SYED ROSHAN ZAMIR ALI

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2025:CGHC:61966

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on 10.10.2025

Judgment delivered on 23.12.2025

FA No. 508 of 2019

1. Professional Institute of Engineering And Technology Situated At State Highway 9,r/o Village Moora, Tehsil Tilda, District Raipur Chhattisgarh. Through (1) Smt. Sheela Khariya (Secretary), District : Raipur, Chhattisgarh
2. Prof. S. K. Khariya (Director) Nill
3. Dr. Swapan Kumar Sen (Treasurer) Nill

... Appellants

versus

1. Murtaza S/o Abdul Kayyum Jiya, Aged About 40 Years Proprietor Of Universal Hardware Paint And Electrical, Situated At Shop No. 3, Highway Complex, G.E. Road, Raipur, District - Raipur Chhattisgarh.
2. Dr. N. Balasubramaniya (Principal), Professional Institute Of Engineering And Technology, State Highway 9, Village Moora, Tehsil Tilda, District - Raipur Chhattisgarh.
3. Shri Ram Gargad, (Alleged To Be Present Secretary) , Shop No. 2, Highway Complex, Shahid Bhagat Singh Chowk, Raipur, District Raipur Chhattisgarh. (Defendant No. 1 Was Died During The Pendency)

... Respondent(s)

For Appellants	**:** Mr. Raza Ali, Advocate
For Respondent No.1	**:** Mr. Rohitasva Singh, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. Appellants have preferred this first appeal under Section 96 of the Code of Civil Procedure, 1908 challenging legality and validity of the judgment and decree dated 14.8.2019 passed in Civil Suit No.293B/2014 by which learned 8th Additional District Judge, Raipur has decreed the suit filed by plaintiff /respondent No.1.

2. Facts relevant for disposal of this appeal, in brief, are that plaintiff/respondent No.1, proprietor of Universal Hardware Paint & Electrical, Raipur, filed a civil suit for recovery of an amount of Rs.1,85,977/- from defendants pleading therein that defendant No.6 with the consent of defendants No.1 to 5 had approached the plaintiff and placed order for paint and other goods for its supply. Details of the order placed for supply of goods is pleaded by plaintiff in Para-4 of plaint. It is also pleaded that plaintiff has supplied other goods also, date and amount of goods supplied is mentioned in Para-5 of plaint. After receipt of goods, defendants have not paid the value of goods and amount as mentioned in bill. Plaintiff thereafter sent legal notice through his advocate to defendants and upon which they have orally requested for some time to make payment and when payment of bill was

not made, the suit was filed for recovery of total sum of Rs.1,85,977/-.

3. Defendant No.6 filed written statement to suit admitting claim as mentioned in the plaint.

4. Defendants No.1 to 4 also filed written statement denying the pleadings made in the plaint. They have denied the fact of issuing any direction to defendant No.6 or authorizing him for placing order of supply of any kind of good. Supply of any good to defendant No.1 to 4 by the plaintiff has also been denied in specific terms. It is also categorically denied that plaintiff ever supplied goods to college of defendants No.1 to 4 situated in village Murra of the value of Rs.1,77,600/- and goods valuing Rs.16,127/- at their office situated in Raipur and prayed for dismissal of suit.

5. Defendant No.5 was proceeded ex-parte.

6. Learned trial Court based on pleadings of respective parties has formulated as many as seven issues for consideration and upon considering pleadings and evidence, oral and documentary, brought on record by respective parties, decreed the suit of plaintiff by impugned judgment and decree, which is put to challenge in this appeal.

7. Learned counsel for appellants would submit that judgment and decree passed by learned trial Court is perverse. He contended that respondents No.1 to 4 have not directed

respondent No.6or authorized him for placing order to purchase goods. It is further contended that plaintiff failed to prove placement of order by defendant No.6 or in consequence had supplied goods as ordered by defendant No.6. No document is placed before learned trial Court to prove the same. It is also contention of learned counsel for appellants that defendant No.6 at no point of time was appointed/deputed on any post in appellant institute. Learned trial Court has overlooked evidence of plaintiff wherein he admitted that he has not maintained any record like ledger book to show supply of material to appellant institute. Defendant No.6 has not entered into witness box to prove his pleadings and therefore written statement stated to be submitted on behalf of defendant No.6 and facts pleaded therein remain unproved. Appellants have not placed any order of supply of goods nor the goods have been received in the institute/office of appellant, as pleaded in plaint. Pleadings and evidence of plaintiff that the goods were received by one R.N. Sahu working in the institute of appellant is *per se* wrong as there is no employee of that name in the institute/office of appellants. Learned trial Court erred in not appreciating evidence properly and arrived at wrong conclusion.

8. Learned counsel for respondent No.1/plaintiff supported the impugned judgment and decree.

9. Heard learned counsel for respective parties and perused the documents placed on record.

10. Plaintiff in support of the pleadings in plaint has produced Ex.P-1 which is legal notice issued by him to appellants; Ex.P-2 to Ex.P-8 are postal receipts; Ex.P-9 to Ex.P-12 are postal acknowledgments; Ex.P-13 is another legal notice issued by plaintiff; Ex.P-14 and Ex.P-15 are acknowledgments. Ex.P-16 to Ex.P-18 are postal receipts. Ex.P-19 is printed piece of paper stating it to be ledger account of defendants / appellants herein, which only mentions the credit sales account on certain dates as mentioned therein. Ex.P-20 is receipt book.

11. To prove the facts pleaded in plaint, plaintiff examined himself as PW-1, Pradeep Sahu as PW-2 and Sunil Kumar Sahu as PW-3.

12. Defendant No.1 to support the pleadings made in written statement has examined Shahid Ahmed Khan, an employee of defendant Institute, as DW-1. Dr. Swapan Kumar Sen, Treasurer of defendant Institute, as DW-2.

13. In Para-4 of plaint description of goods supplied and its value is mentioned. In Para 4A date of supply is mentioned to be 8.6.2013 and value of goods supplied is mentioned as

Rs.1,15,600/-. In Para-4B, name of goods supplied on 18.6.2013 of the value Rs.62,000/- is mentioned. In Para-5, with date, amount is mentioned against goods. Specification of goods supplied is not mentioned therein. In evidence, plaintiff has not placed any document to show that order has been placed by defendant Institute in writing, rather as per pleadings made in plaint the order is alleged to have been placed by defendant No.6.

14. Plaintiff has not submitted before trial Court in evidence any voucher/bill with description of goods supplied, date, value as well document showing its receipt by any person. Only document in proof of supply which is placed before learned trial Court is computer printed piece of paper showing to be ledger account of defendants in which there is no mention of specification of goods but sales account and amount therein shown to be debited. Plaintiff has not produced the document to prove sales, more so when according to pleadings made in plaint the sales is on credit.

15. Ex.P-20 is the receipt book stated to be of plaintiff in which value of goods supplied on different dates i.e. 17.5.2013, 18.5.2013, 28.5.2013, 30.5.2013 till 18.6.2013 is mentioned. This document cannot be accepted to be receipt of goods supplied on a particular date and can be accepted in evidence. To prove the supply of goods it is for the plaintiff to

place on record vouchers/receipt of goods despatched to defendant institute, more particularly when supply is stated to be made on credit basis.

16. Murtaza (PW-1) in Para-9 of his cross-examination had admitted that he has not placed before the trial Court stock register, party ledger and khatoni account. Though in the same para he stated that he has submitted ledger book, however, no such document is available in record. Ledger account is in a piece of paper printed through computer without any details of goods. Plaintiff is the Proprietor of shop dealing in sale and purchase of paints, hardware and electrical goods. From the pleadings in plaint when the goods worth Rs.1,85,985/- have been supplied on credit, then business of plaintiff might be of large scale. If not in ordinary course, the shopkeepers like plaintiff has to maintain accounts for the purpose of fulfilling other liabilities towards the government taxes including income tax.

17. In Para-4 of cross-examination, plaintiff admitted that he is having good relations with defendant No.6 and further admitted that no employee is available in the name of Ashok Dubey in the institute of defendants. Plaintiff himself stated that Ashok Dubey was silent worker. Plaintiff examined Pradeep Sahu as PW-2, who is employee of plaintiff. This witness in examination-in-chief has stated that he is working

with plaintiff since last 12 years and he is known to the officials of defendant Institute. He went to deliver the goods ordered by defendants. He also stated that when he used to go to deliver goods, it was entered in register kept at main gate. He also stated that he has supplied/delivered 20 buckets of primer each containing 20 liter; 30 buckets of acrylic paint each containing 20 liter, which was on credit. On several occasions he has delivered goods in small quantity. In cross-examination he admitted that he has not seen order placed by defendants. He has not submitted before the trial Court copy of pages of register kept at main gate of institute in which entries were made.

18. Sunil Kumar Sahu (PW-3) is witness to the supply of some goods to defendants. He stated that he has obtained receipt of goods supplied by him and further that he is not aware of the name of that person who gave receipt. No such receipt is exhibited on record by this witness or plaintiff.

19. Though defendant No.6 has submitted written statement admitting entire claim of plaintiff, however, he did not appear in witness box for his examination and cross-examination. Plaintiff has even not made any application to call defendant No.6 as a witness even though when he admitted entire case of plaintiff and further when plaintiff in his cross-examination has admitted that he is having good relations with defendant

No.6. Aforementioned facts may be sufficient to draw adverse inference against defendant No.6.

20. Shaheed Ahmed Khan (DW-1), an employee of defendant Institute, gave evidence according to the pleadings made in written statement. He categorically stated in cross-examination that defendant No.6 was never employed with defendant Nos.1 to 4; defendant No.6 had never placed any order on behalf of defendants No.1 to 4 as no such document has been produced by plaintiff. It is settled law that burden to prove the facts pleaded in plaint is upon the plaintiff. Plaintiff cannot be permitted to take benefit of weakness of defendant. He has to stand on his own foot.

21. As discussed above, plaintiff could not able to prove that any order for supply of goods, as alleged, has been placed by defendants No.1 to 4. No receipt of supply of goods has been produced nor any voucher/bill of goods supplied on different dates is placed before the trial Court for consideration. Plaintiff has further not placed accounts to be maintained by him with regard to supply of goods in credit, in particular to defendant No.1 to 4. Ex.P-19 cannot be treated to be ledger account of defendants No.1 to 4, which is maintained by plaintiff.

22. Learned trial Court in Para-19 has erroneously made observation that when plaintiff's witnesses have stated that

they have supplied the goods and entry in this regard is made in the register kept at the main gate of institute of defendants, which was in possession of defendant No.1 to 4, but they have not produced register to proof that no such goods have been entered in register as stated to be supplied by plaintiff. Learned trial Court erroneously come to the conclusion that there is no necessity of producing stock register, party ledger, ledger book and khatoni khata, when entire claim of plaintiff with regard to supply of goods has been denied. Learned trial Court further erred in observing that it is relevant only when defendants have accepted the supply of goods and there is dispute with regard to quantity of goods or amount claimed for recovery. It is the case where plaintiff is a businessman, doing business in large scale of, paints, hardware and electrical items. Therefore, it is for the plaintiff to prove supply of goods as mentioned in the plaint and legal outstanding dues to be recovered from defendants.

23. Learned trial Court in Para-21 of impugned judgment has erroneously concluded that plaintiff has proved the case on the basis of preponderance of probabilities. Preponderance of probabilities is a legal standard of proof, mainly in civil cases, meaning a fact is considered true if an evidence shows it is more likely then not to have happened, outweighing the opposite. It is like a balance scale where the evidence for

one side weights more heavily even slightly than other proving the claim is more plausible than not. It is like tipping the scale of justice which is slightly in favour of one side, not needing absolute proof. It is about considering a fact to be more plausible or probable based on evidence. In case at hand, plaintiff except his pleadings and own oral evidence failed to demonstrate or produce any kind of evidence i.e. documentary in the facts of the case where the root of the case is a business transaction and hence, the balance will not tilt in favour of plaintiff.

24. In case of **Dr. N. G. Dastane Vs. Mrs. S. Dastane** reported in (**1975) 2 SCC 326,** Hon'ble Supreme Court held as under :-

> “24. The normal rule which governs civil proceedings is that a fact can be said to be established if it proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist considers its existence so probably that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he inks that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable a the second. Within the wide

> range of probabilities, the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issue like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue "Per Dixon, J. In Wright vs. Wright (1948) 77 C.L.R. 191 at p. 210; or as said by Lord Denning, "the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear". Blyth vs. Blyth (1966) 1 A.E.R. 534 at 536. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged".

25. The doctrine of preponderance of probabilities was discussed in the judgment titled Postgraduate Institute of Medical Education and Research Vs. Jaspal Singh, (2009) 7 SCC 330 which reads as under :-

> "17. In Syad Akbar Vs State of Karnataka (1980) 1 SCC 30 this curt dealt with in details the distinction between negligence in civil law n din criminal law. It has been held that there is marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man, beyond all reasonable doubt".

26. In the case of **M. Siddiq (Dead) Through Legal Representatives (Ram Janambhumi Temple Case) vs.**

Mahant Suresh Das and others, reported in (**2020) 1 SCC 1**, Hon'ble Supreme Court held as hereunder:-

> “721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in Bater v. Bater, 1951 P. 35 (CA) where he formulated the principle thus: (p. 37)
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> > "... So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter." (emphasis supplied)
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> 725. The Court recognised that within the standard of preponderance of probabilities, the degree of probability is based on the subject-matter involved.
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> 726. In State of U.P. v. Krishna Gopal, [State of U.P. v. Krishna Gopal, (1988) 4 SCC 302 : 1988 SCC (Cri) 928], this Court observed: (SCC p. 314, para 26)
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> > "26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge."

27. Considering the facts and circumstances, as discussed above, in the light of above decisions of Hon'ble Supreme Court, in the considered opinion of this Court, the plaintiff has failed to prove his case on the touchstone of preponderance of probabilities. The plaintiff fails to prove the foundational fact, that there exists a jural relationship between the parties i.e. of seller and purchaser. Besides, the oral testimony of the plaintiff, no evidence is brought on record by the plaintiff, collectively or in isolation, which would aide in establishing the jural relationship between the parties. Once, the jural relationship between the parties, remain unproved, there is no question of recovery of money on that account.

28. In the aforementioned facts of the case and evidence available on record, in the considered opinion of this Court, the plaintiff failed to prove that defendant No.1 to 4 had placed any order for supply of goods as pleaded in plaint making the plaintiff entitled for recovery of amount of Rs.1,85,977/- as claimed.

29. For the foregoing discussion, the appeal is allowed, impugned judgment and decree passed by learned trial Court is set aside and the suit of plaintiff is dismissed.

30. A decree be drawn-up accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-