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IN THE COURT OF (B.B.JADAV) PRINCIPAL SR. CIVIL JUDGE,
AT : KAPADWANJ

SPECIAL CIVIL SUIT NO. 107 OF 2017.

{Old Spl C. S.No. 131/2003& 89/2016}

Exh.- 56

Plaintiff:

1. Bakulchandra C. Sharma
Proprietor of Kamala Fertilizers,
Age: Adult, Occu. Business,
Residing At: Opposite New S.T. Stand,
Ta. Kapadwanj, District- Kheda.

:: V E R S U S ::

Defendants:

- Proprietor of Patel Fertilizers
1. Rameshbhai Gokalbhai Patel
Age About : 30, Occu. Business,

Residing At: Motijher, Ta. Kapadwanj.
District- Kheda.

2. Govindbhai Ramabhai Patel
Age about: 45, Occu. Agriculture,
Residing At: Kevadiya, Ta. Kapadwanj,
District- Kheda.

Subject: Suit for Recovery of Rs. 5,92,691/-.

Appearance:

Ld. ADVOCATE Mr. R.K. ASHAWA FOR THE PLAINTIFF
Ld. ADVOCATE Mr. M. A. SHEKH FOR THE DEFENDANTS

J U D G E M E N T

Brief facts giving rise to the present suit are as under;

1. plaintiff has filed present suit for the recovery of Rs. 5,92,691/- along with interest from the defendants.
2. It is the say of the plaintiff that plaintiff is residing at Kapadwanj and doing business in the name and style of Kamala Fertilizers of the product like Chemical fertilizers, seeds, pesticide and having Dealership of Indian Potash Ltd. Further, it is the say of the plaintiff that defendant frequently came to his shop and purchased chemical fertilizers, potash,

forate, Urea, Sulphate, Mahadhan, pesticide and seeds as per his requirement for his shop. Further, it is the say of the plaintiff that sometimes as per the order of defendants company goods delivered directly to his firm through transport and the company issued instructions letter to the plaintiff, in regards of the goods send to the defendants to the plaintiff along with the details of the goods, date and vehicle number and the amount of bill and as per the instructions letter plaintiff debited it into the account of defendants and sometimes defendants received goods from his person and plaintiff company is noted the name of a person came on behalf of defendants and obtained his signature along with vehicle number and signature of the driver and thus, the amount of Rs. 5,92,691/- are dues from the defendants for the period of 01.11.2001 to 11.12.2001 which is unpaid by the defendants to the plaintiff, after frequently demanded by the plaintiff to the defendants they have not paid the said amount for that present suit is filed against the defendants for the recovery of Rs. 5,92,691/- along with interest.

3. The defendants are duly served with the summons/notice and appeared through the learned Advocate and my learned predecessor has allowed the defendant No.2 to furnish written statement and summary suit is converted into special suit by registering it as per order passed by my learned predecessor on date 15.06.2016 in C.M.A. No. 15/2014 as a Special Civil Suit No. 89/2016 and as the said case transferred in present Court, it is registered with new No. 107/17. The defendant No. 2 has submitted his written statement vide Exh. 20, in which it is contended that the suit is filed by the plaintiff is false, frivolous and vexatious and not maintainable in eye of law and denied all the averments made in Exh. 1 in toto. Further, it is contended that the present suit is barred by Principle of Res-judicata as plaintiff has filed earlier suit No. 29/2005 which is against the defendant No. 2 which is withdrawn by plaintiff and the facts of it not described in present suit. Further, it is contended that defendant No.2 is not a proprietor of Patel Fertilizers and he is not involved in the business carried out by the Patel Fertilizers. Further, it is contended that plaintiff has also filed criminal complaint No. 2499/2002 under the Provision of

Negotiable Instrument Act, Section-138 which is also withdrawn by the plaintiff. In the circumstances, it is asked to dismiss the suit with cost and as per the proceedings of date 01.03.2005, the right of defendant No.1 for furnishing written statement is closed by the Court and proceeded further according to law.

4. From the above pleadings of the parties following issues are framed by My Ld. Predecessor vide Exh. 21 in vernacular language.

ISSUES

૧. શું વાદી પુરાવાર કરે છે કે આ કામના પ્રતિવાદી તેમને ત્યાથી માલ ખરીદતા હતા ?
૨. શું વાદી પુરાવાર કરે છે આ કામના પ્રતિવાદી માલ ખરીદ વેચાણ પેટે બાકી રહેતી રકમની ઉધરાણી કરવા છતાં રકમ આપતા નથી?
૩. શું વાદી પુરાવાર કરે છે આ કામના પ્રતિવાદી પાસે બાકી બીલની રકમ રૂ. ૫,૯૨,૬૯૧/- રહે છે ?
૪. શું પ્રતિવાદી પુરવાર કરે છે કે વાદીના દાવાને સી.પી.સી.

કલમ- ૧૧ મુજબ પુનઃ નિર્ણયતાના સિંધ્યાતનો બાધ નડે છે ?

૫. શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકદાર છે ?

૬. શું હુકમ ? શું હુકમનામું ?

5. My findings to the above issues are as under with the reasons to follow.

1. In the Negative
2. In the Negative
3. In the Negative
4. In the Negative
5. In the Negative
6. As per final order

:R E A S O N S:

6. The plaintiff has furnished following oral and documentary evidence in support of his case.

(A) ORAL EVIDENCE:-

Sr. No.	Exhibit	Description
1.	33	Deposition of plaintiff Bakulchandra Chhotalal Sharma

(B) DOCUMENTARY EVIDENCE :-

Sr. No.	Exhibit	Description of Documents

1	41	Copy of Dispatch Statement of IPL Company
2	42	Copy of Dispatch Statement of IPL Company
3	43	Copy of Dispatch Statement of IPL Company
4	44	Copy of Dispatch Statement of IPL Company
5	45 to 47	Copy of Invoice of IPL Company
6	48	Copy of Invoice of Deepak Fertilizers
7	49	Copy of Firm No. 3CB
8	50	Copy of Record of Patel Fertilizers
9	51 & 52	Copy of Invoice of IPL Company
10	53 & 54	Copy of Bill Book
11	39	Closing Pursis

7. Against this, defendants have not furnished any oral and documentary evidence except the cross-examination of the plaintiff and declared vide pursis at Exh. 40 that they doesn't want to furnish any oral and documentary evidence.
8. The learned Advocate for the plaintiff has argued that defendants have purchased chemical fertilizers seeds and pesticide from the plaintiff's and not paid the amount of the purchase of above goods and ultimately Rs. 5,92,691/- is due from the defendants and it is proved by oral and documentary evidence in present case on had. Further, it is argued that looking to the oral and documentary evidence, plaintiff has successfully proved his case against the

defendants and it is asked to allow the suit with cost.

9. The learned Advocate for the defendants have argued that plaintiff is failed to prove his case by adducing cogent evidence. Further, it is argued that plaintiff is failed to prove that defendant No.1 is doing business in the name and style of Patel Fertilizers and also failed to prove that how defendant No.2 is involved in the transaction carried out by defendant No.1 along with plaintiff. Further, it is argued that looking to the cross-examination of plaintiff. It is proved that defendants are not responsible for the amount mention by plaintiff and no any amount dues against the defendants. Thus, it is asked to dismiss the suit with cost.

10. **Issue Nos. 1 to 5:-** To avoid the repetition of facts and for the sake of convenience all the issues are decided together. Further, in present case on hand duty cast upon the plaintiff to prove issue Nos. 1, 2, 3 and 5 and duty cast upon the defendants to prove issue No. 4.

11. Now, on perusing the oral and documentary evidence furnished by plaintiff, first of all, plaintiff has deposed at

Exh. 33 which is a written chief examination as per the Provision of Order-18 Rule-4 of the C.P.C., the facts stated in it, it is in line of Exh.1. Now, on perusing his cross-examination he stated that he doesn't know whether the Kamala Fertilizers is registered under which law. Further, he denied that defendant No.2 is not responsible. Further, he denied that defendant Nos. 1 and 2 not responsible jointly and severally. Further, he admitted that he has not furnished any evidence in respect of license given to the Patel Fertilizers. Further, he stated that the license of Patel Fertilizers issued in the name of Rameshbhai Gokalbhai Patel and in which year, he has appointed him a Sub-dealer of Kamala Fertilizers is not in his knowledge. Further, he admitted that the Government is carried out audit of his business and furnished documentary evidence vide Exh. 41 to 54. Now, on perusing entire oral and documentary evidence furnished by plaintiff, it is proved that plaintiff is failed to prove his pleadings by adducing cogent evidence in respect of the said transaction carried out between him and defendants. Further, on perusing entire pleadings plaintiff is silent that whether he has carried out transaction with

defendant No. 2. Further, he has not purchased any oral and documentary evidence to show that he has carried out business with Patel Fertilizers or with Rameshbhai Gokalbhai Patel or with Govindbhai Ramabhai Patel and how they are responsible. Further, whatever documentary evidence furnished by plaintiff vide Exh. 41 to 44 which are the dispatch Statement of Indian Potash Company Ltd. are the copies of computerized statement and not certified as per the Provision of Section 65(B) of the Indian Evidence Act.

12. Now, on perusing Section- 65-B of the Indian Evidence Act, 1872, the conditions referred in Sub-Section-1 of Section- 65-B is required to be fulfill by the provisions of Section-65-B(2) and 65-B(4), the certificate is must but in present case on hand the said Exh. 41 to 44 which are dispatch statement of Indian Potash Ltd. are not certified by the maker as described in Section-65-B of the Indian Evidence Act, 1872. And it is also held by the Hon'ble Supreme Court of India in the case of Anvar P. V. V/s. P. K. Basheer, (2014)10 SCC 473 and 2016(4) Crimes, 154, (SC) Harpalsing @ Chhota V/s. State of Punjab. On perusing para-11 of this authority, the

certificate u/s. 65-B(4) is must. Further, it is held that "This Court in Anvar P. V. (Supra) as held in no uncertain terms that the evidence relating to electronic record being a special provision, the General Law or Secondary Evidence u/s. 63 read with Section- 65 of the Act would have to yield thereto. It has been propounded that any electric record in the form of Secondary Evidence can not be admitted in evidence unless the requirements of Section- 65-B are satisfied. This conclusion of ours is inevitable in view of the exposition of law pertaining to Sections - 65-A and 65-B of the Act as above." Thus, in light of this decision, the said documents of Exh. 41 to 44 are inadmissible as it requires conclusive proof. In the circumstances, all this invoice have no any evidentiary value in absence of certification as per the Provision of Section 65(B) of the Indian Evidence Act. Thus, on the basis above said dispatch statement plaintiff is not entitled for his claim against the defendants. Further, on perusing Exh. 45 to 47 and Exh. 51 and 52 which are the invoice in the name of Kamala Fertilizers but on the basis this document it is not proved that the goods is purchased by defendants. Further, on perusing Exh. 50 which is a written document prepared

by plaintiff but as discussed earlier above, plaintiff is failed to prove that how and when defendant Nos. 1 and 2 given an order for the purchase of goods from the defendants by giving particulars of goods and on which date the goods as per the order of defendants supplied by the plaintiff to the defendants is not proved in present case on hand. Thus, whatever evidence adduced by plaintiff against the pleadings is cannot be considered and it is a well-settled principle of law that no Court can considered the evidence which is not, in lieu of, pleadings. Thus, in present case on hand, on perusing the entire plaint, plaintiff is failed to give any description about how and when and under which mode defendant Nos. 1 and 2 are responsible for the business with plaintiff.

13. Further, on perusing the entire plaint it is proved that the relationship between defendant Nos. 1 and 2 is not proved by adducing cogent evidence in present case on hand. Further, on perusing the written statement it is proved that plaintiff has earlier failed one money suit bearing survey No. 29/2005 and one complaint under Section-138 of the N.I. Act, bearing

C.C. No. 2499/2002 against the defendant No.2 which is withdrawn by him. In the circumstances, it is the duty of the plaintiff to prove how defendant No. 2 is responsible along with defendant No. 1 for the suit claim amount. Further, on perusing the entire cross-examination of the plaintiff, it is not proved that plaintiff is a proprietor of Kamala Fertilizers and doing business in the name and style of Kamala Fertilizers because plaintiff has not furnished single documentary evidence to show that Kamala Fertilizers is registered or unregistered firm and it is required in present case on hand. On the contrary, on perusing the cross-examination plaintiff doesn't know about the registration which creates doubt on the company on the conduct of plaintiff how a person can doing business without registration of his firm. Further, on perusing entire oral and documentary evidence, plaintiff has not issued any demand notice to the defendants prior to filing present suit. Thus, the suit is also not maintainable on the ground of non-serving of demand notice to the defendants, which is mandatory for the plaintiff to issued prior to filing suit against the defendants. In light of above discussion, I reply issue Nos. 1 to 5 in the "Negative".

14. **Issue No. 6:-** In view of the above discussion Issue Nos. 1 to 5 , I pass the following final order in the interest of justice.

: O R D E R :

1. The present suit preferred by the plaintiff is hereby dismissed.
2. Further, plaintiff is hereby order to bear his own cost and also bear the cost of the defendants.
3. Decree be drawn accordingly.

Pronounced in the open court on this 24th day of April, 2018.

Place : Kapadwanj
Date :- 24/04/2018.
Ritesh

(Bharat Bhaskarbhai Jadav)
Principal Senior Civil Judge,
Kapadwanj
Judge Code No. GJ00714