



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.281 OF 2024

APPELLANT

(Original Plaintiff)
(On R.A.)

:- Triveni Coal Corporation, Through its Proprietor Premraj Premsukhdas Rathi, Age years, Occ. Business, R/o Rathi Market, Near Shivaji Statue Buldhana Road, Nandura Dist. Buldhana.

..VERSUS..

RESPONDENT

(Original Defendant)
(On R.A.)

:- Gajanan Laxman Tayade
Age about Major, Occ. Business, R/o At Post-Pimpalgaon Kale, Tq. Jalgaon Jamod, Dist. Buldhana.

Mrs. Sonali Saware Gadhwane, Advocate for Appellant.
Mr. Dheeraj I. Jain, Advocate for Respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : 20/02/2026

ORAL JUDGMENT :

1. The appellant in the present appeal is original plaintiff. Suit for recovery of money filed by the plaintiff, being Regular Civil Suit No.03 of 2006, came to be decreed by the learned Civil Judge Junior Division, Nandura, vide judgment and decree dated 28.11.2018 passed in Regular Civil Suit No.10 of 2012. The appeal

preferred by the present respondent, the original defendant, being Regular Civil Appeal No.06 of 2019, came to be allowed by the learned Ad-hoc District Judge-1, Malkapur, vide Judgment and Decree dated 04.05.2024. The present Second Appeal is preferred against the said reversing judgment and decree by the original plaintiff.

2. It is not in dispute that the plaintiff was regularly providing coal to the defendant and that the defendant used to pay money for the same from time to time. The plaintiff has filed suit for recovery of amount of Rs.1,25,449.25/- along with interest accrued thereon till the date of filing of suit. The claim of the plaintiff is principally based on two documents i.e. Bill No.32 dated 05.06.2002 (Exh.34) and Bill No.18 dated 29.01.2003 (Ex.38). Both these bills are signed by the defendant. The defendant has not disputed his signatures on the said documents during the cross-examination of the plaintiff. The defendant did not enter the witness box. The total outstanding amount of Rs.1,25,449.25/- is shown outstanding in the bill at Exh.38. The learned trial Court decreed the suit on the basis of documents at Exhs.34 and 38. However, the learned First Appellate Court has allowed the appeal on the ground that the bills referred in Exh.34 were not produced

on record and that Exh.34 which is a statement of account, cannot be said to be a book of account. The learned First Appellate Court has relied on Section 34 of the Indian Evidence Act, 1872 to discard the document at Exh.34 on the ground that it is not a book of account.

3. The plaintiff has preferred Second Appeal, in which notice came to be issued vide order dated 05.05.2025 on the following substantial questions of law:-

*“i] In view of the Credit Note dated 29.01.2003 at Exh.38, can suit filed for recovery of money filed on 25/01/2006 be said to be barred by limitation?
ii] Has learned First Appellate Court erred in not drawing adverse inference as against the defendant for not entering into the witness box?”*

4. Vide order dated 03.07.2025, the appeal was ordered to be listed for final hearing. The appeal is heard finally with consent of the parties.

5. I have heard the respective advocates and perused the judgments delivered by both the learned Courts along with the depositions of sole plaintiff and exhibited documents, particularly document Exhs.34 to 38.

6. Mrs. Sonali Saware, learned Advocate for the appellant contends that the learned First Appellate Court should have

appreciated that the document at Exhs.34 and 38, which are foundation of the claim, are signed by the defendant and that his signatures on the said documents are not disputed. She further argues that the defendant has also not entered the witness box and therefore, adverse inference was required to be drawn against the defendant.

7. As regards the point of limitation, the learned Advocate points out that the Bill at Exh.38 is dated 29.01.2003 and it is signed by the defendant and that the suit is filed on 25.01.2006, within a period of three years from the said date. She therefore contends that the suit is filed within the limitation.

8. *Per contra*, Mr. Dheeraj Jain, learned Advocate for the respondent contends that the learned First Appellate Court has rightly drawn adverse inference against the plaintiff for not producing the books of account and the bills which are referred in the final Bill at Exh.34.

9. As stated above, the bills at Exhs.34 and 38 are signed by the defendant. The signatures are not disputed during the course of cross-examination. Defendant had not entered the witness box to dispute his signatures on the said documents or the contents thereof.

10. Perusal of the bill at Exh.38 will demonstrate that a sum of Rs.1,10,608/- was outstanding for the transactions of the year 2001-02 and that further purchases to the tune of Rs.14,481.25/- were made subsequently. The receipts at Exhs.35, 36 and 37 are dated 14.07.2002, 15.07.2002 and 19.12.2002, showing payments of Rs.3600/-, Rs.5400/- and Rs.20,000/- respectively. These receipts are also not in dispute. When the amounts mentioned in the aforesaid documents are tallied, it is found that the total outstanding amount comes to Rs.1,25,449.25/-. Although the bills and books of accounts are not produced, the statement of outstanding amount also bears signature of the defendant. The signatures, as stated above, are not in dispute. There is no explanation from the defendant in this regard.

11. As stated above, the defendant has not entered witness box, for which adverse inference needs to be drawn against him. In view of the above, second substantial question of law deserves to be answered in favour of the appellant/plaintiff and against the respondent/defendant.

12. As regards the first substantial question of law, the last payment is made on 19.12.2002 (Exh.37) and balance amount payable is confirmed by defendant on 29.01.2003 (Exh.38). The

suit is filed on 25.01.2006 which is within a period of three years from 29.01.2003 i.e. the date of Exh.38, wherein statement of outstanding amount is signed by the defendant. The suit is therefore obviously filed within the limitation. The first substantial question of law is therefore answered in favour of the appellant/plaintiff. The Second Appeal is, accordingly, **allowed** in the following terms :-

- i) Judgment and decree dated 04.05.2024 passed by the learned Ad-hoc District Judge-1, Malkapur, in Regular Civil Appeal No.6 of 2019, is quashed and set aside.
- ii) Judgment and decree dated 28.11.2018 passed by the learned Civil Judge Junior Division, Nandura, in Regular Civil Suit No.10 of 2012 (Old No.03 of 2006), is restored.
- iii) No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate