IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04-02-2025**

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

AS No. 122 of 2022

S.Vivekanandan
Proprietor, Subbu Associate, 92/26, Pollachi
Road, Udumalpet, Tiruppur 642 126

Appellant(s)

Vs

1.Selva Stone Export Ltd.,
Rep by its Managing Director,

Sy 399/1-S,
Salinayanapalli Village,
Emakkalnatham Post,
Barugur, Near Highway Road,
Krishnagiri 635 104

2. Govindachetty Selvaraj
Managing Director,
M/s.Selva Stone Export Ltd

3. Mohan Selvaraj
Director,
M/s.Selva Stone Export Ltd

4. Munusamy Saravanan
Director,
M/s.Selva Stone Export Ltd

5. Kandasamy Elaango

Director,
M/s.Selva Stone Export Ltd

Respondent(s)

Prayer: This Appeal Suit has been filed against the judgment and decree dated 03.12.2021 passed by the learned Principal District Judge, Tiruppur in O.S.No.228 of 2020 and to set aside the same.

For Appellant(s):
L.Mouli

For Respondent(s):
No Appearance

ORDER

This Appeal Suit has been filed against the judgment and decree dated 03.12.2021 passed by the learned Principal District Judge, Tiruppur in O.S.No.228 of 2020 by the appellant, seeking to set aside the same.

2.Challenge in this Appeal is made to the judgement and decree of the trial Court dismissing the suit filed for recovery of a sum of Rs.12,63,522/-. The suit has been proceeded that the plaintiff started Granite business and the defendants have supplied the granite on the supply order placed by the plaintiff. Such orders have been placed from 12.05.2015 onwards. The plaintiff is maintaining proper accounts in respect of day today affairs. The transactions went up to 13.03.2017. Thereafter, the defendants have not supplied the granite. When the plaintiff requested the defendants to supply the granites as per the supply orders placed, the defendants have shown only defective granites. Therefore, the plaintiff requested the defendants to return the amount paid in respect of the supply order placed by him. However, as there was no response, the plaintiff has issued a legal notice on 26.02.2020. Thereafter, the defendants have paid a sum of Rs.20,000/- by way of cash on 10.03.2020. Therefore, the suit has been filed within 3 years from the date of the last payment made on 10.03.2020.

3.A defence was taken by the defendants 1 to 4 by way of filing a Written Statement adopted by the 5th defendant, that the 5th defendant is no way connected with the transaction and only the defendants 1 to 4, were in the affairs of the Company and there were transactions between the plaintiff and the defendants in respect of supply of the granites and the same went up to 13.03.2017. However, it is denied by the defendants that they paid cash of Rs.20,000/- on 10.03.2020 to the plaintiff. According to them, the suit is barred by limitation and it is the further contention that despite the fact that the granites were available, the plaintiff has not taken delivery of the same. In this regard, E.mail has also sent to the plaintiff. Hence, the defendants opposed the suit.

4.Based on the pleadings, the following issues were framed:

(i) Whether the 5th defendant is an unnecessary party to the suit?

(ii) Whether the statement of account of the plaintiff is correct?

(iii) Whether the suit claim is in time?

(iv) Whether the plaintiff is entitled for the suit claim?

(v) To what relief?

5.On the side of the plaintiff, PW1 was examined and Exs.A1 to A4 were marked. On the side of the defendants, no oral or documentary evidence was adduced.

6.The trial Court, after considering the entire evidence and documents, has found that the suit is barred by limitation and held that the version of the plaintiff that the defendants paid a sum of Rs.20,000/- in cash on 10.03.2020, has not been established and therefore, the suit has been barred by limitation. Challenging the same, the present Appeal has been filed.

7.The learned counsel for the appellant would contend that so far as the payment of Rs.20000/- by the defendants in cash has been clearly reflected in the account maintained by the plaintiff. Therefore, the limitation has been reckoned from that date, the trial Court has not taken this aspect into consideration and erroneously dismissed the suit as barred by limitation. Hence, he would submit that the decree and judgment passed by the trial Court, have to be reversed.

8.Now, the points arise for consideration in this appeal are, whether the plaintiff has proved the accounts in the manner known to law? and whether the suit was barred by limitation?

9.So far as the business transaction of placing the supply orders and supply of granites is not disputed by the defendants. Whereas, the plaint proceeds as if the defendants are liable to pay a sum of Rs.17,35,695.58, on the basis of the accounts maintained by the plaintiff. Except the plaintiff as PW1, nobody has been examined to prove the accounts that have been properly maintained in the regular course of business. Further, the person, who is in-charge of the plaintiff's business and who maintained such accounts regularly, has not been examined. The trial Court has clearly recorded the findings that from Ex.A1 statement relied upon by the plaintiff, there was no transaction with regard to the debit or credit between the plaintiff and the defendants. The trail Court, taking entire statement of accounts of the plaintiff as true, has rightly recorded the findings that there was no transaction between the plaintiff and the defendants after 2018. Now the suit has been filed only on the ground as if the defendants have paid a sum of Rs.20000/- by cash on 10.03.2020. Therefore, there is a period of 3 years limitation reckoned from the payment of such cash. It is relevant to note that in a business transaction, particularly, where the defendant is a Company, any such payment is intended to be made, normally, the same will be made only through cheque or Bank transfer. Therefore, it is highly improbable to contend on the part of the plaintiff that defendants Company had paid cash on a particular date, by virtue of which, the suit is within the period of limitation. Therefore, merely some entries in the statements are sufficient to prove the accounts. Statement of accounts should be fool-proof. Such entries ought to have been made regularly during the course of business. The statement of accounts should be established by way of proving each and every entry in respect of business transactions that had taken place between the parties. The trial Court, has rightly held that the entry made in the statement of account in regard to payment of cash alleged to have been made by the defendants, is a self serving entry and cannot be believed at all. Therefore, when the statement of accounts have not been established, the consequent result would be that factually there was no payment of Rs.20,000/- in cash by the defendants and it has been invented by the plaintiff only for the purpose of limitation. Accordingly, the points are answered in favour of the respondents/defendants herein.

10.In the result, the Appeal Suit is dismissed. There shall be no order as to costs.

04-02-2025

Index : Yes/No
Speaking order:Yes/No
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N.SATHISH KUMAR, J

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To
1.The learned Principal District Judge, Tiruppur

A.S.No.122 of 2022

04.02.2025