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OSA.No.305 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2025

PRONOUNCED ON : 24.04.2025

CORAM

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH
and
THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

Original Side Appeal No.305 of 2018

M/s.Reliance Life Insurance Company Limited,
9th and 10th Floor Building,
No.2 R Tech Park Nirlon Compound,
Next to Hub Mall, Behind I,
Flex Building
Gurugaeon [East],
Mumbai-400 063.

... Appellant

-Versus-

M/s.Hartford Academy of Insurance and Education Pvt. Ltd.,
Represented by its Director Mr.MOH Iqbal,
MOH Buildings III Floor,
No.576 Annasalai,
Teynampet, Chennai-600 006.

... Respondent

Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent Act, praying to set aside the judgment and decree dated 26.07.2017 passed in C.S.No.443 of 2011 and allow the Appeal.



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For Appellant : Mr.S.Namasivayam

For Respondent : Mr.P.Sunil

J U D G M E N T

*(Judgment of the Court was delivered by **C.KUMARAPPAN, J.**)*

The instant OSA is arising against the judgment and decree passed in C.S.No.443 of 2011 dated 26.07.2017. The defendant and the plaintiff are the appellant and respondent respectively herein.

2. For the sake of convenience, the parties will be referred to according to their litigative status arrayed in C.S.No.443 of 2011.

3. Shorne of unnecessary details, the relevant pleadings, which are germane for the disposal of the appeal are as follows:-

(a). The plaintiff is an institute approved and affiliated by the “Insurance Regulatory Development Authority” [“IRDA”]. The defendant is the Insurance Company. It is the submission of the plaintiff that according to IRDA guideline, the Insurance Company needs to recruit only agents who underwent training imparted by the Institute approved by IRDA. Since the

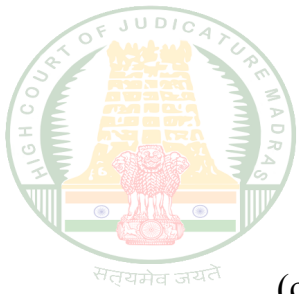


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plaintiff is an approved Institute, the defendant used to send their candidates to the plaintiff institute for practical training in Life and General Insurance business. It is the further submission of the plaintiff that after imparting such training, a certificate will be issued to the sponsored candidates. The plaintiff further submits that, unless such candidates pass in the examination, they will not be qualified to act as an agent.

(b). It is the further submission of the plaintiff that as per the agreement, the plaintiff used to send the course completion certificates of the sponsored candidates and raise bills for their professional charges. The plaintiff further submits that they had given trainings to the defendant's candidates under various batches from the period 2005-2006 to 2007-2008. It is their further submission that the defendant used to make part payment at times, and that the entire transactions were treated by both parties as a running account. According to the plaintiff, as per the running account, a sum of Rs.61,50,795/- became due from the defendant. It is the specific submission of the plaintiff that they have given credit to various payments made by the defendant, and the last transaction between the plaintiff and the defendant is dated 21.05.2008. Since the defendant did not come forward to settle the claim, the plaintiff issued a legal notice to them on 04.08.2010.



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(c). However, the defendant, without disputing the claim, had only stated that they are in the process of verifying the account and also requested the plaintiff to provide the agreement copy. The plaintiff further submits that, the defendant having sponsored candidates, and obtained the service of the plaintiff, cannot postpone the payment for their professional charges. Therefore, the plaintiff has come forward with the suit for recovery of a sum of Rs.94,72,225/- together with future interest of Rs.33,21,429/- on the principle sum of Rs.61,50,796/-.

4. **The said suit was resisted by the defendant** by totally denying the plaintiff's claim. According to the defendant, the suit is barred by limitation. It is their further submission that under the letter of intent dated 01.01.2007, the alleged amount claimed in the suit became due between April 2008 and March 2010. This defendant submits that the plaintiff imparted training to the candidates in accordance to the terms of the letter of intent and that the professional fee agreed is Rs.2,000/- per candidate. This defendant further submits that the present suit is a counter blast to their letter dated 14.03.2009, where they sought for the confirmation of “Nil” balance from the plaintiff. According to them, there are no fees due for the period prior to



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01.01.2007, and that with effect from 01.01.2007, the letter of intent will take care of the terms of payment. They further submit that the payment will be made only to the candidates, who passed in the exam conducted by IRDA. This defendant also disputes the nature of account and according to the defendant, the account between the plaintiff and the defendant is not a running account. It is the further submission of the defendant that neither the agreement was entered nor the training classes were conducted by the plaintiff in Chennai, therefore, this Court has no territorial jurisdiction to try the suit. Hence, the defendant prayed to dismiss the suit.

5. On the basis of the above fact and law admitted by one party and disputed by the other party, the following issues were framed by the learned Single Judge:-

“(i) Whether the suit is bad for want of territorial jurisdiction as contended by the defendant?

(ii) Having admitted the agreement and understanding between the parties, wherein the defendant engaged the services of the plaintiff for imparting training at various training centers for pre-licensing IRDA Examination, is not the defendant liable to pay fees and licensing charges as claimed by the plaintiff?



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(iii) Whether the defendant paid fees and training charges in this regard to the plaintiff as per the running account as pleaded by the plaintiff in the suit?

(iv) Whether the suit claim is barred by limitation as contended by the defendant? And

(v) To what relief the plaintiff is entitled to?"

[Extracted as it is]

6. At Trial, on either side, each one witness was examined as PW1 and DW1. On behalf of the plaintiff, 32 documents were marked as Exs.P1 to P32. Similarly, on behalf of the defendant, 12 documents have been marked as Exs.D1 to D12.

7. The learned Single Judge has decided the relevant issues in favour of the plaintiff, and ultimately decreed the suit as prayed for. Aggrieved with the said finding, the defendant is before this Court.

8. Heard Mr.S.Namasivayam, learned counsel for the appellant and Mr.P.Sunil, learned counsel for the respondent.



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9. The learned counsel for the appellant/defendant would vehemently contend that the institution of suit on 06.06.2011 would make the suit become barred by limitation. He would further contend that they have already settled the claims and there are no dues to the plaintiff. It is his further submission that the contention put forth by the plaintiff that the account is current, open and mutual account, is contrary to the settled Accounting principle, as there is no reciprocal demand in the instant case. It is also the contention of the defendant that having paid all the amounts through cheque, the findings rendered by the Trial Court that the defendant has not paid the amount is nothing but, contrary to the factual position. The learned counsel would also vociferously contend that the suit filed by the Company without a Board Resolution or a letter of authorization is in violation to Order 29 Rule 1 of CPC and on this score also the suit is liable to be dismissed. He would also contend that this Court has no territorial jurisdiction to try the suit. Hence, prayed to allow the appeal and thereby, prayed to dismiss the suit. To buttress his contention, the learned counsel relied upon the following judgments:-

1. ***United Bank of India Vs. Naresh Kumar and others***
reported in ***AIR 1997 SC 3***;



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2. ***Era Constructions (India) Limited Vs. D.K.Sharma*** reported in **2008 (100) DRJ 712;**
3. ***Ashok Parshad Vs. M/s.Mahalaxmi Sugar Mills Co., Ltd.,*** reported in **2013 SCC OnLine Del 3629;**
4. ***Raju and others Vs. L.Kumaramuthu*** reported in **1974 SCC OnLine Mad 134.**

10. Per contra, the learned counsel for the respondent/plaintiff would vehemently contend that the Trial Court took cognizance of all the documents and has rightly found through Ex.P25-statement of accounts that there was a balance due. It is the further submission of the plaintiff that the last payment made on 26.05.2008 would enure to the benefit of the plaintiff for enlarging of limitation. He would also contend that though the suit was filed by the plaintiff in the month of June, according to them, they filed the suit on the first day of reopening of Court, therefore, the suit comes within the limitation. It was also the contention of the plaintiff that to calculate limitation in the present case, the applicable article under Limitation Act is Article 113, as the plaintiff's right to sue accrues only after the defendant's denial of the liability, accordingly would contend that, the suit is well within the limitation. The learned counsel for the respondent/plaintiff would further



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contend that since the agreement was entered at Chennai and the defendant's office being situated in Chennai, this Court has territorial jurisdiction. Thus, he would pray to dismiss the instant appeal by confirming the decree and judgment passed by the learned Single Judge.

11. From the submissions of either side, the following points arise for our consideration:-

- (i) Whether the suit is barred by limitation?
- (ii) Whether the plaintiff is entitled for a suit claim as prayed for?
- (iii) Whether the plaint was verified by an authorized person,
as contemplated under Order 29 Rule 1 CPC?
- (iv) Whether this Court has got territorial jurisdiction to try this suit?
- (v) To what other reliefs the plaintiff is entitled to?

Point No. (i) & (ii):-

12. In respect of limitation, the main contention put forth by the defendant is that, the account between the plaintiff and the defendant is not a mutual account, as contended by the plaintiff, and to explain the mutual account, the learned counsel relied on the following rulings.

1. ***Hindustan Forest Company Vs. Lal Chand and Others***
reported in ***AIR 1959 SC 1349***;



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2. ***Bharath Skins Corporation Vs. Taneja Skins Company Pvt. Ltd.***, reported in ***2011 SCC OnLine Del 5523***;
3. ***B.Rajeswari Vs. M/s.Kanthasamy Traders*** reported in ***2017 SCC OnLine Mad 8123***;
4. ***V.K.Abraham Vs. N.K.Abraham*** reported in ***AIR 1978 Mad 56***.

13. We are in full agreement with the submissions made by the learned defendant's counsel in this regard. According to the admitted position, the plaintiff trained the sponsored candidates and raised bill. It is the plaintiff's case that whatever payment was made, the same was given credit in the plaintiff's account. In order to substantiate the above position, the plaintiff marked their entire statement of Accounts relating to defendant in Ex.P25. Further, the statement of Accounts-Ex.P25 captures the bills raised and the receipts of payment. According to Ex.P25, the total bill value is Rs.2,84,70,197/-, and at various point of time, the total payment made by the defendant is Rs.2,23,19,402/-. Thus, the balance according to Ex.P28 is, Rs.61,50,795/-.

14. However, it is the specific contention of the defendant that there is no due and that they have discharged the entire dues. In this regard, once



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again it is appropriate to refer Ex.P25, which is the ledger account of the plaintiff, pertaining to the defendant. In order to prove this account, the Director of the plaintiff's Company was examined as PW1. Here, admittedly, there is no dispute about the transaction between the plaintiff and the defendant. However, the defendant would contend that they have discharged the entire due. In this regard, it is appropriate to go into the evidence of DW1.

15. On behalf of the defendant, one Mr.Prabhat Ranjan Sharma was examined as DW1. His designation was Regional Training Manager [Sales Training]. According to his proof affidavit, he joined the defendant's Company only in 2007. In his cross examination, he admitted as follows:-

“It is correct to state that D6 Statement of account had been prepared on the strength of the account ledger maintained in our office. I have not produced the original account books maintained in our office for comparison of Ex.D6. I can produce the original account ledge for counter checking if the Court permits me to produce those voluminous records.”

[Emphasis supplied by this Court]

16. Curiously, in spite of his above undertaking, he did not submit any ledger account before the Court, in contrast, they submitted voluminous



vouchers and invoices under Exs.D7 to D12.

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17. In this regard, when DW1 was cross examined, he admits as follows:-

“Q: I put it to you that Ex.D7 to Ex.D12 are not the Account Books of your Company.

A: They are not Account Books but we are maintaining separate Account Books.

Q: Whether Ex.D7 to D12 reflected in your Account Books?

A: Yes, these are all the hard copy evidences. Every minute details are reflected in our account books.

Q: Have you produced those account books in this case?

A: We have not produced. There is no specific reason for not producing the Account Books.”

18. From the above admissions, it is amply clear that the defendant did not submit any account books before the Court and furthermore, DW1, who joined the Company during 2007 may know the transaction only through the documents, but the non-production of ledger would lead to a point that there are no foundation for DW1 to deny the liability. To put it differently, when the plaintiff proved Ex.P25 through PW1, the burden shifts upon the defendant to prove the discharge of due. But, they miserably failed to



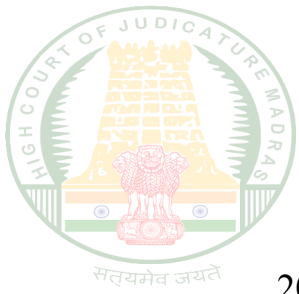
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discharge their burden. Therefore, as rightly found by the Trial Court, though the defendant projected a case of a full discharge, has not substantiated the same through acceptable evidence. Furthermore, the non production of the ledger by the defendant would definitely be a ground to draw an adverse inference against them. In support of this point, it is appropriate to refer the judgment of the Hon'ble Supreme Court in ***S.Babu v. J.K. Industries Ltd.***, reported in **2008 (3) LW 609**.

19. Reverting back to the defence of limitation, it is not the case of the plaintiff that the account between the plaintiff and the defendant is a mutual account. However, they pleaded that it is only a running account. Therefore, no necessity arisen to this Court to go into the question to test whether the account between plaintiff and defendant is mutual account, more specifically when there is no pleading in this regard. According to the plaintiff, it is only a running account. Now, let us consider what is running account. In Ramanatha Iyer's Law Dictionary in Tenth edition, the Running Account is defined as follows:-

“An account with a bank for money loaned, checks paid, etc., which during the time makes monthly statements, striking the balance due each month, which is carried forwarded and charged”.



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20. In order to have a clarification in respect of a running account, it is appropriate to rely upon the judgment relied by the plaintiff in ***Bharath Skins Corporation v. Taneja Skins Company Pvt. Ltd.***, reported in ***2011 SCC OnLine Del 5523***. This judgment was also relied by the defendant to distinguish that the account projected by the plaintiff is not a mutual account.

In this regard, it is appropriate to refer paragraph 20 of the above judgment:-

*“20. In case of a **running** and non-mutual account between the buyer and seller, when goods are delivered by the seller to the buyer, the value of the goods is debited in the debit column and when amounts are paid by the buyer to the seller, they are entered in the credit column. The difference is continuously struck in the column for balance. **In such a case, when the buyer defaults to make balance payment, the seller's action is not for the price of goods sold and delivered but for the balance due at the foot of an account.** Thus, Article 14 would have no application in suits of recovery of money due on a running and a non-mutual current account between the buyer and seller.”*

[Emphasis supplied by this Court]

21. On a close reading of the above exposition of the Hon'ble Division Bench of Delhi High Court, the running account is an account, for the balance due at the bottom, where there is a default by the purchaser for the



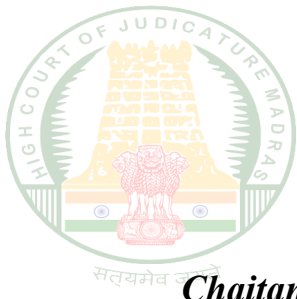
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various delivery of goods made by the seller. We are also dealing a similar account, but with the only difference, here instead of delivery of goods, service was provided. Therefore, the account between the plaintiff and the defendant could be safely brought within the contours of running account by applying the above exposition.

22. Further, admittedly, according to Ex.P25, the last payment was made on 26.05.2008. This was substantiated through the defendant's document in Ex.D6. The payment of part of due would also enlarge limitation under Section 19 of the Limitation Act, as the same could be construed as acknowledgment of debt. But, still if we construe the payment dated 26.05.2008 as the acknowledgment of debt, the suit in hand was filed only on 06.06.2011. But, it is the contention of the plaintiff that the suit was filed on the reopening day. But, there is no pleading or evidence in this regard. At the same time, there is no serious dispute by the defendant about the factum that 06.06.2011 was the reopening day.

23. The learned counsel for the plaintiff relied upon the judgments in ***Ranganathan Vs. Saravana Store*** reported in ***2018 (4) CTC 419***, (ii)



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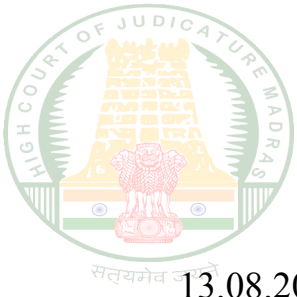
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Chaitanya Builders and Leasing Private Limited Vs. Rahul Foundations

reported in **2021 SCC OnLine Mad 694** (iii) ***Taneja Silks Company's*** case [cited supra] and would contend that the right to sue accrues only when there is a denial by the defendant, and that the relevant Article applicable to the present facts of the case is Article 113 of The Limitation Act. For ready reference, Article 113 is extracted hereunder:-

“Art.113. a suit must be filed within three years from the date the right to sue accrues. This article applies to suits that lack a specific limitation period.”

24. In the entire Limitation Act, there is no reference about “running account”, but “mutual account” is dealt in Article 1 of the Limitation Act. Therefore, “running account” can fit in under the residuary Article 113 of the Limitation Act. If that being the case, when the plaintiff issued notice [Ex.P26] on 04.08.2010, through Ex.P27, the defendant disputed the claim vide reply notice on 14.08.2010. Therefore, as rightly observed by the learned Single Judge, from the above reply, denial could be safely construed with effect from 14.08.2010. If that being the case, by applying Article 113 of the Limitation Act, the plaintiff has got limitation to file a suit upto



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13.08.2013, whereas the suit in the present case was instituted during 2011.

Thus, we are of the indubitable opinion that from the last payment of the defendant, and from their denial of due, the suit was instituted within three years. As such, we may safely conclude that by virtue of Section 19 and Article 113 of the Limitation Act, the present suit is not barred by limitation. Accordingly, the findings rendered by the Trial Court that the suit is well within the limitation, is well merited and liable to be confirmed. We had already concluded that the plaintiff proved the liability of defendant through Ex.P25. Therefore, the Point Nos.(i) and (ii) are answered in favour of the plaintiff.

Point No.iii:-

25. Though the learned counsel for the defendant would raise a defence of absence of the verification of the plaint under Order 29 Rule 1 of CPC, such defence was not raised before the learned Single Judge. But, they may contend that this is a legal defence and can be taken at any stage. Even if we accept the said argument, the very filing of the suit by the Director himself is nothing, but an implied ratification of the Company. Therefore, we are of the firm view that, at the appellate stage the defendant cannot raise



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such defence. Even otherwise, by the conduct of the Trial and through examination of Director of the Company by the plaintiff, we may very well hold that the Company had ratified the action of Director to file the plaint. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in *Union Bank of India Vs. Naresh Kumar and Ors.* reported in *AIR 1997 SC*

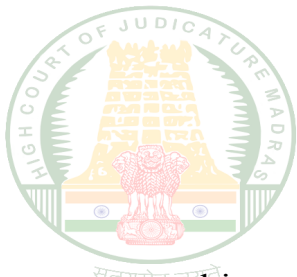
3.

Therefore, even this issue is also has to be decided in favour of the plaintiff.

Point No.(iv)

26. Coming to the jurisdiction, the learned Single Judge has rightly arrived at a conclusion that the defendant's office situate in Chennai and furthermore, Ex.D2 [Agreement] was entered into at Chennai. Therefore, we do not have any doubt in respect of the territorial jurisdiction of this Court to entertain the suit. Accordingly, this point also decided in favour of the plaintiff.

27. We are of the firm view that the learned Single Judge has elaborately considered all these aspects with great perspicacity and



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ultimately, rightly decreed the suit as prayed for. Even on the entire re-appreciation of evidence, we do not find any ground to deviate from the said finding. Accordingly, the present appeal deserves to be dismissed.

28. In the result, this Original Side Appeal stands dismissed. There shall be no order as to costs.

(Dr.ANITA SUMANTH, J.) (C.KUMARAPPAN, J.)
24.04.2025

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Index : Yes/No

Neutral Citation : Yes/No

Speaking order/Non speaking order

To
The Sub Assistant Registrar,
Original Side,
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