



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 08.10.2025

Order pronounced on : 28.11.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

A.S.No.243 of 2023

& CMP.No.9854 of 2023

& CMP.No.9851 of 2023

P.N.Prathiba

... Appellant in A.S.No.243 of 2023
& Petitioner in CMP.No.9854 of 2023

Vs.

Vijayakumar

... Respondent in A.S.No.243 of 2023
& Respondent in CMP.No.9854 of 2023

Prayer in A.S.No.243 of 2023: Appeal Suit filed under Section 96 r/w Order XLI of CPC, 1908, to set aside the judgment and decree dated 29.07.2022 in O.S.No.494 of 2018 on the file of the IV Additional District Judge, Coimbatore.

Prayer in CMP.No.9854 of 2024: Civil Miscellaneous Petition filed under Order 41 Rule 27 of CPC, to receive additional documents, which are more fully described in the schedule below, as additional evidence in the Appeal



Suit.

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For Appellant : Mr.C.R.Prasannan in both cases

For Respondent : Mr.J.Franklin in both cases

JUDGMENT

The plaintiff, whose suit for recovery of Rs.12,44,019.13/-, together with interest at 18% per annum, came to be dismissed by the trial Court, is the appellant.

2.I have heard Mr.C.R.Prasannan, learned counsel for the appellant and Mr.J.Franklin, learned counsel for the respondent.

3.Pleadings:

The plaint in brief:

The plaintiff is the sole proprietor of M/s.Pristine Polymers, involved in the manufacturing of pet bottles, which are primarily used for selling water in sealed containers. The defendant is the plaintiff's customer for the past several years and in the normal course of business, the defendant



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placed orders for pet bottles in various sizes and capacities. The defendant would do business through credit and for the period 2015 – 2017, as per the accounts maintained by the plaintiff, in the regular course of business, the defendant was liable to pay Rs.11,49,886/-. The plaintiff sent a lawyer's notice on 21.07.2018 and despite the same, the defendant has not come forward to make any payment. Hence, the suit.

The Written statement in brief:

The transactions between the plaintiff and the defendant are admitted. However, the allegation that the defendant is liable to pay Rs.11,49,886/- towards credit purchase made by the defendant is denied. The statement of account produced by the plaintiff does not reflect true facts. The defendant also contends that the plaintiff abruptly stopped placing orders to the defendant, resulting in heavy losses being suffered by the defendant and the plaintiff only owes a sum of Rs.30,000/- to the defendant. It is also contended that the plaintiff received plastic scrap worth Rs.25,000/- from the defendant and the said amount has also not been paid by the plaintiff. It is also contended by the defendant that he has paid Rs.40,000/- during the



course of business and the same has not been given credit to by the plaintiff.

The defendant contends that if all these amounts are adjusted to the claim of the plaintiff, then nothing will be due. The claim for interest at 18% is also alleged to be exorbitant and unconscionable.

4. Issues framed by the trial Court:

Based on the pleadings, the trial Court has framed the following issues:

“1. Whether the plaintiff is entitled to get the relief as claimed as per the statement of accounts?

2. Whether the plaintiff is entitled to get decree as claimed in the suit?

3. To what other reliefs, the plaintiff is entitled to?”

5. Trial:

At trial, the plaintiff examined herself as P.W.1 and exhibited Ex.A1 to Ex.A6 and on the side of the defendant, he examined himself as D.W.1 and exhibited Ex.B1 to Ex.B9.

6. The decision of the trial Court:

The trial Court found that the plaintiff has failed to produce accounts



to substantiate his claim and the statement of account and consequently proceeded to dismiss the suit.

7. Arguments of the learned counsel for the appellant:

Mr.C.Prasannan, learned counsel for the appellant would contend that when the defendant had pleaded set off, it was not necessary for the plaintiff to even lead evidence and the trial Court ought to have called upon the defendant to enter the witness box first. Without doing so, according to the learned counsel for the appellant, the trial Court has committed a patent error in dismissing the suit, disbelieving the statement of account relied on by the plaintiff, which was virtually admitted by the defendant, even in the written statement. He would further state that the trial Court has also drawn adverse inference against the plaintiff for non-production of the income tax records. He would further state that the various invoices based on which the suit claim has been laid are all accounted and find place in the income tax returns and in view of the fact that the trial Court has non-suited the plaintiff mainly on this ground, the plaintiff has taken out an application under Order 41 Rule 27 of CPC in CMP.No.9854 of 2023 to produce the income returns



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to substantiate that the claims made in the suit are true and genuine transactions. He would further state that when the defendant has not disputed the amounts claimed as being incorrect or that the invoices are untrue, then the onus was only on the defendant to establish the defence pleaded in the written statement.

8. Taking me through the oral evidence, learned counsel for the appellant would also contend that the defendant has not denied receipt of goods and when all the invoices have been filed in Exhibit A3 series, the trial Court ought to have seen that the plaintiff was entitled to the suit claim. He would also request the court to accept the additional evidence filed in CMP.No.9854 of 2023 under Order 41 Rule 27 of CPC and consider the same along with the main appeal. The learned counsel for the appellant has relied on the following decisions:

1. Hiralal and others Vs. Badkulal and others, reported in (1953) 1 SCC 400.

2. A. Kandaswami Pillai Vs. P. M. Theagaraja Pattar, reported in 1966 SCC Online Mad 246.

3. Kushalbai Mahijibhai Patel Vs. A Firm of Mohmadhussain Rahimbux, reported in 1980 Supp Supreme Court Cases 1.



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9.Arguments of the learned counsel for the respondent:

Mr.J.Franklin, learned counsel for the respondent would submit that the statement of account was highly unreliable and unworthy of any credence and rightly, the trial Court has rejected the same. He would also point out to some of the documents and contend that even the invoice numbers are different and Ex.B1 and Ex.A1 to not even matched. He would further state that in some of the documents, the voucher number is also not reflected, especially in Ex.A1 to Ex.A4 and in such circumstances, he would contend that the trial Court has rightly rejected the claim of the plaintiff.

10.Insofar as CMP.No.9854 of 2023, the learned counsel for the respondent would submit that income tax returns which are now sought to be produced are relating to the years 2015-2016 and 2022-2023 and the said documents were very much available with the appellant during the trial of the suit and therefore, there is absolutely no case made out for reception of



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additional evidence in appeal. He would also contend that the additional documents also will not in any manner sanctify Ex.A1, statement of account filed by the plaintiff and none of the conditions contemplated under Order 41 Rule 27 stand satisfied in the present case, warranting reception of additional evidence. He would therefore pray for the dismissal of the appeal and the CMP as well.

11.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the oral and documentary evidence available on record, including the judgment of the trial Court.

12.Point for consideration:

Based on the arguments advanced by the learned counsel on either side, the following point arises for consideration in this appeal.

1.Whether the plaintiff is entitled to recover the suit claim from the defendant?

13.The fact that the plaintiff and the defendant were doing business is



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not in dispute. The plaintiff claims that the defendant was supplied goods on credit basis and for the period 2015-2017, the defendant was due and payable Rs.11,49,886/-. The legal notice was issued by the plaintiff, claiming that the said amount on 21.07.2018. Despite receipt of the same lawyer's notice, the defendant has not chosen to even send a reply, denying or refuting the claim of the plaintiff.

14.It is the case of the defendant that the statement of account filed and relied on by the plaintiff to justify the suit claim is not a true document and that it does not reflect true transactions between the parties. However, the defendant has not stopped there. The defendant has proceeded to plead that the plaintiff in turn was liable to pay transportation charges of Rs.30,000/-, plastic scrap material worth Rs.25,000/-, besides also not giving credit to Rs.40,000/- paid, during the course of business and referring to these amounts in the written statement itself, the defendant categorically states that if these amounts are adjusted as against the suit claim, then no amount would be due and payable by the defendant. Thus, at the earliest instance, even in the written statement, it is evident that the



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defendant has pleaded a case of set off. Normally, as rightly contended by the learned counsel for the appellant, in such circumstances, the trial Court should have called upon the defendant to enter the witness box first, because by pleading set off, the defendant impliedly admits to the suit claim.

15. Even on a perusal of the written statement, I find that the plea of set off is unqualified and unconditional. The exact stand of the defendant in the written statement is that *'If the above amounts made are adjusted to the alleged claim of the plaintiff, nothing will be due on all'*. Therefore, there is no gain in the defendant contending that the statement of account is not true and the plaintiff has not given credit to various payments made by the defendant or that correct invoice numbers are not mentioned, etc.

16. Further, it is also not the case of the defendant that the plaintiff has not supplied the pet bottles in the first place. The defendant only attempts to dispute the claim, based on the credit purchases made by the defendant. The trial Court has non-suited the plaintiff on the ground that the plaintiff has



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not even examined the accountant on the plaintiff's side to establish the invoices. However, as rightly pointed out by the learned counsel for the appellant, the plaintiff has not come to Court, basing his claim on invoices. It is only a statement of account, which is projected, reflecting the balance due towards credit purchases made by the defendant.

17. In order to meet and defuse Ex.A1, statement, the defendant has relied on Ex.B1. Ex.B1 is the statement of account for the period 01.04.2014 to 31.03.2015, whereas Ex.A1 is the statement of account for the period 01.04.2015 to 19.07.2018, whereas Ex.B1, as already discussed is a ledger account for the period 01.04.2014 and 31.03.2015 and there is no overlap and it relates to an earlier period and does not relate to the period for which the suit claim has been made. Further, in cross examination, the defendant states that he noticed certain changes in Ex.A1, but admits that he did not send any statement of account from his end to validate the corrections that were required in Ex.A1. D.W.1 also claims that he has paid all the amounts mentioned in Ex.A1, but, in order to substantiate his claim in oral evidence, the defendant has not been able to produce a shred of evidence, by way of valid and acceptable receipts issued by the plaintiff.



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Further, the defendant has also clearly admitted that he has received the goods as per the invoices which have been marked as Ex.A4, Ex.A5 and Ex.A6.

18.Coming back to the written statement, there is no denial with regard to the receipt of goods and the suit claim itself has been admitted by the defendant, by pleading a set off. In these circumstances, the burden was only upon the defendant to establish the payments allegedly made in discharge of the suit claim. However, the defendant has not been able to prove the same. The defendant also did not endeavour to file his accounts, which could have helped the defendant to disprove the claims made by the plaintiff. However, I do not think the trial Court should have even stretched so far in the light of the specific plea of set off in the written statement.

19.The trial Court has also clearly drawn adverse inference against the plaintiff for non-filing of the income tax returns. Along with the appeal, finding that such an adverse inference has been drawn, the appellant has also produced the income tax returns for the relevant years and has also



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filed an application for adducing additional evidence. Under Order XLI Rule 27 of CPC, no doubt, as contended by the learned counsel for the respondent, the party seeking to produce additional evidence would have to bring the case within the following three categories, namely (i) trial Court had refused to admit evidence wrongly, (ii) evidence not within the knowledge or could not be produced despite due diligence and (iii) requirement to the Appellate Court to pronounce judgment.

20. The case of the plaintiff does not fall within the first and second conditions. However, if the Appellate Court is of the opinion that the additional documents would be required to pronounce judgment in the matter, then the documents are certainly admissible as additional evidence. The documents, which are now sought to be produced, are only income tax returns that have been filed by the appellant. The documents would certainly assist this Court in deciding if the suit claims are arising out of genuine transactions. Therefore, I do not see any serious prejudice being caused to the respondent, if the documents are admitted in evidence, by way of additional documents under Order XLI Rule 27 of CPC. In fact, Order XLI



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Rule 27 of CPC also permits the Appellate Court to receive additional documents for any other substantial cause. In the light of the above and the facts and circumstances of the case, I am inclined to permit the additional documents to be taken on file. The documents are also public documents, namely, income tax returns certified by the Auditor of the plaintiff and also acknowledged by the Income Tax Department as well. From all these returns, I find that the claim of the plaintiff from the defendant is reflected in the income tax returns as well. Therefore, this only strengthens the plaintiff's claim that the defendant has not settled the credit balances, as claimed by the defendant. Hence, I am inclined to allow CMP.No.9854 of 2023 and the following additional documents are marked as Ex.A7 to Ex.14:

<i>Sl.No.</i>	<i>Date</i>	<i>Description of documents</i>
1.	31.07.2022	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2015-2016.
2.	31.07.2022	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2016-2017.
3.	31.07.2022	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2017-2018.



4.	31.07.2022	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2018-2019.
5.	15.11.2022	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2019-2020.
6.	15.11.2022	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2020-2021.
7.	15.11.2025	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2021-2022.
8.	15.11.2022	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2022-2023.

21. Coming to the decisions that have been relied on by the learned counsel for the appellant, in *Hiralal's case*, cited supra, the Hon'ble Supreme Court, rejecting the contentions that the evidence regarding the accounts was false and highly improbable, held that evidence along with entry was sufficient to hold the plaintiff's case as proved, when best evidence of their own books to disprove the plaintiff's case had been withheld by the defendants and no satisfactory explanation has been given for non-production of the defendants' books. In the present case as well though the defendant admitted to the fact that he also maintains the accounts and if his accounts had been produced, it could have disproved the

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plaintiff's claim, the defendant has not chosen to exhibit his accounts and therefore, it can be safely withheld that the defendant has withheld best evidence and therefore, the Court could rely on the accounts produced on the side of the plaintiff which is a statement of account backed by invoices and also certified by way of income tax returns.

22. In *Kushalbhai Mahijibhai Patel's case*, cited supra, the Hon'ble Supreme Court held that in a suit for recovery of price, the initial onus would be on the plaintiff's supplier to prove privity of contract and once there is an admission by the defendant of supply of goods and its receipt, then the presumption is raised, till contrary is proved that supply order had been placed on the plaintiff by the defendant. In this case as well the Hon'ble Supreme Court held that the onus would stand shifted to the defendant to rebut the presumption and non-production of books of accounts would raise a presumption against the defendant.

23. This Court in *A. Kandaswami Pillai's case*, cited supra held that account books kept in the regular course of business of a tradesman is



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merely a compilation of all details of dealings on day-to-day basis and is practically a summary of such transactions viz., bills, vouchers, etc, and that under Section 34 of the Indian Evidence Act, the entries in books of accounts even though regularly kept in the regular course of business, though relevant, are not alone sufficient evidence to charge any person with liability and that account books by themselves do not stand on any better footing than a bill or a voucher issues in the regular course of business.

24.This Court held that both books of account and bills suffered from same infirmity and they do not prove by themselves and therefore, no adverse inference was required to be drawn against the plaintiff for non-production of account books and Section 114 of the Indian Evidence Act is only a rule of guidance and the presumptions arising therein are only permissive in nature and not absolutely obligatory on the part of the Court to draw such presumption in every case, where account books are not produced. This Court also held that when other evidence which is equivalent to or which can be characterized as substitute for account books are available for the Court to come to a reasonable conclusion, then it is



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always permissible for the Court to do so. In the present case, by way of additional evidence, the plaintiff has produced the income tax returns which clearly justify the claims made by the plaintiff and the transactions referred to and forming basis of the suit claim are reflected in the income tax returns for the relevant periods.

25.Further, as already observed earlier, this is a case where the burden ought to have been shifted to the defendant even at the inception, viz., the moment the defendant pleaded a set off by way of filing written statement. In such circumstances, the trial Court clearly fell in error in disentitling the plaintiff to the suit claim. In view of the above, I am inclined to set aside the judgment and decree of the trial Court. The point is answered in favour of the appellant.

26.In fine, the Appeal Suit is allowed and the judgment and decree dated 29.07.2022 in O.S.No.494 of 2018 on the file of the IV Additional District Judge, Coimbatore. The suit is decreed with costs. CMP.No.9854 of 2023 is allowed. CMP.No.9851 of 2023 is closed.



28.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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List of additional documents marked by this Court, in terms of order passed in CMP.No.9854 of 2023:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1.	Ex.A7	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2015-2016 dated 31.07.2022
2.	Ex.A8	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2016-2017 dated 31.07.2022.
3.	Ex.A9	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2017-2018 dated 31.07.2022.
4.	Ex.A10	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2018-2019 dated 31.07.2022.
5.	Ex.A11	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2019-2020 dated 15.11.2022.
6.	Ex.A12	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2020-2021 dated 15.11.2022.
7.	Ex.A13	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2021-2022 dated 15.11.2025.
8.	Ex.A14	True copy of income tax return Acknowledgment along with profit & loss and balance sheet for the year 2022-2023 dated 15.11.2022.



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28.11.2025

P.B. BALAJI,J.

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To

The IV Additional District Judge, Coimbatore.

Pre-delivery order made in

A.S.No.243 of 2023

& CMP.Nos.9851 & 9854 of 2023

28.11.2025

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