

**(1998) 10 AP CK 0019**

**Andhra Pradesh High Court**

**Case No:** City Civil Court Appeal No. 8 of 1990

M. Iqbal and Company,  
Hyderabad and Others

APPELLANT

Vs

Someswara Cements Chemicals  
Limited. Hyderabad

RESPONDENT

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**Date of Decision:** Oct. 13, 1998

**Acts Referred:**

- Evidence Act, 1872 - Section 34

**Hon'ble Judges:** Vaman Rao, J; P. Ramakrishnam Raju, J

**Bench:** Division Bench

**Advocate:** R. Venugopal Reddy for Mr. R. Vijayanandan Reddy, for the Appellant; Nooty Ram Mohan Rao, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

P. Ramakrishnam Raju, J.

Respondent-Company filed O.S.No.667 of 1984 which was re-numbered as O.S.No. 193 of 1985 on the file of the IV Addl. Chief Judge, City Civil Court, Hyderabad, for recovery of sum of Rs. 10,55,639.70 ps., with subsequent interest being the balance amount and payable by the defendants as per their accounts towards the value of cement supplied. Defendant No. 1 is a partnership firm of which the second defendant is the Managing Partner, while defendants 3 and 4 are. partners. First defendant-Firm applied for dealership of the Plaintiff-Company and the Company appointed the trial defendant as its authorised stockist for Chairman, Mir Allam Mandi in June, 1988 and the business of supply of cement by the plaintiff-Company to the first defendant-Firm was carried on from June, 1983 to December, 1983. The Plaintiff-Company also appointed the first defendant -Firm as its distributor for twin cities and Ranga Reddy district as per its letter dated 10.6.1983. The plaintiff-Company used to supply cement to the first defendant-Firm and the first defendant-Firm used to clear the bills from time to time. The Plaintiff-Company in all

dispatched cement the value of Rs.24,57,712/- after giving credit to the payment made by the first defendant-Firm, the first defendant- Finn has to pay Rs.9,51,317/- to the plaintiff-Company. The Plaintiff-Company demanded payment of the said sum through numbers of letters and the second defendant also held the discussion with the Commercial Manager and the General Manager of the: plaintiff-Company. Curiously defendants came up with a story that in the supply of cement there were more some diversions and the cement supplied was of inferior quality, and hence, they paid compensation to those persons to whom cement supplies were made. Pending finalisation of the accounts, second defendant has agreed to deliver back 4,000 bags of cement to the plaintiff-Company, but finally returned only four trucks of cement on 29.3.1984. Second defendant and the representatives of the Plaintiff-Company held a conference wherein certain understanding was reached, but the second defendant want without signing the minutes. Hence the plaintiff-Company got issued a legal notice, for which a contentious reply was sent by the defendants. Hence the Suit.

2. In the written statement filed by the first defendant which was adopted by defendants 2 and 3, it is stated that the plaint as signed by Mr.M.Madhusudhima Rao is not in accordance with law. It is admitted that the first defendant was appointed as a dealer in cement for twin cities and Ranga Reddy district in terms of the latter dated 6.10.1983. They denied that the plaintiff-Company supplied stock worth Rs. 24,57,766/-. They have received only stock worth Rs, 21,19,962/- as per their books of account. The first defendant-Finn also paid to the plaintiff-Company a sum of Rs. 13,51,560/-. As the plaintiff-Company made supplies of stock directly to Safari Complex Company worth Rs. 15,000/-; Rs.35,280/- and Rs.6,200/- which are diversion made by the plaintiff-Company for which first defendant-Finn is not liable. First defendant-Firm is also entitled to Rs.0.75 Ps. commission which as per the letter of appointment dated 6.10.19:33 comes to Rs.40,912.50 Ps. The first defendant-Firm is also entitled to a rebate of the Rs.2/- which also comes to Rs.71,380/-. It is also stated that the quality of cement supplied by the plaintiff-Company is poor and therefore, customers complaint about the same, and as such, the first defendant-Finn paid compensation to them aggregating to Rs.4,59,890/-. All these amounts were due from the plaintiff-Company. Although the plaintiff-Company promised to take back the entire stock, in reality took only 1,000 bags and on account of this attitude also they suffered. The deposit of Rs.25,000/- made by the defendants has to be accounted for by the plaintiff-Company. In all the first defendant-Finn is entitled to "claim Rs.9,10,452.50 Ps. from the plaintiff Company, Accordingly, they laid the counterclaim.

3. Plaintiff-Company filed written statement to the counter-claim, wherein it reiterated that the plaintiff-Company has supplied stock of cement to the tune of Rs.24,57,712/-. It is stated that the commission of Rs.0.75 Ps. per bag would be payable to the defendants, provided they left 100 metric tonnes per month. The claim for rebate of Rs.2/- per bag cannot be allowed to the defendants, as the stock

lifted by them would not conform to the limits prescribed. It is denied that the quality of cement supplied is inferior. The accounts of Plaintiff-Company are correct and the defendants cannot make any counter-claim.

4. On the basis of the above pleadings, the trial Court framed the following issues:

(1) Whether the suit is filed by competent person?

(2) Whether the suit in the present form is maintainable?

(3) Whether the defendants are due to the plaintiff Rs. 10,55,139.70 Ps.?

(4) Whether the defendants are entitled for adjustment of Rs.2,38,270/- from the plaintiff?

(5) Whether the defendants are entitled to Rs.6,72,182.50 Ps. towards set off and counterclaim?

(6) Whether the suit is bad for non-joinder of necessary parties?

(7) Whether the counter claim made by the defendant cannot be decided in this suit?

(8) To what relief?

5. The plaintiff examined three witnesses and marked Exs.A-I to A-9 while defendants examined three witnesses, including the second defendant, and marked Exs.B-1 to B-13.

6. The trial Court decreed the suit for a sum of Rs. 10,55,639/-; likewise, the counter claim to an extent of Rs. 2,05,362.50 Ps.. It is this decree that is challenged in this appeal.

Now the points for consideration are:

(1) Whether the suit is not maintainable? and

(2) Whether the plaintiff is entitled to (he) decree in a sum of Rs.8,50,277.20 Ps. after giving credit to a sum of Rs.2,05,362.05 Ps. allowed as set off in favour of defendants?

7. Sri R.Manugopal Reddy, learned Senior Advocate appearing on behalf of the appellants submits that the suit as instituted by the plaintiff-Company, represented by its Secretary is not maintainable, as the Secretary is incompetent to represent the plaintiff-Company.

8. The plaintiff is a Company incorporated under the Companies Act. Under Order 29, Rule 1 C.P.C. pleadings can be signed and verified on behalf of the Corporation by the Secretary or by any Director or even by the principal officer of the Corporation. Therefore, it is clear that the Secretary of the Company is competent to sign and verify the pleadings. That apart, P. W. 1 who is the Secretary of the Plaintiff-Company; at the time of his deposition stated that Sri B. Madhusudhima Rao

was the Secretary of the Company all the time of filing the suit. Therefore, the objection that the suit is not maintainable on this ground cannot be sustained.

9. It is next contended by the learned Counsel for the appellants that the suit based on plaintiffs account cannot be decreed, since the plaintiff-Company failed to prove each and every item of the account, and as the plaintiff-Company has produced its ledger only showing the Khata of the defendants. It is not disputed that the Plaintiff-Company is a manufacturing unit, the product being cement, with its registered office at Hyderabad and the Factory is situated in Adilabad district. According to the plaintiff-Company, it appointed the first-defendant-Firm as its distributor for twin cities and Ranga Reddy district as per its letter dated 10.6.1983 (Ex. A-1). It is the further case of the plaintiff that it dispatched between June 1983 to December 1983, cement worth Rs.24,57,712/- and after giving credit to the payment made by the first defendant-Firm, defendants are still due to pay a sum of Rs.9,81,317/-. Plaintiff-Company made number of demands including through letters dated 7.1.1984 and 9.1.1984. It also got a legal notice issued demanding payment of the said amount (Ex. A-7 dated 17.5.1985). Defendants denied that the plaintiff-Company supplied stock worth Rs.24,57,766/-. They further pleaded that for the stock received by them, they made specific acknowledgement of delivery chasans. Instead they stated that they have received stock worth Rs.21,19,962/- only as per their books of account. Now, it has to be seen which version is true.

10. PW-2 who is working an Accountant of the plaintiff-Company stated that Ex. A-1 is prepared by him. Ex. A-1 which is a ledger extract is prepared by him and his colleague. P.W.I also corroborated the evidence of P.W.2 stating that the plaintiff-Company supplied cement worth Rs.24,50,000/- approximately to the defendants and the defendants paid a sum of Rs. 14,76,395/- only leaving a balance of Rs.9,81,317/-. Of course, D.W.I who is the second defendant denied the same, but claimed that the defendants are entitled to Rs.0.75 Ps. commission to each bag of cement and the said commission comes to Rs.40,912.50 Ps.," in addition to a rebate of Rs.2/- on each bags which comes to Rs.71,380/-. It is also his further case that the cement supplied by the plaintiff-Company is of poor quality, and therefore, customers complained and as such, defendants paid compensation in a sum of Rs.4,59,890/-. They are also entitled to recover a sum of Rs.20,000/- which mount they deposited with the plaintiff-Company at the time of agreement. Therefore, defendants are entitled to claim a sum of Rs.9,10,452.50 Ps., from the plaintiff-Company. They examined defendants 2 and 3 who are customers to show that the quality of cement supplied is poor, and therefore, defendant-Firm refunded the money to them.

11. As already seen, learned senior Advocate appearing on behalf of the appellants submits that in a suit based on accounts, plaintiff has to establish each and every item of account and mere production of ledger extract is not enough. He placed reliance on a decision reported in [Chandradhar Goswami and Others Vs. The](#)

[Gauhati Bank Ltd.,](#) The question before the Supreme Court was: whether the certified copy of the account is enough(sic) prove that a sum of Rs. 10,000/- was advanced to the appellant. Considering the scope of Section 34 of the Evidence Act (Companies Act?) which says that entries in books of accounts regularly kept in course of business are relevant whenever they refer to a matter to which the Court has to enquire, but such statement alone shall not be sufficient to charge any person with liability. Section 34 of the Act is enacted by way of prudence, since the accounts maintained by the plaintiff to which the other side has no access cannot be conclusive in the absence of the corroboration. The Supreme Court, therefore observed that in view of Section 34, no person can be charged with liability merely on the basis of entries in books of accounts even where such books of account are kept in regular course of business, and there should be further evidence to prove payment of money which may appear in books of account in order that a person may be charged with liability thereunder except where correctness of books of account is admitted and are not challenged.

12. Normally admission of entries on behalf of a person making them cannot be admitted in evidence as they are not made against the interest of the person making them. But Section 34 of the Evidence Act carves out an exception to the general principles that the entries in the books of account which are kept in the regular course of business shall be relevant. Systematically and regularly maintained accounts may ensure accuracy as they relate to number of transactions and customers. They provide internal evidence for cross-checking. For the fear that businessman would come to disgrace if false entries are found in accounts, normally incorrect entries would not be made in the books of accounts. As the defendant has no part in the maintenance of account by the plaintiff, the degree of correctness and perfection in maintaining the account by the plaintiff is always open to challenge by the defendant. Kept regularly does not mean kept correctly. Therefore, Section 34 of the Act although allows the entries in books of accounts as relevant, but it does not admit them to be final as they by themselves are not sufficient evidence to charge any person with liability without something more. Of course, the later part of adducing further proof does not arise when correctness of books of account is not challenged or disputed. Of course, plaintiff has to establish that the entries in the books of account are regularly maintained, and therefore, the possibility of entries on loose sheets stitched together cannot answer the requirement of regularly maintained accounts. Production of day book and the entries therein may sometimes provide corroboration to the entries found in the ledger sheet, as day book is maintained entering daily transactions. Therefore, entries made in account books maintained in the regular course of business are relevant, but what is the probative value of those entries is a matter to be decided considering the facts and circumstances of each case.

13. In the case on hand the situation is slightly different: No doubt it is primarily on the plaintiff to establish the quantum of cement supplied to the first

defendant-Firm. P.W.2 in his evidence has stated that Ex. A-1 was written by him and his colleague. These accounts were audited and Ex. A-1 is the true extract of the ledger account maintained by the plaintiff-Company. He further states that the accounts were prepared on the basis of delivery challans. D. VV. 1 has not denied in his evidence that cement was not supplied on three dates which are mentioned in Ex. A-1. In other words, he is not specific as to which item or items and the date or dates on which cement was not supplied as mentioned in Ex.A-1. He has not produced the account books maintained by the first defendant-Firm. Apart from that, defendants claimed rebate at Rs.71,380/- payable at the rate of Rs.2/- per each bag as a dealer and claimed a sum of Rs.4,89,290/- being the damages paid by them to their customers on account of poor quality of cement supplied. If the commission comes to Rs.40,912.50Ps. calculated at the rate of 75 Ps. per bag, the total number of bags of cement supplied would come to about 2,700 tonnes. Therefore, having regard to the pleadings, evidence of P. Ws. 1 and 2 and other circumstances mentioned above, we agree with the finding of the lower Court that the Plaintiff-Company has established that cement was supplied to the first defendant-Firm as reflected in Ex.A-1. In fact, under Ex. A-2 letter dated 7.11.1984 plaintiff-Company demanded a sum of Rs.9,40,83 2/- being the amount still due from the defendants, receipt of which is not disputed. If the figure found in Ex.A-2 is not true, defendant ought have disputed immediately. Even under Ex.A-3, letter dated 9.1.1985, plaintiff-Company reiterated the same and defendants have not disputed immediately. In these letters, statements showing various dispatches made was clearly drawn and balance arrived at after showing the payments. The lower Court, therefore rightly observed in our view that Exs. A-2 and A-3 would corroborate the correctness of the entries made in Ex.A-1, Ex.A-4 is another letter dated 27.1.1984 issued by plaintiff-Company to the defendants demanding payment of the said amount stating that defendants have not paid the amount so far. These documents clearly support and corroborate the ledger copy under Ex. A-1.

14. The next question that arises for consideration is whether the set off pleaded by the defendants by way of damages alleged to have been paid to their customers due to supply of defective quality cement, commission at the rate of 75 Ps. per bag and rebate at Rs. 2/- per bag etc., is substantiated.

15. Ex. B-1 is the acceptance by the plaintiff-Company about the offer made by the first defendant dated 8-10-1982 for appointing it as its authorised stockist. The offer was accepted and the first defendant-Firm was appointed as their stockist. It is also found that a sum of Rs.20,000/- was sent by way of a demand draft, which amount is received as a deposit. Under Ex.B-2 dated 6.10.1983, plaintiff-Company agreed to allow 75 Ps. per bag as distributor's commission. There is no mention about the rebate of Rs.2/- per bag in this letter. But in Ex.B-3 dated 27.10.1983 issued by the plaintiff-Company to the first defendant-Firm, it is mentioned a rebate of Re. 1/- per bag would be allowed for quantities between 25 tonnes to 150 tonnes; Rs.1.50 Rs. for quantities between 150 tonnes to 250 tonnes; and Rs.2-00 for quantities

ranging above 250 tonnes per month. ♦ Defendants claimed a sum of Rs.4,59,890/- by way of damages paid to their customers due to defective quality of cement supplied. In order to prove this claim, they examined D.Ws.2 and 3. There is no notice issued to the plaintiff-Company at any time about the payment of the said amount by the defendants to their customers. It is also not their case that they intimated the plaintiff at any time about such liability. Even the evidence of D.Ws.2 and 3 does not inspire confidence. They did not produce any receipt to show that they have purchased cement at any time manufactured by the plaintiff-Company and supplied by the defendants. Their claim that they have purchased cement manufactured by the plaintiff-Company from the first defendant-Finn and that walls and roof developed cracks cannot be believed. They have not produced any account of their construction or purchase of cement. Therefore, in our view, the lower Court has rightly disbelieved their evidence. Even the defendants have not produced their account to establish the factum of any such payment. Therefore, the claim on this count is not proved.

16. However, the lower Court has stated that on the basis of enquiries made by one Bhavani Ram, who worked as the Marketing Manager, Plaintiff-Company has agreed to pay a sum of Rs. 9,000/- under this head.

17. Defendants claimed a sum of Rs. 1.00 lakh as damages in lieu of the fact that they suffered reputation as the cement supplied was of sub-standard. As we have already observed the evidence of D.Ws. 2 and 3 who were examined to speak about the quality of cement cannot be believed. Therefore, there is no basis for such a claim, and defendants failed to establish any legal injury before they seek payment of compensation.

18. Defendants claimed commission at 75 Ps. per bag and rebate at Rs.2/- perbag of cement sold by them. As already seen under Exs.B-2 and B-3 plaintiff-Company offered to pay commission at the rate of 75 Ps. and rebate at the rate of Rs.2/- perbag. The lower Court considered this aspect and came to the conclusion that defendants are entitled in a sum of Rs.71,380/- as rebate, since the plaintiff never disputed that defendants did not lift the required quantity in any month. Defendants are also entitled to commission at the rate of 75 Ps. for which also there is no serious objection from the plaintiff. Accordingly, as the estimated sales come to 54,550 bags which works out to Rs. 40912.03 Rs. at the rate of 75 Rs. The lower Court has rightly in our view allowed these two claims. The lower Court also in our view has rightly directed refund of the deposit amount of Rs.20,000/- with interest as this deposit is meant either to be adjusted at the end of the agreement period or refunded if the defendants have performed their pan of the agreement without any default. Accordingly, the lower Court has allowed interest on this sum and allowed a sum of Rs. 22.700/- under this head. We are of the view that the finding of the lower Court is also based on relevant evidence. Accordingly, the lower Court allowed in all a sum of Rs.2,05,362.50 Ps. towards the counter-claim and after deducting this sum

from Rs.10,55,639 a decree was passed in favour of the plaintiff in a sum of Rs. 8,50,277.20 Ps. with proportionate costs and interest at 12 per cent per annum from the date of the decree till realisation.

19. For all the above reasons, we do not find any ground to interfere with the judgment and decree passed by the lower Court. The appeal therefore, fails and is accordingly dismissed. No costs.