AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

(Judgment reserved on 04.03.2024)

(Judgment delivered on 03.04.2024)

FAM No. 8 of 2022

1 - M/s Bhatia Wine Merchants Pvt. Ltd. D-1 Licensee and Country-made Liquor Supplier, Village-Dhuma, Tehsil-Mungeli, District-Mungeli, Chhattisgarh through its Director Shri Satwinder Singh Bhatia, Aged About 48 Years, S/o Mahendra Singh Bhatia, Resident of Dayalband, Bilaspur, Chhattisgarh **--- Appellant**

Versus

1 - State of Chhattisgarh through Collector, Janjgir, District-Janjgir Champa,,Chhattisgarh

2 - Collector (Excise) Janjgir, District-Janjgir Champa, Chhattisgarh

3 - Assistant Commissioner Excise, Janjgir, District-Janjgir Champa, Chhattisgarh **--- Respondents**

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For the Appellant	: Mr. Ravish Agrawal, Sr. Advocate with Mr. Abhishek Vinod Deshmukh, Advocates.
For the Respondents	: Mr. R.K. Gupta, Addl. Advocate General

Hon'ble Shri Justice Goutam Bhaduri &
Hon'ble Shri Justice Radhakishan Agrawal

CAV Judgment

The following judgment of the Court has been dictated by **Goutam Bhaduri, J**

1) This appeal is against the judgment and decree dated 17.10.2022 passed by the Commercial Court Raipur, wherein the civil suit filed by the plaintiff-appellant bearing C.S. No.05-B/2019 claiming accrued interest on Rs.2,06,30,196/- which the plaintiff claimed to be deprived, was dismissed.

2) The brief facts as pleaded in the plaint is that the plaintiff was engaged

in supply of country liquor in District Janjgir under a contract with the State. According to the plaintiff, the State clamped the charge that the appellant has violated the provisions of sub-rule 4(a) of Rule 4 of C.G. Country Spirit Rules 1995 by not maintaining minimum stock of bottled liquor at each "mnufacturing warehouse" and the show cause notice was issued. Thereafter, the Excise Department through its officer instituted 5 cases in Court of Collector Excise Janjgir Champa. The Collector Excise imposed a penalty of Rs.2/- per litre on the plaintiff in all cases under Rule 12(2) of the the C.G. Country Spirit Rules 1995 (For short "Rules 1995") thereby a total sum of Rs.1,59,30,050/- towards fine was imposed in all 5 cases. The amount of fine was deducted by the State Excise Department from the amount of running bills payable to the plaintiff. Subsequently, the plaintiff challenged the said penalty order before the Commissioner, Excise, by filing the appeal which was dismissed u/s 62(2)(c) of The Excise Act, 1915. Thereafter, the plaintiff challenged the said order before the Revenue Board, Bilaspur. The Revenue Board held that the penalty imposed on the plaintiff was not in accordance with law as it has not caused any damage to the State. Thereafter, the order of Revenue Board was challenged before the High Court in a writ petition. The writ petition was dismissed whereby the imposition of penalty which was held illegal was affirmed.

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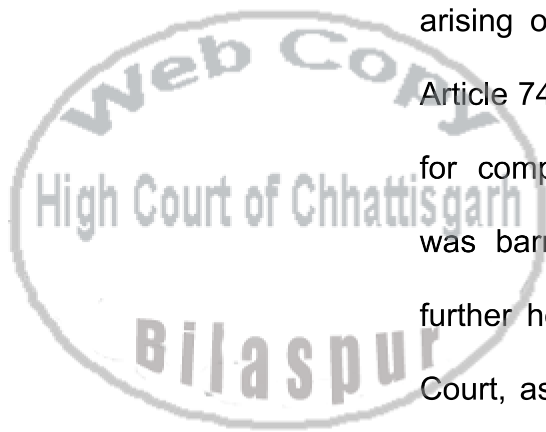
3) According to the plaintiff, the defendants refunded the amount recovered from plaintiff towards penalty of Rs.1,59,30,050/- on 27.7.2018 , but did not pay the interest thereon. According to the plaintiff, during the period from 2012 to 2018, he was compelled to pay interest of Rs.2,06,30,196/- on the aforesaid amount which he borrowed from the Bank . Since the imposition of penalty of Rs.1,59,30,050/- was held to be illegal, the plaintiff claimed that he is entitled to get interest amount of Rs.2,06,30,196/- from the defendants.

4) The defendants/State pleaded that though the penalty was held to be illegal but the action of the State cannot be said to be malafide. It is further pleaded that since the plaintiff did not claim any interest during the course of proceeding before the Revenue Board, separate suit would not be tenable only for interest. The Defendants/State further pleaded that since the plaintiff has not produced any bank account statement, pass-book to establish the fact that they have maintained any account of borrowing and paid interest thereof, as such, the interest cannot be awarded.

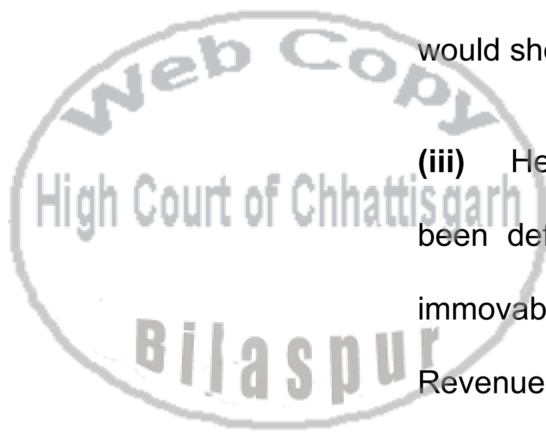
5) The learned Commercial Court framed as many as 5 issues and held that the suit filed by the plaintiff was predominantly for compensation arising out of malicious prosecution initiated against him and as per Article 74 of The Limitation Act, 1963, the period of limitation is one year for compensation for a malicious prosecution. It was held that the suit was barred by limitation and dismissed the suit. The Commercial Court further held that the plaintiff has failed to prove their case before the Court, as such, the plaintiff was non-suited. Being aggrieved by such order, the instant appeal.



6) **(i)** The learned counsel for the appellant would submit that the plaintiff suffered a huge loss on account of wrongful recovery of illegitimate dues which was returned to him after 6 ½ years. Since the interest was paid on the imposed penalty of Rs.1,59,30,050/- which was borrowed from the Bank, the suit was maintainable as per Article 113 of the Limitation Act as no prescribed period of limitation is provided in the Schedule.

(ii) It was further stated that the plaintiff was put to a huge loss of money due to the penalty imposed and recovery so made and the said act of defendants was held to be illegal by the Revenue Board, which was further upheld by this Court. The counsel would further submit that

the adjustment of penalty imposed from the running bills of the plaintiff cannot be justified in view of section 2(8) which defines “excise revenue” read with section 64 of The C.G. Excise Act, 1915 which provides procedure for recovery of government dues. He would submit that a plain reading of Section 64(1) sub-sections (a) & (c) in its entirety would show that recovery of government dues can be made from the person primarily liable to pay the same or from his surety (if any) and in case of failure, the recovery can be made by sale of his movable property or by any other process for recovery of land revenue due from land holders or from farmers of land or their sureties. He would submit that the recovery of like nature does not allow the adjustment from the running bills of plaintiffs. Therefore, *per-se* the written statement filed by the State would show that in the fiduciary capacity, the State withheld the amount.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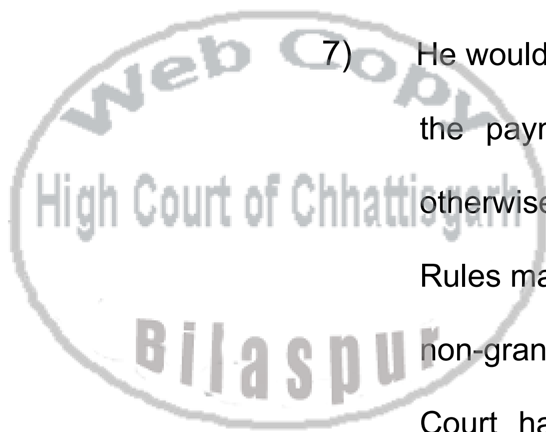
(iii) He would further submit that recovery of “excise revenue” as has been defined in section 2(8) can only be done by distress sale of immovable property and by RRC. Referring to the judgment of Revenue Board (Ex.P-18) dated 27.09.2014, it is submitted that the Revenue Board found no breach of conditions of license was committed by the appellant and recovery *per-se* was held to be bad.

(iv) Referring to C.G. Country Spirit Rules 1995, it was contended that sub-rule (5) of Rule 12 contemplates that the Excise Commissioner may suspend or cancel the license u/s 31 of the Act and may also black-list the licensee on breach or contravention of any of these Rules or of the provisions of Act or of the Rules made thereunder. The licensee shall be liable for any loss caused to Government as a result of such suspension or cancellation of the licence. Therefore referring to the decision in ***Ram Ratan Gupta Versus State of Madhya Pradesh AIR 1974 M.P. 101***, it is contended that in excise matter, the revenue recovery is made only as per the mode of recovery and if the statute

has laid down certain procedure then such procedure has to be adopted.

(v) It is further submitted that sub-section (1) of Section 4 of The Interest Act, 1978 contemplates that interest shall be payable in all cases in which it is payable by virtue of any enactment or other rules of law or usage having the force of law. Referring to sub-section (2) of Section 4, it is submitted that since the interest is payable under certain enactments, the Court can grant interest from the date specified and in case of non-grant of interest, special reasons have to be assigned why interest should not be granted and the obligation to pay money or restore any property which arises by virtue of a fiduciary relationship is also covered.



7) He would submit that since the mode of recovery of penalty by deducting the payment of running bills of the plaintiff or any adjustment is otherwise than a procedure contemplated by the Excise Act and the Rules made thereof, the defendants would be liable to pay interest and non-grant of interest would be illegal. He submits that the learned trial Court has completely misdirected to hold that there had been no malicious prosecution regarding recovery of penalty and thus came to a wrong finding.

8) Referring to Ex.P-21, Ex.P-24, learned counsel would submit that the amount of interest so levied has been proved by P.W.1 and P.W.2 and P.W.3 is a Chartered Accountant whereas P.W.4 and P.W.5 are the officials of the Bank.

9) Referring to the decision rendered in ***Tata Chemicals Limited Versus Commissioner of Customs (Preventive), Jamnagar (2015) 11 SCC 628 Para 18,*** he would submit that if the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of law at all. The

Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person.

10) **(i)** Per contra, learned State Counsel would submit that the penalty was the consequence of quasi-criminal proceedings, therefore, interest cannot be claimed as damage/compensation. It is stated that since 5 cases were registered for violation of Rule 4(4)(a) of Chhattisgarh Country Spirit Rules 1995 as the appellant failed to maintain minimum stock at each manufacturing warehouse, the proceedings were initiated by the Collector which led to imposing penalty. Therefore, the penalty was in nature of punishment.

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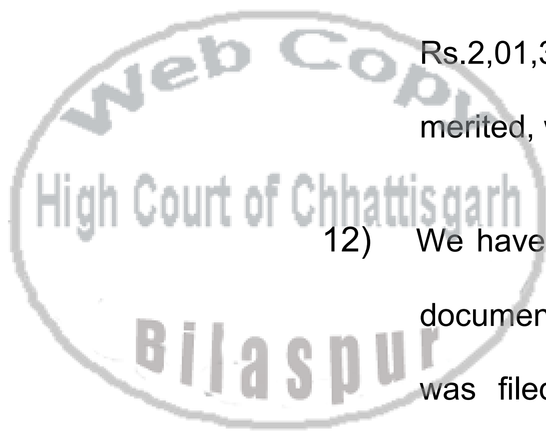
(ii) It was further stated that there is no provision for payment of interest in case of refund of penalty amount either in C.G. Excise Act, 1915 or in the Rules of 1955 unlike Section 244 of the Income Tax Act, 1961, which provides for nominal interest. Nor the claim of interest is covered by the provision of Section 34 of CPC or the provisions of the Interest Act, 1978. Therefore, in absence of any statutory provision, interest cannot be claimed by way of compensation/damage for mlicious act.

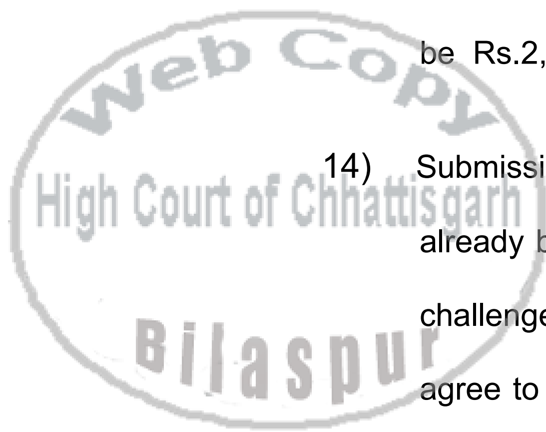
(iii) It was further contended that no foundational pleading and evidence was made regarding Cost Price Bill and the specific pleading is made in Paras 5 & 8 of the Plaint that the penalty amount of Rs.1,59,30,050/- was recovered by adjusting this amount from the payable amount of Cost Price Bill. The burden of proof was on the plaintiff to establish the fact that what was the Cost Price Bill and how it came into existence and how the amount gets accumulated becomes payable to the plaintiff etc., and in absence of such foundational factual pleadings, the plaintiff could not have proved as to what amount in Cost Price Bill had become payable to the plaintiff.

11) It is further contended that the claimed amount of interest was not proved. It is submitted that as per the plaintiff, the penalty amount became a burden for him to discharge the loan taken from Bank and he had to pay the interest and compound interest accumulated to the tune of Rs.2,01,30,196/-. However, the appellant plaintiff has failed to plead the details as to what was the duration for which the simple interest was charged and for what duration compound interest was charged and what were the rates of simple and compound interest. Though the document has been filed vide Ex.P/12 to substantiate the claim but the contents of this document have not been proved by the witnesses. That apart, Ex.P-12 does not speak anything about the rate of interests that has been charged on the principal amount quantifying to the tune of Rs.2,01,30,196/-, as such, the order of the Commercial Court is well merited, which do not require any interference.



12) We have heard learned counsel for the parties at length. Perused the document. Prima facie, the finding of Commercial Court that the suit was filed by the plaintiff for malicious prosecution appears to be misdirected and a wrong finding was drawn. The case of the plaintiff was that 5 cases were registered for violation of Rule 4(4)(a) of the C.G. Country Spirit Rules, 1995 as the minimum stock was not kept in different godowns and as per Rule 12(4) of the Rules, penalty not exceeding Rs.2/- per litre is imposable on the quantity of short supply of spirit. The show-cause notice was subsequently issued after hearing on 05.09.2011 and on that date, the Collector Janjgir passed the order imposing a total penalty of Rs.1,59,30,050/- in all 5 cases. The said penalty amount was recovered from the running bill amount payable to the appellant under the Cost Price Bills by the respondent towards supply of liquor to warehouses. The said order of imposing penalty was subject of appeal before the Commissioner, Excise, which was dismissed by order dated 10.04.2012.

13) Being aggrieved by such order, the revision was preferred by the petitioner before the Board of Revenue which was allowed by order dated 27.09.2014 Ex.P-18 and the finding of both the Courts below was set aside holding that the imposition of penalty was not in accordance with the settled principles of law. Against such order of Board of Revenue, the State Government filed writ petitions which came to be dismissed by order passed by this Court on 06.03.2018 and 20.03.2018 vide Ex.P-14 to 16 & 17 whereby the order of Board of Revenue was affirmed. Subsequently, the dispute started when the State refunded the penalty amount of Rs.,1,59,30,050/-. According to the plaintiff/appellant, the recovery by deduction was made in January 2012 and the refund was made on 27.01.2018, therefore, the quantified interest reckoned to be Rs.2,01,30,196/- was claimed.



14) Submission of the appellant that the penalty cannot be imposed as has already been held to be illegal by the Revenue Board and subsequent challenge to such order was also dismissed by the High Court. We agree to the proposition that the respondent authorities did not perform their duty in accordance with law while imposing penalty as the imposition of penalty in such manner was not contemplated under the law. However, when the claim is made for payment of interest for the loss sustained, we would venture to go into the fact whether such fact has been proved before the Commercial Court. With this view we examined the evidence.

15) The plaintiff appellant has produced a Certificate Ex.P.12 which is under the letter-head of Punjab and Sindh Bank addressed to the Appellant wherein it is scribed that on a request made by the appellant vide letter dated 21.8.2018, the interest charged on amount Rs.1,59,30,050/- for the period from 01.02.2012 to 30.06.2018 comes to Rs.2,01,30,196/-. This letter is proved by P.W.1 Satvinder Singh Bhatia, the plaintiff. The

other plaintiff witness Ajay Kumar (P.W.4) who is Chief Manager of Punjab & Sindh Bank has stated that he was posted as Chief Manager, Punjab and Sindh Bank since July 2020 till date and states that he has seen the letter Ex.P-12 dated 21.08.2018 which bears the signature of former Chief Manager Mr. Prem Shankar Singh. He further states that the account statements Ex.P-21, P-22, P-23 & P-24 which are the account sheets filed by the plaintiff were issued by the Branch. In the cross examination of this witness, he states that he cannot tell the name of officer who signed the account statements vide Ex.P-21 to Ex.24. He admits the fact that the copy of account statements filed by the plaintiff was not certified as per the provisions of The Bankers' Books Evidence Act. He further admits the fact that these account statements are computer generated and do not bear the Certificate u/s 65-B of the Indian Evidence Act. He further submits that Ex.P-12 & P-21 to P-24 were not issued by him and were issued prior to his joining office. The plaintiff has claimed the interest for the unpaid or with-held amount.

16) In order to prove the accounts and the quantum of interest, the plaintiff has also examined one Ajay Sindhwani, Chartered Accountant as P.W.3. With respect to interest, he states that the certificate regarding finance cost incurred by the plaintiff Company was issued by him for the financial years 2011-2012 to 2018-2019 vide Ex.P-27 and it bears his signature at A to A. In cross examination, this witness states that certificate was prepared on the basis of account books which were prepared by the accountant of the Plaintiff Company and not by the witness. Ms. Smita William who was Manager of Punjab & Sindh Bank States that she had seen the Account statements Ex.P-21, 22, 23 & 24 in the Court file which were printed by the clerk of the Bank. She states that all the statements bear her signatures at point A to A along with bank seal and a certificate u/s 65-B of the Evidence Act regarding correctness of these documents was issued vide Ex.P-28 and it bears

her signature at point A to A.

17) The case of the plaintiff is that they were required to pay interest for the amount withheld by the State and they heavily relied on accounts statements Ex.P-21 to 24. The question which cropped up before us is as to whether the entries in the Account Sheets are admissible in evidence or not. The Letter (Ex.P-12) is a secondary evidence. The primary evidence has not been produced and it is based on account-statements vide Ex.P-21 to P-24. A perusal of the accounts sheets would show that it lacks the compliance of statutory requirement as envisaged in the Bankers' Books Evidence Act, 1891. Section 2(8) and Section 2-A read with section 4 of the Act 1891 would be necessary for adjudication of dispute and quoted below :

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> "2[(8) "certified copy" means when the books of a bank,-- (a) are maintained in written form, a copy of any entry in such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, and where the copy was obtained by a mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but where the book from which such copy was prepared has been destroyed in the usual course of the bank's business after the date on which the copy had been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and
>
> (b) consist of printouts of date stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2A;]
>
> (c) a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other

process which in itself ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of Section 2A.

[2A. Conditions in the printout.-- A printout of entry or a copy of printout referred to in sub-section (8) of Section 2 shall be a accompanied by the following, namely :-

(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and

(b) a certificate by a person in-charge of computer system containing a brief description of the computer system and the particularts of--

(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons;

(B) the safeguards adopted to prvent and detect unauthorised change of date;

(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons

(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;

(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;

(F) the mode of identification of such data storage devices;

(G) the arrangements for the storage and custody of such storage devices;

(H) the safeguards to prevent and detect any tampering with the

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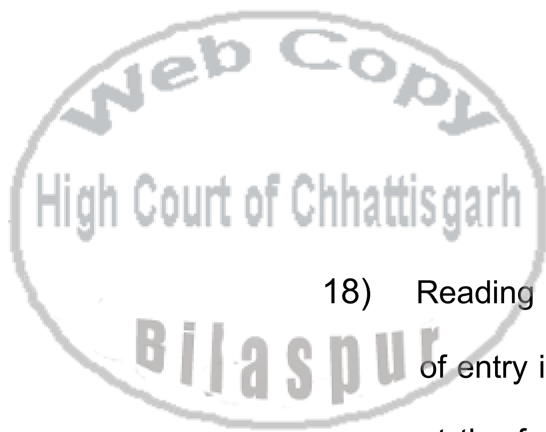
system; and

(I) any other factor which will vouch for the integrity and accuracy of the system.

(c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.]

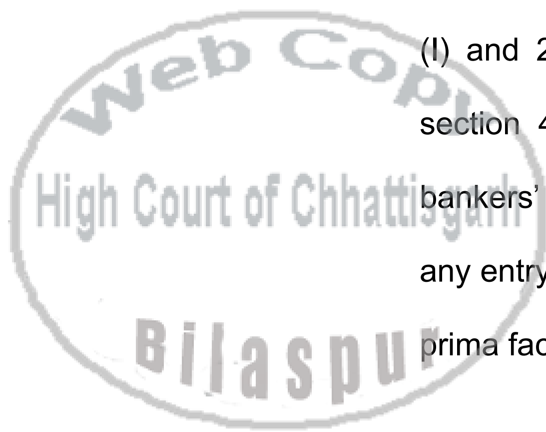
4. **Mode of proof of entries in bankers' books.--** Subject to the provisions of this Act, a certified copy of any entry in a banker's books shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise."



18) Reading of Section 2(8) would show that "certified copy" means a copy of entry in such books maintained by the Bank, with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the Bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank and where a copy was obtained by a mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect.

19) In the instant case, efforts were made to prove the copies of the account statements as P.W.4 Ajay Kumar, Chief manager of the Bank has deposed that account statements Ex.21 to Ex.24 were issued by the Branch. Similarly P.W.5, Manager of the Bank deposes that the account sheets were printed by a Bank Official and were attested by her and a certificate under Section 65B of the Evidence Act was brought by her

regarding correctness of account statements. A perusal of her evidence shows that this witness (P.W.5) satisfies only one part of the certificate and the other part of certificate which is required is missing as the said certificate is not in consonance with the terms of the Bankers Book Evidence Act, 1891. Section 2A contemplates the conditions in the print out. It also requires that when a printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by a certificate to the effect that it is a print out of such entry or a copy of such print out by the principal accountant or branch manger as also a certificate by a person in charge of computer system containing brief description of the computer system and the particulars of some safeguards adopted by the system as mentioned in section 2A (b) (A) to (I) and 2(8)(a)(b)(c) of the Act. If such conditions are fulfilled, then section 4 makes it special provisions relating to mode of entries in bankers' book. Subject to the provisions of this Act, a certified copy of any entry in Banker's Book shall in all legal proceedings be received as prima facie evidence of the existence of such entry.



20) When we go through the bank letter Ex.P-12 which is based on account sheets it does not reflect the fact as to how such quantum of amount was arrived at . Further more, the account sheets are not certified to be admitted for evidence of the matters, transactions and accounts therein recorded. The Supreme Court in ***Chandradhar Goswami & others Versus Gauhati Bank Ltd (1967) 1 SCR 898 : AIR 1967 SC 1058*** has laid down the procedure at para 6. Relevant portion of Para 6 is extracted below:

> "6. The main question urged before us is that there is no evidence besides the certified copy of the account to prove that a sum of Rs.10,000/- was advanced to the appellants and therefore in view of Section 34 of the evidence Act the appellants cannot

be saddled with liability for that amount. Section 34 is in these terms :

> "Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such settlements shall not alone be sufficient evidence to charge any person with liability.

It is clear from a bare perusal of the section that 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. ……………………………………………………………… ……………….. But all that the bank did was to produce a certified copy of account under Section 4 of the Bankers' Books Evidence Act, 18 of 1891. Section 4 of that Act reads thus -

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> "Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise."

It will be clear that section 4 gives a special privilege to Banks and allows certified copies of their accounts to be produced by them and those certified copies become prima facie evidence of the existence of the original entries in the accounts and are admitted as evidence of matters, transactions and accounts therein, but such admission is only where, and to the same extent as, the original entry itself would be admissible by law and not further or otherwise.

> **Original entries alone under Section 34 of the Evidence Act would not be sufficient to charge any person with liability and as such copies produced under Section 4 of the Bankers' Books Evidence Act obviously cannot charge any person with liability. Therefore, where the entries are not admitted it is the duty of the bank if it relies on such entries to charge any person with liability, to produce evidence in support of the entries to show that the money was advanced as indicated therein and thereafter the entries would be of use as corroborative evidence. But no person can be charged with liability on the basis of mere entries whether the entries produced are the original entries or copies under Section 4 of the Banker's Books Evidence Act.** ………….. We are therefore of the opinion that in view of Section 34 of the Evidence Act the appellants cannot be saddled with liability for the sum of Rs.10,000/- said to have been advanced on March, 19, 1947 on the basis of mere entry in the amount. Section 34 says that such entry alone shall not be sufficient evidence, and so some independent evidence had to be given by the bank to show that this sum was advanced. ………………"

(Emphasis applied)

21) Applying the ratio laid down by the Supreme Court in *Chandradhar Goswami Vs. Gauhati Bank (supra),* we are of the view that the plaintiff was not able to prove the fact that on account of withholding the amount, they suffered loss and was required to pay the quantified interest as claimed on a loan obtained from the Bank, therefore, it is not clear how the quantum of interest was arrived to Rs.2,01,30,196/-.

22) Though we do not agree with the finding of Commercial Court about *"the suit being barred by limitation is not maintainable"* but on other aspect after going through the records, on merits, we are unable to accept the contention that the appellant/plaintiff was able to prove the fact that he

sustained a loss of Rs.2,01,30,196/- towards interest on account of withholding of amount. Therefore, the claim of the appellant for payment of interest is not sustainable. Accordingly, the appeal is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Radhakishan Agrawal)
Judge

Rao

FAM No. 8 of 2022

(M/s. Bhatia Wine Merchants Pvt. Ltd Vs. State of Chhattisgarh and others)

CASE-NOTES

No person can be charged with liability on the basis of mere entries and proof is needed as to whether the entries produced are the original entries or copies u/s 4 of the Bankers' Books Evidence Act, 1891.

किसी व्यक्ति पर दायित्व केवल प्रविष्टियों के आधार पर अधिरोपित नहीं किया जा सकता और इस संबंध में प्रमाण की आवश्यकता है कि प्रस्तुत की गई प्रविष्टियाँ बैंककार बही साक्ष्य अधिनियम, 1891 की धारा 4 के अन्तर्गत मूल प्रविष्टियाँ अथवा प्रतियाँ हैं या नहीं।