



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 120 of 2007

Judgment Reserved on 28/02/2022

Judgment Delivered on 20/04/2022

1. State of Chhattisgarh through the Collector, District Bastar (CG)
2. The Block Education Officer, Tribal Development Block, Farasgaon, Tahsil Kondagaon District Bastar (CG)

-----Appellant/Defendant

VERSUS

M/s. Hindustan Supply Agency, Circuit House Road, Jagdalpur through the Proprietor Shri Rakesh Gupta S/o. Late Shri Govind Prasad Gupta, R/o. Jagdalpur District Bastar (CG)

----- Respondent

For the Appellants

: Mr. Avinash K Mishra, GA

For the Respondent

: Mr. B.P.Sharma along with
Ms. Anuja Sharma, Advocates

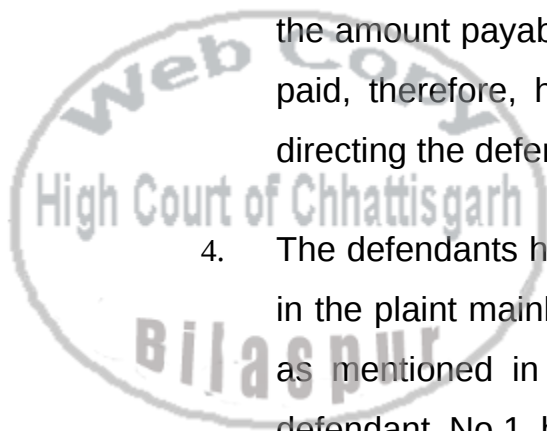
Hon'ble Shri Justice Narendra Kumar Vyas

CAV Judgement

1. This first appeal under Section 96 CPC has been filed by defendant-State of Chhattisgarh and its functionaries assailing the judgment and decree dated 14.08.2006 passed by learned Third Additional District Judge, Bastar in Civil Suit No. 60-B of 2004, by which the trial Court had directed the defendants to pay Rs. 60,000/- along with interest @ 6% from 28.01.2004 till actual payment is made.
2. For the sake of convenience, the parties shall be referred in terms of Civil Suit No. 60-B/2004.

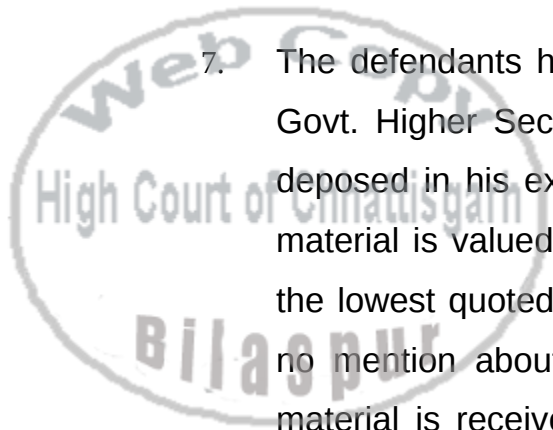


3. Brief facts as mentioned in the plaint are as under that the plaintiff has filed a civil suit before the First Additional District Judge, Jagdalpur mainly contending that the plaintiff is a registered partnership firm and engaged in the business of supply of stationary and sports items. Plaintiff Rakesh Gupta is the partner of the firm. As per plaint averments the plaintiff had supplied goods worth of Rs. 61,464/- to defendants. The defendants to satisfy the bill amount has given two cheques dated 14.07.2002 for Rs. 40,000/- and Rs. 20,000/-. The plaintiff presented the cheque on 10.01.2001 for encashment but the said cheque was returned with an endorsement that there was no sufficient funds in the account (Ex.P-2), consequently plaintiff sent information to the defendants regarding dishonour of cheques on 22.01.2001. The plaintiff sent legal notice under Section 80 CPC to the defendant through his counsel on 08.05.2001 for releasing the payment but they did not release the payment. It has been further contended that in pursuance of the notice defendant No. 2 has forwarded memo mentioning the amount payable by them to defendant No.1 still the amount has not been paid, therefore, he has filed civil suit and prayed that decree be granted directing the defendants to pay Rs. 60,000/- along with 6% interest.
4. The defendants have filed the written statement denying the allegation made in the plaint mainly contending that the plaintiff has not supplied the material as mentioned in the plaint and it is also denied that on 06.01.2000 the defendant No.1 has ever issued any order to the plaintiff for supply the stationary items or the defendant No.2 has given any cheque to the plaintiff of Rs. 40,000/- Rs. 20,000/- on 14.07.2000. It has been further reiterated that since the plaintiff has not supplied the material and if he would have supplied the material then record must be available in the stock register of the year 2000 and would pray for dismissal of the suit.
5. The plaintiff in support of his case examined partner of the firm Rakesh Gupta as (PW-1) and Exhibited notice under section 80 CPC (Ex.P-1), Postal receipt (ExP-2), Acknowledgment (Ex.P-3), Letter issued by BEO, Farasgaon dated 06.01.2000 (Ex.P-4), Letter dated 20.06.2001 issued by BEO, Farasgaon (Ex.P-29), Cheque issued on 14.07.2000 of Rs. 20,000/- (Ex.P-5), Cheque issued on 14.04.2000 of Rs. 40,000/- (Ex.P-6), Memo of PNB dated 10.01.2001 (Ex.P-7) and receipt of goods from Ex.P-8 to Ex.P-28.





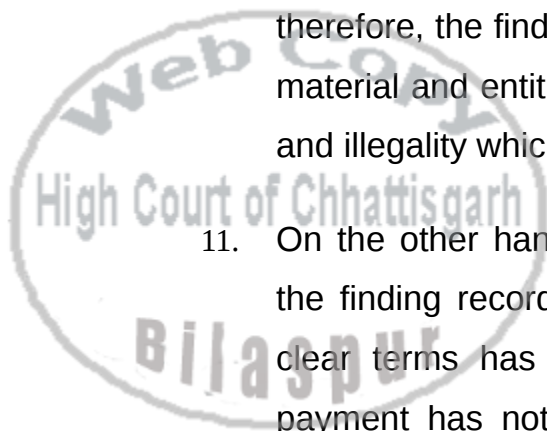
6. The plaintiff has filed affidavit under Order 18 Rule 4 CPC reiterating the plaint averment saying that he has supplied the material to the Block Development Officer Farasgaon valued at Rs. 61,464/-. In the cross examination he has admitted that no order has been issued in his favour for supply of material. It has stated that as per document (Ex.P-4) he was directed to supply material, which was supplied by him and additional to that order supply was demanded which he has provided and receipt has been obtained. He has also stated that he has no knowledge whether the material supplied to the defendants has been mentioned in the stock register or not. He has reiterated that for supply of goods two cheques of Rs. 20,000/- and 40,000/- have been issued on 14.07.2000, but the said cheques were not honoured and returned unpaid due to insufficient fund in the account on 10.01.2001. He has further admitted that he has filed a complaint before Chief Judicial Magistrate under section 138 of Negotiate Instruments Act which was dismissed for want of prosecution.
7. The defendants have examined in their support Devi Prasad Rai, Principal Govt. Higher Secondary School Farasgaon and BEO Farasgaon who has deposed in his examination-in-chief that tender is called when purchase of material is valued more than twenty thousand and tender will be allotted to the lowest quoted persons. As per office of Block Education Officer there is no mention about payment to plaintiff in cash or through cheque, if any material is received in the office then it has to be mentioned in the stock register. He has further stated that plaintiff has not given any bill to Block Education Officer, Farasgaon and purchase order has not been issued by the office. The witness was cross examined and in the cross examination he has denied that any order was given to the plaintiff. He has also denied that cheque (Ex.P-5) has been issued from the office. He has denied that plaintiff is entitled to get interest on the some dues and he has stated that since no record is available in the office he has given this statement.
8. Learned trial Court after appreciating the evidence, pleading material on record has allowed the suit by recording the finding that after dishonour of cheque to the tune of Rs. 60,000/- payment has not been made, therefore, the trial Court directed the defendant to pay Rs. 60,000/- along with interest @ 6% per annum to the plaintiff from the date of filing of the suit i.e.





28.01.2004 till payment is actually made.

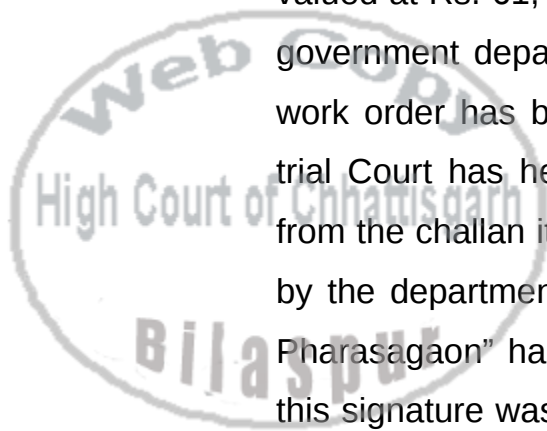
9. Being aggrieved by the judgment and decree passed by the trial court on 14.08.2006, the defendants have filed First Appeal under Section 96 CPC before this Court.
10. Learned counsel for the appellants would submit that finding recorded by the trial Court is perverse, contrary to the record as the plaintiff has failed to prove that he has supplied the material to the defendants. He would further submit that as per Ex.P-4, the value of material comes to Rs. 47,724/- whereas the alleged bounced cheques are valued Rs. 60,000/-, therefore, it cannot be held that the said cheque was released on account of the supply made in pursuance of document (Ex.P-4). He would further submit that the plaintiff has admitted in the cross examination that apart from Ex.P-4 he was directed to supply the material but he has not filed any documentary evidence to establish that the supply was made in pursuance of that order, therefore, the finding recorded by the trial Court that plaintiff has supplied the material and entitled to get the payment with interest, suffers from perversity and illegality which warrants interference.
11. On the other hand, learned counsel for the respondents would submit that the finding recorded by the trial Court is just and proper as the plaintiff in clear terms has proved his case that he supplied the material but the payment has not been made, therefore, the finding recorded by the trial Court is just and proper does not call for interference and would pray for that the appeal may kindly be dismissed.
12. I have heard learned counsel for the parties and record of the Court below with utmost satisfaction.
13. It is to be seen from the material placed on record and the pleading of the parties whether the plaintiff has supplied the material, despite supply of material no payment has been made. It is well settled legal position, that the genuineness of the document has to be proved by the plaintiff who relies upon the document and thereafter it is for the defendants to dislodge the credibility of the document as fake, sham and bogus document. In the present case, the plaintiff has failed to establish that the work order was issued in his favour and genuineness of the challan has also not been





proved. It is incumbent upon the plaintiff to examine the witnesses who has delivered the goods and thereafter the concerning officer has put his signature on the challan, no witnesses was examined by the plaintiff in his support.

14. From bare perusal of receipt from Ex.P-8 to Ex.P-28, it is clear that the plaintiff has not put signature of any employee of concerned department who has received the material and even no cross-examination was done with regard to supply of material through Ex P-8 to Ex.P-28. Even from examining the evidence of the plaintiff it is not clear to whom the plaintiff has supplied the material and who has signed the receipt. Similarly, in the cross-examination, the witness has admitted that as per Ex.P-4 he has supplied the material thereafter additional supply order was given to him but he has not filed any document to show that the supply order is made to him. He has also admitted in his cross-examination that no specific order for supply of material valued at Rs. 61,464/- has been given to him. It is well settled practice in the government department that supply order is always made in writing but no work order has been placed by the plaintiff before the trial Court. Learned trial Court has heavily relied upon the challan from Ex.P-8 to Ex.P-28 but from the challan it is not established that material was supplied and received by the department. It is pertinent to mention here that in the challan "BEO Pharasagaon" has been mentioned and one signature is there but whether this signature was put by the respective officer of the department or not, it is not established, therefore, it cannot held that material was supplied by him. Since the plaintiff has failed to discharge his burden therefore, burden cannot shift to the defendant to prove their case. It was incumbent upon the plaintiff to prove the signature of person who has signed the challan by adopting the course by the person who signed or wrote a document; by calling a person in whose presence the documents are signed or written; by calling handwriting expert; by calling a person acquainted with the handwriting of the person by whom the document is supposed to be signed or written; by comparing in Court, the disputed signature or handwriting with some admitted signatures or writing; by proof of an admission by the person who is alleged to have signed or written the document that he signed or wrote it. These steps have not been taken by the plaintiff to prove the challan, therefore, it cannot be held that material was supplied by the plaintiff as per the challan. The





judgment passed by the trial Court is against in violation of section 67 of the Indian Evidence Act 1872. Section 67 of the Evidence Act is reproduced below;-

Proof of signature and handwriting of person alleged to have signed or written document produced.—If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

15. The Division Bench of High Court of Madhya Pradesh in case of **Rami Bai vs. Life Insurance Corporation of India** reported in (1981) MPLJ page 192 has held as under:-

The signatures may be proved in any one or more of following modes :-

- (i) By calling the person who signed or wrote a document;
- (ii) By calling a person in whose presence the documents are signed or written;
- (iii) By calling handwriting expert;
- (iv) By calling a person acquainted with the handwriting of the person by whom the document is supposed to be signed or written;
- (v) By comparing in Court, the disputed signature or handwriting with some admitted signatures or writing;
- (vi) By proof of an admission by the person who is alleged to have signed or written the document that he signed or wrote it;
- (vii) By the statement of a deceased professional scribe, made in the ordinary course of business, that the signature on the document is that of a particular person:

16. It is well settled legal position is that initial onus is always upon the plaintiff to prove the fact and if he discharges that onus and makes out a case which entitles him to a relief, then onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same. In this case nothing has been discharged by the plaintiff. The plaintiff has not proved by adducing cogent evidence on record that he has supplied the material and thereafter payment was not made.

17. Hon'ble Supreme Court in the case of **Anil Rishi vs Gurbaksh Singh (2006) 5 SCC 558** has held as under;-

There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of



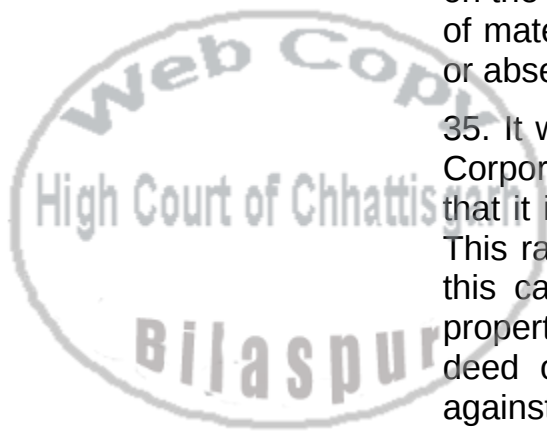
proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

18. Hon'ble Supreme Court again in the case of **Rangammal vs. Kuppuswami and another (2011) 12 SCC 220** has held as under;-

34. It has been further held by the Supreme Court in the case of State of J& K vs. Hindustan Forest Company, 2006 (12) SCC 198, wherein it was held that the onus is on the plaintiff to positively establish its case on the basis of material available and it cannot rely on the weakness or absence of defence to discharge onus.

35. It was still further held by this Court in the matter of Corporation of City of Bangalore vs. Zulekha Bi, 2008 that it is for the plaintiff to prove his title to the property. This ratio can clearly be made applicable to the facts of this case for it is the plaintiff who claimed title to the property which was a subject-matter of the alleged sale deed of 24.2.1951 for which he had sought partition against his brother and, therefore, it was clearly the plaintiff who should have first of all established his case establishing title of the property to the joint family out of which he was claiming his share. When the plaintiff himself failed to discharge the burden to prove that the sale deed which he executed in favour of his own son and nephew by selling the property of a minor of whom he claimed to be legal guardian without permission of the court, it was clearly fit to be set aside by the High Court which the High Court as also the courts below have miserably failed to discharge.

36. The onus was clearly on the plaintiff to positively establish his case on the basis of material available and could not have been allowed by the High Court to rely on the weakness or absence of defence of the defendant/appellant herein to discharge such onus. The Courts below thus have illegally and erroneously failed not to cast this burden on Respondent 1-plaintiff by clearly Section 67 in The Indian Evidence Act, 1872





misconstruing the whole case and thus resulted into recording of finding which are wholly perverse and even against the admitted case of the parties.

19. In the light of the law laid down by Hon'ble Supreme Court and considering the fact that the plaintiff has failed to prove that he has supplied the material despite this, the learned trial Court has held that plaintiff has supplied material to the defendants and he is entitled to receive Rs. 60,000/- along with interest @ 6% per annum from 2004 till the payment is actual made is perverse, contrary to record and deserves to be set aside by this Court.
20. Accordingly, the judgment and decree passed by the First Appellate Court is set aside the appeal filed by the defendants is allowed.
21. A decree be drawn up accordingly.

Sd/-

(Narendra Kumar Vyas)

Judge

