MHAK010004152018	Presented on Registered on Decided on Duration	: : : :	07.02.2018 14.02.2018 21.07.2026 08Yr 05M 06D

IN THE COURT OF HON'BLE AD HOC DISTRICT JUDGE-2, AKOLA.
(Presided over by Tejwant Singh A. Sandhu)

R.C.A. No.16/2018. **Exh.18**

Elite Udyog
Proprietor Dnyandeo Ninu Patil
Age: 72 Yrs., Occu.-Business,
R/o Radhkrishna Cinema Complex,
Murtizapur Road Akola. ...**The Appellant**.

VERSUS

Anamik Tractors
Proprietor Pramod Narayan Nikole
Age: 42 Yrs. Occu.-Business,
R/o Anamika Tractors,
Behind Petrol Pump, Akot Road, Akola,
Dist. Akola. ... **The Respondent.**

Advocate for Appellant: Shri. Kanetkar and Shri R. M. Akotkar
Advocate for Respondent: Shri. K. R. Jairaj

J U D G M E N T
(Delivered on 21.07.2026)

This appeal has been filed under Section 96 of the Code of Civil Procedure, 1908, by the original plaintiff challenging the judgment and decree dated 31.07.2017 passed by the learned Joint Civil Judge Senior Division, Akola in Spl.Civil Civil Suit No.87/2011.

(For the sake of convenience the parties are described as the plaintiff and defendant as in the civil suit before the trial court.)

Facts giving rise to this appeal are as under:-

2] A suit for recovery of amount of Rs. 69,20,562/- is filed with cause of action dt. 10.04.2008, on 12.01.2010 when the defendant acknowledged the liability by confirming the balance of outstanding under his signature, on 19.07.2010, when defendant has issued cheque in favour of the plaintiff and also on 21.08.2010 when the plaintiff made demand of the amount through legal notice has been sent to the defendant by the plaintiff for compliance.

3] It has been admitted by the defendant that plaintiff is the Proprietor running business under name and style "Elite Udhyog". The plaintiff is authorized distributor of Escorts Limited. The plaintiff is in the business of distributorship to distribute Farmtrac and Powertrac Tractor with spare parts. Plaintiff is authorized distributor of Escort Limited for Akola, Amravati, Yeotmal, Washim and Wardha Disttrict. Plaintiff is running the business at Radhakrihsna Cinema Complex, Murtizapur Road, Akola. He further admits that defendant is the authorized dealer of Farmtrac Tractors under the distributorship of plaintiff. Defendant used to purchase Farmatic tractors and spare spares parts from the plaintiff. He started said business of tractor Farmtrac tractor dealership with sale of spare parts from the year 2005. As per business custom of distributorship and dealership, he used to purchase good i.e. tractor and spare parts on credit from the plaintiff. He further admits that to maintain dealing transaction with him as to sale of goods, the plaintiff has maintained ledger account under the computerize program EDMS. He further admits that the plaintiff used to issue invoice through computerized accounting program. He further admits that, he is in business of retail tractor selling and purchase the goods on credit thereon plaintiff issued each bill of sale of goods used to account in ledger of Anamika Tractor, Akot which was maintained by the plaintiff. Said account is continuous account.

4] The defendant time to time avail the goods from the plaintiff on credit. During the transaction of the time to time, he used to pay outstanding balance partly to the plaintiff after such payment. The plaintiff used to forward the outstanding in the ledger account of himself. He further admits that each and every debit and credit entry has been recorded in the ledger account of the defendant maintained by the plaintiff. He further admits that, in their business of sale and purchase of goods, it is continuous one. He further admits that, as per usual business customs, he used to submit undertaking for depositing bank cheques with the plaintifR. M. Akotkarf towards the security of outstanding amount of the relevant period.

5] It is the case of the plaintiff that defendant has confirming the balance outstanding to acknowledge the same under his signature. If the defendant failed to pay the dues within the seven days, there is clause of charging interest @ 24 percent per annum for unpaid bills amount. There is custom of late payment, delay payment, overdue bill interest, cheque bounce charges and other charges which has been born due to act of the defendant which have been debited in the ledger account of the defendant. The defendant has confirmed and acknowledged the said entries of balance outstanding against him. On 12.01.2010, he has acknowledged balance outstanding of Rs. 65,29,845/- which was payable by him against the goods purchased by him on credit. He has signed the ledger account for which the valuable consideration was received by him. On 19.07.2010, the defendant was at the office of the plaintiff and has acknowledged the amount outstanding of Rs. 69,20,562/- which was mentioned in the ledger account. He has issued a cheque for said amount with undertaking document which was duly notarized on 10.04.2008. Said cheque was dishonored for reason “funds insufficient”. A legal notice has been sent through Advocate. On 21.08.2010, demanding the amount of Rs. 69,20,562/- with further interest @ of Rs. 20% per annum, despite that, the defendant has avoided liability and issued false notice on 08.10.2010. Hence, the suit.

6] The case of the defendant that, there was no agreement or any trend in between them for any charges. He has clear all the dues and nothing is due as pleaded in the account maintained by the plaintiff is not proper and is against the agreement in between themselves. It is against the customs prevailing in the market and norms of escort agreement marketing division. So also against the provision of Sale of Goods Act. The plaintiff has misused the cheques which were given to him towards security deposit. He has enhancing the amount over the cheque and misuse it to extract more money from him. The alternative plea is not genuine. A false and fabricated notice has been issued. He is not liable to pay anything, hence, prayed to dismiss the suit.

7] The Ld. Trial Court has framed three issues. It has answered Issue No. 1 in negative, issue No. 2 as redundant and has dismissed the suit with costs.

8] On perusal of the judgment of the trial Court, it appears that the main ground to dismiss the suit is not providing the certificate under Sec. 65-B(4) of the Evidence Act as to the electronic records of ledger account etc. Further the Ld. trial Court has noted by entry in the ledger account that the ledger entries are without documentary base more particularly, as to allotment of mobiles bills etc. and it has observed that there is no role or documentary evidence to corroborate the entries in the ledger account and thereby dismissing the suit.

9] Therefore this appeal on following and amongst other grounds:-

- The Judgment and decree of the Ld. Trial is contrary to the the law and facts on records.
- The Ld. Trial Court has not appreciated the pleadings of the respective parties and therefore has not appreciated the put forth by the Appellant.
- The Ld. Trial court did not appreciate the evidence led by the Appellant in the form of the ledger, supported by sale invoices and therefore erred in holding that as per Sec.34 of Evidence Act the

liability cannot be fastened merely on the ledger books and therefore erred in dismissing the suit of the Appellant.

- It ought to have been seen the Ld. Trial court itself has recorded finding that the relationship of the parties and the business transactions are admitted facts and thus the existence of transactions and business between the Appellant and the Respondent was never denied and stood admitted.

- It ought to have been also seen that the Ld. Trial court has also held in favour of the Appellant that the account books can be in the form of electronic record and alleged loose sheets cannot be disregarded merely because they are computer print outs.

- In view of this finding, the Ld. Trial court erred in not considering the electronic record, supported by the Certificates u/Sec.65B(iv) of the Evidence Act and erred in holding that the same are not qualifying the requirements of the Evidence Ac and more particularly Sec.65B(iv).

- It ought to have been seen that the said accounts and the Certificates were exhibited in the evidence of PWI without any objection and were exhibited as sh 20 and Exh. 118 and 119 respectively. No any demur was taken by the Respondent at the time of exhibiting the said documents.

- It ought to have been seen that the certificates and even the ledger was not challenged in the cross examination and there is no even suggestion to PWI about the ledger in entirety and certificate not being correct.

- The entire cross of PWI is limited to the extent of disputing a few entries and not the entire accounts itself. Thus, the remaining claim than the said entries could have been considered by the Ld. Trial court.

- Even the certificates and the ledger was not challenged in the cross of other witnesses on behalf of the Appellant and thus the alleged challenge can be construed limited only to few entries of mobile bills etc and not to the entire ledger as such.

- The Ld. Trial court lost sight of the basic principle of preponderance of probabilities applicable to civil trial and thus came to wrong conclusion that mere account books are not sufficient for fastening the liability.

- It ought to have been seen that the ledger account Exh.20 was accompanied by the invoice and sell bills and it was not the case where only ledger was produced.

- The said bills invoices etc were also not objected at the time of exhibition and even were not disputed in cross examination in entirety barring entries regarding mobile bills etc. which amounted to a very meager amount.

- It ought to have been seen that once the Appellant produced all these extracts and which went unchallenged during trial as stated above, the onus shifted on the Respondent which was not discharged by the Respondent.

- It ought to have been further seen that the Defense of de Respondent was that there is no outstanding amount and n that there is no absolutely no any transaction between the Appellant and the Respondent and in fact the Respondent claimed that he has paid all the amounts.

- In such case therefore it ought to have been seen that not producing the documents showing payment made by the Respondent in consonance with the defense would have attracted strongest adverse inference against the Respondent which had effect of falsifying the case of the Respondent.

- The Ld. Trial court erred in interpreting Sec. 101 of Evidence Act and erred in not considering that the Appellant discharged the initial burden to shift the onus on the Respondent which was never discharged by the Respondent.

- It ought to have been seen that the documents produced on record in the scenario established the claim of the Appellant and the suit ought to have been decreed at least to the extent of admitted and unobjected entries.

- The Ld. Trial court wrongly applied ration in Anwars case and erred in holding that there is no sufficient compliance of Sec.65B(iv) of Evidence Act.

- The Ld. Trial court erred in not considering the ledger Exh.20 merely because there were no documents in respect of spare parts and mobile bills and there was non production of documents such as debit entries.

- The Ld. Trial court erred in holding that there was no oral and documentary evidence to corroborate the entries or to prove the base as alleged.

- The Ld. Trial court erred in holding that the Appellant has not given details of exact outstanding amount and the pleading the Appellant is vague and does not comply the requirements of CPC.
- The Ld. Trial court wrongly believed the Respondent alleged part payment by it without any proof on record.
- The Ld. Trial court further erred in holding that the invoices and documents on record are not sufficient for the purposes holding liability of the Respondent.
- The Ld. Trial out erred in not considering the effect of Respondent giving cheques of security.
- This act on the part of the Respondent established the transaction between the Appellant and Respondent and the Respondent thus ought to have furnished the details of payment of amount as per its defense.
- The Ld. Trial court erred in holding that the payment of interest @24% is not duly proved.
- The Ld. Trial court erred in not considering the effect of acknowledgment of liability by the Respondent and thus erred in considering the totality of circumstances in favour of the Appellant.
- The Ld. Trial court also erred in holding that the suggestion to the Respondent in cross is on different footing and the confrontation cannot be considered and it is not useful to the appellant. There was no discrepancy as alleged.
- The Ld. Trial court erred in holding that alleged admission about blank cheques falsified the case of the Appellant. The Ld. Trial court also erred in holding that the confirmation of balance is not

proved.

- The Ld. Trial court did not appreciate the case laws an judgments relied on by the Appellant and erred in dismissing the suit.

- The Judgment and decree of the Learned Trial Court otherwise illegal and materially irregular which has re into miscarriage of justice to the Appellant.

10] The points for my determination along-with my findings thereon are as under :-

S.No.	**Points**	**Findings**
1.	Is the plaintiff entitled for the decree of Rs. 69,20,562/- with future interest @ 24 percent per annum from the date of suit till its full realization ?	**...Yes.**
2.	Does the judgment and order of the Ld. Trial Court is correct, legal and proper ?	**...No**
3.	Does the impugned judgment and Decree of the trial court suffers from material legal infirmity or error apparent on the face of the record and required interference in this appeal?	**....Yes**
4.	What Order and Decree ?	**The Appeal is allowed.**

R E A S O N S

AS TO POINT NO.1 :

11] In view of admitted facts noted *supra*, more particularly, it appears that the defendant has denied as to confirmation of balance outstanding and arrears acknowledging the same with under his signature. He further stated in written statement that he has cleared of dues as pleaded by the plaintiff. He further stated in written statement that cheques have been issued by him but everywhere issued towards security deposit and it has been misused by the plaintiff by enhancing the amount to extract more money from him to put him to loss.

12] With above facts, it can be concluded that the defendant has taken the burden to prove that, he has not confirmed the balance outstanding and acknowledged the same with further burden to prove that he has paid all dues as pleaded. Therefore, the findings to Ld. Trial Court as to the statement at **Exh. 20**, from para no. 12 on-wards treating them as not proved for the reasons, not supported by certificate under Sec. 65-B(2) of Indian Evidence Act or various entries which are not supported by such documents appears to be invalid as already the defendant has admitted everything in regard to the business, maintenance of ledger account, issuance of invoices etc. as noted *supra*.

13] There is no evidence at all given by the defendant that he has cleared all dues as pleaded, as noted by him in para No. 5 of the written statement. On the contrary in his affidavit of evidence at Exh.

140, it appears that, he has not stated said fact of clearing all dues as pleaded. On the contrary, without pleading in written statement, he has noted in the affidavit of evidence that, after receiving the policy by the company of the distributor then the distributor should be followed the terms and conditions of the said policy. But the plaintiff failed to follow the said terms and conditions and also failed to file the said copies of the policies in the above said matter. The company used to sent price list for the sale of goods, to the distributor on the basis of which the distributor used to sale the goods to the dealer. The said price list also has not filed by the plaintiff on record. The plaintiff has filed false and bogus copy of ledger account which he has prepared as per his own whims and also have filed false, bogus and fabricated bills on record. So also the plaintiff has filed the false, bogus and fabricated documents, undertaking and the security agreement vide Exh. 106 and 107 respectively.

14] Especially he has affirmed on oath that, he has no arrears against the plaintiff and has never executed cheques. Further in his cross-examination, despite having such admitted relationship of distributorship and dealership, he stated that, he has not maintained account of the transaction during the tenure as dealership. He has admitted his signatures over the cheques. Further more, despite the disputing the entries in **Exh. 20,** he admits in his cross-examination, issuance of demand draft of Rs. 2,92,500/- dtd. 06.07.2005 and payment of Rs. 4,00,000/- dtd. 15.01.2008. This means, defendant himself is not confirm or having such defence that, the ledger account at **Exh. 20 i**s entire bogus. On the contrary, once admitted in written statement no further proof is require of said ledger account vide Sec. 58 of Indian Evidence Act.

15] Further more the defendant failed to give a single reason as to how cheque in question of his business came in the custody of the plaintiff. It appears from record that after dishonored of cheque, notices **(Exh. 111 and Exh. 115)** have been issued to the defendant. Said notices were served upon him vide acknowledgment **(Exh. 114 and Exh. 117)**. He has stated in written statement that said notices are false and fabricated. Though he has admitted that to have given the reply to said notices, he has failed to bring said reply on record. This should be his first defence to the case of the plaintiff. In his defence, he has not filed a single document to prove that he has clear all dues as pleaded by the plaintiff as per his defence in written statement.

16] In above stated facts, it is clear that the facts which have been disputed by the defendant are not proved by him. More particularly, the balance of confirmation or the clearance of dues as pleaded. On the other hand, the plaintiff has filed various documents, right from the agreement of distributorship, all the invoices, ledger account, balance confirmation, cheques, acknowledgment etc.

17] On these points, the Ld. Advocate Shri Kanetkar for the plaintiff has relied upon the judgment as under:-

a] **<u>Ahmedsaheb (dead) by LRs and others Vs. Sayed Ismail, 2012 (6) Mh.L.J..</u>** The Hon’ble Supreme Court held that-

> "the admission of the respondent in the written statement about the rate of rent and the further admission about its non- payment for the entire period for which the claim was made in the three suits was sufficient to support the suit claim. The High Court failed to note the said factor while deciding the Second Appeal which led to the dismissal of the appeals. Even while eschewing Exhibit-69 from consideration, the High Court should have noted that the relationship of landlord and tenant as between the plaintiffs and the defendants was an established factor and the rate of rent was admitted as Rs. 800/- per year"

b] **Sambhaji Laxmanrao Pawar Vs. Abdul Wahed s/o.Rahmatullah,** 1995 (1) Mh.L.J. Hon'ble High Court held that,

> "Rules 3, 4 and 5 of Order 8 of C.P.C. form an integrated Code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal specifically with each allegation of fact in the plaint and when the defendant denies any such fact, he must not do so evasively but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary".

c. **Gian Chand and Brothers and Another Vs. Rattan lal Alias Rattan Singh**, (2013) 2 Supreme Court Cases 606. Hon’ble Supreme Court held that -

> “Evidence Act, 1972 – Ss. 34, 16, 45 and 114III. (f) – Entries made in regular course of business – Evidentiary value of – Held, books of accounts maintained in regular course of business should not be rejected without reason or rebuttal of presumption of their veracity”.

d] **Canara Bank Bombay Vs. Eastern Mechanical Works, Bombay and another**, 2008 (5) Mh.L.J. Hon’ble High Court held that,

> “Evidence Act, SS. 34 and 22 – Advocate for defendant admitted the extracts of account duly certified under Bankers Books Evidence Act without keeping any reservation – Apart from the admission, they were also independently proved by the plaintiffs’ witness in accordance with the provisions of the Evidence Act – Once the document is admitted, the contents thereof cannot be disputed by the defendant”.

e] **State Bank of India Vrs. Yumnam Gouramani Singh,** (1993) 3 Supreme Court Cases 631. Hon’ble Supreme Court held that-

> “Evidence Act, 1982 – S- 34 – Bank dues – Proof of – Amounts shown due in the entries in the books of account of the bank, admitted in written statement and not contested by the defendant – Legality of decree based

on such entries – upheld".

18] All the above citations are squarely applied in this case to support the claim of the plaintiff as to admissions in written statement. The evasive denials without proof of the books of account maintained in regular course of business by the plaintiff which is though denial. But no rebuttal by the defendant and admission of documents then the interest cannot be disputed. Hence, it is the defendant , who has to blame himself for not proving that he has not acknowledged the balance confirmation or has clear the dues as pleaded or not filing the reply to the notice given by the plaintiff.

19] The citations as relied upon by the defendant as under:-

a] **Smt. Chandrakantaben J. Modi and Narendra Jayantilal Modei Vs. Vadilal Bapalal Modi and Others,** AIR 1989 Supreme Court 1269. The Hon'ble Supreme Court held that -

> "Evidence Act, S- 114, S.61 – Account books – entries therein proof – Nobody taking responsibility of supporting the correctness of entries – Reason as to non-production of other important documents supporting account books not given – Account books liable to be rejected".

b] **Chandradhar Goswami and others Vs. Gauhati Bank Ltd**, AIR 1967 Supreme Court 1058. Hon'ble Supreme Court held that,

> "Evidence Act, S-34 – Bankers' Book Evidence act, S-4 – Entry in bank's book of account, Mere entries from bank's books of account or mere copies thereof are not sufficient to charge person with liability except where person

concerned accepts correctness of entries.

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".

20] Above citations are not be helpful as he himself has admitted the entire pleading of the plaintiff except that part of confirmation and acknowledgment of balance outstanding dues clear as pleaded and not filing of reply to notice. He has to blame himself therefore, I come to conclusion that the plaintiff has proved that he is entitled for the decree of money of Rs. 69,20,562/- for repayment of the same with future interest of 24 percent per annum as all the invoices having such note of 24 percent per annum. Hence, I answer issue No. 1 in the **affirmative**.

As to Point No.2 & 3:-

21] In view of above findings to point nos. 1, I come to conclusion that, the impugned judgment and Decree of the trial court is not correct, legal and proper. It did suffer from material legal infirmity or error apparent on the face of the record and requires interference in this appeal. Therefore, it will have to be set aside.

Accordingly, the appeal will have to be allowed. The suit will have to be decreed with costs. Hence, I answered point No.2 & 3 accordingly. Therefore, in answer to point No. 4, I pass the following order:-

ORDER

i] The appeal is allowed, accordingly, the suit is decreed with costs.

ii] The judgment and decree dated 31.07.2017 passed by the Learned Civil Judge Senior Division, Akola in Special Civil Suit No. 87/2011 is quashed and set aside.

iii] The defendant is ordered to pay Rs. 69,20,262/- with further interest @ Rs. 24 percent per annum from the date of filing of suit till its realization.

iv] Decree be drawn up accordingly.

v] R & P if any be sent to the Ld. trail court.

SANDHU TEJWANTSINGH
Digitally signed by SANDHU TEJWANTSINGH
Date: 2026.07.21 17:03:42 +0530

(Tejwant Singh A. Sandhu)

Date:21.07.2026. District Judge-2, Akola.

C E R T I F I C A T E

I affirm that the contents of this P.D.F file order/judgment are same, word to word, as per the original order/judgment.

Name of the Steno	Shamim Sayed
Court Name	(Tejwant Singh A. Sandhu) District Judge-2 & Additional Sessions Judge, Akola.
Date of order/judgment	21.07.2026
Order/judgment signed by the presiding officer on	21.07.2026
Order uploaded on	21.07.2026