2025:KER:88827

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 20TH DAY OF NOVEMBER 2025 / 29TH KARTHIKA,

1947

RFA NO. 198 OF 2012

AGAINST THE JUDGMENT AND DECREE DATED 07.02.2004 IN OS

NO.51 OF 2000 OF II ADDITIONAL SUB COURT,ERNAKULAM

APPELLANT/2ND DEFENDANT:

JIMMY ELIAS, AGED 46 YEARS, S/O. LATE C.N. ELIAS, MANAGING PARTNER, M/S.PATTASSERIL CEMENT MARKETING, H.B.NO.31, PANAMPILLY NAGAR, ERNAKULAM, COCHIN -16.

BY ADVS.
SRI.AJU MATHEW
SRI.P.VISWANATHAN (SR.)
SHRI.G.KRISHNAKUMAR
SMT.SNEHA JOY

RESPONDENTS/PLAINTIFF AND DEFENDANTS 1, 3 AND 4:

1 THE TATA IRON & STEEL CO.LTD., REGD.OFFICE AT BOMABY HOUSE, 24, HOMY MODI STREET, BOMBAY AND AREA OFFICE AMONG OTHER PLACES AT XL/1734, KALOOR CROSS ROAD, ERNAKULAM, KOCHI – 682 018, REPRESENTED BY ITS DIVISIONAL MANAGER, SRI.R.H. SURYAVANSHI, AGED 52 YEARS.

2 PATTASSERIL CEMENT MARKETING,
H.B.NO.3, PANAMPILLY NAGAR, ERNAKULAM
A PARTNERSHIP FIRM REP. BY ITS MANAGING
PARTNER, JIMMY ELIAS.

3 DR. SARAMMA ELIAS, PARTNER,
M/S. PATTASSERIL CEMENT MARKETING, H.B.NO.3,
PANAMPILLY NAGAR, ERNAKULAM, COCHIN-16.

4 RAVINDHAR, PARTNER
M/S. PATTASSERIL CEMENT MARKETING, H.B.NO.3,
PANAMPILLY NAGAR, COCHIN-16., ERNAKULAM

BY ADVS.
SHRI.VARGHESE C.KURIAKOSE
SMT.RENJINI RAJENDRAN

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 20.11.2025, ALONG WITH RFA.375/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 20TH DAY OF NOVEMBER 2025 / 29TH KARTHIKA, 1947

RFA NO. 375 OF 2012

AGAINST THE JUDGMENT AND DECREE DATED 07.12.2004 IN OS NO.51 OF 2000 OF II ADDITIONAL SUB COURT,ERNAKULAM

APPELLANTS/DEFENDANTS NO.1 AND 4 IN O.S.NO.51/2000:

1 M/S.PATTASSERIL CEMENT MARKETING, H.B.NO.3, PANAMPILLY NAGAR, ERNAKULAM, REP.BY ITS PARTNER, RAVINDHAR, S/O.LATE C.N. ELIAS.

2 RAVINDHAR, S/O.LATE C.N. ELIAS, AGED 52 YEARS, PATTASSERIL HOUSE, BOY'S HIGH SCHOOL ROAD, TRIPUNITHURA, ERNAKULAM.

BY ADVS.
SHRI.VARGHESE C.KURIAKOSE
SMT.RENJINI RAJENDRAN

RESPONDENTS/PLAINTIFF AND 2ND DEFENDANT:

1 THE TATA IRON & STEEL CO.LTD.

REGD.OFFICE AT BOMBAY HOUSE, 24, HOMY MODI STREET, BOMBAY AND AREA OFFICE AMONG OTHER PLACES AT XL/1734, KALOOR CROSS ROAD, ERNAKULAM, KOCHI – 682 018, REP.BY ITS DIVISIONAL MANAGER, R.H. SURYAVANSHI, AGED 52 YEARS.

2 JIMMY ELIAS, AGED 46, S/O.LATE C.N. ELIAS, RESIDING AT PATTASSERIL HOUSE, NADAMA, NEAR BOY'S HIGH SCHOOL ORAD, TRIPUNITHURA.

BY ADVS.
SHRI.V.N.HARIDAS
SHRI.P.CHANDRASEKHAR
SMT.KRIPA ELIZABETH MATHEWS

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 20.11.2025, ALONG WITH RFA.198/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:88827

"C.R."

SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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R.F.A. Nos.198 and 375 of 2012

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Dated this the 20th day of November, 2025

JUDGMENT

Sathish Ninan, J.

The decree in a suit for money is under challenge in these appeals. R.F.A.No.375 of 2012 is by defendants 1 and 4 and R.F.A.No.198 of 2012 is by the 2nd defendant.

2. The plaintiff company is engaged in the manufacture and sale of iron and steel. The 1st defendant partnership firm is its authorised dealer. Defendants 2 to 4 are arrayed as the partners of the 1st defendant firm.

3. According to the plaintiff, the 1st defendant purchased goods on credit and there was an open, mutual and current account between the parties. Payments were defaulted since the year 1997. The last payment made by the defendants was an amount of Rs.52,250/- on 19.02.1998. The suit is filed claiming an amount of Rs.80,74,224/-, including the

principal amount of Rs.47,29,420.99/- and interest thereon till the date of suit.

4. The 1st defendant did not dispute about the distributorship of the plaintiff. That credit purchases were effected by the 1st defendant was also not disputed. The amount claimed was challenged. It was also contended that there was no agreement for payment of interest.

5. The 2nd defendant denied the allegation that he is a partner of the firm. His liability for the plaint claim was also denied.

6. The trial court upheld the plaintiff's claim for the principal amount. The claim for interest till the date of suit was declined since the plaintiff failed to prove any agreement for payment of interest. There is no appeal by the plaintiff.

7. We have heard Sri.Varghese C. Kuriakose and Sri.G. Krishnakumar, the learned counsel on behalf of the respective appellants, and Sri.V.N.Haridas, on behalf of the

respondents.

8. The points that arise for determination in these appeals are;

(i) *Is the transaction between the parties based on a mutual, open and current account attracting Article 1 of the Limitation Act?*

(ii) *Is the plaint claim barred by limitation?*

(iii) *Has the plaintiff succeeded in proving the plaint claim?*

(iv) *Is the 2nd defendant a partner of the 1st defendant firm?*

(v) *Does the decree and judgment of the trial court warrant any interference?*

9. The plaint proceeds as if the suit is one based on an open, mutual and current account of the 1st defendant maintained by the plaintiff. Article 1 of the Limitation Act reads thus;

Description of suit	Period of limitation	Time from which period begins to run
For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years.	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account

The trial court held that the suit falls within Article 1 of

the Limitation Act. The learned counsel for the appellants vehemently argued that the account in question is not an open, mutual and current account attracting the application of Article 1.

10. To be an open, mutual and current account, there must be mutual dealings between the parties creating mutual debts or reciprocal demands. There should be two sets of independent transactions between the parties; the creditor in the one will be the debtor in the other. As to what is a mutual, open and current account was considered by the Apex Court in ***Hindustan Forest Company v. Lal Chand and others [AIR 1959 SC 1349]***. Therein, the Apex Court held that a transaction between a buyer and seller, wherein the buyer pays the price for the goods sold by the seller, is only a payment in discharge of the obligations under the contract to buy goods and to pay for them. It does not create independent obligations on the parties. Such transaction was held to be

not a mutual, open and current account. Therein the Apex Court was referring to Article 85 of the Limitation Act, 1908, which is identical to Article 1 of the present Act of 1963. The Apex Court referred to the judgment of the Calcutta High Court in ***Tea Financing Syndicate Ltd. v. Chandrakamal Bezbaruah [(1930) ILR 58 Cal 649]***, which held thus;

> *"There can, I think, be no doubt that the requirement of reciprocal demands involves, as all the Indian cases have decided following Halloway, A.C.J., transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side, those on the other being merely complete or partial discharges of such obligations. It is further clear that goods as well as money may be sent by way of payment. We have therefore to see whether under the deed the tea, sent by the defendant to the plaintiff for sale, was sent merely by way of discharge of the defendant's debt or whether it was sent in the course of dealings designed to create a credit to the defendant as the owner of the tea sold, which credit when brought into the account would operate by way of set-off to reduce the defendant's liability."*

11. In ***Hindustan Forest Company*** above, the buyer had paid an amount of Rs.13,000/- in advance to the seller for the

delivery of goods. Thereafter, part payments were being made against supply. The Apex Court held;

> *"..... The sum of Rs.13,000 had been paid as and by way of advance payment of price of goods to be delivered. It was paid in discharge of obligations to arise under the contract. It was paid under the terms of the contract which was to buy goods and pay for them. It did not itself create any obligation on the sellers in favour of the buyer; it was not intended to be and did not amount to an independent transaction detached from the rest of the contract. The sellers were under an obligation to deliver the goods but that obligation arose from the contract and not from the payment of the advance alone. If the sellers had failed to deliver goods, they would have been liable to refund the monies advanced on account of the price and might also have been liable in damages, but such liability would then have arisen from the contract and not from the fact of the advances having been made. Apart from such failure, the buyer could not recovery the monies paid in advance. No question has, however, been raised as to any, default on the part of the sellers to deliver goods. This case therefore involved no reciprocity of demands."*

12. In ***Ram Pershad and another v. Harbans Singh and others [1907 (6) CLJ 158]***, a mutual, open and current account was explained by the Court thus;

> *"..... The principle is lucidly explained in Wood on Limitations, Section*

278, where it is pointed out that mutual accounts are made up of matters of set-off, or, in other words, are accounts between parties who have a mutual and alternate course of dealings under an implied agreement that one account may and shall be set-off against the other pro tanto. In order to prove a mutual and open account current, it is sufficient to prove mutual dealings between the parties consisting of sales made, or services performed, by each party, to, or, for the other, creating mutual debts or reciprocal demands. If the account, however, be all upon one side, the account is not mutual, and in such a case the account is said to lack the essential attribute to the creation of mutual accounts, namely the express or implied agreement to set-off the one against the other and instead of this, the payment made incidentally goes in reduction of the debt pro tanto."

13. In ***Komu Haji Hysrose Haji v. Moosakutty Bava [AIR 1985 Ker. 126]***, this Court explained a mutual, open and current account under Article 1 of the Limitation Act thus;

"..... It is only when parties agree to bring together their items of debits and credits relating to their mutual dealings for a set off against each other, that a mutual account comes into existence. The mutual dealings must result in independent obligations in both directions. There should be two sets of independent transaction between the parties with the result that the creditor in one will be debtor in the other. It is then that there will be room for reciprocal demands between the parties.

14. In ***Madappillil Brothers and others v. Ullattil Agencies [2006 (4) KLT 196]***, it was held that Article 1 cannot apply when there is no reciprocity of obligations between the parties.

15. In the present case, there is only a contract for sale of goods and to pay for them. The payments made by the defendants go in reduction of their debt to the plaintiff. Hence, the appellants are right in their contention that the suit is not based on a mutual, open and current account falling within the description of a suit under Article 1 of the Limitation Act. We are unable to agree with the trial court which held otherwise.

16. Having found that Article 1 of the Limitation Act is not attracted, it needs to be considered whether the suit is filed within the period of limitation. The suit is being one for recovery of the unpaid price of the goods, Article 14 of the Limitation Act is attracted and the suit has to be filed within three years from the date of delivery of the

goods. It is not in dispute before us that the plaint claim relates to the period from 1997 onwards. If that be so, the suit filed on 31.01.2000, is within three years and in any view, is well within the period of limitation. That apart, there is yet another aspect of it. As per Ext.Ext.A136 letter dated 28.01.1999, the plaintiff demanded payment of the amount. The same was duly replied by the defendants as per Ext.A137 dated 12.02.1999. Therein, no dispute was raised regarding the debt; time was sought for settling the liability and also agreed to provide collateral security for the debt. Thus there is sufficient acknowledgment of the debt and the suit filed in the year 2000 is within time. Therefore, we concur with the trial court that the suit is filed within the period of limitation.

17. Now coming to the merits of the plaint claim, the learned counsel for the appellants argued that the suit is one based on accounts and Order VII Rule 17 of the Code of Civil Procedure mandates that the account books ought to be

produced along with the plaint. However, the plaintiff failed to produce originals books along with the plaint. Rule 18 of Order VII which gave discretion to the Court to accept such document even at a later stage, was taken away by the CPC Amendment of 2002. Therefore, the account books cannot be relied upon. It was also contended that the Accountant, who allegedly made entries in the account book, had not been examined. Hence, the accounts remain unproved. It is also argued that, though the plaint mentions about the payment of an amount of Rs.52,250/- on 19.02.1998, such an entry is not found in the ledger produced by the plaintiff. This indicates that the accounts are not correct. Therefore, a decree could not be granted on the accounts produced by the plaintiff, it is argued.

18. Order VII Rule 17 CPC reads thus:

> *"Production of shop-book.—(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (XVIII of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the*

time of filing the plaint, together with a copy of the entry on which he relies.

(2) Original entry to be marked and returned.—The Court or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed. ".

It requires the account book to be produced along with the plaint. Order VII Rule 18, prior to its deletion under the CPC Amendment of 2002 read thus:

"Inadmissibility of document not produced when plaint filed.--1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave the Court, be received in evidence on his behalf at the hearing of the suit.

2) Nothing in this rule applies to documents produced for cross examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory"

Rule 18 gave a discretion to the Court to accept the document produced at a later stage. At the first blush it would appear that on the deletion of Rule 18, the power has been taken away. But it is significant to note that the said

power has been retained and transplanted, verbatim, as sub rule (3) to Order VII Rule 14. Therefore the contention is devoid of merit. The above apart, it is trite that the procedure is a handmaid of justice and not its mistress. In ***The State of Punjab and Anr v. Shamlal Murari and Anr (1976 (1) SCC 719),*** the Apex Court held :-

> *"We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities".*

In Shreenath And Another v. Rajesh And Others (AIR 1998 SC 1827) the Apex Court held, *"The procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.".* In the present case, the list of documents annexed to the plaint indicates that photostat copies of the ledgers

were produced therewith, and it has been stated therein that the originals of the ledgers will be produced later. The ledgers were subsequently produced and have been admitted and marked in evidence. The defendants never raised any objections before the trial court with regard to the non-production of originals along with the plaint or to its admissibility. The admissibility of the documents cannot be challenged at this stage.

19. The learned counsel for the appellants relied on the judgments of this Court in ***Narayanan v. Indian Handloom Traders [1999 (1) KLT 700]*** and ***Manilal K.N. v. E.F. Johnson [2011 (1) KHC 150],*** to contend that mere production of books of accounts does not amount to its proof and that evidence with regard to the genuineness of the entries is required to be adduced. Reliance was also made in the judgment of the Apex Court in ***Mahasay Ganesh Prasad Ray v. Narendra Nath Sen [AIR 1953 SC 431],*** to argue that loose sheets of account papers cannot have the

same probative force of account books. The non-examination of the Accountant, who claims to have written the accounts, is vital, it is argued.

20. Coming to the proof of accounts, PW1 is the Accounts Manager and PW2 is the Finance Manager of the plaintiff. No specific challenge with regard to any particular entries in the ledgers were raised. Ext.B6 is the statement of accounts of the defendants maintained by the plaintiff. Therein, the net debit balance is shown as Rs.47,29,420.99/-. Ext.A139 and Ext.A139 (a) are the ledgers. The trial court noticed that Exts.A1 to A133 invoices corroborate the entries in the ledgers. It is not attempted to be established otherwise before us. Ext.A136 is a copy of communication sent by the plaintiff to the defendants with regard to the outstanding dues. Along with the letter, a detailed invoice-wise statement showing the net debit balance was enclosed. The statement annexed to the letter shows the net debit balance as Rs.47,29,420.99/-.

Ext.A136 was issued on 28.01.1999 and the same was duly replied by the defendants as per Ext.A137 dated 12.02.1999. In Ext.A137, not only that the correctness of the account and the balance due was not disputed, but also the defendants sought for time and agreed to provide collateral security for the debt. Ext.A138 is a further communication by the plaintiff to the defendants referring to Ext.A136 and also the statement of accounts and requiring the defendants to clear the outstanding of Rs.47.29 lakhs. The claim remained unrefuted. In the above circumstances, we find that the trial court was justified in having held that an amount of Rs.47,29,420.99/- is due to the plaintiff.

21. With regard to the contention that, the payment of Rs.52,250/- allegedly made by the defendants on 19.02.1998, is not revealed in the ledgers, no questions are seen put to the plaintiff’s witnesses regarding the same, with reference to Ext.A139 and Ext.A139 (a) ledgers. Ext.B6 was produced by the defendants and was marked while cross examining PW2. PW2

has stated that Ext.B6 account shows the payment of an amount of Rs.52,200/- and that the statement in paragraph 4 of the plaint that an amount of Rs.52,250/- was paid on 19.02.1998 is a typographical error. In the plaint, though at paragraph 5, the amount is mentioned as Rs.52,250/-, at paragraph 10, the amount is mentioned as Rs.52,200/-. As noted above, the said payment is reflected in Ext.B6 copy of accounts. Therefore, the said argument has no force.

22. Now, coming to the liability of the 2nd defendant for the plaint claim, he was impleaded in the suit as the partner of the 1st defendant firm. He has denied the claim that he is the partner. Though the plaintiff relied upon various communications issued on behalf of the 1st defendant firm by the 2nd defendant, none of them reflect that the 2nd defendant is the partner of the firm. True, the documents reflect that the 2nd defendant was acting on behalf of the firm and was representing the same in the business transactions. The business was being carried out through

him. However that would not make the 2nd defendant a partner of the firm. There is no material to find that the 2nd defendant is a partner of the firm. The finding of the trial court that the 2nd defendant is a partner of the firm, is thus liable to be set aside and we do so.

23. Thus, while concurring with the trial court in finding the liability of defendants 1, 3 and 4, we hold that the 2nd defendant is not liable for the plaint claim.

24. Coming to the claim for interest, we notice that the trial court has granted interest at the rate of 12% per annum from the date of suit till realisation. Considering the prevailing rate of interest in the banking transactions, we are of the opinion that grant of interest at the rate of 9% per annum from the date of suit till decree, and thereafter at 6% per annum would be just and reasonable.

In the result, R.F.A.No.198 of 2012 is allowed. The decree as against the 2nd defendant will stand set aside and the suit as against him will stand dismissed. R.F.A.No.375

of 2012 is allowed in part. The rate of interest awarded by the trial court will stand refixed at 9% per annum from the date of suit till decree, and thereafter at 6% per annum till realisation. The decree and judgment as against defendants 1, 3 and 4 will stand affirmed in all other respects.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
P. KRISHNA KUMAR
JUDGE

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APPENDIX OF RFA 198/2012

PETITIONER ANNEXURES

Annexure A1	**TRUE COPY OF THE COMMON JUDGMENT DATED 12.11.2020 IN CRL. APPEAL NO. 1390/2004**
Annexure A2	**TRUE COPY OF THE PARTNERSHIP DEED DATED 01.06.1992**
Annexure A3	**CERTIFIED COPY OF THE JUDGMENT DATED 31.10.2012 OF THE PRINCIPAL SUB COURT, ERNAKULAM IN O.S. 71/2002**

APPENDIX OF RFA 375/2012

PETITIONER ANNEXURES

Annexure A1	**CERTIFIED COPY OF THE JUDGMENT IN O.S.NO.71/2002 ON THE FILES OF PRINCIPAL SUB COURT, ERNAKULAM DATED 31.10.2012**