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**(2011) 09 MAD CK 0143**

**Madras High Court**

**Case No:** O.S.A. No. 399 of 2008 and M.P. No. 1 of 2008

Southern Explosives  
Company Pvt. Ltd.

APPELLANT

Vs

Gulf Oil Corporation  
Limited

RESPONDENT

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**Date of Decision:** Sept. 19, 2011

**Hon'ble Judges:** R. Banumathi, J; B. Rajendran, J

**Bench:** Division Bench

**Advocate:** A.L. Somayaji for G.R. Shivakumar, for the Appellant; Arvind P. Datar for M.S. Rajasekar, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

B. Rajendran, J.

The Defendant in C.S. No. 196 of 1993 is the Appellant in this appeal. This appeal is filed as against the decree and judgment dated 05.07.2007 made in C.S. No. 1096 of 1993 passed by the learned single Judge, decreeing the suit filed by the Plaintiff/respondent herein for a sum of Rs. 1,69,51,588/- with interest at 18% per annum from the date of filing the suit till decree and at 12% per annum from the date of decree till the date of realization with proportionate cost. By the said decree and judgment, the learned single Judge dismissed the counter claim made by the Defendant/appellant herein.

2. Originally, the Plaintiff has filed the suit for recovery of a sum of Rs. 2,13,00,398.94 with interest thereon at 18% per annum from the date of filing the suit till the date of realization; for recovery of Rs. 11,20,703/- being the value of the stock lying with the Defendant and for costs. Subsequently, the plaint was amended to include a sum of Rs. 31,88,698/- being the tax liability payable by the Defendant and the suit claim was accordingly enhanced.

3. According to the Plaintiff/respondent herein, the Defendant/ Appellant was originally appointed as a sole agent in the year 1963 and subsequently, in the year 1974, the

Defendant was appointed as a consignment sales agent. In between 1974 to 1992, the Defendant was having transaction with the Plaintiff, for which the Defendant sent statement of account to the Plaintiff including debit and credit notes. In between 1988 to 1992, there was disagreement between the Plaintiff and the Defendant as the Defendant defaulted in remitting the amount. There were exchange of correspondence between the Plaintiff and the Defendant for reconciliation of accounts and disputing the receipt of payment of amount, as the case may be. In fact, by a letter dated 14.08.1992, the Plaintiff claimed a sum of Rs. 2,33,67,000/- as due, whereas, the Defendant, by the letter dated 26.08.1992 has admitted outstanding difference up to 25.07.1992 at Rs. 1,96,57,000/-. Thereafter, between 1992 to 1993, there were various correspondences exchanged between the parties regarding the reconciliation of account. Since the amount was not paid by the Defendant, as claimed, the Plaintiff filed the suit on 03.08.1993 claiming the amount, of course basing also on the admission of the Defendant vide letters dated 18.06.1986, 01.08.1998 and 26.06.1992. Along with the suit, various applications were filed for interim injunction, attachment of immovable property before judgment etc., In fact, application No. 5665 of 1995 was filed for appointment of an independent auditor to inspect and reconcile the accounts from 1963 to 1992. this Court, by an order dated 02.04.1998, allowed Application No. 5665 of 1995 and M/s. Sarathy and Vasu, were appointed as auditors to reconcile the account. The auditors were also directed to make independent inspection and reconcile the accounts from 1963 to 1992. The auditor appointed by this Court also filed interim as well as final report. Based on the auditor report, the suit was decreed and the Defendant was directed to pay a sum of Rs. 1,59,51,588/- with interest at the rate of 18% per annum and 12% from the date of decree.

4. The case of the Defendant/appellant is that the Defendant is acting as consignment agent from 1974 and there is no written agreement. The suit ought to have been filed for rendition of account and not for recovery of amount, therefore, the suit is not maintainable. Unless the books of accounts of both the Plaintiff and the Defendant are disclosed to each other, the liability to pay the amount cannot be ascertained. The Defendant submitted weekly sales and stock statements to the Plaintiff. The Defendant, as agent, is entitled to deduct distribution charges, handling charges and reimbursement of 50% of the magazine licence fee at the time of making weekly remittances against the dues. The Defendant raises debit notes as against other expenses. At the time of closing the accounts, the Plaintiff used to send the reconciled statement for the year and the statement of the balance due and payable on each consignment agent on a specified date. The reconciliation is carried forward as opening balance in respect of the said consignment agent for the subsequent period. The accounting process starts with the dispatch by the consignment of the records connected with sales affected by the agent from time to time. It is on the basis of these statements and records like invoices etc., a principle, like the Plaintiff, account these transaction. The relationship between the Plaintiff and Defendant was cordial till 1988. The allegation of the Plaintiff that there were huge amounts due seemed unrealistic. The Defendant sought the services of a

professional auditor to clarify the situation of outstanding dues and to speed up the matters to scrutinize the accounts. The auditor, after study of accounts informed that ledger to ledger reconciliation of the Plaintiff and the Defendant books have to be done to arrive at a decision. During 1989 to 1990, the Plaintiff took steps like contacting the customers directly to oust the Defendant as agent from the territory. An assurance was given that the Defendant would be paid commission even in respect of all such sales done directly by the Plaintiff in the territory of the Defendant, but it was not adhered to. The discriminatory sale policy adopted by the Plaintiff completely kept the Defendant out of business. In any event, the suit, as filed, for recovery of money is not maintainable and the suit ought to have filed for rendition of account.

5. We have heard the learned Senior counsel for both sides and perused the materials on record. Before the learned single Judge, both sides have let in oral and documentary evidence. On behalf of the Plaintiff, Mr. A. Vasudeva Moorthy was examined as PW1 and Exs. P1 to P61 were marked. On behalf of the Defendant Mr. D.P. Padmanabhan was examined as DW1 and Exs. D1 to D17 were marked. Mr. K. Vasudevan, Auditor, was examined as Court witness - CW1 and Exs. C1 to C3 were marked as Court documents.

6 (i) The learned senior counsel for the Defendant/appellant would mainly contend that the suit, as filed, is not maintainable. The Plaintiff ought to have filed the suit for rendition of account and not for recovery of money. Further, to set out the nature of transaction between the parties, there was a credit balance of Rs. 77 lakhs and it required necessary reconciliation of accounts if the account book of both the Plaintiff and Defendant are disclosed to each other, which according to the learned senior counsel for the Appellant was not done. Therefore, even the reconciliation made by the auditor and the report of the auditor appointed by the learned single Judge is not correct and the Appellant is not liable to pay the suit claim

(ii) The learned senior counsel for the Defendant/appellant would mainly contend that there is a need for reconciliation of accounts from the start point of the business. According to the learned senior counsel for the Defendant/appellant, the net amount would be due only from the Plaintiff and not from the Defendant.

(iii) The learned Senior counsel for the Defendant/appellant also brought to the notice of this Court that the Defendant/appellant had filed counter claim for rendition of true and proper accounts and valued the counter claim at Rs. 1 lakhs, which was erroneously dismissed by the learned single Judge.

(iv) The Appellant was one of the consignment sales agents in respect of the Southern States. The Plaintiff/respondent is manufacturer of machineries. As an agent, the Defendant/appellant is entitled to certain benefits namely-

(i) The distribution and handling charges on products supplied by them on behalf of the Plaintiff

(ii) Reimbursement of transportation charges on stock transfers from factories

(iii) Any other expenditure actually incurred on behalf of the Plaintiff in respect of stock transfers

(iv) Reimbursement of turnover tax paid on behalf of the Plaintiff

(v) Wagon clearance charges for the products dispatched by wagon to their magazines

(vi) Ex-gratia depending on the over all performance of such consignment agent

(vii) Reimbursement of 50% of the magazine licence fee and the excess storage fee wherever applicable.

(v) Therefore, the Defendant/appellant would submit the weekly sales and stock statement to the Plaintiff/respondent and he is also entitled to deduct distribution and handling charges and commission of 60% of magazine licence fee at the time of making weekly remittances against the dues. According to the learned senior counsel for the Appellant, the accounts between the Plaintiff and the Defendant is a mutual running account wherein the actual state of affairs can be known only if the account books of both the Plaintiff and Defendants are disclosed to each other for reconciliation.

(vi) The jurally relationship between the parties cast legal obligation on the Defendant to know the amount collected directly collected by the Plaintiff from the buyers so that the Defendant can make corresponding entries in their books of accounts and deduct the amount payable to the Plaintiff.

(vii) According to the learned senior counsel for the Appellant, the nature of transaction between the Plaintiff and the Defendant would fall under four categories and they are (i) bills were raised and payments were directly received by the Defendant's magazine (ii) bills were raised by the Defendant and the payments were received by the Plaintiff in its name from the customers drawing supplies from the Defendant's magazines (iii) bills were raised by the Defendant and the payments were received by the Plaintiff directly for the supplies made from the Plaintiff's factory (iv) bills were raised and payments were received by the Plaintiff from the customers who received the supplies directly from the Plaintiff's factory.

(viii) According to the learned senior counsel for the Defendant/appellant, the learned single Judge passed the decree and judgment only on the basis of the report of the Auditor but the report cannot be taken into account at all as there is no corresponding rectification of the account made between the parties. Therefore, the learned senior counsel for the Appellant would contend that the suit could have been filed by the Plaintiff only for rendition of account and not for recovery of money. If the suit is filed for rendition of account, then it could be easily ascertained that the accounts has not been reconciled at all.

7. (i) On the contrary, the learned Senior counsel appearing for the Plaintiff/ Respondent would contend that the Plaintiff, being a manufacturer of explosives and detonators, appointed the Defendant/appellant as a consignment sales agent for four southern States namely Tamil Nadu, Andhra Pradesh, Kerala and Karnataka in the year 1963, although there was no written contract. During the course of such business transaction between the Plaintiff and the Defendant, the Defendant started defaulting in remitting the amount due to the Plaintiff and in this regard, there were exchange of correspondence between them. According to the learned senior counsel for the Plaintiff/respondent, in the letters dated 18.06.1986, 01.08.1988 and 26.08.1982, the Defendant/appellant admitted his liability to the tune of Rs. 1,96,57,000/-. Though originally the suit was filed only claiming Rs. 2,13,00,000/- towards outstanding amount, the plaint was amended to include a further sum of Rs. 31,88,698/- being the tax liability payable by the Defendant and the suit claim was accordingly enhanced.

(ii) The Plaintiff/respondent, in order to settle the controversy between the parties in so far as reconciliation of the accounts is concerned, agreed to have the examination of the accounts from the year 1963 to 1984 and the accounts have been reconciled by appointing auditor from 1963 to 1992 for a period of 30 years. The auditor took four years to finalize the report and determined the sum of Rs. 1,69,51,588/- payable by the Defendant as against the suit claim of Rs. 2.13 crores even though the admitted liability of the Defendant himself at Rs. 1.96 crores. Even after the report was submitted, the Defendant/appellant is dragging on the matter. When the Defendant is unable to point out any error or deviation in the report submitted by the auditors, the learned single Judge is right in decreeing the suit

(iii) In so far as the averment that the suit ought to have been filed for rendition of account instead of seeking the relief of recovery of amount, the learned senior counsel for the Plaintiff/respondent submitted that it is a fallacy as the learned single Judge has appointed an auditor to reconcile the account and on the date when the suit was filed, there was an admission of the part of the Defendant to pay certain amount and therefore, it is not open to the Defendant/ Appellant to contend that the suit is not maintainable. In this context, the learned Senior counsel for the Plaintiff/respondent relied on the decision of the Honorable Supreme Court reported in [K.C. Skaria Vs. The Govt. of State of Kerala and Another](#), to contend that the suit for rendition of account is an unusual form of relief to be granted only under specific circumstances and such an argument cannot be made by the Defendant/appellant at this stage. Therefore, the learned senior counsel appearing for the Plaintiff/ Respondent prayed for dismissal of this appeal by confirming the decree and judgment passed by the learned single Judge.

8. The main ground of attack made by the learned senior counsel for the Defendant/appellant is that the suit filed by the respondent/plaintiff for recovery of money is not maintainable and the suit ought to have been filed for rendition of account. In this connection, we have to analyze the background of the case. The Appellant and the Respondent herein were associated in business from 1963. The Appellant was working

as a sole agent. In the year 1974, the Appellant became the consignment sales agent. The modus operandi of the transaction was the Defendant use to send weekly sales and stock statement to the Plaintiff and the Defendant, as an agent is entitled to deduct distribution charges, handling charges and reimbursement of 50% of magazine license fee and the excess storage fee, wherever is applicable, at the time of making weekly remittances against the dues. The Appellant, as an agent, would raise debit note as against the other expenses. At the time of closing the accounts, the Plaintiff/ Respondent used to send reconciliation of the accounts for the year and the statement of the balance due and payable for each consignment on a specified date. When reconciliation of accounts is confirmed by the agent, the balance is carried forward as opening balance in respect of the said consignment of the agent for the subsequent year.

9. According to the Plaintiff/respondent herein as well as the Defendant/ Appellant, the crux of the issue involved in this appeal for adjudication is with respect to four points namely (i) bills raised and payment received by the Defendant (ii) bills raised by the Defendant and the payments were received by the Plaintiff in its name from the customers drawing supplies from the Defendant magazine (iii) bills were raised by the Defendant and payments were received by the Plaintiff directly for supplies made directly from the Plaintiff's factory and (iv) bills were raised and payment received by the Plaintiff from the customer, who received the supplies directly from the Plaintiff's factory.

10. In this connection, it is necessary to point out that the term "magazine" would denote the place where the goods (explosives) are kept by the Defendant which the Defendant brought from the Plaintiff. The contention of the Defendant/appellant is in certain cases, referring to one example in the first category, there will be a reduction in the stock of the Defendant and money will given to the Defendant directly. Then, the Defendant would be liable to amount for both the stock and the money.

11. In the second category, the stock of the Defendant would go down, the sundry creditors would go up but the cash would be received by the Plaintiff. To illustrate, "A" has purchased to whom Defendant would supply the stock. "A" would be shown as debtor in the Defendant's book. When "A" pays money directly to the Plaintiff (not Defendant) there will be no entry in the accounts of the Plaintiff.

12. In the third instance, the sundry debtors in the Defendant book would go up, but there will be no change in the stock and the sundry debtors would remain the same even after the purchaser directly pays to the Plaintiff.

13. In the last segment, the Defendant would be entitled to at least overriding the commission and nothing more.

14. Therefore, according to the learned Senior counsel for Defendant/appellant, unless the entire accounts are reconciled from day one, from either of the parties, there will not be a proper reconciliation or the amount arrived therein will not be the correct amount.

According to the learned senior counsel for the Defendant/appellant, this was also insisted by the Defendant from the day one.

15. No doubt, up to 1988, the relationship between the Plaintiff and Defendant were cordial. Therefore, according to the learned Senior counsel for the Defendant/appellant, there cannot be any argument that huge amount were due and it is only an unrealistic. That is why the Defendant originally sought for appointment of a professional auditor to clarify this situation even during the year 1989-1990. At that time, the Plaintiff, according to the Defendant, took every step to contact the customers directly to oust the Defendant as agent from the territory. In this context, the learned senior counsel for the Defendant/Appellant would contend that there was never any agreement between the parties, but unfortunately, it is not so, as proved by the parties as per the admission made in the letters mentioned below:

| S. No. | Date of letter | Amount due         | Exhibit |
|--------|----------------|--------------------|---------|
| 1.     | 10.06.1986     | Rs.<br>47,95,548/- | Ex. P1  |
| 2.     | 01.08.1988     | Rs.1,08,63,942/-   | Ex. P2  |
| 3.     | 26.08.1992     | Rs.1,96,57,000/-   | Ex. P24 |

16. In this connection, it is worthwhile to mention about the report of the auditors, who were appointed by this Court. In fact, a clarification was sought for by the Appellant at the time of appointment of the auditor and this Court also directed to take complete accounts, right from the year 1963 to 1994. In the auditors report, it was clearly stated as to how they have approached the problem namely by verification of the ledger extract of both the Plaintiff and the Defendant for the period 1963 to 1994, verification of voucher, debit notes, credit notes, weekly costing sheet and other relevant correspondence in their opinion considered necessary. The auditors also given details of the transaction took place between the period from 1962 and 1984 originally and for the year ending 30th June 1963 up to 1981 after verifying all the accounts. They have also clearly stated that there was no material differences arise between the accounting books of the Southern Explosives Company Pvt. Ltd (defendant) and Gulf Oil Corporation Limited (plaintiff). Finally, they have concluded that a sum of Rs. 1,69,59,588/- is due and payable by the Defendant, even though the Plaintiff claimed a sum of Rs. 2,13,00,000/- in the suit.

17. Mr. Vasudevan, Auditor was examined as Court Witness No. 1. Even in the cross-examination at the instance of the counsel for the Defendant, CW1 had answered that all the figures are made available and the reconciliation was carried out in accordance with the normal accounting practice. Further, he has also clarified that the auditors have approached the Plaintiff and Defendant at various point of time and obtained clarification, both orally as well as in writing. It was clearly stated by CW1 that "we stand by our final report dated 23.03.2000".

18. An attempt was made by the learned Senior counsel for the Appellant contending that in so far as Rs. 15.23 lakhs is concerned, since the auditors have expressed their inability to form an opinion, the audit report cannot be considered as a correct one. For this argument of the learned Senior counsel for the Appellant, it was replied by the learned Senior counsel for the Respondent that this fact was clarified by the auditors in point No. 7.3 of the second report. Point No. 7.3 of the second report reads as follows:

7.3 As per our interim report, the amount due by SEC to IDL was stated to be Rs. 51,82,016/- which was subject to non-inclusion of reimbursement claim to the tune of Rs. 24,80,705/-. We have further examined the relevant records and find that SEC as per their letter dated 27.03.1992 has admitted its claim to the extent of Rs. 8,97,810/-. It appears that the reimbursement claim to the extent of Rs. 24,20,703 (-) Rs. 8,97,210/- = Rs. 15,23,495/- lakhs represents reimbursement claim made by SEC and not admitted by IOL. Therefore, this sum of Rs. 15,23,495/- represents the disputed item which we are unable to comment upon. We are of the opinion that the claim of SEC to the extent of Rs. 8,97,210/- is to be paid by IDL.

19. Therefore, it is not open to the Appellant, at this point of time to contend that the auditors have expressed their inability to form an opinion with respect to a particular aspect and therefore, the audit report is not correct.

20. A further attempt was made by the learned Senior counsel for the Appellant to demonstrate that Ex. B5, letter dated 14.08.1992 was not considered by the auditors during the reconciliation process and it was admitted by CW1 himself in the cross-examination. When we analyze Ex. B5, it was a letter dated 14.08.1992 written by Southern Explosives Limited to Ideal M/s. IDL Chemicals Limited wherein they have pointed that "as per the earlier transaction by consignment sale, the non-singareni/MMDC dues is to the tune of Rs. 76,43,000/- and therefore, the amount already in credit for the last five years given by the Defendant is to the tune of around Rs. 77 lakhs. Further reconciliation for prior periods would be at least result in similar amounts.... Under these circumstances, we are unable to understand how you can ask us to pay any further amounts until accounts are reconciled." In the evidence of CW1, it was categorically stated that Ex. D-17 series are working sheets and they were prepared by the auditors from and out of the ledger extract given by the Defendant, then, after getting clarification from the office of the Defendant, they have got it with the records of the Plaintiff and thereafter, they have completed the conciliation. Therefore, the circumstances under which CW1 deposed that they could not form an opinion is when in normal accounting practice, both the parties will have to accept or not to accept certain entries, but in this case, since the Plaintiff has not accepted the debit note, at the same time the Defendant placed the facts before them, they have stated in their preliminary report that they were unable to form an opinion with regard to these entries. It is further clarified in the cross-examination that in a subsequent report, when the documentary evidence in the form of letter of the Defendant is available, wherein the Defendant detailed the debit note to the extent of 8.45 lakhs, for which supporting document are available, they have stated

that the Plaintiff should have considered Rs. 8,29,00,000/-. It was stated that the auditors have also given working papers and from and out of the running accounts maintained by the Defendant, certain entries found place in the ledger extract of the Plaintiff, which is maintained only one account. These are the explanation give by CW1 in his cross-examination. It is also further made clear that the accounts have been duly verified by the competent auditors and finally they have come to a conclusion to reconcile the accounts. Even though huge amount was claimed by the Plaintiff, after complete reconciliation, the audit team has concluded that the Plaintiff/Respondent is not entitled to the entire amount claimed and that the Defendant/Appellant is liable to pay only a lesser amount. The auditors have also taken into consideration the letter under Ex. B24 wherein the Plaintiff has admitted the liability to the tune of Rs. 1,97,57,000/-. Therefore, the argument of the learned Senior counsel for the Petitioner that the said letter was not considered by the auditors will not strengthen the case of the Appellant.

21. As per the report of the auditors as well as the materials available on record, we find that Ex. P21 is a reconciliation statement sent by the Plaintiff for the period from 01.06.1986 to 25.12.1999. When resumption of supply was sought for without reconciliation of accounts, under Ex. P26, letter dated 27.08.1992, it was replied that resumption could not take place. In fact, this letter was also referred to by the learned single Judge. As rightly observed by the learned single Judge, the claim made by the Defendant under Ex. B5, letter that a sum of Rs. 77 lakhs is due and it was not considered by the auditor cannot be accepted. As seen above, in the auditors report emanated after consideration of all the material records and no bias can be attributed to such report of the auditor. In fact, the auditor came to be appointed by the learned single Judge at the instance of the Defendant/appellant by filing application No. 5665 of 1995. The Defendant only wanted the whole exercise to be done by an independent auditor and based on such claim, this Court appointed the auditor. We could also see that the Court appointed auditor had undertaken comprehensive verification of the records, reconciled the accounts and thereafter submitted their final report. Therefore, the finding of the learned single Judge is not only based on the evidence on record, but on the basis of the report of the auditor. In these circumstances, the contention of the Appellant that the Respondent ought to have filed a suit for rendition of account, instead of filing the suit for recovery of amount cannot be accepted. The suit as filed by the Plaintiff/respondent herein is maintainable. We could also see that the learned single Judge, on the basis of the auditors report, rightly rejected the counter-claim made by the Defendant/appellant. In a particular situation, it is open to the principal to accept the statement of accounts as a rendition of accounts by the agent and file a suit in respect of specific item without asking for the relief of rendition of accounts. It only means that the Defendant is relieved of his liability to render accounts and Plaintiff takes the responsibility for making good his charges as against the agent. Therefore, we hold that there is nothing wrong in the Plaintiff filing a suit on the basis of records for recovery of money without seeking the relief of rendition of account. In such view of the matter, we are of the opinion that the suit, as filed by the Plaintiff, is maintainable in law.

22. The learned Senior counsel for the Appellant would contend that mere admission in balance sheet would not tantamount to an admission of liability. In this context, the learned senior counsel for the Appellant relied on the decision of the Andhra Pradesh High Court reported in *Smt. Vijayalakshmi v. Hari Hara Ginning and Pressing* 1999 5 CC 723 wherein the Honorable Division Bench held that merely a debit note is shown in the balance sheet, it cannot be construed as an acknowledgment of debt. In that case, it was further held that merely showing a debt in a balance sheet, would not prima facie be termed as an acknowledgment in terms of the Limitation Act, 1963. It was further held that the term acknowledgment, as envisaged in the Limitation Act categorically had to be with the intention of accepting the debt with the object of extending the limitation for recovery. Under these circumstances, it was held by the Division Bench of the Andhra Pradesh High Court that admission made in the balance sheet cannot be construed as an admission of liability.

23. The learned senior counsel appearing for the Plaintiff/respondent herein relied on the decision reported in [G.L. Sultania and Another Vs. The Securities and Exchange Board of India and Others](#), for the proposition that the Court can take into consideration the report of the auditors appointed by the Court. In that case, the Honorable Supreme Court considered the effect of the SEBI Board in rejecting the earlier report and accepting the subsequent auditors report. Taking into consideration the objection to the audit report, SEBI appointed its own valuers to value the shares of the target company and ultimately, the report of the valuer appointed by the Board was accepted by the acquirer and that value was permitted to be incorporated in the other documents. In para No. 87, supreme Court held that "we are therefore hold that the Board committed no error in accepting the report of Patni & Company, The Board has acted in a reasonable manner and made its best efforts to secure a reasonable price for the shares of the shareholders. It has exercised its discretion wisely and we find no reason to interfere." Similarly, in this case, the learned single Judge relied on the report of the auditors appointed by this Court, at the instance of the Defendant/appellant and decreed the suit. We also find that the auditors have cogent reasons for arriving at a conclusion and we are therefore not inclined to interfere with the order passed by the learned single Judge.

24. The learned senior counsel for the Respondent also relied on the decision reported in [Jagdish Singh Vs. Madhuri Devi](#), for the proposition that the appellate Court, before deciding the matter, should bear in mind the findings recorded by the trial court based on oral and documentary evidence. Even though the appellate Court vests with the same power as that of the original court, but such power has to be exercised with proper care, caution and circumspection. In this case, the learned single Judge has recorded a finding based on facts and on appreciation of the oral and documentary evidence and it should not be lightly disturbed unless there is any material to show that the approach of the learned single Judge in decreeing the suit is contrary to the principles of law and is unreasonable.

25. The learned senior counsel for the Respondent also relied on the decision of the Division Bench of Bombay High Court reported in Ultramatix systems Private Limited v. State Bank of India and Ors. 2007 (5) BC 862 wherein the Division Bench held, while dealing with the word "admission" that the statement contained in the balance sheet and profit and loss account of the company can be an admission of liability unless the subsequent balance sheet were filed to show that either the amount have been paid or were not due and payable and or any other materials produced to hold otherwise. If that exercise is not done, normally, the presumption is, the entries shown in the balance sheet would amount to an admission.

26. The learned senior counsel for the Plaintiff/respondent also relied on the decision reported in Raja of Vizianagaram v. Official Liquidator (1952) 22 CC 1 to substantiate that the amount shown in the balance sheet amounts to an acknowledgment of liability. In fact, the learned senior counsel for the Plaintiff/respondent also brought to our notice the following cases to contend that almost all the High Courts have held that the amount shown as due in the balance sheet will amount to an acknowledgment of liability, excluding Andhra Pradesh. The judgments are given as under:

(i) Deepa Anant Bandekar v. Rajaram Bandekar (Sirigao) Mines Private Limited (1992) 74 CC Bom

(ii) Lahore Enamelling and Stamping Co Ltd. v. A.K. Bhalla (1958) 28 CC 216 Pun

(iii) In Re. New Era Manufacturing Company Ltd (1967) 37 CC 796 Ker at Page No. 801

(iv) State Bank of India v. Hegde and Golay Limited (1987) 62 CC 238 Kar

(v) Rishi Pal Gupta v. S.J. Knitting and Finishing Mills (P) Ltd. (1994) 1 CLJ 343 Del

(vi) [Bengal Silk Mills Co. Vs. Ismail Golam Hossain Ariff,](#)

27. We also find from the records that the balance sheet of the parties to the dispute was produced before the Registrar of Companies, Income Tax Department and other statutory bodies. There is a note in the balance reading that "the opinion in the balance sheet is distinctive." In any view of the matter, as rightly pointed out by the learned senior counsel for the Plaintiff/respondent, the matter was referred to qualified Chartered accountant and they have also given their report based on which the suit was decreed.

28. At the time of hearing, the learned senior counsel for the Defendant/ Appellant contended that at least interest may be reduced inasmuch as the Defendant/appellant has not evaded payment. In this connection, the learned senior counsel for the Defendant/appellant pointed out that a sum of Rs. 2.3 crores was already paid by the Defendant/appellant long back on 04.12.2008 and the interest, if it is worked out as directed by the learned single Judge, the Defendant/appellant has to pay huge amount than the actual amount due. The learned senior counsel for the Defendant/appellant

pointed out that the suit was decreed with interest at the rate of 18% during the pendency of the suit and 12% from the date of decree. Since interest awarded was at 12% from the date of decree till realization, the learned senior counsel for the Appellant prayed that from the date of decree, the interest can be reduced to 6%, instead of 12% awarded by the learned single Judge.

29. Considering the genuine request made by the learned Senior counsel appearing for the Defendant/appellant and having regard to the fact that already the Defendant/appellant paid a sum of Rs. 2.3 crores on 04.12.2008, we are inclined to modify the interest awarded by the learned single Judge at 12% from the date of decree till realization to 6% from the date of decree till the date of realization. In all other respects, we confirm the decree and judgment dated 05.07.2007 passed by the learned single Judge in C.S. No. 1096 of 1993.

30. Accordingly, the Original side appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.