Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.20/2024

M/s Raksha Chemicals, now changed to Raksha Industries, A partnership firm Having office at Plot No. 123, Bethora Industrial Estate, Represented herein by its Partner - Shri Biraj Shantaram Varde, Son of Shantaram Borkar, 54 years of age, r/o H.No. 5/166/10, Shamtinagar Ponda, Goa. … APPELLANT

Versus

1. M/s. Intech Pharma Pvt. Ltd., (now known as Intech Organics Ltd., Vide Certificate of incorporation pursuant to change of name dated 28/08/2017 and subsequent conversion from Pvt. Ltd., to Ltd. Company dated 12/09/2017) having office at 33/lA, Dhargal Industrial Estate, Opp. R.T.O. Naka Dhargal, Pernem Goa, represented herein by its Authorized representative (Vide Resolution dated 22/11/2022 resolved by the Board of Directors) Shri Christy Alexander Elias, son of Shri R. C. Elias, major of age, resident of Shirgal, Pernem Goa.

2. Shri Navanshu Saharan, son of Dharmaveer Saharan, major of age, Director of Intech Pharma Pvt. Ltd., now known as Intech Organics Ltd.

3. Shri Divyanshu Saharan, major of age, Director of Intech Pharma Pvt. Ltd., now known as Intech Organics Ltd., and both residents of Civil Surgeon Residence, Civil Lines Gurgaon, Gurgaon, Haryana 122 001. Respondent nos. 1 and 2 herein Rep. by Shri Christy Alexander Elias as

their duly authorized Power of Attorney holder Vide POA executed on 12/12/2022. ... RESPONDENTS

Mr A. D. Bhobe with Ms A. Fernandes, Advocates for the Appellant.
Mr J. J. Mulgaonkar with Ms S. Parulekar, Advocates for the Respondents.

CORAM: M. S. SONAK, J.

DATED: 3rd MAY 2024

ORAL JUDGMENT:

1. Heard Mr A. D. Bhobe with Ms A. Fernandes for the appellant and Mr J. J. Mulgaonkar with Ms S. Parulekar for the respondents.

2. The appellant is the original plaintiff, and the respondents are the original defendants in Regular Civil Suit No.37/2014/B, which was instituted before the Trial Court. Accordingly, the parties would be referred to as plaintiff and defendants for this appeal.

3. The plaintiff instituted the Suit to recover Rs.3,83,265/- from the defendants for the supply of chemicals between 28.01.2009 and 02.06.2011.

4. The Trial Court decreed the Suit on 11.11.2022 and directed the defendants to pay the plaintiff the claimed amount of Rs.3,83,265/- with interest @ 12% p.a., effective from 01.04.2014.

5. The defendants appealed vide Regular Civil Appeal No.80/2022, which was allowed by the First Appellate Court vide Judgment and Decree dated 09.11.2023. Hence, the plaintiff's present Second Appeal.

6. This Second Appeal was admitted on 28.03.2024 on the following substantial questions of law:

a) Whether when the Appellate Court having taken note of the statement of account of the Respondents at Exhibit 61 Colly wherein there was a reference to an amount of Rs.3,92,383/- being due and payable to the Appellant and further having taken note of the inability of DW2 and thereby observed that the amounts demanded by the Appellant was justified, the Appellant Court was justified to dismiss the suit on the spacious plea that the amount claimed by the Appellant was less than the amount shown to be payable by the Respondents in their ledger record?

b) Whether on the admitted fact of the ledger/statement of account at Exhibit 61 colly maintained by the Respondents showing an amount of Rs.3,92,383/- being due and payable to the Appellant, the Appellate Court was right in holding that the said admission on the part of the Respondent was not clear and unambiguous?

c) Whether in the absence of any material/evidence showing rejection of raw material being produced by the Respondents, the conclusion of the Appellate Court that the Respondent's defence of rejection of raw material stood proved, suffer from perversity?

7. Mr Bhobe learned counsel for the appellant/plaintiff, submitted that there was a clear entry in the ledger records maintained by the defendants in their regular course of business that an amount of Rs.3,92,383/- was due and payable by the defendants to the plaintiff. He submitted that the First Appellate Court refused to rely upon this ledger entry or constitute this ledger entry as an admission on the specious plea that the amount claimed by the plaintiff was only Rs.3,83,265/- and not Rs.3,92,383/-. He submits that such a reasoning amounts to perversity, and the impugned judgment and decree of the First Appellate Court warrants reversal on this ground.

8. Mr Bhobe submitted that the defence about the return of defective raw material to the extent of Rs.1,31,827/- was never made good by the defendants. He submitted that if there were any truth in this defence, such defence would have been raised by filing a reply to the plaintiff's legal notice. He submits that, in any case, this amount would have been deducted from the ledgers. Since all this was never done, the Trial Court was justified in rejecting the defence based on defective raw material. Mr Bhobe referred to the evidence of DW1 on the aspect of replacement of goods/raw material by the plaintiff and submitted that this supported the plaintiff's version.

9. For the above reasons, Mr Bhobe submitted that the substantial questions of law should be answered favouring the plaintiff and the First Appellate Court's impugned Judgment and Decree should be set aside and the Trial Court's Judgment and Decree restored.

10. Mr J. J. Mulgaonkar, learned counsel for the defendants, submitted that the plaintiff's claim was for the supply of raw materials valued at Rs.4,33,265/- during the period 28.01.2009 to 02.06.2011. He submitted that the evidence on record establishes that during this period, the defendants paid Rs.4,64,000/- or thereabouts to the plaintiff. Thus, it was clear that the defendants had paid an amount that exceeded the amount claimed for the supply of raw materials and goods. Accordingly, he submitted that the First Appellate Court was justified in reversing the Trial Court's judgment and decree.

11. Mr Mulgaonkar submitted that there were no pleadings about replacing sub-standard or damaged raw materials/goods. Without any pleadings, the First Appellate Court rightly declined to accept the replacement theory of raw material or goods. He submitted that by a preponderance of probabilities, the defendants had established that raw material/goods valued at Rs.1,31,827/- were returned, and therefore, there was no question of making any payments in respect of such raw material/goods.

12. Mr Mulgaonkar submitted that there was no clarity whatsoever in the ledger at Exh.61 relied upon by the Trial Court. He submitted that before the Court acts on an admission, the Court has to be satisfied that the admission was cogent and unambiguous. He submitted that, in this case, the so-called admission in the ledger was unclear and ambiguous. He, therefore, submitted that the Trial Court erred in relying upon the ledger or the so-called admission therein. He submitted that the approach of the Trial Court was contrary to the law laid down in ***Jeevan Diesels and Electricals Limited v/s. Jasbir Singh Chadha (HUF) & Anr. - (2010) 6 SCC 601***.

13. Mr Mulgaonkar also relied on ***Central Bureau of Investigation v/s. V. C. Shukla – (1998) 3 SCC 410*** to submit that the entries in the ledgers could not have been relied upon by the Trial Court, and the statements therein shall not alone be sufficient evidence to charge any person with liability.

14. For the above reasons, Mr Mulgaonkar submitted that substantial questions of law should be decided against the appellant, and this Second Appeal should be dismissed.

15. The rival contentions now fall for determination.

16. In the present case, there is no dispute that the plaintiff used to supply raw materials and goods to the defendants. There is also no dispute that there was a running account between the parties based on which raw materials/goods would be supplied and paid for. The evidence on record, oral and documentary, also establishes that the payments were not against specific invoices but on a running account basis.

17. Before instituting the Suit, admittedly, the plaintiff issued a legal notice to the defendants demanding the amount of

Rs.3,83,265/-. Further, the evidence on record shows that the defendants did not respond to this notice. A plea was taken that a response was indeed filed, but there is no evidence that any response was filed to this legal notice. This aspect assumes importance because, in the written statement, a plea was taken that the raw material/goods valued at Rs.1,31,827/- were found to be sub-standard or damaged; therefore, the same was returned to the plaintiff. Accordingly, the defence was for a set-off in the amount of Rs.1,31,827/-. This was without prejudice to the basic defence that all payments were made towards the supplied raw material/goods, and accordingly, nothing was payable to the plaintiff.

18. The Trial Court decreed the Suit based on oral and documentary evidence. The First Appellate Court has also discussed the oral and documentary evidence on record.

19. In my judgment, the most crucial evidence in this matter was the ledger account produced by the defendants' witness as Exh.61. The Trial Court relied upon this evidence. The First Appellate Court, however, had faulted the Trial Court for relying upon this crucial piece of evidence on the ground that this ledger indicated that an amount of Rs.3,92,383/- was due and payable to the plaintiff when the plaintiff's claim was only Rs.3,83,265/-. Accordingly, the First Appellate Court reasoned that the admission in the defendants' ledger maintained in the course of business was not clear or unambiguous, and, therefore, the Trial Court should not have relied upon the same.

20. The above reasoning of the First Appellate Court is reflected in paragraphs 16 to 37 of the First Appellate Court's impugned Judgment and Decree. In paragraphs 35 and 37, the First Appellate Court holds that as against the plaintiff's claim of Rs.3,83,265/-, the amount shown as payable to the plaintiff in the ledger record is Rs.3,92,383/-. Based on this, the First Appellate Court concluded: "*therefore, the amount claimed in the Suit and the amount shown balance in the defendant's' ledger record does not tally".*

21. The First Appellate Court then held, at paragraph 37, that an admission to be acted upon must be clear and unambiguous. The amount of Rs.3,92,383/- shown due in the ledger record is not the amount claimed in the Suit. Therefore, the alleged admissions are not clear and unambiguous. If so, the learned Trial Court erred in holding that the dues are proved based on said admissions.

22. In my judgment, the above reasoning of the First Appellate Court and the consequent reversal of the finding recorded by the Trial Court constituted an evident perversity. This was not a case where the ledger entry had recorded some amount which was lesser than what was claimed by the plaintiff. Even in such a situation, a decree could always be made for the lesser amount. However, this was a case where the plaintiff had claimed an amount of Rs.3,83,265/- and the defendants' ledger entry, very clearly and unambiguously, had recorded that an amount of Rs.3,92,383/- was payable to the plaintiff. Due to the mismatch, which was favouring the plaintiff, the First Appellate Court was not at all justified in interfering with the finding recorded by the Trial court by treating the entry in the defendants' ledger as an admission of liability.

23. This is an instance of shutting out the most vital evidence based on perverse reasoning. It is a case of misapplying the law on admissions. The proposition in *Jeevan Diesels and Electricals Limited (Supra)* cannot be disputed. But in the present case, the admission was clear and unambiguous. The defendants never explained or attempted to explain it.

24. The contention that the defendants had paid an amount of about Rs.4,64,000/- during the period 28.01.2009 and 02.06.2011 to the plaintiff, at the first blush, appeared attractive. However, the evidence on record shows that payments were never made against any particular invoices. There was a running account governing the business relations between the plaintiff and the defendants. The ledger entries must be read and construed in their entirety. There is no scope for analysing the entries during a specified period and not the entire ledger, mainly when dealing with a running account. This aspect was completely missed by the First Appellate Court.

25. Besides, if the defence had any credibility or ring of truth, it was entirely for the defendants to explain how, in their ledger, which was maintained in the regular course of their business, an amount of Rs.3,92,383/- was found payable to the plaintiff. There is no explanation whatsoever for this. Therefore, the First Appellate Court was not justified in reversing the Trial Court by ignoring the position that payments were never made invoice-vice and that the parties had maintained a running account for governing their business relations.

26. The reliance placed on *CBI V/s. V. C. Shukla (supra)* is completely misconceived. That was a case of loose sheets of papers or entries in the diaries referred to as "Jain Hawala Diaries". The Hon'ble Supreme Court held that before the provisions of Section 34 of the Evidence Act are invoked and a person is charged with liability based upon entries in such books, the predicates of Section 34 would have to be complied with. The Hon'ble Supreme Court found that the books in question could not be said to have been kept in the regular course of business, and besides, this was a case of some loose sheets of paper, and therefore, this was not even a case of "book" contemplated by Section 34 of the Evidence Act.

27. The facts in the present case offer no comparison whatsoever. Here was a ledger account maintained by the defendants during the regular course of business. This was a document produced by the defendants. Therefore, the provisions of Section 34 of the Evidence Act were clearly attracted. Besides, it was not open for the defendants to challenge its own document simply because some of the entries in such document did not favour the defendants' case. Therefore, based on the decision cited, the First Appellate Court's impugned Judgment and Decree cannot be justified or sustained.

28. Regarding the third substantial question of law, again, as noted earlier, the defence about defective or sub-standard raw material/goods was raised for the first time in the written statement. There was no response to the legal notice, or at least no such response has been proved. If there was any truth in the defence raised, some explanation should have been offered by the defendants about how their ledger entry maintained in the course of business did not reflect this position and still showed that an amount of Rs.3,92,383/- was due and payable to the plaintiff.

29. The above defence was correctly rejected by the Trial Court and the First Appellate Court by adopting incorrect legal principles and confusing between aspects of the burden of proof and the onus of proof, was not justified in reversing the Trial Court.

30. Moreover, as Mr Bhobe pointed out, the plaintiff's witnesses admitted that the raw material would be rejected on occasions but maintained that the same would be invariably replaced. Paragraph 44 of the First Appellate Court's impugned Judgment and Decree records that it was suggested to DW3 that whenever any raw material was returned, the delivery component would be promptly replaced by the plaintiff. This witness could not deny this suggestion but claimed that he could say nothing about this suggestion because these materials were looked after by some other department.

31. The First Appellate Court faulted the plaintiff for not pleading about replacing damaged or sub-standard raw material.

The plaintiff's Suit was for the recovery of money. The plaintiff had issued legal notice before the institution of such Suit, for which the defendants admittedly received legal notice. The defendants did not raise any plea of return of damaged or sub-standard raw material or goods. In the absence of all this, there was no necessity for the plaintiff to imagine some defence that the defendants might raise and to plead against the same in advance. Therefore, the plaintiff's version could not have been rejected for want of pleadings. In fact, since the defendants raised such a defence, it was for the defendants to make good the same. In particular, the defendants should have explained the entry in their own ledger in the context of the defence raised in the written statement.

32. For the above reasons, even the third substantial question of law must be answered in favour of the plaintiff.

33. For the above reasons, all the substantial questions of law are now answered favouring the plaintiff. The impugned Judgment and Decree made by the First Appellate Court is hereby reversed, and the Trial Court's Judgment and Decree is restored.

34. This Second Appeal is allowed with costs.

M. S. SONAK, J.

SUCHITRA NANDAN SINGBAL
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