

Karnataka High Court

M/S Malnad Tyres vs Sri R Divakar on 18 December, 2008

Author: Subhash B.Adi

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IR' T!-IE HIGH COURT OF' KARHATAILA AT BANGALORE
DATED THIS 'THE 18*'-5 DAY OF DECEMBER. 2008

BEFORE

THE HQNBLE MRJUSTICE SUBHASH B.ADI 3 Q

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BETWEEN:

M/S Malnad Tyres, V

A registered Partnership Firxza,
Garden Area, Shjmoga,
Reptd. by its Parlner,
S11' V.K.C'rov.imla;u Nair,
S/0 Kallappan Nair.
Aged about 61 years,
R/0 Sharavathinagar, I
Shimoga-577 201. ' ' '
- - - ' - - - ,...PETI'I'I()NER

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S/0 'F.Ram_:=:ppa,

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RESPONDENT

x , {By Sri.Girish Kodgi as K.Van.i, Advs.) .

This C.R.P. is mad UIS 13 of the Karnataka sman Causes

'VT\$Z2)i1.*ft:s.--TAct against the judgment am} order dated 18.6.2007
in SC No.48/2004 on the fk: of the H Add}. Civil Judge
"-- (S'1'.'Dn.), Shivamogga, dismissing the suit for recovery of money.

This petition coming on for admission this day, the Court
made the following:

ORDER

This is plaintiff's revision petition against the judgment and decree in SC No.48/2004 dated 18.6.2007 on the file of Addl. Civil Judge, (Sr.Dn.), Shivamogga.

2. Plaintiff has sought for recovery of Rs.22,73,01/- and alleges that, plaintiff is a registered partnership firm in business of retreading of tyres, selling of. The defendant is a transporter, who purchased, " " : « " z'o' ~ if Rs.14,000/- from the plaintiff on the % this regard, a bill was issued to the defendant against payment was subject to 24% interest. had issued a cheque drawn on State H of the said cheque'; .. it: and plaintiff has initiated criminal proceedings 133 of the Negotiable Instruments Act.

and denied the purchase of two L ' the claim' of the plaintiff including criminal legal proceedings under Section 138 of Negotiable Instruments Act.

Before the Trial Court. on behalf of the plaintiff one Nair was examined as PW1. Defendant himself got as DW1. Exs.F1 to 7 were marked in the evidence of PW1. No documents were produced by the defendant.

5. Trial Court dismissed the suit by observing that, there is over at Ex.P4 by striking some name and writing the name of defendant over the same and disbelieving Ex.P5 ledger book observed that, no documents are produced by the to prove the transaction.

6. Sri S.V.Prakash, learned counsel for the plaintiff submitted that, the defendant T: in the cross-examination and it is clear document age-zegtaxi is the issue of cheque. He submitted are pending in cc No.9038/2007 (Sd. on 11.11.2007) Attdt JMFC, Shimoga, in respect of the very same

7. The defendant had issued cheque in the transaction and the defendant's is total denial of transaction, is V ' : L'jt1eE :e:i.'p1a1t2tfie11.....by the defendant as to in what the was issued. No doubt the original cheque the Trial Court, Ex.P4 credit bill, and Form 'C' and Form 'A' are produced to the Court, the Trial Court without looking into these also without considering the criminal proceedings ' . V t against the defendant in respect of the alleged has dismissed the suit, in my opinion, the matter requires reconsideration.

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8. Accordingly, this revision petition is allowed. The judgment and decree passed by the Addl. Civil Judge (Sr.Dn.), Shivamogga. dated. 18.6.2007 is set aside. Matter is remitted to the Trial Court for disposal after notice to the defendant. Sd. : %&i&§i. St; %A ~ --- _ *AP/ _