



SA(MD). No.173 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 01.06.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**SA(MD). No.173 of 2026
and
CMP(MD)No.4885 of 2026**

A.L.Vijayaragava Raja,
Proprietor, M/s.Latha Agencies,

... Appellant / Appellant /
Defendant

Vs

1. The Fertilisers and Chemicals Travancore Ltd.,
Having its Head Office at Cochin,
Represented Through its General Manager.
(Marketing).

2. The Fertilisers and Chemical,
S Travancore Ltd.,, Having its Head
Office at Gowshika Mansion,
Arasardi, Madurai.
Represented Through its
Senior Regional Manager.

... Respondents / Respondents /
Plaintiffs



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PRAYER :- Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and decree passed in A.S.No.31 of 2020, dated 04.04.2024, on the file of the Additional District and Sessions Court, Srivilliputtur, confirming the Judgment and Decree passed in O.S.No.36 of 2008, dated 28.11.2019, on the file of the Sub Court, Srivilliputhur and allow this Second Appeal.

For Appellant : Mr.F.X.Eugene,

For Respondents : Mr.M.Thirunavukkarasu,

JUDGMENT

The unsuccessful defendant, in a suit for recovery of money, is the appellant herein.

2. I have heard Mr.F.X.Eugene, learned counsel for the appellant / defendant and Mr.M.Thirunavukkarasu, learned counsel for the respondents / plaintiffs.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.



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4. The respondents / plaintiffs sought for recovery of a sum of Rs.4,07,247.07 together with interest and costs before the trial Court in O.S.No.36 of 2008.

5. The suit was resisted by the appellant / defendant mainly on the grounds that the plaint was not duly verified by an authorized person, who was not empowered to file the suit, representing the plaintiffs. The suit was also resisted on the ground that the claim is time barred and that the account was not continuous, open, mutual and current as alleged by the plaintiff.

6. Based on the pleadings, the trial Court framed the following issues:

- “1. பிராது தவறான முறையில் வரையப்பட்டுள்ளதா?
2. வழக்கு காலாவதி சட்டத்தால் பாதிக்கப்பட்டுள்ளதா?
3. வாதி கோரிய தொகை அவருக்கு கிடைக்கத்தக்கதா?
4. வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரம் என்ன?”



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7. On the side of the plaintiffs, one Stalin Dhanaraj was examined as P.W.1 and 21 documents were marked as Ex.A1 to Ex.A21. On the side of the defendant, the defendant examined himself as D.W.1 and did not choose to mark any documents.

8. On appreciation of the pleadings as well as the oral and documentary evidence, the trial Court decreed the suit for a sum of Rs. 2,83,217/- together with proportionate interest and costs. The plaintiffs did not choose to challenge the disallowed portion of the suit. However, the defendant preferred an appeal in A.S.No.31 of 2020 before the Additional District and Sessions Court, Srivilliputhur. The said appeal came to be dismissed by the first appellate Court, confirming the findings of the trial Court.

9. As against the concurrent findings of the trial Court as well as the first appellate Court, the defendant filed the present second appeal.



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10. The second appeal has not yet been admitted. However, since the respondents / plaintiffs are on caveat, I have proceeded to hear the learned counsel on either side.

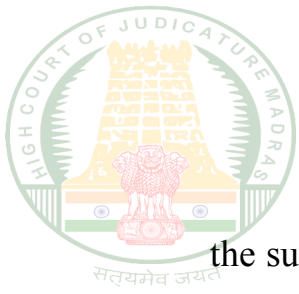
11. Mr.F.X.Eugene, learned counsel for the appellant / defendant would firstly contend that the suit is hopelessly barred by limitation. In this regard, he would point out that though the plaintiffs came to Court with a specific case that the suit was not barred by limitation, in view of the acknowledgement of debt by the defendant, the document marked as Ex.A16 dated 29.11.2006, did not in any manner advance the case of the respondents / plaintiffs. Mr.F.X.Eugene, learned counsel would further contend that the plaintiffs had also specifically pleaded in the plaint that the account was a mutual account. Further, relying on the alleged last date of payment having been made by the appellant / defendant on 28.12.2004, the learned counsel for the appellant / defendant, Mr.F.X.Eugene, would contend that admittedly the suit having been filed only on 02.01.2008 was clearly out of time. Additionally,



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Mr.F.X.Eugene, would also contend that the plaintiffs were sufficiently protected by the Bank Guarantee and instead of invoking the same and without even impleading the bank as a party defendant, the suit filed against the appellant / defendant itself was not maintainable. Taking me through the suggested substantial questions of law, learned counsel for the appellant/ defendant would pray for the second appeal to be admitted and an opportunity to be given to the appellant / defendant to canvass his case in greater detail, after calling for the records from the Court below.

12. Per contra, Mr.M.Thirunavukkarasu, learned counsel for the respondents / plaintiffs would firstly contend that the Courts below, viz., the trial Court as well as the first appellate Court, have rightly appreciated the pleadings, oral and documentary evidence available on records and in fact, they did not even grant relief in entirety, to the respondents / plaintiffs and only proceeded to restrict the entitlement of the respondents/ plaintiffs. Mr.M.Thirunavukkarasu, learned counsel would further contend that only mutual accounts are dealt with under Article 1 of the Limitation Act and a running account would squarely fit only under the residuary Article 113 of the Limitation Act and therefore,

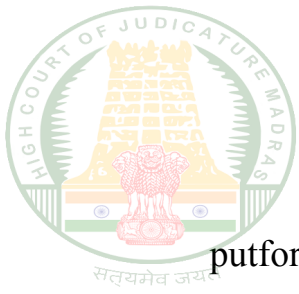


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the suit filed within a period of 3 years from the date of last payment and denial of the defendant was clearly in time. In support of his submissions, Mr. M.Thirunavukkarasu relied on a judgment of the Division Bench of this Court in ***Reliance Life Insurance Co. Ltd., v. Hartford Academy of Insurance and Education Pvt. Ltd.***, reported in **2025-3-CTC-696**. The learned counsel would therefore pray for the dismissal of the second appeal, contending that no substantial questions of law arise for consideration in the present appeal.

13. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records including the pleadings as well as the oral and the documentary evidence adduced before the trial Court and the judgment of the trial Court and also the first appellate court.

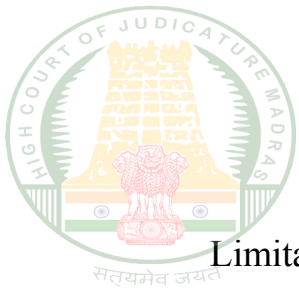
14. With regard to the arguments of Mr.F.X.Eugene, that State Bank of India, who issued a bank guarantee, not being arrayed as party to the suit, being fatal to the case of the plaintiffs, on going through the pleadings, especially the written statement, I find that no such case was



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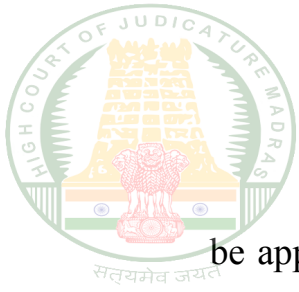
putforth before the trial Court. No issue in this regard has also been framed. In such circumstances, I am unable to entertain the said contention for the first time before this Court, that too, in second appeal.

15. The only other issue that requires consideration is as to whether the suit claim is barred by limitation. Admittedly, the last payment made by the appellant/defendant was on 28.12.2004 and the suit has been filed on 02.01.2008. Article 1 of the Limitation Act enables a claim relating to accounts to be filed within a period of 3 years from the close of the year, in which the last item admitted or proved is entered in the account, such year to be computed when the account mutual, open and current account, where there have been reciprocal demands. As rightly pointed out by Mr.F.X.Eugene, learned counsel for the appellant / defendant even in the plaint, at paragraph No.6, the plaintiff alleges that the plaintiff and the defendant were having a mutual and concurrent account. Even applying Article 113 of the Limitation Act which is the residuary clause, limitation for filing the suit is only a period of 3 years from the date on which the right to sue accrues. The primordial contention of the appellant / defendant is that applying Article 1 of the



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Limitation Act, the suit should have been filed on or before 27.12.2007 and having been filed on 02.01.2008, which is beyond the period of limitation. On analysing the pleadings as well as the evidence brought on record by the parties, the Courts below have concurrently found that the admitted case of the appellant/defendant is that he takes delivery of goods and pays the amounts due then and there to the plaintiffs and therefore, it cannot be held that the date of last transaction has to be taken as the date of commencement of the limitation period. The Courts below have also found that for the first time the plaintiffs' entitlement has been denied by way of reply notice dated 28.05.2007 and in such circumstances, the limitation would commence only there from and suit having been filed on 02.01.2008 was filed within time. I do not find that the findings arrived at by the trial Court and the first appellate Court concurrently, suffer from any perversity or illegality. In fact, even assuming without conceding that the suit ought to have been filed within a period of 3 years from the date of last transaction, ie., on 28.12.2004, I find that the said period of limitation expired during the Christmas vacation of the Court and the suit has been filed on the reopening day, viz., 02.01.2008 and even if Article 1 of the Limitation Act alone has to



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be applied as well, the suit is well within the period of limitation. Thus,

I do not see any substantial questions of law arising for consideration in the present second appeal, entitling the appellant/defendant to a further detailed hearing or opportunity to canvas the grounds of appeal.

16. Therefore, even applying the ratio laid down by the Hon'ble Division Bench of this Court in ***Reliance Life Insurance's*** case, when the accounts are only running in nature and not mutual accounts, then Article 1 of the Limitation Act cannot be pressed into service and Article 113 of the Limitation Act alone would apply. The Courts below have concurrently rendered a finding that the transactions between the plaintiffs and the defendant is not mutual in nature. Such finding is based on evidence available on record and therefore, do not suffer from any perversity warranting interference under Section 100 of the Code of Civil Procedure.



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17. Therefore, viewed from any angle, I do not see any substantial questions of law arising in the matter. There is no merit in the second appeal.

18. In fine, the second appeal is dismissed. There shall be no order as to costs in the second appeal. Consequently, connected Miscellaneous Petition is closed.

01.06.2026

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
LS

TO

1. The Additional District and Sessions Court,
Srivilliputtur.
2. The Sub Court,
Srivilliputhur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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