

Supreme Court of India

Madan Gopal Kanodia vs Mamraj Maniram And Ors. on 15 January, 1976

Equivalent citations: AIR 1976 SC 461, (1977) 1 SCC 669

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Bench: R Sarkaria, S M Ali

JUDGMENT S. Murtaza Fazl Ali, J.

1. Civil Appeal No. 707 is the plaintiffs appeal by certificate granted by the Allahabad High Court against its judgment and decree passed in First Appeal No. 252 of 1963. dated July 10. 1962 (sic). The defendants-respondents have also filed their Appeal No 708/68 for recovery of Rs. 10.000/-from the plaintiff.

2. The plaintiff had brought a suit in the Court of the First Civil Judge. Kanpur for recovery of Rs. 39,956/5/- from the defendants on account of three main items. The plaintiffs case was that he was carrying on wholesale cloth business at Kanpur in the name and style of Anant Ram Madan Gopal. The defendants' firm was also carrying on cloth business at Kanpur and the defendants' firm was known as Mamraj Maniram. The plaintiff's case further was that apart from certain business dealings, the defendant firm used to borrow monies from the plaintiff on various occasions and used to purchase cloth from the plaintiff on credit. Similarly the plaintiff also purchased the cloth from the defendants' firm and used to send bales of cloth to the defendants' firm for retail sale. Badri Prasad one of the partners of the defendants' firm was a close Mend of the plaintiff: they were on very good terms and each of them was willing to co-operate with the other in carrying on the business of the two firms. The plaintiffs case further was that some time in April, 1948. both the plaintiff and the defendants' firm had purchased 400 bales of cloth from M/s. Sidh Gopal Gajanand of Bombay. Out of the total goods the plaintiff had purchased 200 bales and the remaining 200 bales had been purchased by the defendants' firm. The plaintiff further averred that the purchase of the entire quantity of 400 bales was actually a joint venture, though both the plaintiff and the defendants' firm ordered separately for the same, the plaintiff having paid the money through the defendants' firm. The plaintiff further alleged that the goods were received at Phaphoond and were brought to Kanpur in the trucks through the employees of the plaintiff as also the defendants and were unloaded and dumped in the shop and godown of the defendants as the plaintiff's godown was not sufficient to contain the huge quantity of the goods purchased from the Bombay firm. Thereafter the modus operandi was that the bales of cloth belonging to the plaintiff as also to the defendants were sold through Harish Chandra Bagla who was the commission agent and who arranged for purchasers of the bales of cloth belonging to both the parties. A large number of invoices regarding the goods sold were prepared at the defendants' shop and after the purchases were arranged by Harish Chandra Bagla the defendants used to send their peons or bill collectors to realise the money, and give delivery to the purchasers. Thereafter the defendants used to pay the sale proceeds of the cloth belonging to the plaintiff to him. Unfortunate friction between the two friends resulted from the fact that the defendants having sold 21 bales of cloth did not pay the price thereof to the plaintiff in spite of several demands. It was also pleaded in the plaint that the defendant Badri Prasad admitted having sold 21 bales by mistake and asked the plaintiff to debit the cost of the cloth to his account and accordingly an amount of Rs. 21,686-11-3 being the price of 21 bales of cloth was debited in the account books of the plaintiff in the name of the defendants. This was the first item

which was claimed by the plaintiff in his plaint. It was further alleged that the plaintiff had sent cloth worth Rs. 8,824-8-3 for being sold by the defendants on behalf of the plaintiff which was actually sold by the defendants through Ramesh Chandra Jagdish Prasad of Naughada, but the plaintiff was not paid the price thereof. The third claim related to a sum of Rs. 3,819-14-6 which is said to have been borrowed by the defendants from the plaintiff. The plaintiff further claimed a sum of Rs. 5,625-3-0 being the interest at the stipulated rate of -/10/- (ten annas) per cent. per month on the three items mentioned above. Thus the total amount sought to be recovered by the plaintiff from the defendants came to Rs. 39,956-5-0.

3. The suit was contested by the defendants, who inter alia, pleaded that they had not at all sold 21 bales of cloth as alleged by the plaintiff nor was the purchase of 400 bales a joint venture or enterprise entered into between the plaintiff and the defendants, nor were the goods brought from Phaphoond and unloaded in the godown of the defendants. The defendants further denied all the allegations made by the plaintiff and submitted that the plaintiff had purchased 200 bales of cloth from the Bombay firm and had paid for the same separately and had sold the same through Harish Chandra Bagla. The defendants, however, admitted that they had also bought 200 bales of cloth from M/s. Sidh Gopal Gajanand which were also sold through Harish Chandra Bagla and in fact the entire cloth was unloaded in the shop of Harish. Chandra Bagla situated in Morayawala Gola in the city of Kanpur. The defendants also averred that the accounts of the plaintiff were wrong and fabricated as would be evidenced from the fact that a sum of Rs. 10,000/- had been paid by the defendants to the plaintiff for which no credit was shown in the account books of the plaintiff. The defendants, however, admitted that there were some monetary transactions between the plaintiff and the defendants relating to borrowing of monies from time to time which were shown in the account books of the defendants.

4. The plaintiff after perusing the written statement of the defendants immediately conceded the fact that he had received Rs. 10,000/- and it was not credited to the account of the defendants by mistake and he accordingly reduced his claim from Rs. 39,956-5-0 to Rupees 29,956-5-0. Subsequently counsel for the plaintiff gave a statement before the trial Court that if the plaintiff succeeds, a decree to the extent of Rs. 28,671/- only may be passed against the defendants.

5. After the plaint was filed by the plaintiff, the defendants filed an application before the Trial Court praying that the allegations made in the plaint being vague and ambiguous, the plaintiff may be directed under Order 6, Rule 4, CPC to file better particulars in support of his case. The Trial Court directed the plaintiff to file better particulars by way of written statement by August 9, 1952. As the plaintiff could not file his written statement containing the better particulars by August 9, 1952. he was allowed to file the same by August 16, 1952. On this day the plaintiff filed his written statement containing better particulars and the details of his claim and along with his written statement he also filed 13 documents and prayed that the same may be allowed to be produced after condoning the delay. The Trial Court accordingly accepted the prayer of the plaintiff, condoned the delay, and directed the defendants to record their admission or denial on the documents filed by the plaintiff on August 16, 1952. In pursuance of the order of the Court the defendants recorded their admission or denial on those documents. We have mentioned these facts particularly because the High Court seems to have made a huge capital out of the fact that the plaintiff had filed the Nakal Bahi and

other documents at a late stage of the suit without obtaining the permission of the Court - a fact which is not at all borne out from the order sheet of the Trial Court. We shall deal with this aspect of the matter a little later.

6. The Trial Court framed a number of issues and after taking evidence both oral and documentary of both the parties accepted the plaintiff's case in toto and passed a decree for Rs. 28,671/-. The defendants then went up in appeal to the High Court which reversed the judgment' of the Trial Court and dismissed the plaintiff's suit accepting the case made out by the defendants. Thereafter the plaintiff filed an application before the High Court for grant of a certificate of fitness for filing an appeal to this Court and the certificate having been granted, Appeal No. 707 of 1968 is now before us.

7. We have heard the counsel for the parties at great length and have also gone through the judgment of the High Court and that of the Trial Court. We have also been taken through the entire evidence. We are constrained to observe that the High Court has not made a correct approach to the facts of the present case and has proceeded mostly on conjectures and speculations and has also committed errors of record, in arriving at some of the important findings. In view of the case made out by the plaintiff the area of the controversy has been very much narrowed down and centers round the question of the cost of 21 bales of cloth. Both the courts below seem to have concentrated most of their attention to the question as to whether the purchase of 400 bales of cloth was a joint venture or not and as to the mode and manner in which the sale of those bales of cloth was conducted. In our opinion, in order to decide the short point whether the defendants are liable to pay the cost of 21 bales of cloth to the plaintiff it is not at all necessary to go into the complicated question as to whether the purchase of 400 bales of cloth was a joint venture or not, nor is the question of the manner in which the sale was made at all material or germane for the purpose of deciding the main issue in the case. The pivotal points arising for consideration in this case are two - (1) whether the goods were admittedly brought from Phaphund to Kanpur were unloaded in the shop and godown of the defendants as alleged by the plaintiff or they were kept in the godown of the commission agent Harish Chandra Bagla; and (2) whether the defendants had sold the 21 bales of cloth and did not pay the price thereof to the plaintiff. We might mention that if the first point is answered against the defendants, then it follows automatically that the defendants must account for the sale proceeds of those 21 bales of cloth. As the plaintiff expressly admits that he had received the money for 179 bales and confines his claim only to 21 bales of cloth, therefore, it is for the defendants to explain what they did with this quantity of cloth which was in their custody.

8. As regards the claim of the plaintiff regarding the retail sale of cloth worth Rs. 8.824-8-3 and the sum of Rupees 3,819-14-6 on account of cash borrowings by the defendants, on a consideration of the evidence we are clearly of the opinion that the plaintiff has not been able to prove any of these two items.

9. Thus the central point for determination in this case is regarding the sale of 21 bales of cloth which is alleged to have been sold by the defendants and whose price was not paid to the plaintiff. The High Court after considering the evidence of the witnesses of the plaintiff and of the defendants found that the plaintiff had not proved that the goods which were brought in trucks from Phaphund

to Kanpur were actually unloaded in the godown of the defendants. In this connection the High Court observed as follows:

There was thus no reliable evidence to show that the plaintiff's goods were actually placed in the defendants' godown.

XX XX XX In this state of the evidence the plaintiff's case that his goods had been kept in the defendants' godown cannot be accepted.

In coming to this finding it seems to us that the High Court has approached the evidence in a most mechanical manner and seems to have discarded the evidence of the plaintiff on trivial and illusory grounds. In order to appreciate the question as to whether the goods were unloaded from the trucks, it may first be necessary to examine the topography of the defendants' shop, house and the godown in the light of which the evidence has to be read. It would appear that the shop of the defendants is situated in Moholla Kahu-Kothi. The house of the defendants is adjacent to their shop and the godown of the defendants is in front of the shop of the defendants adjacent to the temple of Ram-Janaki. The shop of the defendants as also the house contains a number of Angans, Dalans and Verandahs, the details of which have been given by the defendant Badri Prasad and his witnesses. It appears from the evidence that the godown actually belonged to the temple which has been taken on rent by D.W. 1 Badri Prasad in the name of Babulal Badri Prasad which appears to be an allied firm of the defendants. It further appears that this godown was used by the defendants' firm for keeping goods meant for sale. It also appears from the evidence that Harish Chandra Basla's godown is not large enough to contain the huge quantity of cloth, namely 400 bales, and that is why, according to the plaintiff, D.W. 1 Badri Prasad being a close friend of his had agreed to lend his godown for dumping the goods of the plaintiff therein. These facts are proved from the evidence of P.Ws. 3, 4, 5, 7 and 10 and D.Ws. 1, 5 and 6. It is against the background of these proved facts that the evidence led by the plaintiff regarding unloading of the goods in the godown of the defendants has to be appreciated.

10. The High Court has conceded in its judgment that there is no dispute between the parties that the goods consisting of 400 bales of cloth were brought from Phaphund to Kanpur in trucks. The High Court found that unto this point of time, there was no discrepancy between the evidence of the parties. The only bone of contention between the parties is whether the goods were unloaded in the godown of the defendants or in that of Harish Chandra Bagla the commission agent. P.W. 4 Ganga Prasad who was one of the persons who had been sent to Phaphund to get the goods and had accompanied the trucks from Phaphund to Kanpur states clearly that the goods were unloaded in the Kahu-Kothi near the shop of the defendants. From the topography of the place mentioned above, it is obvious that the shop and the godown of the defendants being situated in close proximity to each other, the evidence of this witness is not at all inconsistent with the goods having been unloaded in the godown of the defendants. In fact the witness not only says that the goods were unloaded near the defendants' shop at Kahu-Kothi. but he also states that the goods were entrusted to Badri Babu (D.W. 1). This part of the statement has been completely overlooked by the High Court. Furthermore, the witness states in cross-examination that the godown of the defendants is in the shop of the defendants' firm. It is obvious, therefore, that the godown of the defendants being

situated adjacent to the shop of the defendants, the statement of the witness is neither incorrect nor inconsistent with the case made out by the plaintiff. The goods could be said to be entrusted to Badri Prasad if they were placed in his custody or in his godown. The High Court has further remarked that the witness admits that he had not seen the defendants' go-down from inside or from outside. That by itself would not falsify the testimony of this witness. The High Court further relies on the admission of the witness that 200 bales of the plaintiff were sold In the shop of Harish Chandra Baela The High Court appears to have laid emphasis on this admission after divorcing it from the context in which it has been made. The witness while describing the invoices relating to 200 bales of cloth belonging to the plaintiff and the manner in which they were sold said that the 200 bales were sold at the shop of Harish Chandra Bagla. The witness also says that the Parchas of those bales were prepared in the names of the plaintiff and the defendants. This statement has got nothing to do with the place where the goods were unloaded. The statement refers to a point of time which is after the goods were dumped in the godown of the defendants and were sold through Harish Chandra Bagla who was the commission agent of both the parties. The High Court further remarked that the witness could not say how many of the 200 bales belonged to the defendants and how many to the plaintiff. This statement also does not falsify the evidence on the question of unloading the goods in the godown of the defendants. These are the only grounds relied upon by the High Court for discrediting the evidence of this witness and in our opinion they are not at all sufficient to dislodge the evidence of this witness on the point that the goods were unloaded in the godown of the defendants which is near their shop and that the goods were entrusted to Badri Babu (D.W. 1).

11. The High Court then refers to the evidence of P.W. 7 Ram Sagar who had also clearly stated that two sets of 200 bales each were brought to Kanpur and unloaded at the shop of Badri Prasad. Here again the High Court appears to have fallen in the same error in not taking into account the topography of the place. If the godown was situated adjacent to the shop of the defendants, then merely because the witness referred to the shop and not to the godown that by itself would not be sufficient to discard the testimony of the witness and to hold that the goods were not unloaded in the godown of the defendants. As the two places are very near to each other and belonged to the defendants, the witness may have committed a bona fide error of description. Substantially, however, the evidence of the witness clearly shows that the goods were at least placed in the custody of the defendants whether it was in the shop or in the godown. Another comment made by the High Court was that in cross-examination the witness stated that he did not visit the house of Badri Babu. Here the High Court has committed a clear error of record, because the witness in fact clearly., stated thus: "I have been to Badri Prasad's house". It seems to us that as there were some printing errors in the Paper Books before the High Court, that is how this error of record has crept in its judgment The High Court further relies on the fact that the witness admits that the goods brought by him and Ganga Prasad from Phaphund were removed by palledars. Here also the High Court seems to have misread the evidence of this witness. It is obvious that when the trucks were brought to the shop of the defendants, the goods had to be unloaded and for that purpose the labourers would have to be engaged. From the original record of the evidence it would appear that the witness stated thus:

I have gone inside the house of Badri Prasad. The bales were unloaded in a Maidan and then were carried to a Chowk i.e. open land in front of the main door of Badri Prasad.

In Paper Book No. II printed in this Court the correct reproduction of this evidence does not appear to have been made where the statement attributed to P.W. 7 is as follows:

I have been to Badri Prasad's house. The goods were carried by labourer through the main door of Badri Prasad's house to the square situate in the middle". It would appear from the topography of the place that the godown of the defendants is near the temple and is actually intervened by a Maidan. Thus what the witness wanted to convey was that the goods were unloaded from the trucks by the labourers who placed them on the Maidan and then carried them to the godown of the defendants. The evidence of this witness, therefore, clearly shows that the goods were in fact unloaded in the shop or the godown of the defendants and the grounds given by the High Court for disbelieving his statement are wholly untenable as discussed above.

12. The High Court then relies on the evidence of D.W. 5 Hari Shankar who has said that the goods were unloaded in Mauraya-wala-Gola in front of Harish Chandra Bagla's shop. The witness has further stated that Mamraj Maniram have no godown. He being the defendants' witness was bound to deny the plaintiff's case. Nevertheless he has clearly admitted in cross-examination that there are 3 dalans and 3 kothas in the defendants' shop, the dalans being 9 to 10 feet in width and 11 to 13 feet in length and the Kothas being 8 to 9 feetX8 to 9 feet and Angan about 10 to 14 feet X 10 to 14 feet He further admits that the godown belonging to Mandir is with Babu Lal Badri Prasad (which as we shall indicate later is an allied firm of the defendants). He also admits that P.W. 5 Beni Prasad was an employee of Babu Lal Badri Prasad and what is significant is that the High Court has not at all considered the evidence of P.W. 5 who was admittedly an employee of the main defendant Badri Prasad and who has deposed clearly that the goods were unloaded in the godown of the defendants. In this connection P.W. 5 Beni Prasad states that the defendants' shop is situated in Kahu-Kothi Mohalla and the business at the defendants' shop is done in the name of M/s. Babu Lal Badri Prasad, This clearly shows that the godown which was rented by Badri Prasad was actually used by the defendants' firm also. P.W. 5 further states that a godown exists in front of the defendants' shop adjacent to the temple of Ram-Janki and the goods were also kept in the Verandahs behind the business-seat (Gaddi) of the defendants' firm.

13. Lastly the High Court seems to have brushed aside the evidence of the most important witness of the plaintiff in the case, namely, Harish Chandra Bagla, who had deposed on oath that the goods were actually unloaded in the godown of the defendants and this fact had been personally verified by the witness. The High Court failed to consider that this witness was a commission agent not only of the plaintiff but also of the defendants and he thus enjoyed the confidence of both the parties. D.W. 1 Badri Prasad himself tacitly admitted in his evidence that he thought that Harish Chandra Bagla was an honest man. In these circumstances, therefore, there should have been more compelling reasons for the High Court for disbelieving the testimony of Harish Chandra Bagla who stated in clear terms that he had gone to the godown of the defendants and found that 400 bales of cloth had been kept there-200 bales were kept at one time and 200 at another He also deposed as an eve-witness to the fact that the goods were being lifted from the Maidan of Kahu-Kothi for being placed in the godown. This witness has also categorically denied the suggestion that the bales of cloth which were brought in trucks from Phaphund were unloaded in his shop. We have gone through the evidence of this witness which appears to be straightforward and has a ring of truth.

The High Court has observed that as P.W. 4 Ganga Prasad who is a servant of Harish Chandra Bagla has stated that the goods were unloaded near the shop of the defendants and not deposited in the godown, therefore, it was difficult to believe the witness. We are constrained to observe that the reasons given by the High Court are utterly unconvincing. Ganga Prasad P.W 4 was deposing regarding the unloading of the goods when they were unloaded at the shop of the defendants but Harish Chandra Bagla went there a little later when the goods had already been deposited in the godown. The two witnesses were deposing to different sets of circumstances having taken place at different times and we can see no reason why the evidence of Harish Chandra Bagla should be rejected, because Ganga Prasad had stated about the unloading of the goods at a different time.

14. As against this the defendants have examined four witnesses including D.W. 1 Badri Prasad himself to deny that the goods were kept in the godown of the defendants. The evidence produced by the defendants falls short of the standard of proof required by law and is not sufficient to displace the evidence of the witnesses of the plaintiff. So far as D.W. 1 Badri Prasad is concerned he has merely denied that the goods were kept in his godown. The witness, however, has not denied the existence of the godown and has admitted as follows:

In my shop there are three DALANS three rooms, two KOTHAS. Ram Janki temple is adjacent to my shop. Attached to Ram Janki Mandir there is one godown. That godown is taken on rent in the name of Babulal Badri Prasad.

His evidence therefore clearly shows that his shop is spacious enough to contain the bales of cloth or at any rate a part of it. He has further admitted that the godown which is adjacent to Ram Janki temple was taken on rent by an allied firm namely Babulal Badri Prasad. It may be interesting to note that D.W. 1 admits again that in the defendants' firm Mamraj Maniram the partners are Babulal, Phulchand and Badri Prasad D.W. 1 himself, where as these very persons are also the partners of the firm of Babulal Badri Prasad. Babu Lal is actually the uncle of Badri Prasad. The trial Court has found that the defendant has been carrying on the business in the names of different firms belonging to the same group of persons and the firms have been described separately to avoid payment of income-tax. Although we may not go to that extent, but there is no doubt that all these firms are conducting business at almost the same place and the godown of the defendant Badri Prasad which was taken on rent from the temple was being used for keeping goods of all the firms. It seems to us that D.W. 1 has deliberately concealed the truth and tried to deny the entire case of the plaintiff regarding the custody of the goods belonging to the plaintiff without sufficient reasons. The evidence of D.W. 1, therefore, on this point does not inspire confidence.

15. The next witness on this question is D.W. 3 Janki Prasad who is admittedly the Munim of the defendants' firm. He has also stated that Mamraj Maniram have no godown but at the same time he admits that there are a number of Dalans, Angans and Kothas with M/s. Mamraj Maniram and states as follows:

There are three Dalans, Angan, four/five kothas with M/s. Mamraj Mani Ram. In one Dalan. there is gaddi: in the other customers stay, in the third the goods received are checked. In two kothas, Bahis (Account books) are kept, and in one Tijori (Safe) and cash are kept. In one Kotha open goods are

kept. Badri Babu's office is in one Kotha.

He further admits as follows:

The Dalans in Mamraj Maniram are 14 by 15 feet long, 7, 8 feet in breadth, with 7, 8 feet height.

One godown of the temple which falls in front of us is under the tenancy of Babulal Badri Prasad.

Thus the existence of the godown belonging to Babulal Badri Prasad is clearly admitted even by this witness. Moreover this witness does not state in his evidence that he was present either at the time when the goods were unloaded or thereafter and is, therefore, not competent to depose as to where the goods were kept after being unloaded from the trucks. For these reasons. therefore, the evidence of this witness does not appear to be of any assistance to the defendants on this point.

16. The next witness is D.W. 5 Hari Shankar who was one of the persons who had gone to Phaphund to take delivery of the goods. He admits that out of 400 bales whose delivery had been taken by him, 200 belonged to the plaintiff and 200 to the defendants. He has, however, stated that Mamraj Maniram had no godown and that the goods were unloaded in Maurayawala-Gola in front of Harish Chandra Bagla's shop. P.W. 10 Harish Chandra Bagla who, as we have already mentioned, was a common friend of the defendants and the plaintiff has categorically denied that any goods were unloaded in or near his shop. In these circumstances we are not able to believe the evidence of this witness D.W. 5 who is admittedly an employee of the defendants in preference to the evidence of P.W. 10 Harish Chandra Bagla who is more or less an independent witness enjoying the confidence of both the parties and who has been characterised by D.W. 1 himself to be an honest man. Furthermore D.W. 5 in his anxiety to support the defendants' case appears to be more loyal than the King and has stated as follows:

As soon as the goods were unloaded from the trucks, the delivery of the foods was given to the purchasers from that place.

This is completely falsified by the statement of D.W. 1 himself where he stated thus:

These 200 bales of mine which came to Harish Chandra Bagla were sold in ten or eleven days.

For these reasons, therefore, we cannot place implicit reliance on the testimony of D.W. 5.

17. The last witness on this point is D.W. 6 Ram Oudh who also says that no goods were unloaded in the shop of the defendants. That this witness has really no knowledge of the fact regarding unloading of the goods is clear from the statement in cross-examination. where he states thus:

Simply I went to Phaphund and returned back, and except this I did not do anything with respect to these goods.



In view of this statement in cross-examination, it is impossible to place any reliance on the testimony of this witness.

18. This is all the evidence that the defendants have produced so far as the deposit of the goods of the plaintiff in the godown of the defendants is concerned.

19. On a consideration of the evidence of the plaintiff and the defendants we are clearly of the opinion that while the evidence of the plaintiff has a ring of truth and consists of persons who have deposed correctly, the evidence of the defendants is not worthy of credence. In other words, the evidence of the plaintiff on this question far out-weighs the evidence of the defendants both in quality and credibility, and in our opinion, the High Court was wrong in accepting the evidence of the defendants on this point. The finding of fact by the High Court on this question is vitiated by non-consideration of material facts and admissions, misreading of evidence, errors of record and a manifestly wrong and unreasonable approach.

20. Apart from the oral evidence led by the parties, there is also circumstantial evidence of P.W. 6 Babulal. P.W. 8 Mohan Lal and P.W. 9 Banarsi Das who are purchasers of the goods belonging to the plaintiff and are independent witnesses who have clearly stated in their evidence that the goods were received by these witnesses from the custody of the defendant. These witnesses have stated that the bills were realised by Gokaran Nath the Bill Collector of the defendants and the commission agent Harish Chandra Bagla asked them to take delivery of the goods from the godown of the defendants. These persons are to tally independent and disinterested witnesses and bear no animus or grudge against the defendants. In fact D.W. 1 Badri Prasad himself admits in clear terms that he has no quarrel or dispute with Banarsi Das P.W. 9 of Mohan Lal P.W. 8. There is no reason why these witnesses should depose falsely against the defendants. The evidence given by these witnesses, therefore lends very great assurance to the direct evidence of the other witnesses of the plaintiff to prove that the entire 400 bales of cloth, including the 200 bales belonging to the plaintiff, were handed over to the custody of the defendants by being deposited partly in the shop and partly in the godown.

21. There is one more circumstance that supports the case of the plaintiff regarding the custody of the goods. It was the plaintiff's case that the purchase of 400 bales of cloth was a joint venture. The defendants emphatically denied this part of the case and in our opinion wrongly. A large catena of documents filed by the plaintiff in the shape of vouchers, entries in Bahi Khatahs. Parchas etc clearly go to show that the Purchase of 400 bales of cloth was undoubtedly a joint venture, though not joint in the sense that it was a partnership business. Even the High Court found that the parties were at one unto the stage that the goods arrived from Phaphund to Kanpur and the controversy arose only when the question of unloading the goods came. It would appear that the plaintiff in his evidence stated that he had dealings with the firm M/s. Mamraj Maniram. Badri Prasad was his class fellow in LL.B. previous and his fast friend. The plaintiff further says that 400 bales were purchased by Badri Prasad from the Bombay firm - 200 in the name of the defendants and 200 in the name of the plaintiff. D.W. 1 Badri Prasad himself has admitted that the plaintiff was his close friend and that he knew the plaintiff since 1935 and since that time they were continuously acquainted. In these circumstances. therefore, it was not at all surprising if the plaintiff had asked the co-operation of his

friend in the purchase of the cloth from M/s. Sidh Gopal Gaianand of Bombay and to help him in selling the bales of cloth purchased by the plaintiff. Even P W. 10 Harish Chandra Bagla has stated that the cloth of the plaintiff and the defendants was sold through him and both of them asked him to sell the cloth and to charge a particular commission. Even the defendant D W. 1 himself admitted that the 200 bales of cloth belonged to the defendants and the same Quantity belonged to the plaintiff and the cloth was being sold simultaneously. In this connection D.W. 1 states as follows:

My 200 bales and plaintiff's 200 bales were being sold simultaneously (SAATH HEE SATH BIK RAHI THHI). Sometimes same goods, those of plaintiff and those of mine, were sold together to same parties.

The defendant Badri Prasad also admitted that his Bill Collector Gokaran Nath used to realize monies from the various purchasers on behalf of the plaintiff but he tried to explain the same that this was done because the plaintiff had asked the defendant to do so. Lastly it was also admitted that the plaintiff and the defendant had money dealings even before the present transaction.

22. Finally from the documentary evidence produced by the plaintiff like Exts. 6, 30 and 31, it would appear that the expenses for the truck freight etc. were paid by the defendants even for the goods of the plaintiff and the same were reimbursed by the plaintiff by making credit entries in favour of the defendants in his books of account. Exhibit 6 is a Parcha which is admitted by the defendant Badri Prasad himself. This parcha shows that the defendant had spent a sum of Rs. 4,050-12-0 in respect of the freight etc. This parcha was sent to the plaintiff who gave a credit for Rs. 4,050-12-0 to the defendants in his books of account. D.W. 3 Janki Prasad the Munim of the defendants admits in his evidence that Exhibit 6 was actually written by him and sent to the plaintiff.

23. There is also an entry in the Cash Book Ext. 31 dated May 6, 1948 Rs. 60,000/- by which the plaintiff had given a credit for Rs 60,000/- to the defendant in his books of account for the cost of the cloth paid by the defendants to the Bombay firm on his behalf. Exhibit 9 is an entry in the Dastakhati Bahi which shows that Rs. 15,800/- were realised by Gokaran Nath by the defendants which was debited to the plaintiff's account. These facts are beyond dispute and they speak volumes against the case of the defendants that the transaction in question was not a joint venture but merely an individual purchase by the plaintiff. Having regard to all these circumstances we feel that the Plaintiff's case on this point is true and the defendants do not appear to have come out with clean hands but have denied every thing merely, for the sake of denial. This circumstance indirectly supports the case of the plaintiff that as all the 400 bales were jointly purchased from the Bombay firm and as the plaintiff had no place in his godown and was not dealing in retail sale of cloth he had requested Badri Prasad D. W 1 to allow the goods to be kept in the defendants godown and that is why the goods were deposited therein.

24. For these reasons, therefore, the finding of the High Court that the plaintiff has not been able to prove that the goods were unloaded in the godown of the defendants is against the weight of the evidence and is based purely on speculation and on misreading of the evidence. On the other hand, on a careful examination of the evidence we are satisfied that the plaintiff has been able to prove by reliable evidence that the entire 400 bales of cloth after being unloaded were actually deposited in

the godown of the defendants which is situated adjacent to their Shop and also near Ram Janki temple. The goods so deposited included the 200 bales of cloth which belonged to the plaintiff.

25. Before proceeding to the effect of our finding it is necessary to pause for a while in order to examine the finding of the High Court on two points, namely. the alleged inconsistency which, according to the High Court, appears in the plaint and the evidence led by the plaintiff and on the question of the genuineness of Exhibits 20 to 22 the Nakal Bahis The High Court observed that there was a wide gap between the case as originally set up in the plaint and the case sought to be proved at the trial. On a careful perusal of the plaint and the evidence we are unable to agree with the finding of the High Court. A perusal of the plaint would clearly reveal that substantially all the allegations of the plaintiff are clearly mentioned therein, and if there was any vagueness the same was cleared up in the written statement filed by the plaintiff as directed by the Court which was moved by the defendants themselves. The facts pleaded in the plaint are as follows:

(1) that as there was no space in the Plaintiff's godown. the defendants on his request agreed to keep the 200 bales of cloth in the defendants' godown situated in Kahu-Kothi. Kanpur:

(2) that the defendants had sold all the cloth on behalf of the plaintiff except 21 bales of which 19 bales were of Markin and 2 bales consisted of Dhoti Joras:

(3) that when the plaintiff's employee went to take delivery of 21 bales, the defendants did not handover the goods and later expressed regret for their action and promised to pay the sale proceeds with interest on demand: and (4) that accordingly the plaintiff made appropriate entries in his account books at the instance and assurance of the defendants.

26. In the written statement filed by the plaintiff under Order 6. Rule 4. CPC, the particulars and essential details of the 21 bales of cloth were clearly mentioned in paragraph 1(b) Further more, counsel for the plaintiff gave a statement before the trial Court on September 5. 1952. where also all the essential details regarding the 200 bales of cloth were given. In the statement the counsel for the plaintiff admitted that the plaintiff had received the sale proceeds of 179 bales of cloth and that 21 bales of doth remained unaccounted for. In the evidence also the plaintiff has sought to prove the very case set up in the plaint as also in the written statement filed later under orders of the Court. We are unable to see any substantial variation between the pleadings of the plaintiff and the evidence led by him at the trial. It is well-settled that pleadings are loosely drafted in the Courts and the Courts should not scrutinise the pleading with such meticulous care so as to result in genuine claims being defeated on trivial grounds. In our opinion, the finding of the High Court that there was wide gap between the pleadings and the proof is not at all borne out from the record of the present case.

27. The High Court then seems to have vehemently criticised the manner in which the Nakal Bahis Exts. 20 to 22 were brought on the record at a late stage in breach of the provisions of Order 13. Rule 2 of the CPC. Here also the High Court appears to have misdirected itself, by completely overlooking the date and the manner in which the Nakal Bahis were produced by the plaintiff. As mentioned earlier. 13 documents were produced by the plaintiff along with his written statement giving better

particulars on August 16, 1952. The Court applied its mind to the written statement and the documents and condoned the delay by an express order. The Court further directed the defendants to record their admission or denial of those documents which was also done by the defendants on August 20, 1952. All this was done even before the evidence had started and in these circumstances it cannot be said that the defendants were taken by surprise or that they suffered any prejudice by the production of those documents or by the order of the Court allowing these documents to be produced. Order 13, Rule 2 of the CPC does not provide for any particular ritualistic formula in which the order of the Court has to be passed. The object of Order 13 Rule 2 is merely to prevent belated production of documents so that it may not work injustice to the defendant. Order 13, Rule 2 of the CPC runs thus:

No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of Rule 1 shall be received at any subsequent stage of the Proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof: and the Court receiving any such evidence shall record the reasons for so doing.

This provision clearly clothes the Court with discretion to allow production of documents, if it is satisfied that good cause is shown to its satisfaction. In the instant case it would appear from p. 78 of the Statement of the case filed by the appellant/plaintiff and which has not been controverted by the defendants/respondents that the Nakal Bahi, invoices and other documents were filed on July 28, 1952, along with the written statement containing better particulars. These documents were filed under List 35/1 and List 35/1J. These documents were filed in pursuance of the order of the Court which was moved by the defendants themselves. The Court had passed an express order condoning the delay and directing the defendants to record their admission or denial of the documents. The defendants never took any objection or exception to the filing of those documents but complied with the order of the Court in regard to their admission or denial of the documents. The defendants had further ample opportunity to rebut these documents and to show that they were not genuine as the evidence had not begun. These documents were proved by P W 11 Mishri Lal and no suggestion was put to him that the Nakal Bahis were either forged or fabricated. The High Court itself observed in its judgment that the original Khata and the original rokar Exhibits 30 and 31 respectively relating to Samvat Years 2004 to 2007 had been filed by the plaintiff along with the plaint. The entries contained in the Nakel Bahis were merely reproduction of the entries mentioned in Ext. 30. Therefore, the question of the entries in Nakal Bahis being fabricated or spurious could not arise. The Nakal Bahis merely give further particulars or details of the entries already mentioned in the Ledger or the Khata. If in these circumstances, therefore, the Court exercised its discretion under Order 13 Rule 2 Civil P. C to condone the delay and allowed the plaintiff to Produce the documents we do not see any error at all which could have been committed by the trial Court. In fact the High Court has completely overlooked the facts mentioned by us and which are contained in the order-sheet of the trial Court. Thus to begin with the entire approach of the High Court to the case of the Plaintiff and the evidence led by him was absolutely wrong.

28. This brings us now to the question as to whether or not the plaintiff has proved that the 21 bales of cloth which were undoubtedly entrusted to the defendants for being deposited in their godown

were sold by the defendants and the sale proceeds paid to the plaintiff. Once it is proved that the defendants were in possession of the 21 bales of the cloth which formed part of the 200 bales of cloth, it was the duty of the defendants to account for the same, and excepting a bare denial the defendants have given no other explanation. On the other hand, the plaintiff has produced both oral and documentary evidence to prove that these goods were sold by the defendants and that the sale proceeds were not given to the plaintiff as a result of which he had to make debit entries even at the instance of the defendants. The trial Court considered this matter at great length but the High Court appears to have overlooked this aspect of the case.

29. We shall now deal with the evidence adduced by the plaintiff on this point. To begin with, the plaintiff has clearly and categorically mentioned in paragraph 4 of the plaint that the defendants did not pay the sale proceeds of the 21 bales despite repeated demands. It is also pleaded that the defendants expressed regret for their action and promised to pay the sale proceeds thereof with interest on demand and accordingly the plaintiff made appropriate entries in his own account books at the instance and assurance of the defendants. The defendants had, therefore, clear notice of the case pleaded by the plaintiff. In support of his case, the plaintiff examined three witnesses including himself. To begin with the plaintiff himself stated in his evidence as follows:

179 bales were sold. Two bales out of 200 were purchased. These two bales are included in 179. The sale of these bales is recorded in the books of the shoo. Badri Prasad told me and Harish Chandra at the shop of Harish Chandra Bagla that 21 bales were sold in his account by mistake. Harish Chandra was going out and he said that his commission account should be cleared. At the very time Badri Prasad told about this sale. This conversation took place about 1 1/2 or 1 1/2 months after the arrival of the goods. After this conversation, entries were made in the books. Badri Prasad and Harish Chandra furnished the details of 21 bales to me.

Thus according to the plaintiff's categorical statement it would appear that the defendant Badri Prasad admitted before him and Harish Chandra Bagla that he had sold 21 bales by mistake and it was after this that the debit entries were made by the plaintiff in his account books. This statement of the plaintiff is amply corroborated by the evidence of P.W. 10 Harish Chandra Bagla, who, as we have already mentioned, was the commission agent of both the parties and a person who enjoyed the confidence of both. P.W. 10 stated in his evidence as follows:

The goods were sold out within 2 to 2 1/2 months whereafter I made a demand from Badri Babu and Madan Babu with regard to my commission. They said, "let us understand the account, we shall come to the shoo within two to four days". Both these persons came and sat for accounts in which it was discovered that 21 bales were not then sold. This tallied with my papers. Then Badri Babu told that he had sold out these bales and asked Madan Babu to note them against his name at a rate at which they were purchased. Madan Babu said, "we shall record the transaction as desired but you get our money realised." This talk took place at my shop in my presence.

It would thus appear from the evidence of P.W. 10 that the defendants clearly admitted before him that Badri Prasad D.W. 1 had sold 21 bales of cloth and asked the plaintiff to note them against his name at the rate at which they were purchased and the plaintiff agreed to make such entry in his

books of account. This fact is further corroborated by the evidence of P W. 11 Misri Lal an employee of the plaintiff who was sent by the plaintiff to the defendant Badri Prasad at Pratapgarh for supplying the accounts as promised. This witness states that when he had talks with Badri Prasad he was told that out of 200 bales 179 bales had been sold and the remaining 21 bales were sold by Badri Prasad and they should be debited to his account and accordingly it was entered in the Bahi. The evidence of this witness is corroborated to some extent by Ext. 5 which is a letter admittedly sent by the defendant Badri Prasad to the plaintiff and which contains a reference to the settlement of accounts. P W. 11 states in his evidence that the expenses for his visit to Pratapgarh on June 30, 1951 were debited in the account books on July 17, 1951. It may be necessary at this stage to refer to the letter Ext. 5 itself and to the exclamation given by the defendant in respect thereof. The letter runs thus:

Compliments (RAM RAM BAN-CHANA) from Badri Prasad to Bhai Madan Lalii. Bharii (brother) further (AAGE) (I state) Shri Chandra Bhan Guptaji is coming over to Pratapgarh on 4-7-1951. Therefore. I shall...(torn)...to Kanpur after his tour. (SO) which be kept in your knowledge (AAPKI NIGAH BAHE) Wish you well (JYADA SHUBH)....I wish myself to expedite (HAMKO KHUD JALDI HAI) No use ful purpose would be served by...(torn)...(sending) man.

A perusal of the contents of the letter would clearly disclose at least two important facts- (1) that the writer was himself anxious to expedite matters and (2) that no useful purpose would be served by sending the man. The first part of the letter therefore corroborates the evidence of P.W. 11 that he had gone to Badri Prasad at Pratapgarh to realise the sale proceeds of 21 bales of cloth sold by the defendants. The defendant Badri Prasad appears to have got a little irritated over this matter and that is why he has mentioned in the concluding part of the letter that no useful purpose would be served by sending man. The defendant admits having written this letter but he says that this letter was sent to the plaintiff by post. This is belied by the contents of the letter which show that this letter must have been sent per bearer since a protest was made as to why the plaintiff had sent the letter through a messenger to the defendant. Furthermore the letter clearly discloses that the defendant Badri Prasad himself was anxious to clear up this matter as expeditiously as possible. The defendant has stated in his evidence that the letter was in respect of the marriage of a daughter of the plaintiff. He is however forced to admit that the daughter of the plaintiff was only of 12 to 13 years of age and therefore there could be no question of her marriage being performed at that time. The defendant further says that he had not heard unto the date of the deposition that either the Mangni or the marriage of the daughter had taken place. The explanation given by the defendant is unconvincing and self-condemning. If the daughter of the plaintiff could be so young that there can be no question of her marriage, then there could be no occasion for sending the letter in respect of the marriage of the daughter. It seems to us, therefore, that the letter was undoubtedly with respect to the settlement of accounts as deposed to by P.W. 11. Thus the combined effect of the evidence of P. Ws. 3, 10 and 11 is to prove beyond any shadow of doubt that the defendant Badri Prasad did make an admission that he had sold 21 bales of cloth and had not paid its price to the plaintiff and had directed him to debit the price thereof to his account.

30. Further more it appears that the evidence discussed above is fully corroborated by the unimpeachable documentary evidence produced by the Plaintiff on this point. First of all, in the

ledger Ext. 30 which is reproduced at p. 73 of Paper Book No. III there are two entries - one of Miti Jeth Sudi 11 debiting an amount of Rs. 20.298-2-6 which refers to the cost of 19 bales of cloth. This entry appears at p. 115 of the Ledger. There is another entry in the same ledger dated Miti Jeth Sudi 11 for a sum of Rs. 1.388-8-9 which represents the price of 2 bales of cloth. In this ledger it is mentioned that these entries find place in the Journal of the firm which is called Nakal Bahi which contains the necessary particulars. In Nakal Bahi Ext. 20 in Miti Jeth Sudi 11 Sambat 2005 the following entry occurs:

Debited to Mamrai Mani Ram Jeth Sudi 11. Sambat 2005. our goods were kept in your godown for being sold and the same have been sold by you through you. the sale proceeds have been debited to you as instructed by Badri Prasad Rs. 20.298-2-6 (L. 71 i. e. posted on Ledger page 71) 19 bales of Markeen containing 760 thans bearing No. 99060 at the rate of -/10/2.

Than comprising 33 yards Rs. 20.298-2-6 Price 18350/11/9 Profit @ 5% 917/8/6 Commission @ 1% 192/11/- Dharmada 12/ - /9 Gaushala 6/ 3/9 Shri Railway expenses @ 4/4/- % 818/14/9  
----- Total Rs. 20298/ 2/6 -----

This entry clearly shows that it was made at the instance of the defendant Badri Prasad himself which fact is mentioned therein.

31. Similarly in Ext. 21 there is an entry of Miti Jeth Sudi 11. Sambat 2005 wherein a sum of Rs. 1.388/8/9 being the cost of two bales of cloth consisting of dhoti joras has been debited to the account of the defendant. This entry runs thus:

Debited to Mamraj Maniram Jeth Sudi 11. Sambat 2005. our goods were kept in your godown for being sold and the same have been sold by you through you the sale Proceeds have been debited to you as instructed by Badri Prasad....

Rs. 1.388/8/9 (L. page 71 i. e. posted on Ledger page 71) Two bales of dhoti joras containing 300 thans bearing No. 6343. at the rate of Rs. 4/5/6 profit @ 5% Price ... Rs. 1373/3/3 Commission 13/11/9) Dharmada -/13/9) Gaushala -/ 2/-) Rs. 15/5/6 Wages and Railway) expenses -/10/-)  
----- Total Rs. 1388/8/9 -----

Regarding Exhibits 20 and 21 we have already mentioned that these documents were produced as early as August 16. 1952. and were allowed to be produced. P.W. 11 has proved these exhibits and has stated thus:

Out of my 200 bales 169 bales were sold, and for the (remaining) 21 bales Badri Prasad said that he had sold them. and they should be debited to his account. It was entered in mv Bahi Mamrai Mani Ram were debited in mv Bahi (account books) for Rs. 20.298-2-6 on Jeth Sudi 11. Samvat 2005 in this respect, which entry is in the hand writing of Roop Ram Munim on which Exhibit 20 has been marked. A sum of Rs. 1388-8-9 have been debited to the account of Mamraj Mani Ram in Miti Jeth Sudi 11. Sambat 2005. which has been marked as Exhibit 21.

P.W. 11 has categorically stated that the copies of the defendants' account are correct copies and that the firm's account books are regularly kept according to Mahajani method. The witness was subjected to a long and searching cross-examination and the only thing that was elicited from him regarding these documents was that the entry was made on the last page of the Bahi. But the witness has explained that this was the last entry because the year had ended. There is no suggestion to P.W. 11 that these entries were either fabricated or spurious. We have already found that the reasoning of the High Court for assailing these documents is not legally sound.

32. Apart from this, there is a Parcha which contains details of the bales of cloth sold by the defendants, which is Exhibit 17. which was filed by the plaintiff along with the plaint. This document appears at pp. 186-187 of the Paper Book No. II. where the relevant entries relating to the 19 bales of cloth consisting of Mar-keen and 2 bales of cloth consisting of Dhoti Joras are clearly mentioned. The entries run thus:

Debited to the account of Mamraj Maniram Jeth Sudi 11 Sambat 2005 We kept our goods at your godowns for sale which you sold through yourself on instructions of Badri Prasad we have debited the sale proceeds to your account Markin Bale 19 than 760 at the rate of 0.10.0 99060 Price 38 years than 18350.12.3 ... ..20298-2-6 Debited to Mamraj Maniram Account Jeth Sudi 11 Sambat 2005 Our goods had been kept at your godown for sale which you have sold through yourself. We have debited the same to your account on the instruction of Badri Prasad.

Dhoti pair bales 2 than 300 at the rate of 4-5-9 6334 with profit at the rate of 5% 1373-3-3 Commission. 13-11-9 Charity 0-13-9 Gaushala 0- 2-0 Labour expenses at Railway Sta- tion 0-10-0 15-5-6 ----- Total 15-5-6 1388-8-9 -----

This Parcha also corroborates the evidence of P.W. 11 and that of the plaintiff that the cost of the sale proceeds of 21 bales was debited to the account of the defendants' firm on the instructions of Badri Prasad. P.W. 11 has stated on oath in his evidence that this Parcha was given to him by Janki Prasad who was the Munim of the defendants. D.W. 3 Janki Prasad who was the Munim of the defendants has of course tried to deny this fact but in view of the oral and documentary evidence discussed above we have no reason to distrust the genuineness of this Parcha Exhibit 17 which was given by Janki Prasad to P.W. 11 the employee of the plaintiff and which substantially corroborates the entries made by the plaintiff in his ledger and the Nakal Bahi referred to above. The defendants' firm has led no reliable evidence to rebut the evidence both oral and documentary produced by the plaintiff as discussed above. It is true that D.W. 1 Badri Prasad has in his statement sought to deny having made any such admission to the plaintiff or to Harish Chandra Bagla but even his denial appears to us to be extremely laconic and halting. All that the defendant Badri Prasad says on this point is as follows:

Accounting of these bales between Madan Gopal and myself was not done at the shop of Harish Chandra Bagla. I have not admitted that I had sold 21 bales and that the price of 21 bales be entered to my debit.



It will be noticed that while the plaintiff's definite case is that Badri Prasad made the admission that he had sold 21 bales of cloth and that the cost of the same may be debited by the plaintiff to the account of the defendant, the defendant does not deny having made any such admission before Harish Chandra Bagla whom he has safely kept out of the picture. He also does not say that he made no such admission either to the plaintiff Madan Gopal or to Harish Chandra Bagla. All that he denies is that no accounting of these bales was done by him and by the plaintiff at the shop of Harish Chandra Bagla. This clearly shows that the admission of the defendant Badri Prasad relied upon by the plaintiff has a ring of truth. In view of this admission alone the plaintiff is entitled to succeed, but we have already indicated that the admission of the defendant Badri Prasad is proved by the plaintiff and is corroborated by unimpeachable documentary evidence whose genuineness has not been shaken by the defendant Badri Prasad.

33. On a careful consideration of the oral and documentary evidence produced by the plaintiff on this point we are satisfied that the plaintiffs claim with regard to item (a) of the Plaint namely, the price of 21 bales of cloth which had been sold by the defendants' firm and whose sale proceeds were not paid to the plaintiff has been proved to our satisfaction. The High Court was, therefore, wrong in disallowing this claim. The total claim of the plaintiff as regards this item comes to Rs. 21.686/11/3 which may be rounded off to Rs. 21.686/-.

34. We now come to Item (b) of the plaint which is the claim of the plain-tiff for an amount of Rs. 8.824-8-3 which may be rounded off to Rs. 8.824/-. This claim is on account of the price of the goods sent by the plaintiff to the defendants for retail sale and which having been sold the price thereof was not paid to the plaintiff. The trial Court accepted the claim of the plaintiff but the High Court disallowed this claim after finding that the plaintiff had not been able to prove this part of the claim. After having gone through the evidence we find ourselves in agreement with the finding of the High Court on this point. It is true that the amount of Rs. 8,824/- is mentioned in Ext. 22 Nakal Bahi and the entry runs thus:

Debited to M/s. Mam Raj Mani Ram Eka Miti (i. e. one date taken up according to business practice for all different dates of sales of goods of a party for the purposes of interest) Asarah Sudi 5. Sam-bat 2005.

Goods were sent to you to your place for being sold. The sale proceeds details of which have been given by you are being debited to you as per your memo (parcha)..Rs. 8824/8/3 (L. 71 i e. posted on leaser page 71) Credited to cloth A/C... Rs. 8824/8/3 (L. 16 i. e. posted on ledger page 16) But there is no reliable evidence to corroborate this entry The defendants have categorically denied both in the written statement and in the evidence having received the goods mentioned in Exhibit 22. The plaintiff has himself clearly stated in his evidence that the retail cloth sent to the defendants was sold by Ramesh Chandra Jagdish Prasad at his shop. The plaintiffs suggestion is that the firm of Ramesh Chandra Jagdish Prasad really belongs to the defendants. There was, however, no reliable evidence to Drove this fact which has been denied by the defendants and their witnesses. Furthermore if the plaintiff knew fully well that the retail cloth was actually sold by Ramesh Chandra Jasdish Prasad, then there was no reason why he should not have mentioned this fact either in his plaint or even in the written statement containing the better particulars. Neither the

plaint nor the written statement filed by the plaintiff later contains any allegation that the goods were sold by Ramesh Chandra Jagdish Prasad. D.W. 2 Laxmi Narain who is the owner of Ramesh Chandra Jagdish Prasad has deposed on oath that he did not sell any goods of the plaintiff. He had also brought his account books and no attempt was made by the plaintiff to prove any entry in his account books to show that he had sold the goods of the plaintiff.

35. The sheet-anchor of the plaintiff's case on this point was the document Ext. 12 which may be extracted thus.

Exhibit 12 - Parcha of 843 pieces of retail sale. Ex. 12 No. 12 202/1 Sari Pairs 19 No. 133 ??? Doria Thans 15 No. 1358 " Crep Thans 31 No. 15107 " Sari Pairs 14 No. 1910 " Cyton thane 20 No. 431 " Cyton thans 60 No. 7/358 " Khadi thans 61 No. 27/1006 " Sari Pairs 150 No. 334 " Sari Pairs 170 No. 914 " Sari Pairs 169 No. 7909 " Markin thana 32 No. 25/0353 " ----- Total 843 thans ----- MAM RAJ MANI RAM.

36. To begin with this document has not been signed either by the defendants or their agent or by D.W. 2 who is the owner of the firm Ramesh Chandra Jagdish Prasad. Only the words "Mam Raj Mani Ram" appear to have been written by D.W. 2 and we do not know under what circumstances. Furthermore, the total pieces of cloth mentioned in this "document is 843 thans, but the total is absolutely wrong when we compare the items mentioned therein the total comes to 741 and not 843. The plaintiff has not given any explanation for this important discrepancy appearing in this document. Finally there is no reliable evidence at all to show that these pieces of cloth were actually sent either to the defendants or to D.W. 2 the owner of the firm Ramesh Chandra Jagdish Prasad. The cumulative effect of these circumstances, therefore, is clearly to throw a serious doubt on the truth of this part of the case put forward by the plaintiff. But the most important ground on which the claim of the plaintiff must be rejected is that there is no foundation for this claim in the pleading, particularly in view of the categorical statement of the plaintiff that the goods were sold by the firm Ramesh Chandra Jagdish Prasad. For these reasons, therefore, we agree with the High Court that the plaintiff has not been able to prove his claim with respect to the item aforesaid. The claim of the plaintiff for Rs. 8,824/- is, therefore, disallowed as being disproved.

37. The last item consists of a sum of Rs. 3,819/14/6 which may be rounded off to Rs. 3,820/- on account of the cash borrowings by the defendants. This item was not seriously dealt with by the learned Counsel for the plaintiff/appellant before us, nor has any evidence been produced by the plaintiff in support of his claim. In these circumstances, therefore, the High Court was fully justified in disallowing this claim also.

38. Thus on the evidence led by the plaintiff he has been able to prove only Item (a) of the plaint amounting to Rs. 21,686/- being the price of 21 bales of cloth which was sold by the defendants. The defendants have pointed out in their written statement that they had paid a sum of Rs. 10,000/- by cheque to the plaintiff which has not been accounted for and the Plaintiff at once agreed to give a credit of this amount by subtracting it from the claim put forward by him in the present suit. This shows the bona fides of the plaintiff. But the manner in which the credit of Rs. 10,000/- has been given by the plaintiff is not legally correct. If the plaintiff has preyed his claim to the extent of Rs.

21.686/11/3. He must first subtract, Rs. 10,000/- from this amount before adding interest on his claim. Thus after giving credit of Rs. 10 000/- the claim of the plaintiff would be Rupees 11 686/11/3 which may be rounded off to Rs. 11.686/-. The plaintiff has claimed interest at the rate of 10 annas -/10/- per cent. per month which appears to us to be too high. We would, therefore, allow the claim for interest to the extent of 6 per cent per annum for three years. This will come to about Rs. 700/- per year. The interest for three years would be Rs 2100/-. Thus in view of our finding, the plaintiff is entitled to the item relating to the cost of 21 bales of cloth sold by the defendants to a decree for Rs. 13,786/- which includes interest upto the date of the suit, after giving credit for the amount of Rs. 10.000/- which he admittedly received from the defendants. Since the amount of Rs. 10.000/- claimed by the defendants has been duly credited by the plaintiff and his claim has been reduced by Rs. 10.000/- the appeal of the defendants is disposed of on full satisfaction.

39. For these reasons, therefore, the plaintiff's appeal is allowed in part and the decree of the High Court is modified to the extent that the plaintiff's suit is decreed for a sum of Rs 13.786/- against the defendants upto the date of the suit. The plaintiff would be entitled to proportionate costs throughout. The plaintiff would also be entitled to interest pendente lite and future interest at the rate of 6 per cent. per annum which will be calculated by this Court only on the amount decreed by us.