IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on | 18.12.2023 |
|---|---|
| **Pronounced on** | **21.01.2024** |

CORAM

**THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI**

A.S.No.79 of 2015

S.Manimozhi ... Appellant/Plaintiff

Versus

1.M/s.Baxter India Limited,
A Private Limited Company,
Having its office at Enkay Towers,
V Floor, Udyog Vihar Phase 5,
Gurgaon 122 106, Haryana.

2.M/s.Edwards Lifesciences (India) Private Limited,
Having its office at E, F-201 to 204, Remi Bizcourt,
Plot No.9, Shah Industrial Estate,
Andheri (West), Mumbai – 40 058.

3.M/s.Edwards Lifesciences (India) Private Limited,
A Private Limited Company,
Having its office at
No.17-A, Sambasivam Street,
First Floor, T.Nagar, Chennai – 600 017 ... Respondents/Defendants

**Prayer** : The Appeal Suit is filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 25.09.2014 made in O.S.No.12602 of 2010 on the file of the learned XVIII Additional City Civil Judge, Chennai.

| | | |
|---|---|---|
| For Appellant | : | Mr.K.P.Gopala Krishnan |
| For Respondents | : | R1 – Dismissed vide order dated 10.02.2023 |
| | : | Mr.V.V.Sivakumar for R2 and R3 |

**ORDER**

This Appeal Suit is preferred as against the judgment and decree passed in O.S.No.12602 of 2010, dated 25.09.2014 on the file of the learned XVIII Additional City Civil Judge, Chennai.

2. It is a suit for recovery of money filed by the Plaintiff against the Defendants. The case of the Plaintiff is that the Plaintiff is a Proprietorship concern dealing with life saving products. During the business transactions, the Plaintiff was purchasing goods from the 1st Defendant from the year 1997 to 2000. The Plaintiff used to place orders at the Madras Office

of the 1st Defendant and the 1st Defendant supplied the goods from its Office. The Plaintiff settled all the bills of the 1st Defendant by way of cheques, Demand Draft and through letter of credits. Further, when there was any defects in the goods supplied, the same were returned by the Plaintiff to the authorized representative of the Madras Office of the 1st Defendant. Later on, the 1st Defendant used to issue credit notes and adjusted the amounts against the subsequent bills.

3. The 1st Defendant by letter dated 13.03.2000 informed the Plaintiff that the pattern entity of the 1st Defendant had announced its decision to spin off its cardiovascular business world wide to 2nd Defendant, as such, the 2nd Defendant would conduct the business in India, from 01.04.2000 with office at Bombay. The 1st Defendant also assured that it would contact the Plaintiff for settlement of accounts. While so, when the Plaintiff verified the whole transaction with 1st Defendant and on scrutiny of accounts, the Plaintiff found that the cheque bearing No.458003 dated 05.04.1999 drawn on Punjab National Bank, Chennai for Rs.3,15,000/- was issued to the 1st Defendant without purchasing any goods and the 1st Defendant also not adjusted the said

amount against the subsequent bills nor had issued any credit notes. The said cheque was realized on 16.04.1999. The Plaintiff requested the 1st Defendant to issue credit note or pay back the amount. Since there is no response, the Plaintiff requested the 1st Defendant to issue credit notes or returned the sum by its letter dated 20.03.2001.

4. From 01.04.2000 onwards, the Plaintiff placed orders with the 2nd Defendant through 3rd Defendant for its requirements and received the goods. The Plaintiff also requested the 2nd and 3rd Defendants as the successor of the 1st Defendant to settle the cheque amount of Rs.3,15,000/- received by the 1st Defendant without supplying goods, the 2nd Defendant also promised to look into the matter. The Plaintiff further scrutinized the accounts upto 31.03.2000 and found that a total sum of Rs.6,18,120/- is payable by the 1st Defendant to the Plaintiff on account of :

(a) Amount paid by the Plaintiff to the 1st Defendant by over sight without any purchase

(b) Bill amount paid without adjusting the value of the goods returned to the 1st Defendant and

(c) Bill amount paid to the 1st Defendant without adjusting the credit notes issued by the Plaintiff.

5. The Plaintiff also paid a sum of Rs.3,15,000/- without purchasing any goods. However, the 1st Defendant did not issue credit notes for the goods returned for a sum of Rs.2,96,880/-. The 1st Defendant issued credit note for Rs.6,240/-, but failed to adjust the same against subsequent bills. The Plaintiff through letter dated 19.11.2001 addressed to the 2nd and 3rd Defendants brought the facts of excess payment made by the Plaintiff and requested the 2nd Defendant as the successor of the 1st Defendant to pay the said amount to the Plaintiff together with interest thereon. Though, the 2nd and 3rd Defendants received the said letter did not respond. Hence, the Plaintiff was constrained to cause a legal notice dated 21.01.2002 to the Defendants calling upon them to pay a sum of Rs.6,18,120/- together with interest within three months on receipt of the notice. The Defendants received the said notice did not return the money nor sent any reply. The 1st Defendant agreed to settle the amount to the Plaintiff through their letter dated 13.03.2000. Hence, the

Plaintiff is charging interest from 13.03.2000 at the rate of 25% per annum, the Plaintiff states that a total sum of Rs.10,31,464/- including interest of Rs.4,13,344/- is due to the Plaintiff as on 25.12.2002. In view of the commercial transaction between the Plaintiff and Defendant, the Defendant is liable to pay interest at 24% per annum from the date of filing the Plaint to till date of realization. Hence, the Plaintiff filed suit for recovery of the amount mentioned in the Plaint.

6. The case of the Defendants 2 and 3 is that the Plaintiff already filed O.S.No.72 of 2003 before IV Assistant Judge, City Civil Court, Chennai for recovery of sum from the Defendants herein on the ground of credit note was not given credit in the statement of accounts, excess payment paid and three credits were not given for the goods returned. The said suit was dismissed on contest by both parties. The Plaintiff herein did not prefer any appeal against the decree and judgment passed in O.S.No.72 of 2003. Hence, the present suit filed by the Plaintiff is hit by *res judicata*.

7. The grounds alleged by the Plaintiff in O.S.No.72 of 2003 and in the suit are one and the same, the Plaintiff did not seek leave of this Court under Order 2 Rule 3 of CPC. Further, the cause of action as alleged in O.S.No.72 of 2003 and this suit are also one and the same.

8. The claim of the Plaintiff that, he issued cheque bearing No.458003, dated 05.04.1999 for Rs.3,15,000/- drawn on Punjab National Bank, Chennai in favour of the 1st Defendant by way of mistake without purchasing any goods is false and incorrect. The said sum was paid by the Plaintiff to the 1st Defendant towards part payment of the sale consideration due and liability to be paid by the Plaintiff to the 1st Defendant, for the goods supplied under Invoice No.01805 dated 03.11.1998. Hence, the claim of the Plaintiff that he paid Rs.3,15,000/- in favour of the 1st Defendant by way of mistake without purchasing the goods is not sustainable.

9. In letters dated 22.08.2001, 25.09.2001 and 05.10.2001, the Plaintiff alleged that he has paid a sum of Rs.3,15,000/- as excess payment. On the contrary, in his letter dated 19.11.2001, the Plaintiff alleges that he

has paid excess sum of Rs.3,40,200/- in lieu of Rs.3,15,000/-. The claim of the Plaintiff is illusionary false and incorrect.

10. The Defendants herein never requested the Plaintiff to mark the copy of the legal notice of the 1st Defendant. The Defendants submitted that, the suit claim of the Plaintiff a sum of Rs.6,18,120/- towards the alleged claim of the principal amount of Rs.4,13,344/- towards the alleged interest calculated at 24% per annum from 13.03.2000 to 08.12.2002 is unsustainable. The Defendants submitted that they are not liable to pay the alleged principal sum of Rs.6,18,120/- and the alleged interest claimed by the Plaintiff for Rs.4,13,344/- is liable to be rejected.

11. It is further submitted that the delivery challan listed by the Plaintiff towards claiming refund of all the stock returned or forged and fabricated documents. The said delivery challan have not emanated from the Defendants. The material evidence relied on by the Plaintiff and fastening the suit liability on the Defendants are liable to be discarded. The suit claim has not been substantiated through valid documents and material evidence.

Hence, prayed for dismissal of suit with cost.

12. Based on the above pleadings, the Trial Court has framed the following issues :

(i). Is it true the Plaintiff is not entitled for the suit claim?

(ii). Whether the Plaintiff is entitled to the suit claim as prayed for?

(iii). To what relief the Plaintiff is entitled?

Considering the pleadings filed by both parties, the Trial Court is of opinion that, the issues framed by the Trial Court on 17.08.2012 is not satisfactory, hence for proper, effective and complete adjudication of this case framed the following issues :

(i). Whether the suit is hit by *res judicata* ?

(ii). Whether is there any cause of action for filing the suit?

(iii). Whether the Plaintiff is entitled to recover the suit claim from the Defendants?

(iv). To what other relief the Plaintiff is entitled?

13. For the sake of convenience, the Appellant and Respondents

are referred as Plaintiff and Defendants 2 and 3 as in the suit.

14. During the trial, the Plaintiff was examined as P.W.1 and Ex.A1 to Ex.A46 were marked on the side of the Plaintiff. The Authorized Signatory of the Defendants 2 and 3 are examined as D.W.1 and Ex.B1 and Ex.B2 were marked on the side of the Defendants.

15. The Trial Court upon considering the averments made in the plaint and written statement and appreciating the evidence on record and the arguments advanced by the respective counsels, dismissed the suit. Aggrieved by this, the present appeal is preferred by the Plaintiff.

16. The contention of the Plaintiff is that, as Plaintiff he filed a suit in O.S.No.12602 of 2010 against the 2$^{nd}$ and 3$^{rd}$ Defendants who are the Respondents herein for recovery of a sum of Rs.10,31,464/- together with interest at the rate of 24 % per annum and Rs.6,18,120/- from the date of plaint till the date of realization. The Trial Court dismissed the suit in O.S.No.12602 of 2010 by stating that the suit claim is not proved by the

Plaintiff. As such, the Plaintiff is not entitled for recovery of the amount claimed in the suit. It is submitted that the Appellant/Plaintiff has filed 46 documents on his side to prove his case and the Trial Court failed to consider that in the commercial transaction between the Plaintiff and the Defendant, it is normal to purchase the good on credit basis, payments made by cheques, if the defective goods are returned and the amount is adjusted in the subsequent bills, issuing of credit notes that could be adjusted subsequently and ultimately the accounts would be reconciled and balance if any recovered.

17. Further submission is that, the Plaintiff has filed the invoices issued by the Defendants for the purchase of goods by Plaintiff, credit notes and the cheques and the statement of accounts issued by the bank to substantiate the claim made by the Plaintiff against the Defendant The Trial Court erroneously came to the conclusion that the Plaintiff failed to prove his case by filing necessary documents.

18. It is submitted that the burden is on the Defendants to disprove the claim of the Plaintiff when the Plaintiff proved his case through

documentary evidence. In the absence of any such proof by the Defendants, the Trial Court ought to have decreed the suit. It is further submitted that the Plaintiff has proved that the credit notes were issued for the return of the defective goods. The credit notes were issued by the Defendants only for the defective goods and the same has to be adjusted subsequently. When the Plaintiff says that the credit notes were not adjusted, the burden lies on the Defendants to prove that the same were adjusted subsequently. The Defendants failed to enter the witness box and disprove the claim of the Plaintiff and in such circumstances, the Trial Court ought to have decreed the suit. The Trial Court having found that the Plaintiff has filed the documents for the dues by the Defendants to a tune of Rs.6,18,120/- payable to the Plaintiff on account of the amount paid by the Plaintiff to the Defendant by oversight without any purchase, the bill amount paid without adjusting the value of the goods returned to the Defendant and the bill amount paid to the Defendant without adjusting the credit notes issued by the Plaintiff, ought to have decreed the suit.

19. It is further submitted that the Trial Court failed to consider

the fact that the Plaintiff has produced the individual account of the Defendants maintained in a separate book to prove the claim of the Plaintiff. The Trial Court failed to see that the Defendant remained *ex parte* and the Defendants 2 and 3 cannot authenticate the dues to the Plaintiff and hence, the claim of the Plaintiff should have been decreed.

20. It is further submitted that, the Trail Court failed to consider the account books marked as Ex.A46 and failed to compare with the bank statements and the credit notes issued by the 1st Defendant. The Plaintiff has produced all the credit notes issued by the 1st Defendant and also the bank statements to prove his contention. The P.W.1 deposed about the entries in the books and also about the other documents. His evidence would clearly establish the liability of the Defendants to the Plaintiff. The finding of the Trial Court is that non-examination of the Accountant is fatal to the Plaintiff case is erroneous and the proprietor himself has deposed before the Court and has explained each and every document during the course of his examination. The judgments relied on by the Trial Court are favourable to the Plaintiff

which says that mere marking of account books is not alone sufficient and the entries have to be proved which has been done by the Plaintiff by marking all the credit notes issued by the 1st Defendant towards the dues and also the bank statement to show the clearance of the cheque and since the 1st Defendant remained *ex parte*, the Trial Court ought to have decreed the suit against the Defendant and ought to have directed the Defendants 2 and 3 to pay the same. In view of the undertaken given by the 1st Defendant under Ex.A35, the bill No.1805 relied by the Defendants 2 and 3 do not belong to the Plaintiff.

21. Therefore, the judgment and decree dated 25.09.2014 in O.S.No.12602 of 2010 on the file of the XVIII Additional City Civil Court, Chennai. The learned counsel appearing for the Plaintiff would submit that the Plaintiff has established his case through oral and documentary evidence. The Plaintiff had produced the account books for the purpose of establishing the genuineness of the statement of accounts and also to prove each and every entry through the evidence of P.W.1, who is the proprietor of the Plaintiff

concerned. Through Ex.A46, the Plaintiff has proved his case. Hence, the finding of the Trial Court that the Plaintiff failed to prove the suit claim and erroneously dismissed the suit requires interference by this Court.

22. On the other hand, the learned counsel appearing for the Respondent/Defendant would submit that the Plaintiff had already filed a suit in O.S.No.72 of 2003 for recovery of money from the Defendants herein on the ground of credit not given in the statement of accounts, excess payment paid and three credit note given for the goods returned before the learned VI Assistant Judge, City Civil Court, Chennai. The said suit was dismissed after contest. The Plaintiff did not prefer any appeal against the decree and judgment passed in O.S.No.72 of 2003. The grounds alleged in O.S.No.72 of 2003 and the claim made in the present suit is one and the same. He would submit that Plaintiff did not seek the leave of the Court under Order 2 Rule 3 of Code of Civil Procedure and further, the cause of action alleged in O.S.No.72 of 2003 is one and the same in the present suit. He would submit that the claim of the plaintiff is that he issued cheque bearing No.458003 dated 05.04.1999 for Rs.3,15,000/- drawn on Punjab National Bank, Chennai

in favour of the 1st Defendant by way of mistake without purchasing any goods is utter false.

23. He would further submit that the said sum was paid by the Plaintiff to the 1st Defendant towards part payment of the sale consideration due and liability to be paid by the Plaintiff to the 1st Defendant for the goods supplied under invoice No.01805 dated 03.11.1998. Hence, the claim of the Plaintiff that, he paid Rs.3,15,000/- in favour of the 1st Defendant by way of mistake without purchasing the goods is utter false. In the letters dated 22.08.2001, 25.09.2001 and 05.10.2001, the Plaintiff alleged that he has paid a sum of Rs.3,15,000/- as excess payment. To the contrary, in the letter dated 19.11.2001, the Plaintiff alleged that he has paid excess sum of Rs.3,40,200/-. Therefore, it would establish that the claim of the Plaintiff is imaginary. Hence, the suit filed by the Plaintiff was rightly dismissed by the Trial Court after considering the oral and documentary evidence put forth on the side of the Defendants. Based upon the above arguments, the following points arises for consideration :

(i). Whether the claim in O.S.No.72 of 2003 is one and the same in O.S.No.12602 of 2010 ?

(ii). Whether the Plaintiff is entitled to recover the suit claim from the Defendants ?

(iii). Whether the Trial Court erred in dismissing the suit filed by the Plaintiff ?

(iv). Whether this appeal can be allowed or not ?

24. The case of the Plaintiff is that he purchased goods from the 1st Defendant from the year 1997 to 2000 and the Plaintiff used to place orders in the office at Madras belonging to the 1st Defendant and the 1st Defendant supplied the goods from his office. The further case of the Plaintiff is that he had settled all the bills to the 1st Defendant by way of cheques, demand draft and through letter of credits. He would further state that if any defects found in any goods supplied, the same was returned by the Plaintiff to the authorized representatives of the Madras office of the 1st Defendant. The 1st Defendant used to issue credit notes and adjusted the amounts against the

subsequent bills. The 1st Defendant by letter dated 13.03.2000 informed the Plaintiff that the parent entity of the 1st Defendant had announced its decision to spin off its cardiovascular business world wide and as such, the 2nd Defendant would conduct the business in India from 01.04.2000 with office at Bombay. The 1st Defendant also assured that it would contact the Plaintiff for the statement of accounts. While so, when the Plaintiff verified the whole transaction with 1st Defendant and on scrutiny of accounts, the Plaintiff found that the cheque bearing No.458003 dated 05.04.1999 drawn on Punjab National Bank, Chennai for Rs.3,15,000/- was issued to the 1st Defendant without purchasing any goods and 1st Defendant also did not adjust the said amount against the subsequent bills and had not issued any credit notes. The said cheques were realized on 16.04.1999 and when the Plaintiff requested the 1st Defendant to issue credit note or pay back the amount, there was no response and therefore, the Plaintiff issued a letter dated 20.03.2001 requesting the 1st Defendant to issue credit notes or return the money.

25. From 01.04.2000 onwards, the Plaintiff placed orders with the 2nd Defendant through 3rd Defendant for its requirements and received the

goods. The Plaintiff also requested the 2nd and 3rd Defendants as the successor of the 1st Defendant to settle the cheque amount of Rs.3,15,000/- received by the 1st Defendant without supplying the goods. The 2nd Defendant also promised to look into the matter. The Plaintiff on further scrutiny of the accounts, after 31.03.2000 found that a total sum of Rs.6,18,120/- payable by the 1st Defendant to the Plaintiff on account of :

(a) the Amount paid by the Plaintiff to the 1st Defendant by oversight without any purchase.

(b) the bill amount paid without adjusting the value of the goods returned to the 1st Defendant and

(c) the bill amount paid to the 1st Defendant without adjusting the credit notes issued by the Plaintiff.

26. Therefore, the contention of the Plaintiff is that, the Plaintiff paid a sum of Rs.3,15,000/- without purchasing any goods. The 1st Defendant did not issue credit notes for the goods returned for a sum of Rs.2,96,880/-. The 1st Defendant issued credit notes for Rs.6,240/- but failed to adjust the same against the subsequent bills. Hence, the Plaintiff issued letter on

19.11.2001 to the Defendants 2 and 3 intimating the excess payment made by the Plaintiff and requested the 2nd Defendant as the successor of the 1st Defendant to pay the said amount to the Plaintiff together with the interest thereon. Though the Defendants 2 and 3 received the said letter failed to respond and therefore, the Plaintiff issued a legal notice on 21.01.2002, demanding the Defendants to pay Rs.6,18,120/- with interest within a period of three months from the date of receipt of the notice.

27. However, the Defendants inspite of receipt of the notice neither replied nor paid the amount. Since the 1st Defendant agreed to settle the amount to the Plaintiff through the letter dated 13.03.2000. Hence, the Plaintiff is entitled for the interest from 13.03.2000 at the rate of 25 % per annum. Therefore, the Plaintiff filed the above suit for recovery of Rs.10,31,464/- including interest of Rs.4,13,344/- which is due to the Plaintiff as on 25.12.2002 and also to direct the Defendants to pay interest at the rate of 12 % per annum from the date of filing the plaint till the date of realization as it is a commercial transaction. The claim of the Plaintiff was resisted by the Defendants by stating that the Plaintiff already filed a suit in O.S.No.72 of

2003 for recovery of money from the Defendants which was dismissed against which the Plaintiff did not preferred any appeal. Hence, the present suit is hit by *res judicata*. It is submitted that the claim of the plaint is illusionary and the Defendants are not liable to pay any amount to the Plaintiff as claimed by him. The cause of action stated in the suit in O.S.No.72 of 2003 is one and the same in the present suit.

28. The learned counsel appearing for the Appellant would submit that the suit in O.S.No.72 of 2003 was filed against the Defendants 2 and 3 for their dues to the Appellant after a period 01.04.2000, where as the present suit in O.S.No.12602 of 2010 was filed against the Defendant for the dues of the 1st Defendant and therefore, the dismissal of the suit in O.S.No.72 of 2003 has got nothing to do with the present suit and it would not amount to *res judicata*. *The* judgment and decree in O.S.No.72/2003 marked as Ex.B.1 goes to show that the above suit was filed against the defendants 2 and 3 for recovery of Rs.45,200/- with interest at the rate of 21% per annum for the period after 01.04.2000 onwards, when the 1st defendant transferred

his business in India to the 2nd defendant. The present suit is filed against the defendants 2 & 3 for dues of the 1st defendant for the period from 1997 to 23.03.2000. Moreover, the plaintiff had also obtained the leave of the Court for recovery of the outstanding amount against the defendants on 18.12.2002 and therefore, the contention of the defendants that the present suit is barred under Order 2 Rule 3 of CPC is unsustainable. The Trial Court also had given a categorical finding that the cause of action in both the suits are different and therefore, the present suit is not barred by the principles of res-judicata. Therefore, the findings of the Trial Court in this regard is confirmed.

29.The further case of the Plaintiff is that on scrutiny of their accounts up to 31.03.2000 in a transaction between the plaintiff and the 1st Defendant found that a total sum of Rs.6,18,120/- which includes a sum of Rs.3,15,000/- through cheque bearing No.458003 is payable by the 1st Defendant to the Plaintiff on account of :

(a) the amount paid by the Plaintiff to the Defendants by oversight without any purchase,

(b) the bill amount paid without adjusting the value of the goods returned to the 1st Defendant and

(c) the bill amount paid to the 1st Defendant without adjusting the credit notes issued by the Plaintiff.

30. The specific contention the defendants is that they used to supply products to the plaintiffs, based on the specific purchase order placed by the plaintiff. Subsequent to the receipt of purchase order, from the plaintiff, the 2nd defendant would supply their products to the plaintiff through their branch office, i.e., the 3rd defendant herein. The supply in this regard were effected by the defendants to the plaintiff through their invoice clearly mentioning the invoice number, date, description of the product supply, consideration payable by the plaintiff. The plaintiff used to take delivery of the material by way of accepting the invoice and delivery challan. Whenever, defective goods are returned by the plaintiff, they should be returned by the plaintiff to the defendants at their chennai branch office (the 3rd defendant herein) after getting valid acknowledgment under the seal and the signature of the defendant herein. After the return of the defective goods, in the manner stated, the plaintiff used to right to the 2nd defendant either to substitute the

defective stocks with new ones or to give monetary credit to them for the value of the stocks returned. The defendants would submit that in all instances of defective stock return, the plaintiff is entitled to claim for supply of new stocks or to return the consideration paid by the plaintiff in the form of credit notes only after submitting proof of return of stocks to the defendants by way of submitting delivery challan for the returned stocks duly acknowledge under the seal and signature of the 3rd defendant herein. It is submitted that being the normal business practice, the plaintiff failed to establish that he issued her cheque for Rs.3,15,000/- in favour of the 1st defendant by mistake without purchasing any goods is false and incorrect. The said amount was paid by the plaintiff to the 1st defendant towards part payment of the sale consideration due and liable to be paid by the plaintiff to the 1st defendant for the supplies received by the plaintiff from the 1st defendant in voice No.01805, dated 03.11.1998. The plaintiff has to establish that he had paid a sum of Rs.3,15,000/- by way of cheque drawn on Punjab National Bank, Chennai in favour of the 1st defendant by mistake without purchasing any goods.

31.The Trial Court also found that the Plaintiff failed to file the original statement of accounts and the sales tax return for the relevant period to support the transaction between the Plaintiff and the 1st Defendant and also observed that Plaintiff failed to examine the author of Ex.A6 to establish the genuinity of Ex.A46.

32.The Trial Court in this regard has relied upon the following cases reported in :

> ***"A. 2005(3) Current Tamilnadu Cases page 12***
>
> *P.Sood & Co.Manufacturing*
>
> *Vs.*
>
> *Peerchand Misrimalj*
>
> *Held as follows :*
>
> *"That accounts books by themselves are not sufficient to charge any person with liability. Entries in the accounts book should be proved by examining the author of such entries. In the instant case, the Plaintiff has neither produced the original books of account nor examined the*

*accountant for the purpose of establishing the genuineness of the statement of account. Hence the suit claim is not proved in the above suit"*

***B. AIR 1967(1) SCR page 898***

*Chandradar Goswami and others*

*Vs.*

*Gauhati Bank Limited*

*Held as follows :*

*"That near filing the statement of accounts is not sufficient to fasten anybody with the liability. For the purposing the fastening the liability based on the statement of account, the plaintiff should not only file the original statement of accounts into Court, but also have to prove each and every entry by way of examining the author of the document. In the above case, the plaintiff neither produced the original books of accounts nor examined their accountant to prove the entries in the books of account"*

***C. 1972(4) Supreme Court Cases page 562***

*Sait Tarajee Khimchand and Others.*

*Vs.*

*Velamarti Satyam @ Satteyya*

*Held as follows :*

*"Has categorically held that mere marking of the day book ledger does not fasten the liability on the defendant. In the above lines, it is submitted that in as much as the plaintiff in the above suit has failed to furnish the original statement of accounts and neglected to prove the same. Ex.A46 cannot be relied on by this Honourable Court for fastening the liability on the defendant herein."*

***D. 2002(1) Law Weekly Page 293***

*Mettur Beardsell Ltd.,*

*Vs.*

*Salem Textiles Ltd., and Others*

*Held as follows :*

*"Has specifically observed that "mere production of accounts books simplicitor" will not tantamount to proving the liability on the defendant herein"*

33. Placing reliance on the above judgments, the Trial Court held that on the basis of Ex.A.46 alone, it cannot be presumed that the Plaintiff proved his claim. Apart from filing the original statement of accounts, it is bound to prove the each and every entry by way of examining the author of the document. Now, it has to be considered whether such findings of the Trial Court warrants interference of this Court.

34. The Plaintiff has produced the account books marked as Ex.A46. The Plaintiff as P.W.1 admitted in his cross examination that the Ex.A46 is an extract taken by the original document and it was not certified by the Auditor and also admitted that Ex.A46 is not the original document and the original account book is not in his custody and also admitted that Ex.A6 was not attested as true copy. The Plaintiff failed to produce the original books of accounts and examined their Accountant to prove the entries in Ex.A46 books of account. Therefore, mere marking of Ex.A46 statement of account books alone is not sufficient to fasten the Defendants with liability. When the Defendants denied the liability, then the burden is on the side of the Plaintiff to prove the liability of the Defendants. Hence, the Plaintiff failed to

produce the original account books maintained by the Plaintiff's company with regard to their day to day business transaction and since there is a categorical admission by P.W.1 admitting that the Ex.A46 statement of accounts prepared for the purpose of the suit, it would reveal that the said document is prepared only for the purpose of this case to fasten a false liability on the Defendants. Moreover, the plaintiff in the letters dated 22.08.2001, 25.09.2001 and 05.10.2001 has stated that he had paid a sum of Rs.3,15,000/- as excess payment. But, in the letter dated 19.11.2001 marked as Ex.A39, the plaintiff alleges that he had paid excess amount of Rs.3,40,200/-. Therefore, the claim of the plaintiff is uncertain. Moreover, the plaintiff failed to establish that the defendants 2 and 3 requested the plaintiff to mark the copy of the legal notice to the 1st defendant herein. The plaintiff failed to establish that the defendants are liable to pay a sum of Rs.6,18,120/- with interest at the rate of 24% from 13.03.2000 cannot be accepted without any iota of evidence. Though the plaintiff alleges that the defendants are entitled to pay Rs.6,18,120/- i.e., Rs.3,15,000/- towards excess payment made, Rs.2,96,880/- towards value of the defective stocks returned and Rs.6,240/- being the value of the credit note, not given credit by the 1st defendant, the same is not established by the plaintiff by any concrete evidence. As discussed above, based on Ex.46, the extract of the account book alone, the claim of the plaintiff cannot be accepted. The burden is on the plaintiff to prove the same. The plaintiff ought to have produced the original account book to prove its claim. Therefore, the plaintiff failed to establish that the sum of Rs.3,15,000/- was paid by him in excess. Moreover, the plaintiff is claiming a sum of Rs.2,96,880/- alleging that the same is aggregate value of the stocks returned by him for the year 1998-1999. The plaintiff had also produced the delivery challans for returning the stocks. The above documents according to the defendants are fabricated and were not emanated from the 1st defendant. On perusal of the above delivery challans marked on the side of the plaintiff do not bare the approval, seal and signature of the 1st defendant. It is also not establish that the above delivery challans were accepted by the 1st defendant by way of stand alone correspondence. Therefore, the above delivery challans relied by the plaintiff for proving the return of defective stocks cannot be accepted. The plaintiff failed to prove that the return of stocks was on stand alone basis. The plaintiff also failed to establish that the 1st defendant failed to give to the credit note for the value of Rs.6,240/- in the statement of accounts. The perusal of statement of accounts would indicate that the plaintiff in this regard making a false claim. No where in the statement of accounts it is mentioned that the 1st defendant has to pay Rs.6,240/- towards the credit note.

35. Therefore, the Trial Court has rightly came to the conclusion that the suit claim is not proved by the Plaintiff and as such, the Plaintiff is not entitled to recover the sum of Rs.10,31,464/- and he is not entitled to the suit claim. No infirmity or perversity found in the judgment and decree passed by the Trial Court.

36. In the result, the judgment and decree passed by the Trial Court in O.S.No.76 of 2003 is confirmed. Accordingly, this Appeal Suit is dismissed. No cost.

**21.12.2023**

mkn2/vsn
Index:Yes/No

Speaking Order : Yes/No

To

The learned XVIII Additional City Civil Judge,
Chennai.

**K.GOVINDARAJAN THILAKAVADI,J.**

Mkn2/vsn

**PRE- DELIVERY JUDGEMENT MADE IN**

A.S.No.79 of 2015

21.12.2023