

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

R.F.A. No. 08 of 2019

Prem Pradhan,
S/o Late P.K. Pradhan,
R/o Duga, Rangpo,
East Sikkim.

..... Appellant

Versus

Santosh Rai,
S/o Padam Rai,
R/o Daragaon, Turuk-Billing,
Melli, South Sikkim.

.....Respondent

**Appeal under Order XLI, Rules 1 and 2 of the Code of
Civil Procedure, 1908.**

*(Memorandum of appeal against the Judgment and Decree dated 30.03.2019
passed by the Learned District Judge, Special Division-I, Sikkim at Gangtok in
Money Suit No. 22 of 2016 **Prem Pradhan vs. Santosh Rai**).*

Appearance:

Mr. Sajal Sharma, Ms. Roshni Chettri, Ms. Puja
Kumari Singh Advocates for the Appellant.

Mr. Manish Kumar Jain, Advocate for the Respondent.

Date of hearing : 24.08.2022 & 31.08.2022
Date of Judgment : 13.09.2022

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The Regular First Appeal (appeal) is directed against the impugned judgment dated 30.03.2019 passed by the learned District Judge, Special Division-I, East Sikkim at Gangtok (learned District Judge) in Money Suit No. 22 of 2016. The appellant also preferred an application under

Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1973 (CPC) for production of additional evidence. This court considered this application and vide judgment dated 31.03.2022 allowed it. Pursuant thereto additional evidence has been taken and placed before this court for consideration in the present appeal.

2. The case of the appellant in the plaint was that he is the owner and operator of Himalayan Hatcheries located in Duga, Pendam, East Sikkim which deals in the business of poultry farming. The respondent is a poultry farmer from Daragaon, Turuk and the appellant's customer. Since 2014 the respondent purchased day old chicks from the appellant on credit basis for a sum totaling to Rs.17,60,105/- which liability has been admitted and accepted in writing by him. On 29.11.2014 they signed an agreement in the presence of witnesses in which the respondent accepted the liability, gave the plaintiff four blank cheques bearing No.489729, 489728, 489727 and 489726 to hold until the amount was fully paid. It was also agreed that the payment shall be made in installments and the first by the end of December, 2014. On 30.12.2014 the appellant called the respondent on phone to remind him to make the payment as he had failed to make the first installment. The respondent made up a story of falling in

hard times and sought for further time of few months. Even after having waited for a few months the respondent failed to make the payment and in fact avoided receiving calls from the appellant. On 25.07.2016 the appellant tried to encash the cheques which were returned due to insufficient funds. The appellant sent a formal notice on 03.08.2016 requiring the respondent to make the payment. On receipt the respondent came to the appellant and assured him that he would pay back the amount within two months. However, the respondent neglected to make the payment even thereafter. It was also averred that the appellant had to take loan as the respondent failed to make payments and for which he had to take on additional liability to pay back the loan on interest at 4% per month. It was pleaded that the cause of action to file the suit first accrued on 31.12.2014 when the respondent failed to make the first installment towards the payment of liability as per the agreement. The cause of action then accrued on each and every date when the appellant requested the respondent to make the payment of the outstanding amount and then on 03.08.2016 when the appellant sent a legal notice calling upon him to make the payment. The appellant therefore, sought a decree of recovery of Rs.17,60,105/- along with interest @ 4% per month on the principal amount from the

date on which it was due till the end of the suit along with cost.

3. In the written statement the respondent did not deny the fact that the appellant was the operator of Himalayan Hatcheries. The respondent also did not deny the fact that he is a poultry farmer from Daragaon, Turuk. According to the respondent he was working as a supplier of the Turuk Poultry Livestock Cooperative Society (the TPLC Society). The respondent denied that he had purchased day old chicks and poultry feed from the appellant on numerous occasions on credit basis for a sum of Rs.17,60,105/- since 2014. The respondent admitted that he was a customer of the appellant; he had made transaction with the appellant for day old chicks and feeds in the year 2013 and made payments to the appellant for the same in the following manner:-

- (i) Rs.64,000/- in cash on 18.04.2013
- (ii) Rs.1 lakh in cash on 10.05.2013
- (iii) Rs.2 lakhs in cash on 19.06.2013
- (iv) Rs.1 lakh in cash on 26.07.2013
- (v) Rs.90,000/- deposited in the UBI account, Deorali (Gangtok) Branch of the appellant on 14.08.2013
- (vi) Rs.1,20,000/- in cash on 24.08.2013

- (vii) Rs.3,10,000/- in cash deposited in the UBI, Deorali (Gangtok) Branch of the appellant on 10.09.2013
- (viii) Rs.4,43,000/- in cash on 27.09.2013
- (ix) A cheque of Rs.2 lakhs of D.A.C.S. Turuk, Daragaon issued in favour of the appellant on 20.12.2013.

4. The respondent further pleaded that since he stopped buying day old chicks and feed from the appellant in and around the month of August, 2014, the appellant asked the respondent to meet him at Rangpo Bazaar and asked him to settle dues as he was not maintaining his record of transactions. The respondent told him that he would settle the dues if any money was owed to him after checking his records. The appellant requested the respondent to hand over all documents relating to transactions in the year 2013 which was declined. The appellant got angry and abused him and threatened him with dire consequences.

5. The respondent took a plea on the agreement that it is a document executed by the appellant only and he was asked to sign on it being their supplier and further requested to issue blank cheques by the appellant as well as the members of the TPLC Society. The respondent pleaded that the members of the TPLC Society was of the impression that they had some outstanding dues towards the appellant for the transaction made in the year 2013

and that the appellant had failed to show actual credit amount to them. The respondent denied having received any calls from the appellant and prayed for dismissal of the suit.

6. On 07.11.2017 the learned District Judge framed six issues in the following manner:

- (1) *Whether the suit is maintainable? (OPP)*
- (2) *Whether during the year 2014 the Defendant had purchased day-old-chicks and poultry feed from the Plaintiff on numerous occasions on credit basis? (OPP)*
- (3) *Whether on account of such purchase the Defendant incurred liability to pay Rs.17,60,105(Rupees Seventeen Lakhs Sixty Thousand One Hundred and Five) only to the plaintiff? (OPP)*
- (4) *Whether vide the Agreement dated 29.11.2014 the Defendant acknowledged the above liability towards the Plaintiff? or, Whether the Defendant was coerced to simply sign on the said Agreement? (OPP)/(OPD)*
- (5) *Whether the Plaintiff is entitled to recover the above amount along with interest thereon? (OPP)*
- (6) *To what other reliefs is the Plaintiff entitled to? (OPP)*

7. In the trial the appellant examined himself; Sanjeev Khati to prove that the respondent had acknowledged that he owed the appellant a large sum of money of about Rs.17 lakhs and promised to pay 35% of the same within a week in the first half of 2015; and Neena Pradhan, the appellant's wife to support and prove his case as pleaded.

8. The appellant exhibited the four cheques as (exhibits- 2, 3, 4 and 5), identified the signatures of the respondent

thereon; the four return memos (exhibits-6, 7, 8, and 9) indicating that the four cheques were dishonoured; the office copy of the legal notice issued to the respondent (exhibit-10); the acknowledgment card indicating receipt of legal notice by the respondent (exhibit-11) and his evidence on affidavit as exhibit-12. Although the appellant had mentioned about the agreement in the plaint as well as in the evidence on affidavit since he had placed a photocopy of the same it was not exhibited during the trial.

9. The appellant in his evidence on affidavit reiterated what he had stated in his plaint. In his evidence on affidavit besides identifying his signature and that of the respondent in the agreement, the appellant also identified the signatures of the witnesses therein. He stated that the respondent had purchased day old chicks from him since 2014 totaling to Rs.17,60,105/- which fact was acknowledged and admitted by the respondent by way of the agreement.

10. During his cross-examination the appellant admitted that he had not filed any document to prove that he was the owner of Himalayan Hatcheries; that he had not filed any books of accounts, documents etc. of Himalayan Hatcheries; that he had not filed any authorization or power of attorney to depose on behalf of Himalayan

Hatcheries; that he had not filed any document indicating the list of customers dealt by him or Himalayan Hatcheries or that the respondent was his customer; that he had not filed any document, books of account pertaining to the year 2014 regarding the purchase of day old chicks; that he had not filed any tax receipts, inward way bills or any other document to show that he was dealing with the business of poultry farming during the relevant time; that he had not made any bank officials as witness; that he had himself filled the blank cheques and put his name and the amount thereon; that he has not filed any complaint under the Negotiable Instruments Act, 1881 although legal notice was issued by him under Section 138 thereof; that he had not filed any call records to show that he had reminded the respondent about the money owned. With regard to the agreement which was marked document X at that time, the respondent, during the appellant's cross-examination, sought to put to him that it pertained to transaction of TPLC Society which suggestion was denied. On the suggestion of the respondent, during cross-examination, the appellant stated that the respondent used to pay some money and take the goods/day old chicks regularly. The appellant denied that the respondent had deposited a sum of Rs.3,10,000/- in his UBI Deorali Account.

11. According to Neena Pradhan she used to help her husband in his poultry business. She knew that the respondent was the appellant's regular customer having seen him in numerous occasions. She stated that the appellant was the sole owner and operator of Himalayan Hatcheries dealing in the business of poultry farming and that the respondent was a poultry farmer from Daragaon, Turuk and appellant's customer. She also reiterated that the respondent had purchased day old chicks from the appellant on credit totaling to Rs.17,60,105/- and that in spite of numerous calls by the appellant the respondent failed to make payments. She stated that the appellant had tried to encash the cheques which were returned due to insufficiency of funds. She also reiterated that due to the failure of the respondent to pay back the amount the appellant was unable to invest into his business and had to borrow money from the bank, his friends and well wishers for which he had to pay interest at 4% per month as stated by the appellant in the plaint as well.

12. During cross-examination Neena Pradhan admitted that in her evidence on affidavit she had not named the borrowers, the bank or the name of the well wishers or filed any documents to show that the appellant had taken loan at the interest rate of 4% per month.

13. Sanjeev Khati deposed that he knew the appellant personally and that he had met the respondent once before. He stated that in the first half of 2015 the appellant and the respondent had come to his hotel and in his presence the respondent had acknowledged that he owed the appellant around Rs.17 lakhs and promise to pay 35% of it within a week and the rest later.

14. During Sanjeev Khati's cross-examination nothing material which would affect his oral deposition was extracted by the respondent.

15. The respondent in his evidence on affidavit took a stand that the contents of the plaint as well as the documents filed by the appellant are false, fabricated and that he was made to execute the alleged false and fabricated documents on misrepresentation. He further stated that the appellant had committed fraud upon him and his family members and forced to sign on the alleged documents and made to issue cheques which are filed and relied by the plaintiff. According to the evidence on affidavit these cheques which were in the custody of the appellant were given in blank as security and it was not encashed as he had already paid the entire money to the appellant. The stand of the respondent in his evidence on affidavit is not

the stand taken by him in his written statement which is indicated above.

16. The respondent denied having purchased day old chicks from the appellant in the year 2014 on credit and stated further that no amount was payable.

17. During cross-examination the respondent admitted that he can read Nepali and English; that he knew the appellant personally and had a long standing relation with him since 2012 ; that he was supplier for TPLC Society since 2012 up to 2015; that he knew all the members of TPLC Society from the year 2014 to 2015; that he personally knew Prakash Rai a member of TPLC Society between 2012 to 2015; that he had never had any disagreements with any of the members of TPLC Society; that he also knew Pradeep Rai the president of TPLC Society from the year 2012 to 2015 and that he was related to him. The respondent was confronted with the agreement (then marked as document X). The respondent admitted that he had signed on the same and the initial thereon was his. However, the respondent volunteered to state that the appellant had not explained the contents thereof. The respondent also admitted that he had signed the agreement along with Prakash Rai, Bikash Chettri, Krishna Rai, Issac Rai, Robin Rai and Pradeep Rai who had all signed on it as

witnesses. The respondent also admitted that they were all members of TPLC Society from the year 2012 to 2015 as well as his friends. He admitted that the agreement was executed and scribed in Turuk. He admitted that the agreement was shown to him before he put his initials thereon but volunteered to say that he was forced to sign on it and also to give the cheques to the appellant. The respondent also admitted that the cheques as well as the signatures thereon were his. He also admitted that the signatures on the back of the cheques were also his. He admitted that in spite of receiving legal notice he did not reply to the same. He admitted that the witnesses mentioned above were present when he had put his initials on the agreement. He also admitted that he had not filed any First Information Report or complaint after signing the agreement or a suit to cancel the agreement. He admitted that the appellant was not a member of TPLC Society and all the witnesses in the agreement were residents of Turuk.

18. The respondent did not examine any other witness or exhibit any document except his evidence on affidavit.

19. The learned District Judge examined the issues framed by him and delivered his judgment on 30.03.2019 non-suiting the appellant on the ground that he had failed to prove that during the year 2014 the respondent had

purchased day old chicks and poultry feed from him for which he was liable to pay an amount of Rs.17,60,105/-.

20. The learned District Judge in answer to the issues framed held that the suit was not maintainable (issue no.1); that the appellant had failed to prove that during the year 2014 the respondent had purchased day old chicks and poultry feed on credit (issue no.2); and therefore, the appellant had failed to establish that the respondent had incurred liability to pay Rs.17,60,105/- (issue no.3); document X was inadmissible and could not be considered by the court (issue no.4). In view of the findings arrived at by the learned District Judge on issues nos. 2, 3 and 4 he held that the appellant was not entitled to the reliefs prayed for by him and as such held issue nos. 5 and 6 against the appellant.

21. Mr. Sajal Sharma, learned counsel for the appellant submitted that unlike a criminal case civil disputes are decided on preponderance of probabilities. He relied upon a judgment of the Supreme Court in **Dr. N. G. Dastane vs. Mrs.**

S. Dastane¹ in which it was held:

“24. The normal rule which governs civil proceedings is that a fact can be said to be established if it is 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 or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding

¹ (1975) SC 1534

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 finds 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 at 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 issues 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 v. Wright, (1948) 77 CLR 191, 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 v. Blyth, (1966) 1 AER 524, 536] ”. But whether the issue is one of cruelty or of a loan on a promissory note, 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.”

22. The learned counsel for the appellant also relied upon another judgment of the Supreme Court in ***M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) vs. Mahant Suresh Das & Anr.***² in which it was held :

“The standard of proof

720. *The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly : If therefore, the evidence is such that the court can say “we think it more probable than not”, the burden is discharged, but if the probabilities are equal, it is not. [Phipson on Evidence.]In Miller v. Minister of Pensions [Miller v. Minister of Pensions, (1947) 2 All ER 372] , Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the*

² (2020) 1 SCC 1

balance or preponderance of probabilities in the following terms : (All ER p. 373 H)

“(1) ... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, “of course it is possible, but not in the least probable” the case is proved beyond reasonable doubt, but nothing short of that will suffice.

(emphasis supplied)

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 [Bater v. Bater, 1951 P 35 (CA)], where he formulated the principle thus : (p. 37)*

“... 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)

722. *The definition of the expression “proved” in Section 3 of the Evidence Act is in the following terms:*

“3. ... “Proved”.—*A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”*

723. *Proof of a fact depends upon the probability of its existence. The finding of the court must be based on:*

723.1. *The test of a prudent person, who acts under the supposition that a fact exists.*

“723.2. *In the context and circumstances of a particular case.”*

23. Thus the question is whether the appellant has been able to prove his case on preponderance of probabilities.

24. On examination of the evidence produced by the appellant and the admission made by the respondent it is quite clear that the respondent had business dealings with the appellant in the past and as such they were not strangers. Quite clearly the appellant's entire case was based on the agreement which is now exhibited as exhibit-15. Evidently, the appellant has not filed any other documentary evidence in support of his claim besides the agreement (exhibit-15), the four cheques, the four return memos, the legal notice and the acknowledgment card. The extensive cross-examination of the appellant by the respondent also brings out clearly that the appellant had failed to produce any other business document for the inspection of the court. The learned District Judge had concluded that the appellant had not been able to prove his case also on the ground that he had failed to produce these documents. Whether these documents exist is a question which was not answered during trial. The learned District Judge however, did not consider the agreement (then marked as document X) as he held that it was inadmissible and therefore of no legal consequence. The learned District Judge had come to the conclusion also on the basis of the fact that none of the signatories of the agreement had been produced by the appellant.

25. The agreement having now been exhibited it is important to analyse the further evidence recorded by the learned District Judge in terms of the judgment passed by this court dated 31.03.2022. The agreement is scribed in Nepali with few words in English as well. The substantial part of the agreement is in Nepali. It states that on 29.11.2014 the respondent, a resident of Turuk, would like to acknowledge in writing and inform that he owed Rs.17,60,105/- towards payment of debt due for chicken-chicks to the appellant. It is further stated that towards this due he was issuing SBI cheque to the appellant to hold until he pays the amount to the appellant. It is stated that if he failed to make the payment then the appellant may take any legal action for which he would have no problem. The agreement also mentions the cheque numbers as 489729, 489728, 489727 and 489726. Further in the agreement the respondent undertakes to pay the entire amount in four instalments within a period of six months and that he would pay the first instalment in the year 2014. It is signed by the appellant as well as the respondent. The appellant asserts that the agreement has been signed by him as well as by the respondent and that the agreement is his acknowledgment in writing of the debt. The respondent admits to having signed the agreement.

Besides their signatures there are signatures of Prakash Rai, Bikash Chettri, Krishna Rai, Issac Rai, Robin Rai and Pradeep Rai as witnesses to the agreement. They were not produced as witnesses however both the appellant as well as the respondent state that they had signed the agreement as witnesses thereof.

26. In the additional evidence on affidavit of the appellant he asserted that the respondent had signed the agreement in the presence of witnesses and accepted that he owed an amount of Rs.17,60,105/- to him. He further averred that in the agreement the respondent had agreed that the appellant would hold the four blank cheques until the amount was fully paid by the respondent; that the agreement was signed by both the parties with the full understanding and consent; that further the respondent had assured the appellant that he would pay the amount in front of the witnesses. He identified his signature thereon, the signature of the respondent as well as the six witnesses.

27. During his cross-examination the appellant admitted that the agreement was an unregistered document and not prepared on any stamp paper; it was not certified by an Oath Commissioner or an Advocate; that he had filled his name and date on the cheques; the he had not filed any

documents, cash memos, acknowledgment receipts, challans issued in the respondent's name pertaining to the purchase of the cheques nor any documents relating to Himalayan Hatcheries; that he could not say for sure whether the signatures of the witnesses are their correct and official one (although he volunteered to state that the witnesses executed the signature in his presence).

28. The respondent in his additional evidence on affidavit stated that the agreement is a manufactured document and he was made to sign on it on pressure from the appellant and his friends. This was the plea which was not taken by respondent in his written statement. The respondent took a new plea that the transaction was between the appellant TPLC Society and the allegation of him not paying Rs.17,60,105/- is false and that there was no such transaction between them. He also took a further plea which was not taken in the written statement that even the witnesses were made to sign on the agreement without being made aware about it.

29. In cross-examination the respondent admitted his signature thereon as well as the signatures of the witnesses. He admitted the witnesses are not only his co-villagers but his friends as well and that he knew them personally and further that they were members of TPLC

Society. He admitted that the witnesses also were literate and can read and write in Nepali. He admitted that the agreement was executed by him, the appellant and other witnesses at Turuk. He also admitted that it takes around 2 hours to go from Duga to Turuk by vehicle; that he was earlier a supplier for TPLC Society; that he knew how to read and write in Nepali and understand English at basic level; that he had business transaction with the appellant earlier. The respondent admitted that the appellant had not threatened him or forced him to sign on the agreement or the cheques. He also admitted that the appellant had not committed fraud upon his family members. Respondent admitted that he had no record to show that he had paid the entire money to the appellant that was owed to him. During his cross-examination the respondent was asked to go through the contents of the agreement and he admitted that the agreement states that he owed the appellant an amount of Rs.17,60,105/- and if he was unable to pay the same, the appellant could institute legal proceedings. By an Order dated 25.07.2022 the learned District Judge examined the additional evidence and held that there can be no doubt that the respondent signed on the agreement which has been categorically admitted by him. It was held that since that it was admitted that the agreement was

signed by the respondent there would be a presumption that it was executed by the parties which was but a rebuttable presumption and the onus lay upon the respondent to establish it. The learned District Judge concluded that the agreement is authenticated by the parties after understanding and agreeing to the contents.

30. The agreement is an agreement as understood in law. The Indian Contract Act, 1872 provides in Section 2(e) that every promise and every set of promises, forming the consideration for each other, is an agreement. In the agreement the respondent acknowledges his liability and agrees to pay the amount in four instalments within a period of six months the first of which could be paid within December, 2014. The appellant who is also the signatory to the agreement also accepts that the respondent could pay the amount as indicated therein. The reciprocal promises qualify it as an agreement.

31. Mr. Manish Kumar Jain, learned counsel for the respondent submitted that in terms of Section 68 of the Indian Evidence Act, 1872 the attesting witnesses were not produced by the appellant and as such the agreement cannot be relied upon. Section 68 provides that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has

been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of court and capable of giving evidence. However, the proviso indicate that it shall not be necessary to do so if the document not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 unless its execution by the person by whom it purports to have been executed is specifically denied. The Indian Contract Act, 1872 does not indicate that the agreement is a document required by law to be attested. This court's view is fortified by the judgment of the Bombay High Court in *Asudamal s/o Laxmandas Sindhi vs. Kisanrao s/o Wamanrao Dharmale*³ in which it was held that in order to prove an agreement it is not necessary to examine the attesting witnesses.

32. Mr. Manish Kumar Jain relying upon the judgment of the Supreme Court in *Veena Singh (Dead) Through Legal Representative vs. District Registrar/Additional collector (F/R) and Anr.*⁴ submitted that mere signing of an instrument does not amount to its execution and that execution of a document does not stand admitted merely because a person admits to have sign the document. There is no

³ (2003) 4 Mah L.J. 134

⁴ (2022) 7 SCC 1

doubt that merely signing in instrument does not amount to its execution.

33. Section 61 of the Indian Evidence Act, 1872 provides that the contents of document may be proved by primary or by secondary evidence. Section 62 provides that primary evidence means the document itself produced for the inspection of the court. Section 64 provides that the documents must be proved by primary evidence except in cases thereafter provided. The appellant has produced the agreement in its original for the inspection of the court. Section 59 provides that all facts, except the contents of documents or electronic records, may be proved by oral evidence. Section 72 provides that an attested document not required by law to be attested may be proved as if it was unattested.

34. The content of the agreement has been proved by the appellant by way of oral as well documentary evidence. The appellant had deposed about the contents of the agreement and also produced the cheques whose numbers match what has been scribed in the agreement. The fact that the respondent signed the agreement along with the witnesses who were his friends from his area is also admitted and proved. The further fact that the cheques were the respondents and he had in fact signed them has also been

proved. The plea of the respondent in his written statement is that the agreement is a document executed by the appellant only and he was asked to sign on it being their supplier; that the members of the TPLC Society was of the impression that they had some outstanding dues towards the appellant for the transaction made in the year 2013 and that the appellant had failed to show actual credit amount to them has not been proved by the respondent. The respondent's further plea that he was requested to issue blank cheques by the appellant as well as the members of the TPLC Society has also not been proved. The oscillating plea of the respondent taken in his evidence on affidavit sans any pleading cannot be considered. Even if it was considered no attempt was made by the respondent to prove what he alleged. On preponderance of probabilities the appellant has been able to prove the contents of the agreement. The agreement makes it clear that the respondent owed an amount of Rs.17,60,105/- for purchase of day old chicks in the year 2014 from the appellant which was payable in 4 equal instalments within 6 months from the date of the agreement i.e. 29.11.2014. The respondent failed to pay the same in spite of notice. The suit was filed on 20.12.2016 after the cause of action arose in his favour. The appellant is thus entitled to a

decree for recovery of Rs.17,60,105/- as principal amount owed by the respondent. Although the appellant took the plea that he had to take loans and incur interest at the rate of 4% per month to invest in his business as the respondent had not paid him his dues, he was not able to prove it. The appellant is therefore not entitled to interest at the rate of 4% per month as claimed by him. The appellant would be entitled to interest at the rate of 10.2% per annum on the principal sum from the date of the suit till the date of the decree. Further, the respondent shall also pay in addition an interest on the principal sum @ of 6% per annum from the date of the decree till the date of actual payment. In terms of Section 35 CPC the cost of the present appeal shall be paid by the respondent to the appellant. The issues are decided accordingly.

35. The appeal is allowed. The impugned judgment is *set aside*. The decree in terms of this judgment shall be drawn accordingly.

36. A copy of the judgment shall be sent to the Court of the learned District Judge, Special Division-I, Gangtok, East Sikkim for compliance.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**

to/