IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.32 OF 2024
WITH
INTERIM APPLICATION NO.602 OF 2024
IN
SECOND APPEAL NO.32 OF 2024

Dattatray Dnyaneshwar Raut
since deceased through
legal heirs ....Appellants/Applicants
V/S
Ashok Shankar Khujat
through Proprietor ....Respondent

...

Mr. Kuldeep U. Nikam for the Appellants/Applicants.

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CORAM: SANDEEP V. MARNE, J.
DATE : JANUARY 16, 2024.

P.C.:

1 This Appeal is filed challenging the judgment and order dated 8 January 2024 passed by the District Judge, Sangli dismissing the Regular Civil Appeal No.144 of 2023 and thereby confirming the decree dated 22 February 2016 passed by the Civil Judge Junior Division, Sangli in Regular Civil Suit No.863 of 2012.

2 Plaintiff filed Regular Civil Suit No.863 of 2012 for recovery of amount of Rs.2,55,000/- alongwith interest at the rate of 18% p.a. from 14 August 2009. Plaintiff's suit is based on money due from the Defendant out of sale of coconuts sold to the Defendant from time to

time. Plaintiff contended in the suit that Plaintiff's firm used to supply coconuts to the Defendant who was operating the grocery shop and entries of supply made and payments received from Defendant was maintained in a ledger account. Before filing the suit Plaintiff served notice on the Defendant seeking recovery of the due amount and despite receipt of the notice the Defendant failed to respond to the same.

3 After filing of the suit, the Defendant was served with the suit summons. However he failed to appear in the suit. He neither filed his Written Statement nor conducted cross-examination of Plaintiff's witnesses. The Trial Court, after considering the evidence produced by the Plaintiff proceeded to partly allow the suit by decree dated 22 February 2016 directing the Defendant to pay amount of Rs.2,55,000/- alongwith interest at the rate of 12% p.a. from 14 August 2009. It appears that the Defendant did not take any steps to challenge decree dated 22 February 2016 for a considerable period of time. It appears that long after passing of the decree the Defendant passed away. His legal heirs belatedly filed Regular Civil Appeal No.144 of 2023 before the District Judge, Sangli challenging the Trial Court's decree dated 22 February 2016.

4 Mr. Nikam, the learned Counsel appearing for the Appellants would submit that the delay in filing the Appeal was condoned by the First Appellate Court and the Appeal was entertained on merits. By judgment and order dated 8 January 2024, the First Appellate Court has proceeded

to dismiss the Regular Civil Appeal No.144 of 2023 and therefore the Appellants have filed the present Second Appeal.

5 Mr. Nikam, the learned Counsel appearing for the Appellants would contend that the Trial Court erred in decreeing the suit in absence of production of any evidence by the Plaintiff in support of his contention of supply of coconuts and amount of Rs.2,55,000/- being due from the Defendant. He would submit that the sole document relied upon by the Plaintiff in his evidence is the computerized ledger entries. That Plaintiff ought to have produced additional supporting documents in the form of invoices, vouchers etc. to prove that the supply of coconuts were indeed made and that the Defendant failed to pay the due amounts to the Plaintiff. He would submit that relevant extracts of bank accounts or income tax returns could also have been produced by the Plaintiff to prove that any amount was due or payable by the Defendant to the Plaintiff. Mr. Nikam would rely upon provisions of section 34 of the Indian Evidence Act, 1872 under which the entries in books of account, though relevant, cannot be sufficient evidence to prove a liability against the Defendant. He would submit that section 34 of the Indian Evidence Act clearly provides that some additional evidence to corroborate the entries in the books of accounts must be produced. That in absence of production of additional evidence the Trial Court has erred in decreeing the suit. Mr. Nikam would further submit that suit was clearly barred by limitation. That the entries in the ledger account were deliberately made in such a fashion so as to put the suit in limitation. That the necessary

formalities of filing Affidavit under section 65B of the Indian Evidence Act was not filed to prove the computerized entries in the ledger account. He would therefore submit that substantial question of law is involved in the present Appeal.

6 After having considered the submissions canvassed by Mr. Nikam, it is seen that the Plaintiff's suit for recovery of amount of Rs.2,55,000/- alongwith the interest was premised essentially on the entries made in the ledger account. Perusal of the said ledger account would indicate that sale of coconuts is reflected from time to time against which the Defendant has made payments through cash/cheques from time to time. The relevant entries produced by the Plaintiff are in respect of the period from 1 April 2008 to 31 March 2009 which would indicate regular sale of coconuts to the Defendant and various payments being made by him from time to time.

7 True it is that under provisions of section 34 of the Indian Evidence Act, entries made in the books of account are relevant and that such entries cannot alone constitute sufficient evidence to prove a financial liability. Section 34 of the Indian Evidence Act reads thus:

> **34. Entries in books of account when relevant.-** Entries in 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."

8 However in the present case, the Defendant has neither replied the notice received by him from the Plaintiff nor has appeared in the suit by filing a Written Statement. There is no case pleaded or proved before the Trial Court that in ordinary course of business, vouchers were counter signed or invoices were raised each time supply of coconuts was made. If such specific defence was taken, the burden would have shifted on the Plaintiff to produce and prove such vouchers, invoices etc. Perusal of the ledger account relied upon by the Plaintiff would indicate that in ordinary course of business, the parties supplied goods and made payments on the basis of entries made in the ledger account. There is nothing on record to indicate that there was system of raising vouchers or invoices every time the supply is made. In absence of any defence on the part of the Defendant, the Trial Court has decreed the suit on the basis of entries made in the ledger account. Defendant did not contest the claim of the Plaintiff that an amount of Rs.2,55,000/- was due and payable to the Plaintiff. In that view of the matter, no serious error can be traced in the decree passed by the Trial Court. It also appears that Defendant did not take any steps for challenging the decree passed by the Trial Court on 22 February 2016 during his life time. After his death, his legal heirs filed Regular Civil Appeal No.144 of 2023 on 16 August 2023 that is after eight long years.

9 Mr. Nikam would fairly admit that while filing the Appeal against a money decree the Appellant did not deposit the decretal amount in the First Appellate Court. In fact the Regular Civil Appeal No.144 of 2023

filed by the Appellants could not have been entertained by the First Appellate Court in absence of deposit of the decretal amount. Be that as it may, it appears that the Appeal was taken up for decision on merits contrary to the mandatory provisions of the Code of Civil Procedure and the First Appellate Court has proceeded to dismiss the Appeal by its judgment and order dated 8 January 2024.

10 Considering the overall conspectus of the case and in the light of absence of any defence on the part of the Defendant contesting the claim of the Plaintiff, I do not find any serious error on the part of the Trial Court and the First Appellate Court in believing the case of the Plaintiff. There is a commercial transaction between the parties in respect of which the ledger account has been maintained and proved. In the light of this, the Trial Court has rightly decreed the suit of the Plaintiff in absence of any defence by the Defendant. I do not find that any substantial question of law is involved in the present Appeal. The Second Appeal is accordingly rejected.

11 In view of the disposal of the Second Appeal, nothing would survive in the Interim Application and the same is disposed of accordingly.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM

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