
(2014) 11 MP CK 0002
In the Madhya Pradesh High Court
Case No : First Appeal No. 366/1997

J.K. Batteries

APPELLANT

Vs

Parasmal Jain

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1

Citation : (2014) 4 MPLJ 576

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Ashok Lalwani, Advocate for the Appellant

Judgement

Alok Aradhe, J.—This appeal is by the plaintiff against the judgment and decree dated 4.2.1997 by which the suit filed by the plaintiff for recovery of an amount of Rs. 1,20,695.50/- has been dismissed.

2. The facts, leading to filing of the appeal, briefly stated, are that the plaintiff filed the suit inter alia on the ground that the plaintiff is a company registered under the Companies Act and deals with the business of batteries. It was pleaded that the plaintiff appointed the defendants as distributors for Madras region in May, 1981. It was also pleaded that the defendants worked as distributors up to September, 1981 and the defendant No. 1 had signed the statement of accounts on 15.1.1981. As per the aforesaid statement of account, the defendants have acknowledged their liability to pay an amount of Rs. 99,748.50/- to the plaintiff. However, despite the notice the defendants did not pay the amount in question. Accordingly, the plaintiff filed the suit for recovery of Rs. 1,20,695.50/-.

3. The defendants were served by publication in the newspaper. However, they did not enter appearance. Accordingly, the defendants were proceeded ex parte. The defendants neither filed the written statement nor led any evidence.

4. The plaintiff in support of his claim examined the officer who was authorised by it, namely, P.V. Gohade. The trial Court vide judgment and decree dated

4.2.1997 dismissed the suit filed by the plaintiff inter alia on the ground that the plaintiff witness was not authorised to depose on behalf of the plaintiff. It was further held that the plaintiff appointed the defendants as distributors in May, 1991 yet the statement of account begins from 1.1.1981 and no explanation was offered in this regard as to how the statement of account begins from 1.1.1981 when the defendants were appointed in May, 1981. The trial Court discarded the document (Exhibit P-2) statement of account on the ground that from perusal of the said document it is not clear that the defendants had signed the document in presence of the plaintiff witness No. 1, (P.V. Gohade). Accordingly, it was held that the plaintiff had failed to prove his claim and the suit filed by the plaintiff was dismissed.

5. Learned counsel for the appellant has invited the attention of this to Order 29 Rule 1 of the Code of Civil Procedure and submitted that principal officer of the Corporation can depose the facts of the case before the Court. In this connection, attention of this Court has been invited to the document (Exhibit P-1) under which plaintiff witness No. 1 (P.V. Gohade) was authorised to depose on behalf of the plaintiff. It is further submitted that Exhibit P-2 clearly shows that the defendants had admitted their liability and, therefore, the trial Court grossly erred in dismissing the suit filed by the plaintiff.

6. I have considered the respective submissions made by learned counsel for the appellant and have perused the record. It is well settled in law that where the other side leads no evidence, the burden of proof is discharged by even leading a slight evidence. [Syed and Company and Others v. State of Jammu & Kashmir and Others, 1995 Suppl. 4 SCC 422] It is equally settled in law that if the testimony of a witness on a particular point is not challenged, it is to be admitted. [See: Sri Baru Ram Vs. Prasanni and Others, , Punjab Rao Vs. D.P. Meshram and Others,

7. Order 29 Rule 1 of the Code of Civil Procedure provides that in a case by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. In the instant case, the plaintiff authorised P.V. Gohade as officer-in-charge of the case and has expressly given him the authority to depose on behalf of the plaintiff which is evident from Exhibit P-1. The aforesaid witness in his examination-in-chief clearly stated that he is authorised by the company to prosecute the suit and depose on its behalf. It was further stated by him that the statement of account was signed by the defendants on 15.1.1982 under which the defendants had acknowledged the liability of Rs. 90,748/-. It was also stated that the aforesaid statement of account was signed by the defendant No. 1 in his presence. The testimony of the aforesaid witness has not been challenged by way of cross-examination therefore, in view of law laid down in Syed and Company (supra), the plaintiff had discharged the burden which initially lies on it. Since, the defendants did not cross-examine the witnesses of the plaintiff therefore, the

testimony of the plaintiff witness could not have been discarded by the trial Court and the same should have been taken to be admitted, in view of the decisions of the Supreme Court in Baru Ram (supra) and Punjabrao (supra).

8. In view of the preceding analysis, the judgment and decree 4.2.1997 passed by the trial Court cannot be sustained in the eye of law. Accordingly, the same is set aside. The claim of the plaintiff is decreed with costs. In the result, the appeal is allowed.