

(2005) 04 MAD CK 0049
In the Madras High Court
Case No : O.S.A. No. 250 of 2000

P. Sood and Co.

APPELLANT

Vs

Peerchand Misrimalji Bhansali, Prop. Meena Metals

RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:

Evidence Act, 1872 — Section 34

Citation : (2005) 4 BC 247 : (2005) 3 CivCC 170 : (2005) 3 CTC 12 : (2005) 2 MLJ 603 : (2005) 3 RCR(Civil) 64

Hon'ble Judges : S.K. Krishnan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : S.V. Jayaraman, for D. Dharan Chand Jain, for the Appellant; A.R. Nixon, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Krishnan, J.—Aggrieved by the judgment and decree passed by the learned Single Judge of this Court in C.S. No. 1014 of 1994,

dated 14.1.2000, the plaintiff has preferred this Original Side Appeal.

2. The facts leading to the filing of this appeal are as follows:

a. On 3.4.1992 the defendant placed orders with the plaintiff, who is the dealer in stainless steel and manufacturer of alloy and special steel bright

bars, for the supply of 11700 kgms of S.S. Pipes. The plaintiff accepted the said orders at its Madras office and agreed to supply the same

through its Non-Residential Office at Bombay. Thereafter, the plaintiff delivered the goods to the defendant on credit for Rs. 14,18,625/- under

invoice No. DO.1/1/92-93, dated 3.4.1992. The defendant also agreed to pay interest at 22.5% after 60 days. The defendant acknowledged the

receipt of the goods and agreed to pay the amount after adjusting the advance

of Rs. 7 lakhs paid to its sister concern M/s.Metal Processing

Industries P.Ltd. and the defendant also agreed to sent Form XIV. Despite repeated demands, the defendant has not paid the balance of Rs.

7,18,623/- and interest. However, on 6.8.1994, the plaintiff sent a letter, but the defendant has not paid the amount. Hence the above suit.

3. Denying the averments made in the plaint, the defendant filed the Written Statement.

4. The learned Judge of this Court considering the oral and documentary evidence, dismissed the suit on the ground that the plaintiff failed to

establish with any unimpeachable evidence that the plaintiff is entitled to claim the suit amount from the defendant. Hence, the present Original Side

Appeal.

5. Heard both sides.

6. The point for consideration is whether the judgment and decree passed by the learned Judge of this Court in C.S.No. 1014 of 1994, dated

14.1.2000, is sustainable under law and on facts.

7. The plaintiff is the appellant herein. The plaintiff is a registered partnership firm and doing metal business at No. 50, SIDCO, Industrial Estate,

Ambattur, Madras-98. The plaintiff is having offices both at Bombay and Madras.

8. It is the case of the appellant/plaintiff that the respondent/defendant is carrying on business in the name and style of Meena Metals at No. 74,

C.P. Tank Road, Bombay. The respondent/defendant purchased the goods from the plaintiff on credit basis for Rs. 14,18,625/- under invoice No.

DO.1/1/92-93, dated 3.4.1992.

9. It is the case of the plaintiff that the defendant also agreed to pay interest at the rate of 22.5.% after 60 days. Further, the defendant handed

over a letter, dated 10.4.1992, acknowledging the transaction effected between the appellant/plaintiff and the respondent/defendant, to the plaintiff.

After adjusting the advance amount of Rs. 7,00,000/-, the plaintiff issued a legal notice to the defendant asking him to pay the balance amount of

Rs. 7,18,625/-. Since the respondent/defendant failed to pay the said amount, the appellant/plaintiff instituted the suit against the defendant for the

recovery of the said amount.

10. The learned counsel appearing for the appellant would submit that the

respondent/defendant after receiving the goods, from the plaintiff firm acknowledged the said transaction under Ex.P.2, dated 10.4.1992. This fact has been established by the appellant/plaintiff by way of adducing satisfactory evidence before the learned Judge of this Court. The evidence of the plaintiff is not only supported by Ex.P.2 but also corroborated by the evidence of P.W.2.

11. In such circumstances, the learned Judge concluded that Ex.P.2 is a fabricated document and no reliance could be placed on it. Further, the learned Judge observed that the appellant/plaintiff failed to take steps to compare the signature of the defendant by an handwriting expert.

12. In such circumstances, it is pointed out that the learned Judge without appreciating the oral as well as the documentary evidence produced on the side of the appellant/plaintiff to establish the transaction effected between the respondent/defendant and the appellant/plaintiff, such conclusion arrived at by the learned Judge is not at all in accordance with law.

13. It is pointed by the learned counsel that no difference is found in Ex.P.2, rather, there are so many similarities found in the said signature when compared with the admitted signatures of the respondent/defendant.

14. At this juncture, it is to be noted that the respondent has categorically denied that the signature found in Ex.P.2 is not a genuine one but a false and fabricated one. This fact has been referred in the reply notice sent by the respondent/defendant. Further, the same fact has been pleaded in the written statement filed by the respondent/defendant. In the written statement, it is stated as follows:

This defendant says that he has not written the said alleged letter dated 10.4.1992 at all and the said letter relied upon by the plaintiff is a forged and is a fabricated letter.

15. It is also denied by the defendant under reply notice dated 26.8.1994. It is stated in the said notice as follows:

Please note that the claim made by you in your letter under reference is absolutely false and bogus.

16. Further, the said fact has been categorically denied by the defendant in his evidence, which is as follows:

I have not sent Ex.P.2 letter to the plaintiff. The signature found in Ex.P.2 is a forged signature.

17. As pointed out by the learned counsel appearing for the respondent/defendant, the appellant/plaintiff did not take any steps to ascertain the genuineness of the disputed signature by sending the same to an handwriting expert.

18. Further, it is the definite case of the appellant/plaintiff that the said letter Ex.P.2 was issued by the respondent/defendant when P.W.2 met the defendant. At this juncture, for proving this fact P.W.1 himself has not adduced satisfactory evidence before the learned Judge. In this regard,

P.W.1 stated as follows:

My cousin who is looking after the Bombay office met the defendant who gave the letter Ex.P.2.

19. Further, the said fact has not been corroborated by P.W.2. According to P.W.2, Ex.P.2 letter was delivered to him by the office people of the defendant. He received it personally. He did not know the name of the person who delivered the letter Ex.P.2.

20. On a careful analysis of the evidence adduced by P.Ws.1 and 2, it could be seen that the said fact has not been established by the plaintiff.

Moreover, for proving the said transaction, the appellant/plaintiff relied on Ex.P.1, which was prepared by P.W.2. Ex.P.1 is a duplicate copy. The

definite case of the appellant/plaintiff is that the original letter Ex.P.1 was already handed over to the respondent/defendant. The said letter was

given to the respondent/defendant on the basis of placing an order by the defendant.

21. In this regard, P.W.1 himself has not stated that Ex.P.1 was given to the respondent/defendant. In this regard, P.W.1 says as follows:

There is nothing in writing to show that the defendant received the original of Ex.P.1.

22. Further, he would state that he did not know when Ex.P.1 was delivered to the defendant. Moreover, he has stated that if it is necessary, he

would examine the person, who prepared Ex.P.1. However, contrary to the evidence of P.W.1, P.W.2 has categorically admitted that he

prepared Ex.p.1 for and on behalf of the plaintiff firm.

23. Further, he would state that on the basis of contact over phone by the defendant with P.W.2, he entrusted Ex.P.1 original to the cart man along

with two copies of challans. Further, P.W.1 himself has categorically stated that

there is nothing in writing to show that the defendant received the original of Ex.P.1. In this regard, P.W.1 himself did not know the fact that the said letter Ex.P.1 was prepared by P.W.2. Moreover, for proving the existence of Ex.P.1 as well as the handing over of Ex.P.1 to the defendant, P.Ws.1 and 2 themselves have adduced contrary evidence.

Therefore, in such circumstances, the learned counsel appearing for the respondent/defendant would submit that the respondent/defendant would not have placed orders for delivering the goods over phone one week prior to 3.4.1992.

24. Further, the learned counsel would point out that for receiving the said order from the respondent/defendant, no documentary evidence was produced by the appellant/plaintiff except oral evidence adduced by P.Ws.1 and 2.

25. Further, the learned counsel appearing for the respondent/defendant would submit that the respondent/defendant has denied that he received the goods from the plaintiff firm. For delivering such goods to the respondent/defendant, P.Ws.1 and 2 have not produced any documentary evidence.

26. It is pointed out that for proving the fact the defendant's signature is not found in Ex.P.1. Moreover, in Ex.P.18 and Ex.P.19, even though it is stated in the said document that the said order entered in those documents on the basis of telephonic conversation, no date is mentioned in the said document as to when the respondent/defendant has spoken with the plaintiff firm for supplying the goods.

27. For proving the delivery of goods from the plaintiff's firm, the plaintiff relied on Ex.P.18 and P.19. In this connection, P.W.1 would state that , normally, four copies of challans would be prepared. Out of which, two copies would be retained in the challan book and other two copies would be delivered to cart man, who is deputed to take delivery of the goods. During the course of delivery, the cartman will give one copy in the lorry office and take delivery of the goods and other copy will be retained by him. This is the procedure being followed for taking delivery of goods from the plaintiff's company.

28. For proving the said delivery, the plaintiff produced Ex.P.18 and P.19. It is contended by the respondent/defendant that for receiving the said goods referred in Ex.P.18 and P.19, the defendant has not signed in the said

documents. Even though P.W.2 would state in his chief examination that he handed over Ex.P.1 and other two copies of the challans to the cartman of the defendant, in his cross examination, he would state that he did not know the name of the cartman to whom Ex.P.18 and P.19 was handed over.

29. On a careful analysis of the evidence adduced by P.W.1 and P.W.2 in this regard and also considering the fact that there is no signature of the defendant, it is unsafe to conclude that on 3.4.1992 goods have been delivered to the defendant.

30. Further, no explanation was given by P.W.1 and P.W.2 as to why the signature of the defendant was not obtained in the challan, which was returned to the plaintiff by the cartman after delivering the goods.

31. For proving the plaintiff's case, the plaintiff relied on Ex.P.14. Ex.P.14 is the stock and sales register of the plaintiff for the year 1992-1993. It

is seen that at page 2 of Ex.P.14, the particulars with regard to purchase of goods on 3.4.1992 are mentioned under the caption of sales covering

the period 1.4.1992 to 31.3.1993. At page 7, the name of the defendant's company is mentioned under the caption of stock covering the period 1992-93.

32. In this regard, the learned counsel appearing for the respondent/defendant would contend that Ex.P.14 is a created one for the purpose of this

case and that no credence to be attached to this document. One another document relied on by the appellant/plaintiff is Ex.P.7. Ex.P.7 is the

challan for payment of Bombay Sales Tax. Since no seal is affixed by the sales tax department on the challan and Ex.P.7 is a xerox copy, no

reliance could be placed on this document for arriving a just conclusion that the said transaction effected between the plaintiff and the defendant is a genuine one.

33. Ex.P.15 is a letter from the auditor of the plaintiff to the Income Tax Department enclosing the Income Tax return for the year 1993-94.

Ex.P.15 has been marked by the plaintiff to prove the fact that the plaintiff company filed the income tax return for the year 1993-94, which was

prepared by a Chartered Accountant of the plaintiff company. In Ex.P.15, the name of the defendant's company is mentioned. Further, it is

mentioned that a sum of Rs. 14,36,156.80 is due by the defendant company to

the plaintiff. For proving this fact, the appellant/plaintiff has not examined the author of this document.

34. In support of the contention that the entries made in the account books of the plaintiff company, namely, Ex.P.14 and Ex.P.15, could not be relied on for the reason that the author of those documents has not been examined, the learned counsel appearing for the respondent/defendant relied on the following decisions.

35. In ARULMKIGU VISWESWARASWAMI AND VEERARAGHAVA PERUMAL TEMPLES REPRESENTED BY ITS EXECUTIVE

OFFICER, TIRUPPUR, COIMBATORE DISTRICT VS. R.V.E. VENKATACHALA GOUNDER AND ANOTHER 1996 (1) M.L.J. 553

and in Mettur Beardsell Limited Vs. M/s. Salem Textiles Limited and 2 others, the learned Judge of this Court, who is also a party to this

judgment, observed, when he had an occasion to deal with a similar case, as follows:

The account books by themselves are not sufficient to charge any person with liability and the party has to show by some independent evidence

that the entries in its books represented the real and honest transactions and that the moneys paid or the transactions took place, in accordance

with those entries, inasmuch as none connected with the account was examined, the Court is of the view that entry in the Ledger under Ex.A.10 is

not sufficient to accept the case of the plaintiff.

36. Further, in Chandradhar Goswami and Others Vs. The Gauhati Bank Ltd., the Apex Court held as follows:

No person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the

regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order

that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account

and does not challenge them and the original entries alone under S. 34 of the Evidence Act would not be sufficient to charge any person with

liability.

37. As already discussed above, the plaintiff has not come forward to establish his case that the defendant placed orders with the plaintiff one

week prior to 3.4.1992 for delivering the goods. Likewise, for taking delivery of the goods by the defendant, the plaintiff has not produced any material. Further, certain documents relied on by the appellant/plaintiff are not in conformity with the relevant facts with regard to the receipt of the goods from the plaintiff company.

38. Moreover, the entries made in Ex.P.7, Ex.P.14 and Ex.P.15 have not been proved by examining the author of those documents.

39. In such circumstances, it cannot be held that the defendant is liable to pay the suit claim to the appellant/plaintiff for purchasing the goods from the plaintiff on 3.4.1992.

40. On a careful analysis of the entire evidence of P.W.1 and P.W.2 and the relevant records produced on either side, we are of the considered

view that none of the circumstances has arisen to interfere with the decision arrived at by the learned Judge of this Court while disposing the C.S.

No. 1014 of 1994.

41. In the light of the discussions held above, we are of the firm view that we do not find any evidence both oral and documentary to upset the findings of the learned Single Judge of this Court.

42. In result, the Original Side Appeal is dismissed confirming the judgment and decree passed by the learned Single Judge of this Court in C.S.

No. 1014 of 1994, dated 14.1.2000. No costs.