed holding that the suit claim had not been proved. The learned counsel also pointed out that the defendants had however produced their ledger which reflected substantial payments to the plaintiff and therefore stated that the suit claim is misconceived and the Judgment and Decree will have to be interfered with and the suit must be dismissed.

15. The learned counsel placed reliance on a Judgment of the Hon'ble Supreme Court reported in (2006) 6 SCC 39 [M.S.Narayana Menon alias Mani Vs. State of Kerala and Another]. The learned counsel stated that the Hon'ble Supreme Court had



held that the initial burden of proof is on the plaintiff to first establish that there was a liability to be discharged by the first defendant. That could have been discharged only if the plaintiff had produced the statements of accounts. Since that had not been produced, a reasonable presumption can be drawn against the plaintiff. The learned counsel also pointed out the absence of the statements of accounts, and contrasted that with the presence of the statement of ledger filed on behalf of the appellant/first defendant, and stated that a perusal will make it clear that the first defendant had made substantial payments to the plaintiff. It was also pointed out that the motive for filing the suit was that the defendant had chosen to purchase the same materials from another competitor vendor. The learned counsel further pointed out that Ex.A-6 had been forged and in this connection, pointed out the letter head produced by the defendant which had a different format and insisted that the suit should be dismissed.

16. Mr.C.D.Johnson, learned counsel appearing for the first respondent/plaintiff however justified the reasoning in the judgment and stated that all aspects raised had been considered by the learned Judge. It was pointed out by the learned counsel that the very fact that the defendants had issued a cheque would show that they had admitted liability. The Calendar Case was quashed by the High Court only on technical grounds that the company, namely, the first defendant herein had not been made a party to the criminal proceedings. It was stated that the High Court had not entered into a discussion whether the amount had to be paid or whether the cheque was issued for the amount liable to be paid. The learned counsel also pointed out that the cheque was issued since there was balance owing to the plaintiff in view of the transactions between the parties. The learned counsel therefore stated that the Judgment need not be interfered with and urged that the appeal should be dismissed.

17. I have given careful consideration to the arguments advanced and to the materials on record.

18. The following points arise for consideration under Order 41 Rule 31 CPC:-

- (1) Whether the non-production of statements of accounts by the plaintiff is fatal to the case of the plaintiff?;
- (2) Whether the claim of the first defendant that Ex.A-6 is a forged document had been proved during the course of trial?; and



(3) Whether the issuance of a cheque by the second and third defendants would amount to admission of liability by the first defendant?

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19. Before entering into a discussion, on the points above, it would be only instructive to examine the position of law as pointed by the Hon'ble Supreme Court in (2006) 6 SCC 39 [M.S.Narayana Menon alias Mani Vs. State of Kerala and Another]:-

"27. In view of the aforementioned backdrop of events, the questions of law which had been raised before us will have to be considered. Before we advert to the said questions, we may notice the provisions of Sections 118(a) and 139 of the Act which read as under:

"118. Presumptions as to negotiable instruments.-Until the contrary is proved, the following presumptions shall be made-

(a) of consideration.-that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

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139. Presumption in favour of holder.-It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

Presumptions both under Sections 118(a) and 139 of the Act are rebuttable in nature.

28. What would be the effect of the expressions "may presume", "shall presume" and "conclusive proof" has been considered by this Court in Union of India v. Pramod Gupta [(2005) 12 SCC 1] in the following terms: (SCC pp. 30-31, para 52)





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ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."

30. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.

31. A Division Bench of this Court in *Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal* [(1999) 3 SCC 35] albeit in a civil case laid down the law in the following terms: (SCC pp. 50-51, para 12)

"12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of



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proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt."

This Court, therefore, clearly opined that it is not necessary for the defendant to disprove the existence of consideration by way of direct evidence.

32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies.

33. Presumption drawn under a statute has only an evidentiary value. Presumptions are raised in terms of the Evidence Act. Presumption drawn in respect of one fact may be an evidence even for the purpose of drawing presumption under another.

.....

37. What would be the effect of a presumption and the nature thereof fell for consideration before a Full Bench of the Andhra Pradesh High Court in G. Vasu v. Syed Yaseen Sifuddin Quadri [AIR 1987 AP 139 : (1987) 1 An LT 1 (FB)] . In an instructive judgment, Rao, J. (as His Lordship then was)



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speaking for the Full Bench noticed various provisions of the Evidence Act as also a large number of case-laws and authorities in opining: (AIR p. 147, para 30)

"30. From the aforesaid authorities, we hold that once the defendant adduces evidence to the satisfaction of the court that on a preponderance of probabilities there is no consideration in the manner pleaded in the plaint or suit notice or the plaintiff's evidence, the burden shifts to the plaintiff and the presumption 'disappears' and does not haunt the defendant any longer."

It was further held: (AIR pp. 148-49, para 32)

"32. For the aforesaid reasons, we are of the view that where, in a suit on a promissory note, the case of the defendant as to the circumstances under which the promissory note was executed is not accepted, it is open to the defendant to prove that the case set up by the plaintiff on the basis of the recitals in the promissory note, or the case set up in suit notice or in the plaint is not true and rebut the presumption under Section 118 by showing a preponderance of probabilities in his favour and against the plaintiff. He need not lead evidence on all conceivable modes of consideration for establishing that the promissory note is not supported by any consideration whatsoever. The words 'until the contrary is proved' in Section 118 do not mean that the defendant must necessarily show that the document is not supported by any form of consideration but the defendant has the option to ask the court to consider the non-existence of consideration so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that consideration did not exist. Though the evidential burden is initially placed on the defendant by virtue



of Section 118 it can be rebutted by the defendant by showing a preponderance of probabilities that such consideration as stated in the pronote, or in the suit notice or in the plaint does not exist and once the presumption is so rebutted, the said presumption 'disappears'. For the purpose of rebutting the initial evidential burden, the defendant can rely on direct evidence or circumstantial evidence or on presumptions of law or fact. Once such convincing rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the plaintiff who has also the legal burden. Thereafter, the presumption under Section 118 does not again come to the plaintiff's rescue. Once both parties have adduced evidence, the court has to consider the same and the burden of proof loses all its importance."

38. If for the purpose of a civil litigation, the defendant may not adduce any evidence to discharge the initial burden placed on him, a "fortiori" even an accused need not enter into the witness box and examine other witnesses in support of his defence. He, it will bear repetition to state, need not disprove the prosecution case in its entirety as has been held by the High Court.

39. A presumption is a legal or factual assumption drawn from the existence of certain facts.

40. In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn., at p. 3697, the term "presumption" has been defined as under:



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"A presumption is an inference as to the existence of a fact not actually known arising from its connection with another which is known.

A presumption is a conclusion drawn from the proof of facts or circumstances and stands as establishing facts until overcome by contrary proof.

'A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged but of which there is no direct proof. It follows, therefore, that a presumption of any fact is an inference of that fact from others that are known' (per Abbott, C.J., R. v. Burdett [4 B & Ald 95, 161 : 106 ER 873] ).

The word 'presumption', inherently imports an act of reasoning—a conclusion of the judgment; and it is applied to denote such facts or moral phenomena, as from experience we know to be invariably, or commonly, connected with some other related facts (Wills on Circumstantial Evidence).

A presumption is a probable inference which common sense draws from circumstances usually occurring in such cases. The slightest presumption is of the nature of probability, and there are almost infinite shades from slight probability to the highest moral certainty. A presumption, strictly speaking, results from a previously known and ascertained connection between the presumed fact and the fact from which the inference is made."

Having noticed the effect of the presumption which was required to be raised in terms of Section 118(a) of the Act, we may also notice a decision of this Court in regard to "presumption" under Section 139 thereof.



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41. In *Hiten P. Dalal v. Bratindranath Banerjee* [(2001) 6 SCC 16 : 2001 SCC (Cri) 960] a three-Judge Bench of this Court held that although by reason of Sections 138 and 139 of the Act, the presumption of law as distinguished from presumption of fact is drawn, the court has no other option but to draw the same in every case where the factual basis of raising the presumption is established. Pal, J. speaking for a three-Judge Bench, however, opined: (SCC pp. 24-25, paras 22-23)

"22. ... Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, 'after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists'.

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably



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probable, the standard of reasonability being that of the 'prudent man'."

42. The court, however, in the fact situation obtaining therein, was not required to go into the question as to whether an accused can discharge the onus placed on him even from the materials brought on record by the complainant himself. Evidently in law he is entitled to do so.

43. In Goaplast (P) Ltd. v. Chico Ursula D'Souza [(2003) 3 SCC 232 : 2003 SCC (Cri) 603] upon which reliance was placed by the learned counsel, this Court held that the presumption arising under Section 139 of the Act can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption. The question which arose for consideration therein was as to whether closure of accounts or stoppage of payment is sufficient defence to escape from the penal liability under Section 138 of the Act. The answer to the question was rendered in the negative. Such a question does not arise in the instant case.

44. In Kundan Lal Rallaram v. Custodian, Evacuee Property [AIR 1961 SC 1316 : 1961 An LT 601] Subba Rao, J., as the learned Chief Justice then was, held that while considering the question as to whether burden of proof in terms of Section 118 had been discharged or not, relevant evidence cannot be permitted to be withheld. If a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced, it might have gone unfavourable to the plaintiff. Such a presumption was itself held to be sufficient to rebut the presumption arising under Section 118 of the Act stating: (AIR p. 1319, para 5)



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"Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or presumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."

20. Strong reliance had been placed on the dictum laid down in the aforementioned Judgment by both the learned counsels for the appellant and the first respondent.

21. In the instant case, it is admitted that the plaintiff and the first defendant that there had been continuous transactions by the plaintiffs supplying electronic goods. The first defendant had also made payments for such supply of goods. But however, it is the specific case of the first respondent that the appellant herein had not paid the amount claimed in the suit, though goods had been supplied and had therefore, towards that amount, the second and third respondents had issued a cheque. The cheque when presented for payment was dishonoured. It was therefore stated that a strong presumption must be drawn that the first defendant who was the receipt of the goods supplied was actually liable for the amount claimed.

22. This contention is refuted by the appellant by holding that the first respondent had not produced statement of accounts to reflect the goods supplied and payments made. It was therefore stated that a presumption is to be drawn under illustration (9) of Section 114 of the Evidence Act, 1872 that statements of accounts had not been produced only because, if it had been produced, it would have been adverse to the first respondent.

23. In this connection, reference can also be had to Order 11 Rule 16 CPC which is as follows:-

"16. Notice to produce- "Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require."

24. If even after a direction is issued to produce a document and it is still not produced, then pleadings to that effect, can be struck off. Order 11 Rule 21 is as follows:-





that effect. It had only been stated that the said documents have been forged and fraudulently prepared by the first respondent. In Ex.A-6, there is reference to various invoices. Each one of the invoices had been independently produced by the first respondent in Ex.A-9. This had been further substantiated by Ex.A-10. There is a direct interconnection between the statements made in Ex.A-6 and the invoices produced under Ex.A-9 and also in Ex.A-10. The trial Judge had as a fact placed reliance on all the three documents. The veracity of Ex. A-9 and A-10 particularly had not been shattered during the course of trial. If A-6 is said to have been prepared fraudulently, then Ex.A-9 and Ex.A-10 still hold and they reflect invoices for supply of goods. The statements of accounts produced by the appellant in Ex.B-4, would not come to the rescue of the appellant.

28. A cheque had been issued by the second and third respondents in favour of the first respondent. The issuance of such cheque itself places a presumption that they had admitted liability to that particular amount. The statement that the cheque had been issued as a security, cannot be countenanced since the cheque had been presented for payment and had been returned with the endorsement 'insufficient funds'.

29. Taking into consideration, all these factors, namely, the invoices mentioned in Ex.A-6, the actual invoices produced under Ex.A-9, and further reinforced under Ex.A-10 and also the cheque which had been issued under Ex.A-1 it is clear that the appellant was due and liable to pay amounts to the first respondent herein. The Calendar case had been quashed by this Court only owing to a technical error that the appellant company had not been impleaded as an accused. The discussions lead to a further conclusion that the issuance of the cheque itself reflected liability on the part of the appellant.

30. In view of all these reasons, the points are answered that Ex.A-6 is a central document and on the basis of which a decree can be passed and further, there is no necessity for the first respondent to produce the separate statement of accounts in the absence of notice to produce such document before the Court and further, the very fact that a cheque had been issued shows that was liability payable by the appellant to the first respondent.



31. I find no infirmity in the Judgment of the trial Court which had discussed all the issues and therefore, I hold that the Appeal has to suffer an order of dismissal and accordingly, it is dismissed with costs. The Judgment of the trial Court in O.S.No. 46 of 2014 dated 20.01.2017 is affirmed.

SD/-  
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

vsg

To:

1. The III Additional District Sessions Judge,  
at Coimbatore.
2. The Section Officer,  
VR Section,  
Madras High Court, Chennai.

+1cc to Mr.A.E.Ravichandran, Advocate Sr.26675  
+1cc to Mr.C.D.Johnson, Advocate Sr.26579

A.S.No. 102 of 2018

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srg 12/05/2022