IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2023

PRONOUNCED ON: 01.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No. 135 of 2021

M/s. Flowtech Water Meters and Instruments (P) Ltd,.
Rep by its Managing Director,
Having Office at SF No.694/1A, 2A,
Madhukkarai Road, Kurichy,
Coimbatore – 641 012. ... Appellant

Vs.

M/s. Anand Water Meter Mfg. Company (P) Ltd.,
Rep by its Managing Director,
Having Office at XL/490, Anand House,
C.L.Anand Lane, M.G.Road,
Cochin – 682 011 ...Respondent

PRAYER: Appeal Suit filed under Section 96 read with Order XLI and XLI – A of Code of Civil Procedure to set aside the Judgement and Decree dated 07.12.2019 made in O.S.No.171 of 2015 on the file of the learned IV Additional District and Sessions Judge, Coimbatore and decreeing the original suit with costs throughout.

For Appellant : Mr. N.Somasundaar

For Respondent : Mr. Pranav V.Shankar.

JUDGEMENT

The above First Appeal is filed challenging the Judgement and Decree passed by the IV Additional District Judge, Coimbatore, in O.S.No. 171 of 2015. For ease of understanding in the narration of the facts given below, the parties are referred to in the same rank as in the suit.

2. The suit has been instituted for recovery of a sum of Rs.15,19,740/- together with interest at 18% per annum from the date of the suit till the date of realisation and for directing the defendants to issue all the C Forms pertaining to the delivery of goods and for costs.

Plaintiff's case:

3. It is the case of the plaintiff that the plaintiff is a manufacturer of water meters. They had been making supplies to the defendant on the orders placed by them. However, the plaintiff had not received the payment for these supplies. As per the terms of the invoice, the amounts had to be paid within 15 days and over and above 15 days, the outstanding amounts were to attract 18% interest per annum from the date of the respective invoices till date of payment. In addition, the defendant was also required to issue C Forms, in order to enable the plaintiff to avail tax benefits.

4. The plaintiff had issued a letter dated 30.06.2012 calling upon the defendant to pay the outstanding amount of Rs.10,12,125/- as per the statement of accounts maintained by them. However, the defendant had issued a reply dated 20.09.2012, calling upon the plaintiff to issue C Forms to them without clearing their outstandings. On 26.09.2012, the plaintiff

once again addressed a letter to the defendant to clear the dues. To this, by reply dated 12.10.2012, the defendant once again demanded C Forms for the supply effected by them to the plaintiff.

5. From a reading of the plaint, it appears that letters were being exchanged back and forth with the plaintiff demanding payment and C Forms and the defendant demanding C Forms. Finally by letter dated 11.02.2015, the plaintiff had demanded the payment and stated that without payment being made a demand for producing C Forms cannot be made and also informing the defendant that if the payments are not received, the plaintiff would be initiating legal proceedings. This was followed by a legal notice dated 11.03.2015 calling upon the defendant to pay a sum of Rs.10,12,125/- towards principle, i.e., amounts due under the invoices and Rs.5,46,547/- towards interest as due as on 28.02.2015. This notice had been received by the defendant.

6. The plaintiff would contend that the last payment made by the defendant was on 25.06.2012 being a sum of Rs.61,598/- under

a cheque drawn in Punjab National Bank. Therefore, the plaintiff has instituted the above suit for the relief claimed supra.

Defendant's case:

7. The defendant filed a written statement with a counter claim for a direction to the plaintiff to pay a sum of Rs.13,73,173/- together with interest at 18% per annum from the date of the suit till the date of realisation and for direction to the plaintiff to furnish the C Forms to the defendant as set out in annexure A to the written statement within a time to be stipulated by the Court.

8. The defendant would at the outset submit that the Trial Court lacked territorial jurisdiction to entertain the plaint since the suit ought to have been filed in the Court within whose jurisdiction the defendant resides or is carrying on business or where the cause of action arises. According to the defendant, the goods were supplied at Cochin and payments were also made at Cochin. The defendant would contend that their application for return of plaint in I.A.No.487 of 2015 had been dismissed against which there was

no further revision.

9. The defendant would submit that in their reply they had been demanding payment and also to issue C Forms. Further, the defendant would contend that they had handed over the C Forms upto January 2012 to the plaintiff. This fact has been suppressed in the plaint. However, the C Forms that the plaintiff was required to furnish to the defendant has not been issued to them. The plaintiff had demanded that the defendant should take back certain materials lying with them. To this, the defendant had given a detailed reply dated 12.10.2012 explaining the true position of accounting between the parties.

10. In the said letter, the defendant had stated that the components / spare parts which the plaintiff had asked the defendant to take back were obsolete / defunct goods which has not been used for the automatic water meters for some time. The defendant would further submit that they were at loss to understand as to why and for whom these items were purchased. They had

also put the plaintiff on notice that they had not placed any order for some of the items set out in the list. Therefore, they had expressed their inability to take back the goods. They had however stated that they were willing to take back some of the components on the rate at which it was supplied to the plaintiff.

11. Despite the above letter, the plaintiff has proceeded to issue debit note dated 13.10.2012 claiming a sum of Rs.16,06,500/-. The defendant had sent a reply dated 19.10.2012 giving reasons as to why the amounts could not be repaid. They had stated that the father of the Director of the defendant company one P.K.Varghese had been associated with the plaintiff company.

12. The defendant had submitted that they are the pioneer in the manufacture of water meters under the brand name "*Anand Asahi*". They have good reputation across the country and outside the country. The plaintiff had been manufacturing water meters for the defendant using their own manufactured components and by purchasing spare parts from the defendant for assembling water

meters.

13. The defendant would further submit that the father of Vivin Varghese one of the directors of the plaintiff company by name P.K.Varghese was associated with the defendant company as its Managing Director from 11.11.2005 to 30.06.2012. The defendant has been transacting with the plaintiff only on account of the nexus between the said Vivin Varghese and the said P.K.Varghese.

14. The defendant would contend that the said P.K.Varghese during his tenure as a Managing Director has abused his fiduciary position and entered into transactions to the advantage of the plaintiff and disadvantage of the defendant company. They would state that materials which were not required and totally unconnected with water meters were being purchased from the plaintiff by the defendant only at the behest of P.K.Varghese and that too without any documentation.

15. The defendant would submit that they had been calling upon the plaintiff to issue C Forms and since the C Forms had not been furnished in time, the defendant had been penalized by the Assistant Commissioner of Sales Tax, Ernakulam to the tune of Rs.2,32,560/- for the assessment year 2010 to 2011 vide order dated 16.01.2016. The defendant has been constrained to make the payment and they would submit that the plaintiff is liable to reimburse the sum. Further, the assessment for financial years 2011 to 2012 and 2012 to 2013 had been finalised by the Assistant Commissioner Commercial Taxes, Ernakulam and the order is yet to be issued. Therefore, the defendant reserved their right to file an additional written statement claiming these amounts as and when orders were passed by the department calling upon the defendant to make the payment.

16. The defendant would further submit that as per statement of accounts maintained by them, the plaintiff was liable to pay the defendant a sum of Rs.6,12,000/- and the defendant would contend

that it is the plaintiff who has to pay the defendant several lakhs of rupees, apart from furnishing C Forms. According to the defendant, a sum of Rs.13,73,173/- was due and payable by the plaintiff to the defendant as detailed below:

Particulars	***Amount***
Towards statement of account	6,12,000/-
Interest @ 18% p.a. from April 2015 onwards (date of the suit till 13.02.2017)	2,06,437/-
Towards reimbursement of tax paid over to the sales Tax Department	2,32,560/-
Interest thereon @ 18% p.a. From 21.03.2016 to 13.02.2017	37,732/-
Towards the amount to be paid to sales tax department for the years 2011 – 12 & 2012 – 13 due to non submission of Form C	2,84,444
Total	**13,73,173/-**

The defendant has also proceeded to deny the contention of the plaintiff in detail. The defendant had therefore made a counter claim for the aforesaid amount along with the issue of C Forms.

<u>Reply Statement of the Plaintiff:</u>

17. The plaintiff would submit that the allegation of alleged nexus between the Managing Director of the defendant

Mr.P.K.Varghese and the director of the plaintiff company Vivin Varghese was far from the truth. The plaintiff would submit that the said P.K.Varghese had taken over as a Managing Director of the defendant company when the company was totally grounded and he had been directed to revive the company. The said P.K.Varghese took it up as challenge and it is his efforts that had turned around the defendant company into a profitable one for over 10 years. Thereafter, the promoter's family started indulging in mismanagement and over spending for which the said P.K.Varghese was not responsible. The plaintiff would submit that the counter claim is nothing but an after thought and is a claim which is barred by limitation.

18. The Trial Court on considering the pleadings had proceeded to frame the following issues:

(i)Whether this Court has no territorial Jurisdiction to entertain the plaint as claimed by the defendant?

(ii)Whether the plaint is not framed as per the

statute governing pleadings?

(iii)Whether the plaintiff is entitled for the claim amount of a sum of Rs.15,19,740/- with interest?

(iv)Whether the plaintiff is to be directed to issue all C Forms pertaining to the delivery of goods to the defendant?

(v)Whether the defendant is entitled for a sum of Rs.13,73,173/- with interest as claimed by it?

(vi)Whether the claim of the defendant is barred by limitation?

(vii)To what other relief the parties are entitled to?

19. On the side of the plaintiff, the Managing Director of the plaintiff Vivin Varghese was examined as P.W.1 and its accountant Shalumon C.Ambat was examined as P.W.2. Ex.A.1 to Ex.A.20 were marked on the side of the plaintiff. The defendant examined

their Accounts Manager one P.R.Ravindranathan as D.W.1. The defendant had marked Ex.B.1 to Ex.B.27.

20. All the issues were clubbed together and findings returned. With reference to the first issue, the Trial Court had observed that the defendant had earlier filed I.A.No.487 of 2015 questioning the territorial jurisdiction of the Court under Order VII Rule 10 of the CPC. This IA was dismissed against which there was no further proceedings and therefore, the learned Judge held that the same cannot be once again re-agitated as the defendant was estopped.

21. The learned Judge has further held that the statement of account (Ex.A.18) furnished by the plaintiff had not been proved. The Trial Court ultimately proceeded to dismiss the suit as well as counter claim.

Submissions:

(i)Plaintiff's Submission:

22. Mr. N.Somasundaar, learned counsel appearing on behalf

of the plaintiff would in a nutshell summarise the facts of the case by providing a synopsis and dates and events which reads as follows:

Date	***Description***
30.06.2012	The appellant vide its Exhibit A —1 letter demanded payment of Rs.10,12,125/- which was the amount due and payable by the respondent as per book of accounts as on that date for the transactions that transpired vide Exhibit A-18 ledger account for the period 01.04.2011 to 31.03.2013
17.09.2012	The appellant vide Exhibit A - 2 letter demanded the respondent to evoke payment of Rs.10,12,125/- as claimed in letter dated 30.06.2012 with 18 % interest as also for issuance of “C” forms for the sale transactions that transpired.
26.09.2012	The appellant vide Exhibit A - 4 letter demanded the respondent to evoke payment of Rs.10,12,125/- as claimed in letters dated 30.06.2012 and 17.09.2012 as also for issuance of ‘C” forms for the sale transactions that transpired
19.10.2012	The respondent vide Exhibit A — 6 letter acknowledging its receipt of letter dated 26.09.2012 and debit note issued by appellant for Rs.16,06,500/-, offered to pay a sum of Rs.3.07 lakhs as on that date. Strangely the respondent which had otherwise expressly admitted the exchange of letters, its liability and receipt of debit note, falsely deposed evidence disputing the liability and its receipt of debit note. This fact missed the consideration and

Date	Description
	appreciation of the court below.
02.11.2012	The respondent vide Exhibit A — 8 LETTER ACKNOWLEDGES its receipt of very many letters from the appellant company asking for C Forms and other matters and about its debit note.
12.11.2012	The appellant vide Exhibit A - 9 letter demanded the respondent to make payment and issue "C" forms
11.02.2015	The appellant vide A — 15 final reminder demanded the pending payments as claimed in its earlier letters and the "C' forms.
21.04.2015	The appellant filed suit for recovery of Rs.10,12,125/- as on 25.06.2012 with subsequent interest at 18% p.a. aggregating to Rs.15,19,740/- and for mandatory injunction' directing the defendants to issue "C" forms pertaining to the delivery of goods to the respondent setting out specifically in Para 7 & 8 of the plaint about the respondent's effectuation of its last payment of Rs.61,598/- on 25.06.2012 and this suit being filed within time.
07.12.2019	The court: below passed the impugned order and decree dismissing the suit filed by the appellant as also the counter claim of the respondent without appreciating the pleadings, exhibits and evidences of the parties thereto including Exhibit A — 18, B-3, B-9 and B-23 ledger accounts/statement of accounts and deposition of Pw-1, Pw-2 and Dw - 1 as also without returning its finding as regards the relief of mandatory injunction sought for by the appellant as regards issuance of "C" forms.

Date	***Description***

23. The learned counsel would submit under Ex.A.1, letter dated 30.06.2012 addressed by the plaintiff to the defendant, they had brought to the notice of the defendant the fact that a sum of Rs.10,12,125/- as on that date was payable by the defendant. They had also informed the defendant that they had handed over the statements with reference to the materials and components lying in their factory which was to be billed on the defendant on the termination of the previous orders as instructed by the defendant themselves. Therefore, the plaintiff had requested the defendant to account for and receive stocks which were being stocked by the plaintiff as per the defendant's requirement. Under Ex.A.2, the plaintiff had called upon the defendant to pay the balance amount of Rs.10,12,125/- and the C Forms.

24. The learned counsel would submit that Ex.A.4 and Ex.A.6 were reminder letters. He would submit that the dispute was only with reference to one debit note under invoice No.29. He would further argue Ex.A.15 was a letter dated 11.12.2015 enclosing a final reminder letter dated 21.01.2015 issued by the defendant to the plaintiff requesting C Forms. Under this letter, the plaintiff had informed the defendant that they were ready to issue the defendant with C Forms which they could collect after giving the C Forms due to the plaintiff and to clear the pending payments.

25. He would submit that the statement of accounts, Ex.A.18 is the correct statement since the entries in Ex.A.18 is reflected in the defendant's documents and there was no objection to its marking. He would also draw the attention of the Court to the fact that in the statement of account the sum of Rs.61,598/- has been given credit to. That this cheque has been issued by the defendant is evident from their statement of accounts which reflects the payment. All of this would go to show that the statement of

accounts produced by the plaintiff is authentic and cannot be called into question.

26. The learned counsel would submit that the defendants have not cross examined the witness on the statement of accounts. Further, the defendant has also admitted the receipt of the debit note in Ex.A.6 and this debit note is duly entered into the statement of accounts.

27. The learned counsel would submit that the Trial Court has committed a grave error in stating that Ex.A.18 has not been substantiated and that the best evidence has been kept away from the Court. In this regard, the learned counsel would submit that the entries when cross checked with the defendant's statements would clearly prove that they are all valid documents. He would submit that the finding of the Trial Court that there is no evidence to show that the last payment was made on 25.06.2012 is absolutely incorrect in the light of the bank statement of the defendant which reflects the said payment.

28. The learned counsel would submit that the plaintiff has been non suited on the ground that the statement of accounts have not been proved. He would submit that the statement of accounts have not been inspected by the defendant nor has the plaintiff's witness been cross-examined on this statement of accounts. This would itself show that the defendant have accepted the statement filed by the plaintiff.

29. The learned counsel would further submit that by not challenging the dismissal of their counter claim, the defendant has admitted that they are due and owing to the plaintiff. He would rely upon the following Judgements:

> *"i.* ***AIR 2007 SC 2380*** *– Gannmani Anasuya and Others Vs. Parvatini Amarendra Chowdhary and Others.*
>
> *ii.* ***AIR 1978 MADRAS 56*** *– V.K.Abraham Vs. N.K.Abraham*
>
> *iii.* ***AIR 1961 RAJASTHAN 52*** *– Hagami Lal*

Ram Prasad Vs. Bhuralal Ram Narai."

(ii)Defendant's Submission:

30. The learned counsel for the defendant has submitted written arguments. He would submit that the suit is barred by limitation and in respect of this argument he would draw the attention of the Court to certain dates and events. On 28.02.2012, the plaintiff had stated that a sum of Rs.10,12,125/- was due. The plaintiff wold state that a sum of Rs.10,12,125/- was due towards the invoice amount and a sum of Rs.5,46,547/- was due towards interest and Rs.8,62,239/- for non-submission of C Forms there of was payable as on 28.02.2012.

31. On 23.06.2012, the outstanding as on 13.06.2012 was shown as Rs.10,12,125/-. On 25.06.2012, a payment of Rs.61,598/- is claimed to have been made, however, the payment has not been accounted for by the plaintiff. On 30.06.2012, once again a sum of Rs.10,12,125/- is alleged to be the amount due as on that date. Once again the payment made on 25.06.2012 which is

the date from which the plaintiff calculates limitation has not been accounted for. Thereafter on 12.04.2014, the plaintiff has demanded the payment against invoice No.29 dated 28.02.2012, which is a debit note, which was converted into a invoice unilaterally. Once again under the legal notice dated 11.03.2015, the plaintiff has demanded the payment of Rs.10,12,125/-. This legal notice has also not given credit to the payment made on 25.06.2012. Therefore, since the suit has been filed only on 21.04.2015, the suit is barred by limitation as the cause of action arises on 28.02.2012. The learned counsel would submit that the finding of the Trial Court with reference to the above has not been repulsed by the plaintiff.

32. The learned counsel for the defendant would submit that issue of limitation is interconnected with the issue as to whether Ex.A.18 has been proved. It is the contention of the defendant that the said document has not been proved in terms of Section 34 of the Evidence Act. The defendant would submit that except for letter and Ex.A.18 there is no other document filed by the plaintiff to

prove its claim. Ex.A.1 to Ex.A.15 are the various correspondence between the parties and Ex.A.16 and Ex.A.17 are the legal notices. Ex.A.18 is the statement of accounts from 01.04.2012 to 31.03.2013.

33. The suit being one on accounts, the plaintiff is bound to prove each and every entry in the statement with adequate documentary evidence. That Ex.A.18 has not been proved in the requisite manner is evident from the following facts:

(a)Ex.A.18 is not signed.

(b)The accounts produced is only from 01.04.2012 to 31.03.2013, whereas, the appellant and respondent had dealings even prior to 01.04.2012.

(c)The opening balance of statement is Rs.7,40,000/-.

(d)The plaintiff has not clarified the accounting entries.

(e)The statement of account has not been re-conciled by parties despite defendant sending reminder to do so.

(f)The plaintiff has not produced the debit note which is referred to in the correspondence

(g)Invoice, delivery challans, lorry receipts etc., have not been produced to substantiate the claim.

(h)Payment made on 25.06.2012 has not been accounted upto June 2015 when the legal notice was issued.

(i)Debit entry for Rs.16,00,000/- is shown but there is no corresponding debit note produced.

(j)On 22.06.2012, there is a sales entry and on 25.12.2012 this sum has been paid by cheque.

34. P.W.2 who was examined on the side of the plaintiff is not even an auditor who is qualified to testify in respect of entries in this statement of accounts. Further, P.W.2 has confirmed that no stock registered, invoices or balance sheet has been produced. Therefore, the plaintiff has failed to prove their contention. Therefore, in the absence of proof, the Trial Court has rightly rejected the suit.

35. The learned counsel would submit that Ex.A.4 dated 26.09.2012 would confirm that the debit note was converted into an

invoice in lieu of debit note. The invoice is dated 23.03.2012. The entries in the debit note has been disputed in their letter dated 12.12.2012 and the same has not been proved by the plaintiff. Ex.A.6 dated 19.10.2012 is a debit note for Rs.16,06,500/-, the defendant has demanded that the expense has to be proved by the invoices which has not been done. The invoice sought for in Ex.A.6 has not been provided. The letter dated 25.10.2012, Ex.A.7, would clearly show that invoice No.29 was in lieu of the debit note dated 28.02.2012 and not as pleaded by the plaintiff.

36. Regarding non issue of C Forms, the defendant would submit that in the proof affidavit of D.W.1 a specific stand has been taken that the issue of C Forms has been given up by the plaintiff. Therefore, the defendant would submit that the Judgement and Decree under appeal requires no re-consideration and the same may be confirmed.

<u>37. Points for consideration is herein below set out:</u>

(i)Whether the plaintiff has proved there

entitlement to claim a sum of Rs.15,19,740/- with interest?

(ii)Whether the plaintiff is entitled to claim a relief solely based on Ex.A18, statement of accounts?

(iii)whether the suit claim is barred by limitation?

(iv)Whether the defendant can be directed to issue all the C Forms pertaining to the delivery of goods to the defendant?

Discussion:

38. To prove their entitlement to the amount claimed in the suit, the plaintiff apart from relying upon the correspondence, exchange of letters would place reliance solely upon Ex.A.18. Ex.A.18 is a ledger account maintained by the plaintiff in respect of their transactions with the defendant company. A perusal of the said account show that many of the entries are with reference to purchase of raw material and the detail of the same is given below and the ledger accounts start from 01.04.2011. However, this

ledger account is not accompanied by the corresponding invoices, purchase orders etc,.

39. The plaintiff has filed Ex.A.20, which consists of just four invoices which are as follows:

Sl. No	***Date of Invoice***	***Invoice Number***	***Amount***
1	11.04.2012	03	Rs.16,50,488/-
2	20.04.2012	04	Rs.80,325/-
3	02.05.2012	05	Rs.4,590/-
4	22.06.2012	06	Rs.61,598/-

40. A perusal of these invoices would bring to the fore the following features. The invoices span a period of two months, however, they appeared to be contiguous which give raise to a doubt as to whether the plaintiff was only supplying material to the defendant. However, in the plaint, there is no reference to these invoices. In fact, a reading of the plaint would indicate that the principal amount of a sum of rupees Rs.10,12,125/- was due and the remaining amount is towards interest. That apart, the plaint

would proceed primarily on the ground that the defendant had not issued C Forms to the plaintiff and similarly the plaintiff was not in a position to issue C Forms, since the payments had not been received by the plaintiff. These invoices have also not been filed along with plaint. The plaint does not even give the details of the period for which these amounts were outstanding.

41. That apart, in the series of communication between the plaintiff and the defendant, i.e., Ex.A.4, Ex.A7, Ex.A9 and the legal notice Ex.A.16, the plaintiff has only stated that amounts are due however no details as to the invoices under which these amounts were due has not been set out in these letters, notice or in the plaint. Apart from these four invoices and the ledger account, there are no other documents.

42. The suit is filed for recovery of a sum of Rs.10,12,125/- together with interest. From a reading of the plaint and the legal notice it is not clear to which invoices the amounts are due. P.W.1 has adduced evidence to the fact that they have running account

with the defendant. However, the accounts have not been produced.

43. Section 34 of the Evidence Act would read as follows:

"34. [Entries in books of accounts including those maintained in an electronic form] [Substituted by Act 21 of 2000, Section 92 and Sch.II, for "Entries in the books of account" (w.e.f. 17.10.2000)], when relevant.

[Entries in books of accounts, including those maintained in an electronic form] [Substituted by Act 21 of 2000, Section 92 and Sch.II, for "Entries in the books of account" (w.e.f. 17.10.2000)], 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.

44. A reading of the above section would clearly show that a mere production of statement of account alone would not be sufficient to charge the other with liability. Corresponding invoices, purchase orders etc., have to be produced to substantiate the entries in the statement of account. In the case on hand, the defendant have contended that many a time supplies have been made without their placing an order for the same. Further, they would contend that outdated material / material not corresponding to the sample have been supplied to them. Therefore, the duty is cast on the part of the plaintiff to prove / disprove the statement made by them. Except for producing four invoices all of which do not find place in the pleadings, the plaintiff has not filed any other documents.

45. The plaintiff would try to prove the entries in the ledger account by drawing strength from the bank statement filed by the defendant. The plaintiff cannot seek to prove their case through the statement / bank statement produced by the defendant.

46. The plaintiff has come to the Court with a specific case that on the purchase orders been placed by the defendant, the plaintiff has effected supplies to the defendant and amounts are outstanding towards these supplies. Unfortunately, the plaintiff has not deemed it fit to prove this statement. Though the plaintiff have submitted that the goods have been supplied by lorry, lorry receipts for the supply of goods have not been marked.

47. The Accountant of the plaintiff company has been examined as P.W.2, he would admit that the plaintiff company has prepared the balance sheet but the same has not been field into the court. Therefore, the proof required under Section 34 of the Evidence Act has not been filed in to the court by the plaintiff.

48. Ex.A.18 ledger account cannot be relied upon for the simple reason that the corresponding invoices for the supply / purchase of the goods have not been filed into court and it is an account prepared by the plaintiff.

49. The judgements relied upon by the plaintiff would not be relevant for the case on hand since they were the cases where the witnesses admitted to the correctness of the statement of accounts. In the instant case, the defendant has denied the statement of account that has been filed.

50. In the Judgement of the Hon'ble Supreme Court reported in ***1998 (3) SCC 410 – Central Bureau of Investigation Vs. V.C.Shukla and Others***, the learned Judges have observed as follows:

> *"A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person."*

51. In the Judgement of this Court reported in ***2001 (2) CTC 736 – Mettur Beardsell Limited Vs. Salem Textiles Limited,*** this Court had held as follows:

> *"I have already stated that except the ledger,*

no other account book or books containing similar entries was filed before the Court. The account books by themselves are not sufficient to charge any person with liability and the party has to show by some independent evidence that the entries in his books represented the real and honest transactions and that the moneys paid or the transactions took place, in accordance with those entries."

Therefore, the first and second point for consideration has to be held against the plaintiff.

52. Coming to the issue of limitation, Ex.A.18 would show that the said sum of rupees i.e., Rs.61,598/- in the debit claim has been cleared through cheque dated 25.06.2012 drawn on Punjab National Bank. The statement of accounts gives credit to the same. The receipt of this amount has not been seriously contested by the defendant. Therefore, the filing of the suit in the month of April 2015 is very much within the period of limitation.

53. As already stated there is no corresponding document apart from the statement of accounts to show how the sum of Rs.10,12,125/- was due and payable by the defendant. No doubt from a perusal of Ex.A.18 it appears that the plaintiff and the defendant where having running account. Therefore, it cannot be held that the suit is barred by limitation and therefore, the suit is well within the limitation. Therefore, the third point for consideration is answered in favour of the plaintiff.

54. As regards the supply of C Forms, the defendant would submit that they are also entitled to C Forms from the plaintiff which has not been supplied to them. The counter claim field by the defendant has been dismissed and there is no challenge to the dismissal of the counter claim.

55. The plaintiff has not given the particulars of the C Forms which are still due from the defendant. The defendant on the contrary has filed Ex.B.23 and Ex.B.24, which would show that since plaintiff had not supplied the C Forms, the defendant had to

pay a sum of Rs.2,32,560/- on account of non furnishing of C Forms. The plaintiff once again has not given the details of the invoices, towards which C Forms were to be issued to them. Therefore, the fourth point for consideration is answered against the plaintiff.

56. Therefore, in the absence of proof, the claim of the plaintiff has to be necessarily fail and I see no reason for disagreeing with the findings of the Trial Court. The First Appeal therefore stands dismissed. No costs.

01.02.2024

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order
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To

The IV Additional District and Sessions Judge,
Coimbatore.

P.T. ASHA, J,

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Pre-Delivery Judgment in
A.S.No. 135 of 2021

01.02.2024