IN THE COURT OF THE PRL.SENIOR CIVIL JUDGE
at MACHILIPATNAM
Present:-**V. S.S.Srinivasa Sarma**
Prl.Senior Civil Judge, Machilipatnam

Monday, this the 7th day of December, 2015

O.S No.190/2010

Between:
Usha Sri Rama Traders, Represented by its Proprietor, Sabbisetti Sri Ramachandra Murthy, S/o late Rathaiah, Hindu, aged about 46 years, Business, residing at Bantumilli, Bantumilli Mandal, Krishna District, Andhra Pradesh.

…. ...Plaintiff.

And:
Chitikineni Srinivasa Rao, S/o Subba Rao, Hindu, aged about 37 years, Cultivation and Prawn Business, residing at Pendurru Village, Bantumilli Mandal, Krishna District, Andhra Pradesh.

… . Defendant.

This suit is coming on 27.11.2015 before me for final hearing in the presence of Sri J.M. Prasad (J.P.), Advocate for plaintiff and of Sri C.B.Y.N.Sastry, Advocate for defendant and having stood over for consideration till this day, this Court made the following:

J U D G M E N T

This is a suit filed for recovery of Rs. 2,12,839-46 ps with subsequent interest at 12% per annum based on the *khata* of the defendant being maintained by the plaintiff and costs thereof.

2. The plaintiff-Usha Sri Rama Traders Bantumilli is a proprietary concern and Sabbisetti Sri Ramachandra Murthy is its proprietor. He does pesticides and fertilizers business. The plaintiff averred that the defendant opened a khata on 23.8.1999 and that he used to purchase pesticides and manures on credit and the defendant used to pay amount at his convenience, which were duly noted in the khata account. The plaintiff also averred that the defendant used to send his agents for the purpose of purchasing pesticides and manures and as such, all his agents also used to sign in the khata book maintained by the plaintiff. The plaintiff averred that on 18.12.2006, the defendant made part-payment of Rs.2,000/- but he did not discharge the entire

amount and that as the *khata* disclosed that the defendant is liable to pay Rs.2,12,839-46 ps., on 6.7.2009 he issued a legal notice but inspite of legal notice but he did not pay any amount. Hence, the plaintiff filed this suit for recovery of the said amount.

3. On receipt of summons in this suit, the defendant made appearance and he filed a detailed written statement denying each and every averment of the plaint including operation of khata with the plaintiff. He denied maintaining any credit account with the plaintiff. He denied making part payment. He denied purchasing of any pesticides and manures from the plaintiff through any of his agents. He claimed the suit to be barred by limitation. He sought for dismissal of the suit.

4. Based on pleadings, the following *issues* were settled for trial:-

1. Whether the defendant has the 'Khatha' transactions with plaintiff's shop?
2. Whether the defendant used to purchase manure and pesticides from the shop of the plaintiff either personally or through his agents?
3. Whether the defendant's agents signed in the katha book for the transactions?
4. Whether the defendant paid Rs.2,000/- on 18.12.2006 and thereafter discontinued khatha?
5. Whether an amount of Rs.2,12,839-46 ps., was due from the defendant?
6. Whether the plaintiff is entitled for a decree for the suit amount?

5. During the course of trail of the suit the plaintiff-the plaintiff-S.Sri Ramachandra Murthy examined himself as P.W.1. He got marked Ex.A1 to Ex.A24. Later the defendant examined himself as D.W.1.

6. Heard the counsel on record.

<u>ISSUE No.1 to No.6:-</u>

7. The above issues are interlinked and hence, it is necessary to discuss all the issues under one head. As noted above, during the course of trial of the suit, the plaintiff- Sri Ramachandra Murthy examined himself as P.W.1. He filed an affidavit under Order XVIII Rule 4 of CPC. In such affidavit he had

practically reiterated the averments of the plaint. In his evidence he deposed as if the defendant opened a khata with him and that he used to purchase pesticides and manures either directly or through his agents and that he used to make payments at his own convenience and that on 18.12.2009 he made part payment of Rs.2,000/- and that subsequently he did not pay any amount and that when the khata account disclosed that as on 08.12.2006 the defendant was liable to pay to Rs.1,08,756-60 ps., on 18.12.2006 he issued a legal notice on 6.7.2009 but inspite of it, the defendant did not pay any amount. Hence he sought for decree of this suit.

8. In his evidence he got marked the copy of the legal notice dt.6.7.2009 as Ex.A1 and the unserved notice as Ex.A2. The Day Book and the Ledgers for the period from 1999-2000 to 2009 to 2010 were marked as Ex.A3 to Ex.A23. The extract of the khata/statement of account was marked as Ex.A24. In his cross-examination, he admitted that whenever a person purchases pesticides or fretilizers on credit, he would obtain the signature of the said person in his Day Book. He admitted that he cannot say when the defendant subscribed his signature either in the Day Books or Ledgers to show that he acknowledged the debt. He admitted that whether the transaction is 'cash transaction' or 'credit transaction', he would prepare a bill and then he would make necessary entries in cash book/day book and if it is a credit transaction he would obtain the signature of the purchaser also. He admitted that irrespective of the fact whether a transaction is a cash transaction or credit transaction, he would obtain the signature of the purchaser on the bill. He admitted that he did not file any bill book evidencing the so-called transactions of the defendant. He contended that the defendant had personally made all payments and no one made any payment representing the defendant. He admitted that the last payment made by the defendant was three years prior to the date of filing of the suit. He admitted that he did not file any document to show that he had a right to claim interest. He contended that according to him the defendant made the last payment of Rs.2,000/- on 18.12.2006 and thereafter the defendant never operated the khata. He admitted that Ex.A9 and Ex.A10 Day Books, Ex.A16 Day Book of the year 2004-2005 and Ex.20 Day Book of the year 2009-2010 did not contain the signature of the defendant. He admitted that

he did not file Day Books for the years 2005-2006 to 2007-2008. He contended that one Mutyala Naga Raju signed the Day Book in Ex.A16 representing the defendant, but he admitted that there was no written authority to the said Mutyala Naga Raju to receive any stock. He admitted that the Dy Books and Ledgers filed by him did not contain the signatures or stamps to show that such Registers were verified by Sales Tax Department, Commercial Tax Department or any other Government Authority. He denied that defendant never maintained any khata with him. He denied that he is not liable for the suit claim.

9. Later, the defendant examined himself as D.W.1. He filed an affidavit under Order XVIII Rule 4 of CPC. In such affidavit he denied suit transaction. He denied purchasing any fertilizers and manures from the plaintiff on credit. He contended that the suit claim to be barred by limitation. He sought for dismissal of the suit. In his cross-examination he denied that he made purchases of pesticides from the plaintiff personally and also through his agents. He denied that he used to issue letters to the 3rd parties to obtain fertilizers and manures on credit from the plaintiff and that he used to make payments at regular interest at his own convenience. He denied that he is liable for the suit claim.

10. Now, considering the above nature of evidence, it is required to answer whether the plaintiff is entitled for the suit claim besides other issues. Before I make such an exercise, it should be noted as seen from the record the plaintiff herein filed this suit on 16.12.2009. It is the case of the plaintiff that the defendant maintained khata with him and that on 18.12.2006 he made payment of Rs.2,000/- and subsequently he did not make any payment. Therefore, according to him as he filed this suit on 16.12.2009, the suit is within the period of limitation. But, it should be noted that in the cross-examination of P.W.1 S.Sri Ramachandra Murthy, he had categorically admitted that he did not file Day Book for the years 2005-2006 to 2007-2008. He admitted that the Day Book of the year 2009-2010 did not contain the signature of the defendant. Admittedly, the Day Book of the year 2005-2006 is requires to be filed so that it can be noted whet her the defendant had subscribed his signature on the said

Day Book showing payment of Rs.2,000/- on 18.12.2006. Admittedly, the plaintiff did not file any such Day Book. Thus, there is no evidence before this Court to show that the defendant made payment on 18.12.2006. When the contents of Ex.A19 Ledger for the year 2005-2006 are taken into consideration the relevant entries of the defendant were found at page No.101. Though page No.101 of Ex.A19 shows as if the defendant had made three credit purchases and he made payment on three days including 18.12.2006, the entries were not certified by the defendant. The signature of the defendant is not found at the relevant page showing acknowledgment of debt. Admittedly, the plaintiff had not filed the day book of the year 2005-2006. Thus, there is nothing to suggest that the suit claim is within limitation. Hence, it should be considered that the suit claim is barred by limitation. Hence, issue No.4 is required to be answered against the plaintiff. On this ground alone, the suit is liable to be dismissed.

11. In the instant suit, the plaintiff had categorically admitted that whether the transaction was cash transaction or credit transaction, he would obtain the signatures of the purchaser on the bill/bills. He admitted that he would prepare Day Books and Ledgers basing on such Bills. He admitted that whenever a transaction was credit transaction and whenever a Bill was prepared, basing on such bill, he would make necessary entries in the Day Book and further, it would be carried into the ledgers. He also admitted that he would obtain the signatures of the persons purchasing the fertilizers on credit. Therefore, it is necessary for the plaintiff to file all the relevant credit bills to show that the defendant made credit purchases. When the plaintiff had pleaded that the defendant used to purchase fertilizers on credit through the 3rd persons, it is necessary for him to name the 3rd parties who made credit purchases and also that the 3rd parties were duly authorized to make credit purchases on behalf of the defendant. Further, it is the legal duty of the plaintiff to prove that the defendant had ratified such purchasers and or that he acknowledged the debt. Further, it is necessary for the plaintiff to show that the defendant made part-payment(s) acknowledging the credit balance. However, in his cross-examination, the plaintiff had categorically mentioned that he is not aware whether the defendant signed any Day Book or Ledger to acknowledge the debt. Thus, when the Ex.A3 to Ex.A13 Day Books and

Ledgers for the years 2000-2001 to 2009-2010 did not disclose that the defendant had subscribed his signatures in such books to show his liability of the suit amount or admitting his liability or acknowledging the debt, the plaintiff is not entitled for any suit claim. So when the entire evidence is concerned, it should be held that the plaintiff had failed to show that the defendant maintained khatha and that either the defendant or his agents had purchased fertilizers and manures on credit or that the agents of the defendant had never signed the khatha books maintained by the plaintiff. Hence, Issue No.1, to 3 are answered against the plaintiff holding that the plaintiff is not entitled for the suit claim. Further there is no evidence to show that the defendant fell due of an amount of Rs.2,12,839-46 ps., and consequently, Issue No.5 and No.6 are answered against the plaintiff holding that the plaintiff is not entitled for the suit claim. Hence, the suit is liable to be dismissed.

13. In the result, the suit is dismissed, with costs.

Dictated to the Gr.II Stenographer, typed by him, corrected and pronounced by me in open court, this the 7th day of September, 2015.

Prl. Senior Civil Judge,
Machilipatnam.

Appendix of Evidence:
Oral Evidence

For Plaintiff	For Defendant
P.W.1: S.Sri Ramachandra Murthy.	D.W.1 Ch.Srinivasa Rao.

Documentary Evidence

For Plaintiff :

Ex.A1: Office copy of legal notice issued by the plaintiff to the defendant, dt.6.7.2009.
Ex.A2: Unserved postal cover.
Ex.A3: Day Book for the year 1999-2000.
Ex.A4: Day Book for the year 1999-2000.
Ex.A5: Corresponding Ledger for the year 1999-2000.
Ex.A6: Correspondent Ledger for the year 2000-2001.
Ex.A7: Correspondent Ledger Book No.1 for the year 2000-2001.
Ex.A8: Ledger for the year 2000-2001.
Ex.A9: Day Book for the year 2001-2002.

Ex.A10 Day Book for the year 2001-2002.
Ex.A11 Ledger Book for the year 2001-2002.
Ex.A12 Ledger Book for the year 2002-2003.
Ex.A13 Ledger Book for the year 2002-2003.
Ex.A14 Day Book for the year 2003-2004.
Ex.A15 Ledger for the year 2003-2004.
Ex.A16 Day Book for t he year 2004-2005.
Ex.A17 Ledger for the year 2004-2005.
Ex.A18 Ledger for the year 2005-2006.
Ex.A19 Ledger for the year 2006-2007.
Ex.A20 Day Book for the year 2009-2010.
Ex.A21 Ledger for the year 2007-2008.
Ex.A22 Ledger for the year 2008-2009.
Ex.A23 Ledger for the year 2009-2000.
Ex.A24 Khata/Statement of Account of the defendant maintained by the plaintiff.

For Defendant:-

NIL.

Prl. Senior Civil Judge,
Machilipatnam.

Date of presentation: 16.12.2009
Date of registration: 19.06.2010

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
MACHILIPATNAM

Present:-**V. S.S.Srinivasa Sarma**
Prl.Senior Civil Judge, Machilipatnam

Monday, this the 7th day of December, 2015

O.S No.190/2010

Between:
Usha Sri Rama Traders, Represented by its Proprietor, Sabbisetti Sri Ramachandra Murthy, S/o late Rathaiah, Hindu, aged about 46 years, Business, residing at Bantumilli, Bantumilli Mandal, Krishna District, Andhra Pradesh.

…. ...Plaintiff.

And:
Chitikineni Srinivasa Rao, S/o Subba Rao, Hindu, aged about 37 years, Cultivation and Prawn Business, residing at Pendurru Village, Bantumilli Mandal, Krishna District, Andhra Pradesh.

… . Defendant.

Purpose of Suit:

This is a suit filed for recovery of Rs. 2,12,839-46 ps., with subsequent interest at 12% per annum based on the khata of the defendant being maintained by the plaintiff and costs thereof.

Cause of Action and Jurisdiction:

The cause of action for the suit arose on 23.8.1999 when the defendant opened a khata wit h the plaintiff, subsequently whenever the defendant operated the same from time to time, personally and through his agents after verifying the account on 18.12.006, subsequently, when the defendant failed to pay the amount, on 6.7.2009 when the plaintiff got issued a legal notice and at Machilipatnam, where the defendant opened the khata and operated the same, within the jurisdiction of this Hon'ble Court.

Court Fee:

This is a suit for recovery of an amount of Rs.2,12,839-46 ps., based on khata, on which the plaintiff paid Court Fee of Rs.4,626/- is paid under Sec.20 Schedule I Article I (b)(c) of A.P.C.F. and S.V. Act .

This suit is coming on 27.11.2015 before me for final hearing in the presence of Sri J.M. Prasad (J.P.), Advocate for plaintiff and of Sri C.B.Y.N.Sastry, Advocate for defendant and having stood over for consideration till this day, this Court DOTH ORDER AND

DECREE

i) That the suit be and hereby decreed dismissed;

ii) That the plaintiff do pay a sum of **Rs./-** (Rupees only) to the defendant towards costs of this suit and the plaintiff shall bear his own costs of Rs.NIL (No bill of costs filed).

Given under my hand and seal of this Court, this the 7th day of September, 2015.

Prl. Senior Civil Judge,
Machilipatnam.

MEMORANDUM OF COSTS

	For Plaintiff Rs. P.S.	For Defendant Rs. P.S.
1. Stamp on Vakalat	‘2-00	
2. Stamp on Plaint Fee	4,626-00	
3. Process Fee	45-00	
4. Stamp on petitions		
5. Advocate Fee		
6. Junior Fee		
7.Writing charges		
8. Typing Charges		
Total		

PSCJ., MTM

Note: The parties are hereby directed to apply for return of all exhibits which they may wish to preserve as soon as possible within three years as the record will liable to be destroyed three years after the date of decree of order.