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OSA No. 262 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

OSA No. 262 of 2017

Textile Connection
149, Poonamallee High Road
Chennai – 600 010
A Partnership Firm
Rep. By its Managing Partner, Shri.C.P.Vikas

..Appellant(s)

Vs

1. Burlingtons Exports
B-75, Wagle Industrial Estate, Thane,
Maharashtra, Rep Herein By Its Partner,
Sri.Andre Kapoor-died
The Firm Was Continued With Remaning
Partners/children Of Late Andre Kappoor Viz.
Rudra Kapur (R3) And Shai Kapur(R5) and 4
Others

..Respondent(s)

For Appellant(s):

Mr.M.Arun Kumar
for M/s.Samathkumar & Associates

ORDER

(Order of the Court was made by C.V.Karthikeyan J.)

This matter had been listed under the caption "For Being Mentioned" for
correction in the cause title.



2. The learned counsel submitted that the first respondent may read as

"M/s. Burlington's Exports
B-75, Wagle Industrial Estate, Thane
Maharashtra
Rep. by its Partners, Sri Rudra Kapoor and Ms. Shai Kapoor"

[Andre Kapoor is deleted and R3 and R5 are disclosed as R1 partners in the cause title vide Court order dated 09/01/2026 in C.M.P.No.21220 of 2017 (CVKJ and KBJ)]

Instead of

"M/s. Burlington's Exports
B-75, Wagle Industrial Estate, Thane
Maharashtra
Rep. by its Partners, Sri Andre Kappor (died)

(The Firm was continued with remaining Partners/children of late Andre Kappoor Viz., Kapur (R3) and Shai Kapoor (R5))"

Further, the word "deleted" as against Respondents R3 and R5 to be removed.

For ease of reference, the corrected cause title is as follows:

"Textile Connection
149, Poonamallee High Road
Chennai – 600 010
A Partnership Firm
Rep. By its Managing Partner, Sri.C.P.Vikas

Vs.

1. M/s. Burlington's Exports
B-75, Wagle Industrial Estate, Thane
Maharashtra



Rep. by its Partners, Sri Rudra Kapoor and Ms.Shai Kapoor"

[Andre Kapoor is deleted and R3 and R5 are disclosed as R1 partners in the cause title vide Court order dated 09/01/2026 in C.M.P.No.21220 of 2017 (CVKJ and KBJ)]"

2. Sri.Andre Kapoor (died)
3. Sri.Rudra Kapoor
4. Sri Kershaw Colabawala
5. Ms.Shai Kapoor"

The above corrections to be carried out and fresh order copy to be uploaded/issued.

(C.V.K.,J.) (K.B.,J.)
02-04-2026

gpa



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OSA No. 262 of 2



**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

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OSA No. 262 of 2017

02-04-2026



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OSA No. 262 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.02.2026

Pronounced on : 13.03.2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

OSA No. 262 of 2017

Textile Connection
149, Poonamallee High Road,
Chennai – 600 010.
A Partnership Firm,
Rep. by its Managing Partner, Sri.C.P.Vikas

..Appellant(s)

Vs

2. M/s.Burlington's Exports
B-75, Wagle Industrial Estate, Thane,
Maharashtra,
Rep by its Partner, Sri.Andre Kapoor (died)

The Firm was continued with remaining
Partners/children of late Andre Kappoor viz.,
Rudra Kapur (R3) and Shai Kapoor (R5)

3. Sri. Andre Kapoor (died)
4. Sri. Rudra Kapoor (deleted)
5. Sri.Kershaw Colabawala
6. Ms.Shai Kapoor (deleted)



R3 and R5 are deleted from the Cause Title vide
Court order dated 09/01/2025 in
CMP.No.21220 of 2017 (CVKJ and KBJ)

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..Respondent(s)

This Appeal filed under Order XXXVI Rule 1 of O.S.Rules and Clause 15 of Letters Patent against the judgement and decree dated 01.09.2016 made in CS NO.29 of 2000 & allow the suit as prayed for.

For Appellant(s): Mr.R.Bharanidharan
For M/s.Sampathkumar & Associates.

For Respondent(s): Mr.C.Mohan
for Ms.A.Rexy Josephine Mary
for M/s.King and Partridge for R1, R2, R3 & R5

R4- No such person

JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The plaintiff in C.S.No.29 of 2000 aggrieved by the judgment dated 01.09.2016 passed by a learned Single Judge of this Court, on the Original Side dismissing the said suit, has filed the present appeal.

2.C.S.No.29 of 2000 had been filed seeking a judgment and decree against the defendants jointly and severally to pay a sum of Rs.39,67,144/- together with interest at 24% per annum from the date of the plaint till date of realization and for costs of the suit.



3. It had been contended in the plaint that the plaintiff, a registered Partnership Firm was a regular supplier of cotton fabrics to the 1st defendant which was also a Partnership Firm carrying on business at Thane, Maharashtra. The defendant would convert the fabrics into garments and export such garments. The 2nd, 3rd and 4th defendants were partners of the 1st defendant. The 5th defendant who was yet another partner was subsequently impleaded during the pendency of the suit.

4. It had been stated in the plaint that the 1st defendant used to send to the plaintiff the details of the fabrics required, the construction, colour and other points of specification. The plaintiff would get the samples ready and send the same to the 1st defendant. If the 1st defendant were to indicate changes / modifications in the samples, the plaintiff would have to obtain fresh samples and send them for final approval. After the samples had been approved, the plaintiff would quote the price for acceptance by the 1st defendant.

5. The arrangement between the parties was that the 1st defendant would first place a trial order for about 100 meters which would be supplied by the plaintiff. Thereafter, the 1st defendant would place bulk orders and issue purchase orders setting forth the terms and conditions for the supply. The purchase orders would be countersigned by the plaintiff. This was the usual / normal practice. There would be occasions when there would be considerable



time interval between the trial order and the bulk order to about four to five months. But the plaintiff did not alter the quoted price even if there had been increase in input prices. The plaintiff never claimed the price which prevailed on the date of the supply but raised invoice only on the contracted price.

6.It had been further stated that the supplies were made either directly or by signing documents by the bank. When documents were sent through the bank, the payments were cleared within a reasonable time. But when supplies were made directly, the payments for the bills were always belated, with the delay being anywhere between three to twelve months though in the invoices it had been stated that the payments should be effected within thirty days. It had been further stated that though the payments were delayed by the 1st defendant, the plaintiff still continued to honour its commitment to supply the fabrics in accordance with the purchase order.

7.In June 1998, the 1st defendant wrote to the plaintiff that they had obtained quotations from other suppliers and found that the prices quoted by the plaintiff over the last two years had been 20% to 30% higher than the other suppliers. The 1st defendant wanted the plaintiff to issue credit note at 10% of all supplies for the period from 01.04.1996 to 30.06.1998. The plaintiff issued a reply denying the allegations. The 1st defendant again addressed a letter stating that they proposed to debit the plaintiff with Rs.16/- lakhs to be adjusted at the rate 10% of the future supplies.



8.The plaintiff replied on 20.10.1998 that the bills could be worked out by taking into account the overhead expenses, profit and other such aspects and that the 1st defendant can deduct 5% on future bills but that the plaintiff would not agree for debit of 10%. It was contended that the 1st defendant, however, sought credit for 10% value of the supplies made between 01.04.1996 to 30.06.1998 and stated that it could be adjusted against future supplies.

9.The 1st defendant then issued a debit note for Rs.8,00,994/-. The plaintiff rejected the same stating that they would agree for reduction at the rate of 5% in future supplies, provided the 1st defendant gave an assurance to clear the pending payments. The 1st defendant replied that the Managing Director was out of India and they would revert back on his arrival. The plaintiff did not receive any further communication from the 1st defendant except repeated statements about the absence of the Managing Director. It was contended that the 1st defendant did not place any purchase order from 01.04.1999. The plaintiff claimed that after adjusting the amounts received, a sum of Rs.39,67,144/- was due as on that date payable by the 1st defendant to the plaintiff. It was under those circumstances that the suit had been filed seeking the said amount together with interest and costs.

10.The defendants filed a written statement denying and disputing the claim made and further pointing out that the calculation as to how the amount



claimed was arrived at was not provided by the plaintiff. It had been contended that the 1st defendant was a garment manufacture and export company situated at Thane in Maharashtra. They purchase cloth from various suppliers for their manufacture of garments. It had been contended that the defendants had been purchasing cloth from the plaintiff for several years regularly. The 1st defendant used to place orders with the plaintiff giving time to supply. It was contended that the defendant could clear the goods only after inspection but there were instances when the payment had already been made and goods were rejected and in those circumstances, the defendants used to raise debit notes for the value of the goods rejected. It was contended that the plaintiff often failed to supply the goods within the specific time limit. The plaintiff would supply the goods directly to the defendants which was termed as direct supplies. If the defendants agreed to accept the goods, they would inspect the same and return the rejected the goods and pay for the balance. Since this procedure took time, the payments were delayed.

11.It was further contended that the bills were cleared not independently but in a lot and debit notes were also not issued immediately after rejection of goods but only when a bunch of bills of the plaintiff were cleared. The payments were made through demand draft and when the same were encashed, the defendant presumed that the plaintiff had accepted the debit notes. It was contended that as per the books of accounts after reconciliation as on



18.03.2000 a sum of Rs.2,42,995.40/- was due for payment. It had been contended that over a period of time, the defendant had paid more than Rs.1,73,73,853.40/-. They had not paid the amount demanded since they waited for clarification of the accounts from the plaintiff. It had been contended that the other claims by the plaintiff were imaginary and not sustainable. The plaintiff had not given the bifurcation to show the actual amount due from the defendants. It was therefore contended that the suit may be dismissed with costs.

12. On the basis of the above pleadings, the following issues were framed:

“i). Whether the plaintiff is not entitled to recover the suit amount?

ii). Whether the plaintiff is not entitled for interest on the suit claim at the rate of 24%?

iii). To what relief?”

13. During trial, the Managing Partner of the plaintiff examined himself as PW-1 and marked Exs.P1 to P308. On the side of the defendants, the authorized representative and the Accountant of the 1st defendant firm were examined as DW-1 and DW-2. They marked 18 documents as Exs.D1 to D18.

14. The learned Single Judge while examining the issues framed held that the total purchase made by the defendants was for a sum of Rs.1,99,27,851.60/-



and the total payments made by the defendants was Rs.1,73,73,853.40/-. It was thus observed that the balance amount payable was Rs.25,53,998.20/- which was close to the suit claim of Rs.26,21,139.00/-. The defendant had deducted debit notes for a sum of Rs.23,11,002.80/-. It was further noticed that the case of the plaintiff was that the payments had not been made for the supplies effected between 01.04.1996 and 30.06.1998. However, it was further observed that under Ex.P11, ten invoices for a sum of Rs.1,56,899/- were for a period between 15.05.1995 and 17.11.1995 which were clearly outside the claim period in the suit had been included. It was further observed that each invoice reflected an independent transaction providing for interest, if payment was not made within 30 days.

15.It was further noticed that an outstanding of Rs.2,42,995/- was paid to the plaintiff after the filing of the suit. It was further held that in Ex.P11, Statement of Accounts, item Nos.1 to 10 were prior to the claim in the suit and item Nos.11 to 17 were barred by limitation. It was also contended that Exs.P12 – P303 were only invoices issued during regular business and would not reflect non-payment. The learned Single Judge further noted that the plaintiff had not produced any evidence to challenge the correctness of the Statement of Accounts filed by the defendant. It was also noted that the defendant had filed Exs.D2, D3 and D4 which were marked during cross examination of PW-1 which would indicate that the debit notes were not considered.



16.It was further observed that during cross examination of DW-1, the plaintiff had only questioned the competency of the witness. The statement of Accounts produced by the defendant were not countered. It was finally held that the plaintiff had to prove their case on the basis of their documents and that they had failed to substantiate the pleadings. The suit was therefore dismissed.

17.The plaintiff has filed this appeal challenging the said judgment.

18.Heard arguments advanced by Mr.R.Bharanidharan learned counsel for the appellant for M/s.Sampathkumar and Associates and Mr.C.Mohan, learned counsel for the 1st, 2nd and 3rd and 5th respondents for Ms.Rexy Josephine Mary for M/s.King and Partridge

19.Notice issued to the 4th respondent had been returned with endorsement that there is no such person.

20.Mr.R.Bharanidharan, learned counsel for the appellant pointed out that the appellant had filed the Suit before the Original Side of this Court seeking a judgment and decree against the defendants to jointly and severally to pay a sum of Rs.39,67,114/- together with interest and costs. The learned counsel pointed out that the appellant, a Partnership Firm registered under the



Partnership Act had been a regular supplier of cotton fabrics to the 1st respondent / Burlington's Exports, who would convert the fabrics into garments and export them. The 1st respondent used to send details of the fabrics required including their construction, colour and other points of specification. The appellant would organize samples and forward the same to the 1st respondent. There were occasions when the 1st respondent would suggest further changes / modifications. The appellant would then have to make fresh samples and forward the same for approval. After the samples had been approved, the appellant would quote the prices for acceptance by the 1st respondent. Thereafter, the 1st respondent would place a trial order for 100 meters of cloth. It was only thereafter they would place bulk orders.

21. The learned counsel stated that when the clothes were sent in accordance with the purchase orders placed by the 1st respondent, the terms and conditions of the supply would be stated. These purchase orders would be countersigned by the appellant. This was the normal course of business transaction carried on between the appellant and the 1st respondent. The learned counsel pointed out that at every stage there was a check by the 1st respondent over the quality of the clothes supplied by the appellant. Initially, samples would be sent and if modifications were made, the samples would be again sent after carrying out the modifications. When the samples were approved, the 1st respondent would place only a trial order for 100 meters. It was only after that



would they place bulk orders and issued purchase orders, which would be countersigned by the appellant. Even though, bulk orders were placed with a delay of a few months from the date of supply of the trial order / 100 meters, the appellant retained the same price which had been quoted when the samples were initially sent and never factored the increase in the price.

22.The learned counsel pointed out that the appellant had raised invoices whenever supplies were made in response to the purchase orders issued by the 1st respondent. It was contended that the 1st respondent had not effected payment for the fabrics supplied by the appellant. It was contended that after adjusting the payment received, a sum of Rs.26,21,139/- was due and payable by the 1st respondent and together with interest at 24% per annum, the aggregate came to Rs.39,69,144/- payable for the period between 01.04.1996 to 30.06.1998. It was under those circumstances that the suit had been filed seeking a judgment and decree in the said amount.

23.The learned counsel, pointed out the aforementioned facts and stated that the disputes were with respect to the supplies made directly to the 1st respondent. He contended that a running account was maintained. A further dispute arose over the debit note at 10% on future orders while the appellant insisted 5% on future supplies. It was contended by the learned counsel that the debit notes were not marked during the course of trial. Further, except for three



or four debit notes none of them correlated to the statement produced by the appellant under Ex.P11.

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24.The learned counsel further pointed out that a notice to produce documents had been issued to the 1st respondent to produce the statement of bank accounts and payments alleged to have been made to foreign importers for their alleged claim on account of supply of poor materials / delayed supply by the appellant during the period 01.04.1996 to 30.06.1998. Documents as demanded were not produced by the 1st respondent. The learned counsel further pointed out that the 1st respondent themselves by their letter dated 15.09.1999 which had been marked as Ex.P305 had admitted that the amount payable by them was about Rs.17/- lakhs approximately. He therefore contended that the learned Single Judge had omitted to consider this admission and had proceeded to dismiss the suit in entirety. The learned counsel contended that the order under appeal should be set aside and the appeal should be allowed and the suit decreed prayed for.

25.Mr.C.Mohan, learned counsel for the 1st, 2nd, 3rd and 5th respondents pointed out that the appellant who had instituted the suit had the burden to prove the claim. The learned counsel pointed out that among the invoices produced the invoices from Ex.P12 till Ex.P23 were prior to the claim period which commenced from 01.04.1996. The learned counsel further contended that the



claim of the appellant was based on Ex.P11. The said document contained several discrepancies and had been correctly rejected by the learned Single Judge. It was contended that the appellant had not produced revised statement of accounts after deleting the invoices which were outside the period for which the claim was made in the plaint. The learned counsel further stated that there were several discrepancies in the statement of accounts. He also pointed out that though in the invoice it had been stated that the interest would be 18% if the payment is delayed by 30 days, the appellant had claimed interest at 24% per annum. The learned counsel stated that each invoice will have to be examined independently and disputed the contention that there was a running account and pointed out that if the invoices were examined independent of each then the invoices for the period between 01.04.1996 to 30.09.1996 would be barred by limitation.

26. Pointing out the above facts, the learned counsel argued that the judgment of the learned Single Judge did not warrant any interference and urged that the Court should dismiss the appeal.

27. We have carefully considered the arguments advanced and perused the material records.



28.The following points arise for consideration:

i).Whether the invoices marked as Exs.P12, P13, P15, P17 to P23 have to be rejected since they were prior to the suit claim which commenced from 01.04.1996?

ii).Whether the claim under the invoices marked as Exs.P24 to P29 and P31 were barred by the law of limitation?

iii).Whether the Court can take note of the debit notes said to have been issued by the respondents particularly when copies of the same had not been produced during the course of trial?

iv).Whether the reasoning of the learned Single Judge in dismissing the suit has to be upheld by this Court or interfered by this Court?

29.Since the discussion with respect to each one of the four points framed for determination overlap and the pleadings and the evidence are interrelated, all the four points are taken up for consideration and for determination together.

30.The appellant filed C.S.No.29 of 2000 for recovery of a sum of Rs.39,67,144/- together with interest at 24% per annum from the date of the plaint till the date of realization and also for costs of the suit.



31. It is the case of the appellant, a Partnership Firm that they supplied cotton fabrics to the 1st defendant, also a registered Partnership Firm, who would later convert the fabric into cloths and export them. The normal practice adopted by the appellant and the 1st respondent was that the 1st respondent used to send details of the fabrics required including their construction, colour and other points of specification. The appellant would organize and make samples and forward the same to the 1st respondent. There were some occasions when the 1st respondent suggested further changes and modifications. The appellant then had to carry out the modifications and re-forward the samples for approval. The appellant quoted the prices which prevailed on the date when the samples were approved.

32. Thereafter, the 1st respondent would place a trial order of 100 meters of cloth. This would also be sent by the appellant. After that, the 1st respondent placed bulk orders and issued purchase orders which would be countersigned by the appellant. There would be a time interval between the trial and bulk orders but the appellant always adhered to the price which was quoted at the time when the samples were approved. The appellant would then supply the bulk orders and forward the invoices. There were two methods in which the bulk orders were supplied. One method was forwarding the documents through banks which were cleared within a reasonable time. The other was direct supply to the 1st respondent. There was considerable delay in effecting payment.



33. The disputes arose between the appellant and the 1st respondent when the 1st respondent, in June 1998 stated that on enquiry with other suppliers they found that the prices quoted by the appellant were about 20% higher than the prices which were informed by the other suppliers. The 1st respondent therefore sought a debit note at 10% to be issued for all the supplies from 01.04.1996 to 30.06.1998. The appellant stated that they would issue such note at 5% and not at 10%. It was also stated that for the supplies made during that period, payments had not been issued. Disputes had arisen over the price determined by the appellant.

34. The 1st respondent also raised an issue of the quality of the products forwarded by the appellant. They raised debit notes at 10% of the value. Since there was total failure of communication and understanding between the parties, the appellant filed the suit seeking a sum of Rs.26,21,139/- as the amount due under the invoice and a further sum of Rs.13,46,005/- towards interest which was due and payable till the date of the plaint also sought further interest from the date of the plaint till date of realization at 24%.

35. The 1st respondent, in their written statement, had claimed that the quality of the cloth supplied by the appellant was of inferior quality and were rejected by the customers. It was also stated that the appellant supplied the clothes well beyond the delivery date. The clothes had to be immediately



cleared and there was no possibility of the 1st respondent checking the clothes for quality. It was contended that since payment had already been made for such rejected goods, the 1st respondent used to raise debit notes for the goods which had been rejected. In the written statement, the 1st respondent had stated that the total purchasers till 18.03.2000 on and from 1996 – 1997 was a sum of Rs.1,99,27,851.60/-. They deducted the debit notes which they had raised for a sum of Rs.23,11,022.80/-. The 1st respondent claimed that they had paid a sum of Rs.1,73,73,853.40/-. It was their contention that they had to pay a sum of Rs.2,42,995.40/-.

36. On the basis of these pleadings, the parties had tendered evidence. During trial, the appellant had marked Exs.P1 to P308. Among those documents, Exs.P12 – P303 were either invoices or delivery notes from the appellant to the 1st respondent. Ex.P11 was the statement of accounts filed by the appellant export of the invoices and delivery notes. A perusal of Ex.P11, would show that ten invoices were for the period from 15.05.1995 to 17.11.1995. It is to be noted that the suit claim was for the period 01.04.1996 to 30.06.1998. The plaint was dated 30.09.1999. Even though it could be reasonably argued that the account was a running account between the appellant and the 1st respondent, the last invoice raised for which the payment was due should be within a period of three years. Any invoices which beyond the period of three years from the date of filing of the plaint would only be barred by limitation.



38.A perusal of Ex.P11 indicates that the invoices mentioned in SL.Nos.11 to 17 were between the dates 08.04.1996 and 13.08.1996. The suit claim was for the period from 01.04.1996 to 30.06.1998. These invoices had been raised prior to that particular time period.

40. It had been the consistent stand of the respondents that they had protested against the quality of the cloth and had therefore raised debit notes. It had been contended that as per Ex.D2, the appellant had admitted to 5% discount which was required to be debited and which was found in Ex.D3 and had not been taken into account by the appellant. It was also stated that the reasons for raising the debit notes had been communicated by Ex.D4 dated 24.11.1998 which had been acknowledged by the appellant.



41.It had been however pointed out on behalf of the appellant that the respondents have not produced even one debit note as a document during trial.

The witness for the respondents gave evasive answers when confronted with the fact that the respondent had not produced even one debit note. With respect to the issue that the price quoted by the appellant was more than the prices offered by other supplies, DW-1 had answered as follows:

“Qn:Did you at any point of time raise your little finger that the goods were over priced?”

Ans: It was not raised because of the good faith with the plaintiff Mr.C.P.Nair.

Qn:Did you at any point of time write letters to plaintiff stating that such invoices were over priced?”

Ans:No letters were written.”

42.It is thus seen that the respondents had not protested about the alleged increased price.

43.It is also seen that even in the written statement there has been no mention about raising of debit notes.

44.With respect to the allegations that the quality of the fabrics were substandard and raising of the debit notes, DW-2 had answered as follows:



“Qn: Were you the competent person to speak about whether the goods were sent according to the specification and also about rejection of goods ?

Ans: No

Qn: You can't comment because you were not competent to speak about rejection?

Ans: Yes.

Qn: Does your firm have a separate book for debit notes?

Ans: I cannot say if it was separate book but we were maintaining it systematically.

Qn: Do you keep debit notes in loose sheets or bound volumes?

Ans: It was kept in debit note pads.

Qn: I put it to you that none of the debit notes have been sent by the defendant to the plaintiff?

Ans: Sending of debit note was not handled by accounts department.

Qn: Do you have the copies of debit notes?

Ans: Yes

Qn: Can you produce it now?

Ans: If all the copies are available we can try to produce. This has been already submitted to this Hon'ble Court.”

45.It must however be pointed out that even one debit note had not been produced during trial.



46. The learned counsel for the 1st respondent placed reliance on the following observations of the Hon'ble Supreme Court in a matter relating to Section 13 of the Hindu Marriage Act, 1955 wherein, divorce was sought on the ground of desertion and cruelty. In the judgment reported in **2008 10 SCC 497, Jagdish Singh Vs. Madhuri Devi**, in paragraph 28, it had been observed as follows:

“28. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable.”

47. In the instant case, it is to be noted that the learned Single Judge had not referred even once in the judgment to the evidence recorded. The fact that the debit notes had not been produced was also neither stated by the learned Single Judge nor addressed by the learned Single Judge in the course of the judgment.



48. The learned counsel for the 1st respondent placed further reliance on the judgment reported in ***AIR 1967 SC 181, Gordon Woodroffe and Company (Madras) Ltd., Vs. Sheikh M.A. Majid & Co.*** The facts of the case were as follows:

“1. The respondent was a trader at Madras in hides and skins. The appellant was a firm, Gordon Woodroffe and Company (Madras) Ltd., doing business among other things as exporters of hides and skins. For the period of 8 months commencing from January 1949 there were as many as 101 contracts entered into between the appellant and the respondent.

2. The case of the respondent was that he entered into an agreement with the appellant to act as agents for shipping the goods (hides and skins) to the United Kingdom and for finding purchasers there. It is alleged that the appellant used to make payment to the respondent in respect of the goods sent to it for shipment in the nature of advances and he used to set off these advances when payment was made to the respondent after the goods were shipped. The respondent will hereinafter be referred to as "the plaintiff" and the appellant as "the defendants".

3. The plaintiff tentatively claimed a sum of Rs 56,564 and odd as due to him as balance of the price of the goods and a further sum of Rs 40,275 as representing the loss sustained by him by reason of the defendants' conduct in not shipping his goods under the "Shaik mark". The plaintiff accordingly prayed that an



account should be taken of the dealings between the parties for the period in question.

4. The defendants contested the suit on the ground that it was not an agent of the plaintiff but it purchased hides from the plaintiff for export and for resale in the United Kingdom. The case of the defendants was that there was an outright purchase of the goods from the plaintiff for the purpose of resale in the United Kingdom. The defendants also contended that a sum of Rs 4351 and odd was due to it from the plaintiff and it prayed for a decree against the plaintiff for that amount by way of counterclaim.”

49. The trial Judge dismissed the suit and decreed the counter claim of the defendants. On appeal, the High Court reversed the judgment of the trial Court and decreed the suit and directed taking of accounts. The counter claim was also allowed. The Hon'ble Supreme Court while examining the issue of separate contract notes being sent by the defendants to the plaintiff and the statement of accounts with a covering letter as well as cheque for the balance due to the plaintiff being sent to the plaintiff from time to time and that there were 101 contract forms and several statement of accounts sent to the plaintiff to none of which the plaintiff had raised any objection had held as follows:

“37. It is admitted in this case that for almost every shipment the defendants prepared a statement of account and sent it to the



plaintiff giving full particulars of the amount due to him together with the deduction and showing the net balance payable to him and enclosing a cheque for such balance or giving a credit for the sum in the accounts. Copies of such accounts are Exts. P-1A, P-2A and P-3A corresponding to the contracts Exts. P-1, P-2 and P-3. Copies of other accounts have been filed by the defendants in the Court and marked Ext. D-18 series.

38. The plaintiff in his evidence did not deny the receipt of these accounts. On the contrary, he admitted in cross examination that for every shipment he was getting accounts and cheques for the balance due. It is an admitted fact that to these statements of account no objection was raised by the plaintiff at any time. Nor a single document has been produced on his side to show that he ever wrote to the defendants raising an objection to the statements of account. Not only the plaintiff failed to raise objection to the several statements of account but at one stage sent a memorandum to the defendants accepting the accuracy of the accounts.

41. The legal position is that the accounts are settled or stated if they are submitted and accepted as correct by the other side to whom the accounts have been rendered. Such a statement of accounts need not be in writing, nor is it necessary that before the accounts are settled, they should be gone into by the parties and scrutinised and supported by vouchers. It is sufficient if the accounts are accepted and such acceptance may be inferred by conduct of parties.”



50. It was thereafter held in paragraph No.45 as follows:

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“45. The contention on behalf of the defendants is that there has been a "stated" or "settled" account in this case and in the absence of fraud, mistake or any other sufficient equitable ground it is not liable to be reopened at the instance of the plaintiff. In this connection it is necessary to state that the expression "account stated" has more than one meaning. It sometimes means a claim to payment made by one party and admitted by the other to be correct. An account stated in this sense is no more than an admission of a debt out of court; while it is no doubt cogent evidence against the admitting party, and throws upon him the burden of proving that the debt is not due, it may, like any other admission, be shown to have been made in error. Where the transaction is of this character, it makes no difference whether the account is said to be "stated" or to be "stated and agreed"; the so-called agreement is without consideration and amounts to no more than an admission.”

51. The Hon'ble Supreme Court set aside the judgment and decree of the High Court and restored the judgment and decree of the trial Court dismissing the suit of the plaintiff and granted counter claim.

52. In the instant case, the respondents had not produced any debit note as document before this Court. The invoices raised by the appellants have been produced before the Court and marked as documents. While answering the issue



of a part of claim being barred by limitation and another part of the claim being outside the purview for the period which the claim made, this Court had examined the invoices and had rejected such of those invoices which were barred by limitation and which were outside the time period for which the claim was made. Very significantly, the 1st respondent in their communication which was marked as Ex.P305 had admitted as follows:

“Dear Sir,

While I was in Madras you had given me a statement of A/C showing the outstanding is Rs.24 Lakhs, but according to us it is only Rs.17 Lakhs approximately. Please note although you have received the enclosed payment i.e. of Rs.4,85,952.70 as under:

- | | |
|-----------------------------------|---|
| <i>1) 4th Sept. 98</i> | <i>Rs. 18,791.00</i> |
| <i>2)24th Sept. 98</i> | <i>Rs.3,91,008.00 (with Debit Note)</i> |
| <i>3)22nd Dec. 98</i> | <i>Rs. 76,153.10 (with Debit Note)</i> |

Your A/C has not taken this. So please go over your A/C and resent the corrected one to tally.

Thanking you,

*Yours faithfully,
for, BURLINGTONS' EXPORTS*

MANAGER”

53.It is thus seen that at the earliest point of time on 15.09.1999, there has been a categorical admission by the 1st respondent that they were liable to pay, at that time, a sum of Rs.17/- lakhs to the appellant. It is thus evident that even though the appellant had challenged and disputed Ex.P11, the invoices which



were barred by limitation and which were outside the period of claim alone can be deleted, and the respondents will have to be made liable for payment on the other invoices.

54. When viewed from that angle, the total amount under Exs.P12, P13, P15, P17 to P23 for a sum of Rs.1,56,899/- and the amount under the invoices in Exs.P24 to 29 and 31 for a sum of Rs.102,078/- will have to be deducted from the principle amount claimed in the plaint. This would leave a balance of Rs.23,62,162/-.

55. With respect to the interest component, a perusal of the plaint shows that clarity had not been given as to how the interest was calculated on the principle sum of Rs.26,21,139/- and the period for which such interest was determined.

56. We would therefore, partly decree the suit to a sum of Rs.23,62,162/- and grant interest from the date of plaint till the date of realization at 24% per annum which was the agreed rate of interest mentioned in the invoice forwarded by the appellant to the 1st respondent.



57. In the result, the points framed for consideration are answered as follows:

i). *The total amount under the invoices in Exs.P12, P13, P15, P17 to P23 for a sum of Rs.1,56,899/- are held to be barred by limitation.*

ii). *The amount under the invoices in Exs.P24 to 29 and 31 for a sum of Rs.1,02,078/- are rejected since they were prior to the suit claim.*

iii). *The claim of the respondents regarding debit notes are rejected since the debit notes had not been produced and filed as documents before the Court.*

iv). *The appeal is partly decreed with costs granting a judgment and decree for a sum of Rs.23,62,162/- [26,21,139 – 1,56,899 – 1,02,078] together with interest at 24% from the date of the plaint till date of decree and @ 6% p.a from the date of decree till the date of realization.*

(C.V.K.,J.) (K.B.,J.)
13-03-2026

smv

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No



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**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

smv

Pre-delivery Judgment made in
OSA No. 262 of 2017

13-03-2026