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A.S.No.243 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON : 07.01.2026  
PRONOUNCED ON : 06.07.2026

CORAM:

**THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE**

A.S. No. 243 of 2019

M/s.Sri Devi Ram Enterprises  
Rep., by its Partner,  
Mr.Karra Mani  
At No.B-4, Brindavan Apartments,  
No.6, Brindavan Street,  
Mylapore, Chennai – 4.

...Appellant/Plaintiff

Versus

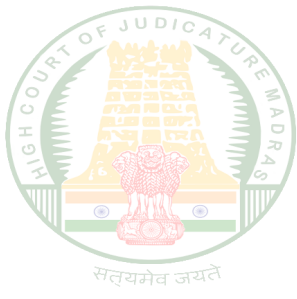
M/s.Firenze Shoes Limited,  
Rep., by its Managing Director,  
Mr.S.B.P.Madan Mohan,  
No.38, Mount Road, Guindy,  
Chennai – 32.

Also at  
No.49/2, 3<sup>rd</sup> Main Road,  
Gandhi Nagar, Adyar,  
Chennai – 20.

...Respondent/Defendant

PRAYER:

Appeal Suit filed under Section 96 of the Code of Civil Procedure, 1908 against the Judgment and decree dated 11.10.2018 made in O.S.No.11253 of 2010 on the file of the II Additional City Civil Court, Chennai.



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For Appellant : Mr.S.Vijayaraghavan, Advocate.

For Respondent : Mr.N.Kumar Rajan, Advocate.

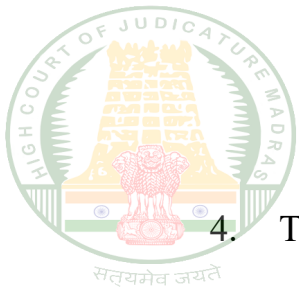
## J U D G M E N T

This Appeal Suit has been filed by the plaintiff, challenging the judgment and decree dated 11.10.2018 in O.S.No.11253 of 2010 passed by the learned II Additional City Civil Judge, Chennai, dismissing the suit for recovery of money.

2. The appellant is the plaintiff. The respondent is the defendant. For convenience, the parties will be referred to as they were arrayed before the trial Court.

3. The plaintiff filed the suit originally on the Original Side of this Court as C.S.No.737 of 2002. Later, on account of change in pecuniary jurisdiction, the suit was transferred to the City Civil Court, Chennai, and renumbered as O.S.No.11253 of 2010. The suit was for recovery of a sum of Rs.10,24,264.57 together with interest at 24% per annum on Rs.7,71,140/- from the date of plaint till realisation and for costs. The plaint was presented on 25.10.2000.

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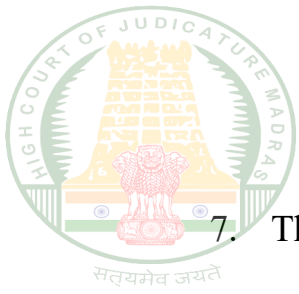


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4. The trial Court dismissed the suit without costs by judgment dated 11.10.2018. Aggrieved by the same, the plaintiff has preferred the present appeal.

5. **Plaint in brief:** The plaintiff is a registered partnership firm carrying on business in moulded components for shoes. The defendant is a company represented by its Managing Director.

6. According to the plaintiff, in the course of business, the defendant requested the plaintiff to supply moulded insoles. Pursuant to such request, the plaintiff supplied moulded insoles to the defendant under various invoices from 03.01.1996 to 14.03.1997. The plaintiff pleaded that a sum of Rs.7,63,859/- remained due towards the price of goods supplied. It further pleaded that freight charges of Rs.7,281/- were also payable by the defendant. Thus, according to the plaintiff, a total sum of Rs.7,71,140/- was due and payable by the defendant.



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7. The plaintiff further pleaded that the amounts due were debited from time to time and the amounts received on account were credited. Despite repeated demands and personal follow-up by the plaintiff's executives, the defendant did not clear the dues.

8. The plaintiff relied strongly on the defendant's communication dated 01.11.1997. According to the plaintiff, by that communication, the defendant admitted its liability and promised to clear the outstanding amount. The plaintiff pleaded that even after the said communication, no payment was made.

9. The plaintiff thereafter caused a legal notice dated 08.09.1999 to be issued through counsel by registered post with acknowledgment due. The notice was returned with the postal endorsement "unclaimed". The plaintiff therefore filed the suit.

10. The plaintiff also claimed damages of Rs.2,50,000/- towards loss of goodwill. The case of the plaintiff was that non-payment by the defendant



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placed the plaintiff in difficulty in meeting its own obligations and in taking further orders, and thereby caused loss of goodwill in the market.

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11. On these averments, the plaintiff prayed for a decree directing the defendant to pay Rs.10,21,140/- together with interest at 24% per annum from the date of plaint till realisation and costs.

12. Written Statement in brief: The defendant admitted that the plaintiff had supplied moulded insoles. But the defendant pleaded that the dues were paid regularly. The defendant specifically contended that the plaintiff had not produced invoices in support of the suit claim and that the plaintiff had filed only a statement of accounts.

13. The defendant denied the plaintiff's claim that goods were supplied between January 1996 and March 1997 in the manner stated in the plaint. The defendant also denied the claim for freight charges. According to the defendant, there was no agreement that freight charges should be borne by the defendant; ordinarily, the supplier would bear such charges.



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14. The defendant denied that it had sent any letter acknowledging liability. It pleaded that the suit was barred by limitation, since the last date of supply pleaded by the plaintiff was 14.03.1997 and the suit was filed only in October 2000.

15. The defendant also denied the claim for damages of Rs.2,50,000/- towards loss of goodwill. According to the defendant, the claim for damages was added only to bring the suit before this Court by inflating the valuation. The defendant contended that there was neither pleading nor proof of actual loss of goodwill.

16. The defendant further pleaded that the defendant's company was before the BIFR and that civil proceedings were liable to be stayed under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.



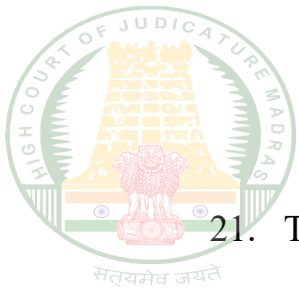
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17. Plaintiff's Reply statement: The plaintiff stated that the defendant's written statement was self-contradictory because, while admitting supply in one paragraph, the defendant denied supply in another.

18. The plaintiff also stated that supplies were made on various dates under invoices detailed in the annexure to the reply statement. It was further stated that the defendant had issued necessary 'C' Forms bearing No.TN/F 736/20 after receiving confirmation of the invoice amounts from the plaintiff.

19. The plaintiff reiterated that the defendant had acknowledged liability by fax message dated 01.11.1997 and requested time to pay the entire amount by 10.12.1997. The plaintiff therefore contended that the suit was within limitation.

20. The annexure to the reply statement contains a list of invoice numbers, dates and amounts, stated to be connected with Form 'C' for 1996-1997. The total shown in the annexure is Rs.5,32,746/-.



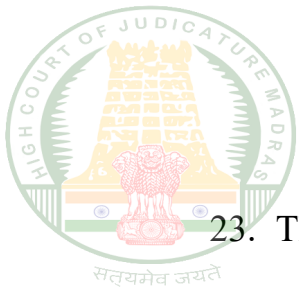
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21. The trial Court framed the following issues:

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1. Whether the plaintiff is entitled to the suit claim along with interest as prayed for?
2. Whether the suit is based on supply of goods between January 1996 to March 1997 is true?
3. Whether the plaintiff is entitled to freight charges as against the defendant?
4. Whether the suit claim is barred by limitation?
5. Whether the suit is having cause of action for the damages as claimed by the plaintiff?
6. To what other reliefs?

22. Before the Trial Court, on the side of the plaintiff, P.W.1, namely, Thiru Karra Mani, Partner of the plaintiff firm, was examined. Exs.A1 to A4 were marked. Ex.A1 dated 24.09.1997 – Fax sent by the plaintiff to the defendant; Ex.A2 dated 01.11.1997 – Reply fax sent by the defendant to the plaintiff; Ex.A3 dated 08.09.1999 – Legal notice issued by the plaintiff's counsel to the defendant; Ex.A4 for 1995-1996 – Statement of account of the plaintiff's company. On the side of the defendant, D.W.1, namely, Thiru S.Rajasekaran, was examined and marked Ex.B1 an authorisation letter dated 30.06.2017 given to D.W.1.



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23. The trial Court held that Ex.A2 did not state that the amount was due for purchase of moulded insoles from 03.01.1996 to 14.03.1997. It therefore held that Ex.A2 would not prove the plaintiff's entitlement to Rs.7,63,859/- for supply of moulded insoles during the pleaded period. The trial Court then considered Ex.A4, the statement of account. It noted that Ex.A4 was certified by one R.Shivakumar, Chartered Accountant, but that he was not examined. It further held that Ex.A4 was marked through P.W.1 and that the defendant had not admitted it. The trial Court relied on the cross-examination of P.W.1. P.W.1 had stated that he came to the conclusion about the amount due from the defendant because the defendant was aware of the due amount. The trial Court observed that P.W.1 did not state the details of the amount due to the plaintiff and that, though the plaint pleaded supply under various invoices, no invoice was produced. The trial Court further held that only if supply of goods was proved would the burden shift to the defendant to prove payment. It held that the plaintiff had not proved supply of goods in the manner pleaded. On Ex.A4, the trial Court invoked Section 34 of the Indian Evidence Act. It held that books of account must be regularly kept in the course of business and must conform to a known system of accounting. It held that Ex.A4 was merely a statement of account and was not supported by other documents kept in the ordinary course of business. On this reasoning,

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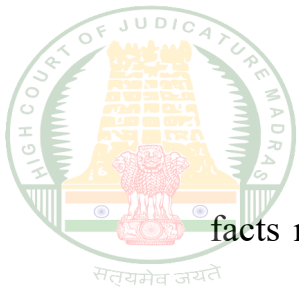


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the trial Court held that the plaintiff had failed to discharge its initial burden of proof. It also held that non-examination or non-cross-examination of the defendant would be immaterial where no onus had shifted to the defendant.

24. On Issue of limitation, the trial Court held that the suit was for goods purchased by the defendant during the period 03.01.1996 to 14.03.1997. It held that since Ex.A2 did not mention the period of liability, Ex.A2 could not be connected to the suit transaction. The trial Court therefore treated 14.03.1997 as the starting point of limitation and held that the suit filed on 25.10.2000 was barred by limitation. On Issue of damages, the trial Court held that in view of its findings on Issues 1 to 3, the issue relating to damages need not be answered. In the result, the trial Court dismissed the suit without costs.

25. Grounds of appeal: The plaintiff has challenged the judgment mainly on the following grounds: The trial Court failed to consider that the defendant admitted supply of moulded insoles in the written statement. The trial Court wrongly held that supply was not proved, though admitted



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facts need not be proved. The trial Court failed to give proper effect to

Ex.A2, which, according to the plaintiff, was an admission of liability and a promise to clear the amount by 10.12.1997. The trial Court wrongly treated the suit as barred by limitation by calculating limitation from the last date of supply, instead of from Ex.A2 dated 01.11.1997. The trial Court failed to note that once supply was admitted and payment was pleaded, the burden was on the defendant to prove payment. The trial Court erred in rejecting Ex.A4 merely because the auditor was not examined. The trial Court failed to consider that D.W.1 did not subject himself to proper cross-examination and therefore his evidence could not be acted upon.

26. Learned counsel for the appellant/plaintiff, apart from narrating the facts, submitted that the defendant had admitted the supply of moulded insoles and had also acknowledged the liability under Ex.A2 dated 01.11.1997. According to him, in Ex.A2, the defendant had stated that it could not keep up its earlier commitment to make payment on 20th October and had further stated that it would clear the dues before 10.12.1997. Therefore, it was contended that Ex.A2 amounts to acknowledgment of liability and that the suit filed on 25.10.2000 is well

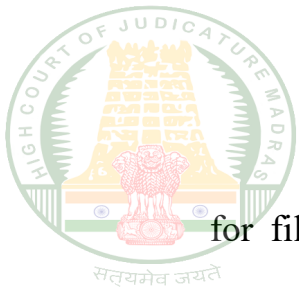


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within limitation. It was further submitted that, once the defendant admitted supply and pleaded payment, the burden was on the defendant to prove that the dues had been discharged. The Trial Court, without properly appreciating Ex.A2 and the admission in the written statement, erroneously dismissed the suit. In support of his contention, he relied on the judgment of the Honourable Supreme Court in **Anita Rani v. Ashok Kumar and others [Civil Appeal Nos.7750–7751 of 2021]**, wherein held that when the defendants admitted that the money claimed had either been paid by the plaintiff or had gone from the plaintiff's account into their account, the burden was on the defendants to prove discharge by settlement of accounts or to prove that the payment was gratuitous. Relying on the said judgment, learned counsel prayed that the appeal be allowed and the suit be decreed.

27. Per contra, learned counsel for the respondent/defendant submitted that the dues were regularly paid; the plaintiff had not produced proof for supply of goods for the suit claim between January 1996 and March 1997. The plaintiff had also not proved that the defendant was liable to pay freight charges. On limitation, learned counsel submitted that they had not sent letter acknowledging liability and there is no cause of action

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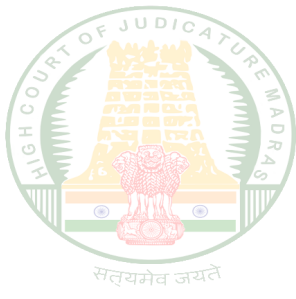


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for filing this suit. It was submitted that that since the defendant has nowhere acknowledged the debt of the plaintiff before expiry of the period of limitation, they relied on **M/s.Pentax Engineering Pvt. Ltd. v. Techno Fab Engineering Ltd. [AIR Online 2018 Del 276]**, wherein it was held the limitation would not be extended under Section 18 of the Limitation Act unless the debt is acknowledged before expiry of limitation. He also relied on **Deepak Mehta and another v. Yashi Multimedia Pvt. Ltd. and others [C.S.(OS) No.869 of 2010, dated 21.04.2014, Delhi High Court]**, wherein it was held that the admissions relied upon in that case did not amount to acknowledgment of liability within the meaning of Section 18 of the Limitation Act. He further relied on **Keshrimal Devichand Porwal v. Bhuwan Moda Suttar [AIR 1960 MP 272]** on the requirements of acknowledgment. Thus, learned counsel submitted that the suit claim was not proved, that the suit was barred by limitation, and that the appeal deserves to be dismissed.

28. The points for consideration are :

- (1) Whether the plaintiff has proved that it supplied the goods to the defendant and that the sum claimed is legally due and payable by the defendant?



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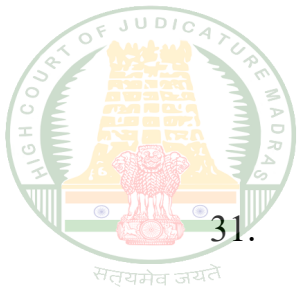
(ii) Whether Ex.A2 constitutes a valid acknowledgement of liability under Section 18 of the Limitation Act, 1963, and whether the suit is within the period of limitation?

(iii) Whether the defendant has established that the suit is not maintainable in light of the alleged proceedings before the Board for Industrial and Financial Reconstruction (BIFR)/Company Law Board, as pleaded in the written statement?

(iv) Whether the judgment and decree of the trial court dismissing the suit warrant interference?

**29. Points No. 1 & 2:** The suit is for the recovery of the price of goods allegedly supplied under several transactions spread over a period. The burden squarely rested on the plaintiff to prove each transaction giving rise to the liability.

30. Although the plaintiff pleaded that moulded insoles were supplied from time to time, none of the original invoices, delivery challans, transport receipts, or acknowledgements of delivery has been produced. No explanation has been offered for withholding these primary documents.



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31. In paragraph 3 of the written statement, the defendant admitted that there had been business dealings between the parties but specifically disputed the plaintiff's monetary claim, pleading that all dues had been paid and further asserting that the plaintiff had produced only a statement of account without any invoices. In paragraph 4, the defendant specifically denied proof of the alleged supplies. Therefore, the burden never shifted from the plaintiff.

32. The statement of account kept by the plaintiff is merely an entry in its own books. Under Section 34 of the Indian Evidence Act, entries in books of account are relevant but cannot, by themselves, fasten liability unless supported by independent evidence.

33. Ex. A2, dated 01.11.1997, undoubtedly refers to "outstanding dues" and "pending payments". However, the document neither specifies the amount due nor identifies the invoices or transactions to which it relates. It also does not enable the Court to correlate the alleged acknowledgement with the exact sum claimed in the suit. At best, Ex. A2 establishes that there were commercial dealings between the parties and that some amount remained payable. It does not prove that the specific amount claimed in the plaint represents the legally recoverable balance.

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34. In an action for the price of goods sold and delivered, the plaintiff cannot succeed merely by relying on a general acknowledgement of outstanding dues. The Court must be satisfied that the individual transactions and the quantum claimed are proved by acceptable evidence. That foundational evidence is absent in the present case.

35. Consequently, even assuming that Ex. A2 extends the period of limitation under Section 18 of the Limitation Act, the plaintiff has failed to prove the suit on the merits. The dismissal of the suit is therefore liable to be upheld, though for reasons partly different from those assigned by the trial Court.

36. Although this Court is inclined to hold that Ex. A2 can constitute an acknowledgement within the meaning of Section 18 of the Limitation Act, the plaintiff has failed to establish the supply of goods and the precise outstanding liability by producing the best available evidence, namely the invoices, delivery challans, or other contemporaneous records. The statement of account, standing alone, is insufficient in law to fasten liability. Ex. A2, being a general acknowledgement of outstanding dues, cannot dispense with proof of the individual transactions

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constituting the suit claim. Hence, the decree of dismissal passed by the trial Court does not warrant interference. Thus, these points are answered.

**37. Point No. 3:** The defendant has pleaded that the suit is not maintainable in view of an order alleged to have been passed by the Company Law Board. However, apart from raising this plea in the written statement, no material whatsoever has been placed before the Court. The alleged order of the Company Law Board has neither been produced nor marked in evidence. No witness has spoken to the nature, scope or legal effect of the said order. It is a settled principle that pleadings are not evidence. A party who asserts a particular fact bears the burden of proving it. In the absence of the order itself, this Court is unable to ascertain whether the proceedings before the Company Law Board pertained to the present transaction or whether any injunction or statutory bar operated against the institution of the present suit. Consequently, the plea regarding the maintainability of the suit on the basis of the alleged Company Law Board proceedings is liable to be rejected for want of proof.



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38. However, the rejection of the above plea does not advance the plaintiff's case. The plaintiff must still independently establish the supply of goods and the outstanding liability. For the reasons already discussed, the plaintiff has failed to prove the individual transactions and the amount claimed by producing the best evidence, namely the invoices, delivery challans, or other contemporaneous documents. Therefore, notwithstanding the defendant's failure to prove the plea founded on the alleged Company Law Board order, the plaintiff is not entitled to a decree.

39. **Point No.4:** In view of the answers arrived at in Points No.1 to 3, the appeal fails. The judgment and decree of the trial court passed in O.S.No.11253 of 2010, dated 11.10.2018, are confirmed. Consequently, the appeal is dismissed. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

**06.07.2026**

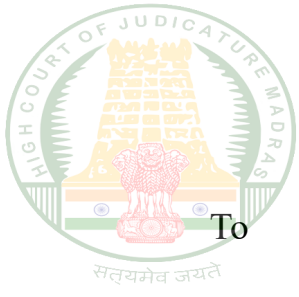
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Index: Yes/No

Speaking Order /Non-speaking order

Neutral citation: Yes/No

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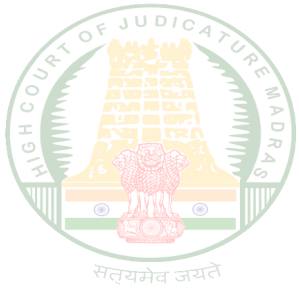
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1. The II Additional City Civil Court,  
Chennai.

2. The Section Officer,  
V.R.Records,  
Madras High Court.



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**DR. A.D. MARIA CLETE, J**

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PRE-DELIVERY JUDGMENT IN  
A.S. No. 243 of 2019

06.07.2026

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