BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.01.2025

DELIVERED ON: 16.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE **RMT.TEEKAA RAMAN**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

A.S.(MD)No.29 of 2014
and
M.P.(MD)No.1 of 2014

Society for Education, Village Action and Improvement (SEVAI),
a registered Society,
represented by Executive Secretary,
133, Karur Main Road, Allur,
Trichy District, Tamil Nadu. ... Appellant

-vs-

Water Aid, an incorporated Company in UK,
with a Liason Officer at New Delihi,
represented by Country representative,
New Delhi ...Respondent

Prayer: This Appeal is filed under Section 96 of CPC r/w Order 44 of CPC to set aside the judgment and decree, dated 08.11.2013 made in O.S.No.104 of 2008 on the file of the III Additional District Court, Tiruchirappalli.

For Appellant	:Mr.J.Barathan for Mr.P.Arun Jayatram
For Respondent	:Mrs.A.S.Rajeswari Legal Aid Counsel

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JUDGMENT

[Judgment of the Court was made by **N.SENTHILKUMAR, J.**]

The Appeal Suit has been filed challenging the judgment and decree passed by the learned III Additional District Judge, Tiruchirappalli, made in O.S.No.104 of 2008, dated 08.11.2013.

2.For the sake of convenience, the parties are referred as per their status in the suit.

3.The appellant is the defendant and the respondent is the plaintiff in the suit. The respondent/plaintiff has filed a suit for recovery of a sum of Rs.26,71,899/- along with interest for a sum of Rs.19,80,155/-from the date of filing of the plaint. The plaintiff contended that it is a Society registered in the United Kingdom having registration No.1787329 for the purpose of doing charity with moto of providing water aid to the needy. The plaintiff identified the defendant as a registered Society, who is involved in the social activities. In the moto of providing safe domestic drinking water, sanitation and education, the defendant was entrusted with a Project No.2435 with terms and conditions by WAI/53/2435/SEVAI/2009-906, dated 30.08.2000, by the plaintiff.

4.An agreement was entered between the plaintiff and the defendant on 30.08.2000 and identified the rural, semi-urban, town panchayat and urban areas and thereafter, another agreement for appointing the Project Implementation Officer (PIO) of the defendant was entered. One of the terms with regard to the agreement was that towards a single cash payment of Rs.10,000/- and back payment of Rs.50,000/- be made and if the amount has to be sanctioned beyond that, the Project Implementation Officer (PIO) has to get appropriate approval from the plaintiff. The plaintiff is representative appointed as the Country Representative by name, S.Paramasivam. The Project Implementation Officer (PIO)/the defendant had entered into a Project No.3059, as per sanction, dated 23.04.2003.

5.The plaintiff appointed one Price Waterhouse (PW) Auditor to carry out a detailed assessment and investigation with regard to the work done and a report was filed by them, which was treated as Doc.No.5 filed along with the plaint. From the audit report, the plaintiff came to know that the defendant had made a huge loss to an extent of Rs.19,80,155/- and thereby, a notice was issued by the plaintiff to the defendant on 25.05.2005 and a reply was given by the defendant on 01.06.2005. Thereafter, two demand drafts for a sum of Rs.9,90,100/- and Rs.9,90,055/- totalling Rs.19,80,155/- in favour of the plaintiff were sent by the defendant drawn in IOB, CCO payable at New Delhi. The demand drafts were returned to the defendant without presenting into their bank account by the plaintiff. The plaintiff had demanded the amount due from the defendant is Rs. 19,80,155/- and at the rate of 12% per annum, arising from 01.06.2005 to 28.04.2008, a sum of Rs.6,91,734/- in total, Rs.26,71,889/-.

6.The defendant had filed the written statement denying that there was no malpractice and having a good reputation in the Society, the defendant had sent two demand drafts in favour of the plaintiff, as stated supra. However, the same were returned without encashing the same.

7.The trial Court had formulated the following issues for consideration:

> *"1.Whether the plaintiff is entitled to pay Rs.26,71,889/- to the defendant?*
> *2.Whether the plaintiff is entitled to get future interest for the sum of Rs.19,80,155/-?*
> *3.To what other relief the plaintiff is entitled?*
> *Additional Issue:*
> *1.Whether the suit claim is barred by limitation?*
> *2.Whether the suit is hit by Foreign Contribution Maintenance Act of India?*
> *3.Whether the suit is represented by proper person?*
> *4.Whether the suit is hit by the provisions of Section 41 of the Indian Contract Act?*
> *5.Whether the suit is hit by Section 63 of the Indian Contract Act?*
> *6.Whether the Audit Company Price Water is competent to file report in this case?*
> *7.Whether the Audit report is comprehensive and valid under law?*
> *8.Whether Audit findings are valid and proved by established method?*
> *9.Whether the quantum fixed by the Auditor and claimed in the suit are sustainable under law and facts?*
> *10.Whether the Reserve Bank of India has permitted the plaintiff to make this claim by filing this suit?"*

8.During trial, one P.K.Sriraman was examined as PW-1 and Ex-P1 to Ex-P14 were marked as documents on the side of the plaintiff and on the side of the defendant, DW-1 to DW-4 were examined and Ex-B1 to Ex-B35 were marked as documents.

9.After trial, the trial Court had come to the conclusion that Ex-P5, a private audit report, which had identified the discrepancies, as per the agreement in Ex-P3 and an excessive amount was spent by the defendant. The defendant had contended that Ex-P5 is a private audit report and a xerox copy alone was marked and the author of the document was not examined by the trial Court and that Ex-P5, the report cannot be acted upon. Apart from marking such allegation, it is further contended that Ex-P5 cannot be relied upon as there were Ex-B22 and Ex-B23, which are the vouchers for the expenditures incurred by the defendant. However, the trial Court held that the said vouchers were created for the purpose of making believe the plaintiff and rejected the contention made by the defendant.

10.The trial Court had disbelieved the evidence of DW-3, who was maintaining the accounts of the defendant, who had deposed before the Court about the accounts and maintenance of the entire amount, which was sent by the plaintiff. However, the trial Court disbelieved the same by taking into consideration that money sent by the plaintiff is in USD and Euro, which means United States Dollar and European money and decreed the suit claimed by the plaintiff with an interest at the rate of 6% per annum. Aggrieved by the same, the present appeal has been filed by the defendant.

11.The learned Counsel appearing for the appellant/defendant contended that DW-1 had narrated the entire sequence of activities done by the defendant and DW-3, who was in-charge of maintaining the accounts and despite the evidence deposed by DW-3 with regard to the day-to-day expenditure of the project, nothing was culled out by the plaintiff during the cross examination of DW-1, DW-2, DW-3 and DW-4. He further submitted that the trial Court had totally ignored the documents filed by the defendant and Ex-P5 marked by the plaintiff, ie., the report of the private auditor given by the Price Waterhouse (PW), the private audit agency, is a xerox copy and the relevance and the truthfulness of Ex-P5 were not put to proof, as the author was not examined during trial. The trial Court had taken note of Ex-P5 and had decreed the suit, however, the trial Court had ignored the demand drafts, which were marked as Ex-B8 and Ex-B9 dated 31.05.2005 for a sum of Rs.9,90,100/- and 9,90,055/-, respectively.

12.It is the further submission that the trial Court had also failed to note that Ex-P4, is a xerox copy of the audit report for the year 2002 to 2005 and there were no allegations of mismanagement or siphoning or any other irregularity to be pointed by the plaintiff and Ex-B8 to Ex-B12, the documents filed by the defendant with regard to the SEVAI Management System Office Manual, photographs, xerox copy of fax message received from the plaintiff and the letter sent by the defendant. Ex-B14 was a document to prove the bank details from the Standard Chartered Bank and the letter thereof, were totally ignored by the trial Court.

13.*Per contra*, the learned Counsel appearing for the respondent contended that the defendant's mismanagement came to light, when the plaintiff appointed the private auditor and the audit report, Ex-P5 would clearly indicate that there are short goods and the amounts were not accounted properly. Therefore, the learned Counsel for the respondent contended that the judgment of the trial Court is in consonance with the facts and the evidence of PW-1 coupled with the documents filed thereto.

14.It is not in dispute that the defendant was appointed by the plaintiff by identifying their social service. However, the trial Court had failed to note that Ex-P5 is a private auditor's report and a xerox copy was marked by PW-1. In the absence of author of the report being examined and the contended veracity of the said document was not challenged, is a fatal to the prosecution, where, the trial Court has emphasised the report of the Ex-P5.

15.The trial Court had rejected the evidence of DW-3, who was the person maintaining the accounts of the defendant organisation and had disbelieved his evidence without assigning any reason. When the plaintiff has not pleaded that the currency given to the defendant was either US Dollar or Euro money, the trial Court without any basis or material had come to the conclusion that the US Dollar or Euro currencies are expensive and that was not accounted properly. In the absence of any allegation in the plaint or any evidence deposed by PW-1 and the documents thereon, the trial Court has come to the conclusion that the defendant had not accounted the money properly sent by the plaintiff.

16.The trial Court has failed to considered Ex-B8, and Ex-B9, the demand drafts, dated 31.05.2005, sent by the defendant for a sum of Rs.9,90,100/- and Rs. 9,90,055/-, respectively, which demonstrates the *bona fide* of the defendant. The plaintiff had not realised the said demand drafts and had filed the suit for recovery for sum of Rs.26,71,889/- along with interest. The reasoning given by the trial Court is not in consonance with the case of the plaintiff and the defendant and without any effective cross examination done by the plaintiff to make disbelieve deposition given by DW-1 to DW-4, the trial Court had totally ignored the documents marked on the side of the defendant, namely, Ex-B4, previous audit report for the year 2000 to 2005, the email sent by the plaintiff in the year 2004, which was marked as Ex-B12, the letter given by Standard Chartered Bank with regard to the statement of accounts of the defendant, which was marked as Ex-B14 and the official letter sent by the defendant, which was marked as Ex-B15 and more specifically, when the defendant had given their objection with regard to the plaintiff's auditor report, Ex-P5, which objection was marked as Ex-B16 along with auditor report for the period 2001 to 2005 which was marked as Ex-B17, dated 25.06.2003. There was no reference to the defence raised by the defendant and the documents marked thereon.

17.The trial Court has miserably failed to discuss the evidence deposed by the DW-1 to DW-4 and has totally ignored the exhibits marked on the side of the defendant. Further, the trial Court had totally rested and believed, Ex-P5, the private audit report, which has no legal sanction, as the xerox copy was marked and the author of the said report was not examined.

18.In the result, **the Appeal Suit is allowed** and the judgment and decreed passed by the learned III Additional District Judge, Trichy, in O.S.104 of 2008, dated 08.11.2013 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [N.S., J.]
16.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

The III Additional District Judge, Tiruchirappalli.

RMT.TEEKAA RAMAN, J.
and
N.SENTHILKUMAR, J.

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A.S.(MD)No.29 of 2014

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