



WEB COPY



SA(MD)No.715 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.715 of 2022

and

CMP(MD)No.10683 of 2022

M/s.Hitech Agro Lab,
Through its Proprietor Subramanian
No.4/97A, Mullai Street,
NGO Colony, Virudhunagar. : Appellant/Appellant/
Defendant

Vs.

M/s.Deeparani Chemicals,
Rep. thro' its Proprietrix,
R.S.D. Rathinamala,
167/267, Palace Road,
Madurai. : Respondent/Respondent/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in A.S No.117 of 2018 on the file of the I Additional District Judge, Madurai, dated 12/02/2020, confirming the judgment and decree in OS No.412 of 2012 on the file of the II Additional Subordinate Court, Madurai, dated 03/01/2018.

For Appellant : Mr.P.Thirumahilmaran
for Mr.S.Senthil Kumar

For Respondent : Mr.C.Godwin



SA(MD)No.715 of 2022

J U D G M E N T

WEB COPY This second appeal is filed seeking to set aside the judgment and decree, dated 12/02/2020 passed in AS No.117 of 2018 by the 1st Additional District Court, Madurai, confirming the judgment and decree, dated 03/01/2018 passed in O.S No.412 of 2012 by the II Additional Subordinate Court, Madurai.

2.Plaint averments in brief:-

The plaintiff is doing wholesale dealership in Industrial Chemicals in name called 'Deeparani Chemicals. The defendant is doing business in Agro Chemicals. They had business transactions. In the course of business transactions, the defendant purchased various items from the plaintiff on credit basis from 2005 to 22/12/2009. Statement of accounts were maintained, in the usual course of business. As on 22/12/2009, the total balance amount payable is Rs.1,92,944/-.

3.Towards discharge the liability, the defendant issued three post-dated cheques for Rs.10,000/- each. They were presented for payment, dishonoured. So, private complaint was filed against the defendant before the Judicial Magistrate No.4, Madurai under section 138



SA(MD)No.715 of 2022

of the Negotiable Instruments Act. Seeking the amount,
the suit is filed seeking 18% interest.

WEB COPY

4.Statement was filed by the defendant namely the appellant herein stating that the trial court has no jurisdiction to try the suit, since the cause of action arose at Virudhunagar, where the goods were ordered and delivered. There was no agreement between the parties for payment of interest. Stop payment was ordered due to the inferior quality supplied by the plaintiff. There is no reference to the goods supplied and other particulars. As per the statement of accounts maintained by the defendant, he has paid excess amount of Rs.1,67,102-02/- as on 05/01/2010.

5.The cheques were issued in blank in advance towards the transaction. Because of the poor quality of the goods delivered, the defendant suffered loss. So, counter claim is filed claiming Rs.2,08,640/- with 18% interest.

6.Reply statement was filed by the plaintiff for the counter claim stating that the plea raised in the counter claim is not correct. No such inferior quality was delivered to the defendant. Pending the criminal



SA(MD)No.715 of 2022

proceedings before the Judicial Magistrate No.4, Madurai,
the defendant paid Rs.30,000/- by way of demand draft.

7.The trial court framed the following issues:-

(1)Whether the plaintiff is entitled to get back Rs.2,70,218/- from the defendant?

(2)Whether this court has no jurisdiction to entertain the suit?

(3)Whether the suit is laid by suppressing the terms of agreement entered into between the plaintiff and the defendant?

(4)Whether the plaintiff has received excess amount of Rs.1,67,210-02/- from the defendant?

(5)Whether the defendant is entitled to Rs.2,08,640/- as counter claim from the plaintiff?

(6)To what other reliefs?

8.Before the trial court, on the side of the plaintiff, one witness was examined and 8 documents were marked. On the side of the defendant, one witness was examined and 5 documents were marked.



SA(MD)No.715 of 2022

WEB COPY

9. After hearing both sides, the trial court decreed the suit as prayed for with costs and the counter claimed filed by the defendant was dismissed, imposing 9% interest from the date of the suit till the decree and thereafter, 6% till realization.

10. Against which, appeal was preferred before the appellate court by filing AS No.117 of 2018 before the I Additional District Court, Madurai. It concurred with the decree and judgment passed by the trial court and ultimately, the appeal came to be dismissed.

11. Against which, this second appeal is preferred by the defendant as appellant.

12. At the time of admission, the following questions of law were framed:-

(a) Whether the courts below were correct in granting the decree for recovery of money based on the copy of the statement filed by the plaintiff (Ex.A1) alone and whether the said document is permissible in evidence under Section 34 of the Indian Evidence Act, 1872?



WEB COPY



SA(MD)No.715 of 2022

(b)Whether the plaintiff, without proving the supply effected on the defendant, is entitled to the suit claim based on the statement of accounts (Ex.A1) ?

(c)Whether the lower appellate court was correct in confirming the judgment and decree of the trial court framing points for consideration with regard to the issues raised by the appellant/defendant in compliance with Order 41 Rule 31 of C.P.C?

(d)Whether the courts below were correct in granting the decree in favour of the plaintiff by holding that the Banker's Books Evidence Act, 1981 applies only to the banks and not individuals?

(e)Whether the courts below were right in granting the interest at the rate of 18% per annum in favour of the plaintiff from 22.12.2009 to 13.03.2012, when the contract between the plaintiff and the defendant does not stipulate payment of interest?

13.Heard both sides.



WEB COPY



SA(MD)No.715 of 2022

14.Before we go into the substantial questions of law, the background facts may be kept in mind, so that it may be easy for further discussion.

15.There was no denial over the business transactions between the plaintiff and the defendant. The amount due is disputed by the defendant. Apart from that, it is also stated that inferior quality of goods were delivered. So the defendant suffered loss. It is also not denied that the cheques issued by the defendant were dishonoured and a private complaint was filed against the defendant before the Judicial Magistrate No.4, Madurai. Pending process, Rs.30,000/- was paid by the appellant herein namely the defendant. These are the admitted facts.

16.With these admitted facts in mind, let us go to the issue now.

17.The main of ground attack by the appellant is that the statement of accounts is not supported by any corroborative evidence. The trial court and the appellate court culled out the entries made in the statement of accounts. Ex.A1 is the statement of accounts for the period between 20/11/2002 and 22/01/2010.



SA(MD)No.715 of 2022

WEB COPY

18. Whether the defendant can be saddled with the liability only with the statement of the account is no more *res-integra*. We can go to the judgments cited by the appellant on this aspect.

(1) *S. Babu Vs. J.K. Industries Ltd.,*
(2008-3-LW-609);

(

2) *H. Siddiqui (dead) by Lrs Vs.*
A. Ramalingam (2011-4-SCC 240);

(3) *United Engineers and Contractors*
Vs. Secretary to Government A.P and
others (2003-0-Supreme (SC) 1200);

(4) *Kanailal and others Vs. Ram*
Chandra Singh & others (2009-0-Supreme
(SC) 1218)

19. The earlier judgment on this point is in the case of ***Chandradhar Vs. Gauhati Bank (AIR 1967 Supreme Court 1058)***, wherein the Hon'ble Supreme Court held as follows:-

"6.... No person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the



WEB COPY



SA(MD)No.715 of 2022

money which may appear in the books of accounts in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them."

which is followed in **S.Babu Vs. J.K.Industries Ltd., (2008-3-LW 609)**. The Division of this Court also followed the judgment of the Hon'ble Supreme Court in **V.K.Abraham Vs. N.K.Abraham (1990.L.W.686)**, wherein it has been held that the accounts 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 real and honest transactions and that the moneys paid or the transactions took place, in accordance with those entries.

20.So, this is the settled principle of law, which has been brought to the notice of this court by the appellant.

21.Now the question, which arises for consideration is whether the plaintiff bases his pleadings on Ex.A1 alone or not? and whether it is supported by any documentary evidence with regard to the amount due, since the transactions already admitted between the parties.



SA(MD)No.715 of 2022

22.Before we go into the documentary evidence, as mentioned above, it is admitted by the appellant himself that in the proceedings initiated under section 138 of the Negotiable Instruments Act for dishonour of three cheques, the matter was referred to Lok Adalath. In the Lok Adalath, he undertook to pay Rs.30,000/-. When there is admission on the part of the appellant, then it may not be proper on the part of the appellant to say that no documentary evidence is available. Now, he wants to explain away this admission by stating that those cheques were issued to the respondent herein in advance in blank as security for the continuous transactions. But absolutely, no such evidence is available. If really, it was so, the appellant would not have consented for compromise in the Lok Adalath. The explanation on the part of the appellant is completely out of place and cannot be accepted.

23.Now, we will go to the other aspect of corroborative evidence.

24.Ex.A8 is the counter-foil of the respondent showing the goods delivered. Ex.A7 is the copies of the delivery notes. Reading of Ex.A7 shows that orders were placed through telephone. In the reply notice under Ex.A4



SA(MD)No.715 of 2022

WEB COPY

to the demand made by the respondent, the appellant has stated that goods supplied in the year 2009, but very inferior quality. So he demanded discount. A promise was made by the respondent to give discount. In that discount, he suffered loss. In his books of accounts, there is a excess payment of Rs.1,67,102/-, for which, he has filed a counter claim. But if really, there is supply of inferior quality and suffering of loss, he would immediately take action against the respondent. But he remained silent till the notice of demand was received by him. Not only that, he also, as mentioned above, gave consent for settlement. So, this conduct on the part of the appellant shows that what he pleaded now is not true.

25.More-over, the statement of accounts maintained by the respondent herein in the usual course of business was produced before the trial court. Verification of entries were made by the registering officials, by the usual procedure, it was returned to the respondent by replacing the same with the copies. So, this practice cannot be found fault. So, the appellant cannot say that no original documents were produced before the trial court.

26.To show that inferior qualities were supplied,



WEB COPY



SA(MD)No.715 of 2022

absolutely there is no evidence on record, except the copy of the telegram. Based upon this document, the appellant wants this court to record a finding that proper steps were taken to indemnify the respondent about the inferior quality of the goods supplied. The date of message is 24/01/2010. Ex.A2 is dated 21/05/2011. Ex.B1 is dated 24/01/2010.

27. Reading of the message shows that they were having six years business dealings. The following is the message, which can be extracted hereunder:-

"SIX YEARS BUSINESS DEALING-
INFERIOR QUALITY CHEMICAL PRODUCT SENT
BY YOU IN RECENT TIMES-INTIMATE IF
THROUGH PHONE AND IN PERSON-DOES NOT
CARE-OFFER DISCOUNT NOT ALLOWED-DISPUTE
IN ACCOUNTS-DUE INTIMATION GIVEN TO
COME IN PERSON AND TO SETTLE THE
DISPUTE IN THE ACCOUNTS-DOES NOT CARE-
WE INTIMATE OUR BANKER STOP PAYMENT FOR
THE CHEQUE GIVEN TO YOU-EVEN WE HAVE
SUFFICIENT BALANCE-IMMEDIATELY WE CALL
UPON YOU IN PERSON TO SETTLE THE
ACCOUNTS AND OFFER DISCOUNT-AS AGREED



WEB COPY



SA(MD)No.715 of 2022

*AND PROMISED BY YOU THROUGH PHONE AND
READY TO PAY THE AMOUNT AFTER THE ABOVE
DISPUTE SETTLED."*

28. So, this shows that no offer was made by the respondent to offer discount. Mere admission for discount will not show that the quality of the goods were inferior in nature. From this document, the appellant cannot draw any advantage.

29. Reading of the entire statement of accounts maintained by the respondent shows that continuous running account is maintained and the payments were made either in cash or through Demand Draft etc. Now, all of a sudden, trouble has arisen over the inferior quality.

30. Now we will see whether any offer was made subsequent to the telegram under Ex.B1. The closing balance as on 22/01/2010 is Rs.1,92,944/-. But three cheques were encashed by the respondent till 04/01/2010. Other three cheques were dishonoured as on 22/01/2010. The telegram message is dated 24/01/2010. So, this is the evidence that issue arose between the parties over the quality of the goods supplied and thereafter, transactions terminated. Exactly on what date, the



SA(MD)No.715 of 2022

inferior quality was found is not mentioned in Ex.B1.

But in the reply notice, it has been stated that it shows in the month of April 2009. But reading of the statement of the accounts does indicate that sales were effected subsequent to that months also.

31.Now the next aspect is the statement of accounts maintained by the defendant in contradiction to the statement of the accounts produced by the respondent.

32.Now the appellant wants to believe that as per the statements of accounts, amount was paid in excess. Ex.B5 is statement of accounts maintained by the appellant. But this is not supported by any vouchers in contradiction to the vouchers produced by the appellant herein. So, the counter claim raised by the appellant is rejected.

33.Whether the reasons assigned by the trial court as well as the first appellate court are corrected or not? can be seen now.

34.As mentioned above, the trial court has come to the correct conclusion that there is no evidence to show the inferior quality of the chemicals were supplied by



WEB COPY

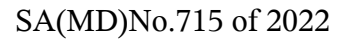


SA(MD)No.715 of 2022

the respondent. If really, there is a loss, that would have been found place in the statements of accounts. How the statements of the accounts have been prepared not showing the loss amount is not clear on record. Statements of accounts produced under Ex.B5 is completely unreliable and unrealistic also. The manner, in which it was prepared by the appellant/defendant does not inspire any confidence. By what manner, the amount was adjusted in the statements of accounts, when we compare the statement of accounts produced by the respondent and the appellant will show the differences. So, Ex.B5 is completely not reliable document. The appellate court also concurred with the trial court finding on that aspect. So, I find no reason to differ from the finding of facts recorded by the trial court as well as by the appellate court.

35.Regarding the interest, it is a commercial transaction, the trial court granted decree for the amount claimed at 9% p.a. Even in the absence of any contract between the parties for the commercial transaction, granting interest @ 9% p.a. cannot be found excessive. I find absolutely no reason to interfere in the interest portion also.

36.Regarding the substantial question of law [c], no



37. In the result, the second appeal fails and the same is dismissed with costs. Consequently, connected Miscellaneous Petition is closed.

```
Index:Yes/No
Internet:Yes/No
er
```

- 1.The 1st Additional District Court,
Madurai.
- 2.The II Additional Sub Court,
Madurai.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



SA(MD)No.715 of 2022

G.ILANGOVAN, J

er

SA(MD)No.715 of 2022

19/07/2024