

**THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO**

**APPEAL SUIT No.2308 OF 1993**

**JUDGMENT:-**

The first defendant in O.S.No.63 of 1980 on the file of the II Additional Subordinate Judge, Kakinada, is the appellant herein.

2. The suit was filed by the plaintiff contending that the first defendant is not the lessee in reality and he was only a benami for the plaintiff and he has been doing business on behalf of the plaintiff and therefore, the first defendant is liable to account for the stock received and should hand over the stock and furniture. The first defendant contended that he is the real person, who is doing business and is entitled for doing business and he is not liable to view the value of the stock. The first defendant contended that he has got the lease individually with P.Krishna Murthy, which was later purchased by the second defendant and the second defendant also supported the claim of the first defendant. Apprehending interference with the business, the defendants also filed O.S.No.23 of 1981. After trial, a common judgment was delivered and O.S.No.23 of 1981 was decreed and O.S.No.63 of 1980, which is subject matter of the present appeal, was dismissed by the judgment dated 27.11.1985 and as against that the plaintiff has preferred the appeal to this Court and this Court held that the termination of tenancy by the first defendant is void and the plaintiff is entitled for the damages. The first defendant is liable to render account to the plaintiff. Consequently, O.S.No.63 of 1980 was remanded to the Court below and after remand, the following issues were framed:

- 1) What is the period during which the accounts between the parties are true to be settled?
- 2) Who has to pay to whom and in what amount after determination of accounts?

3. The evidence was also let-in after remand and the Court below after considering the value of the goods supplied and the amounts paid and also the deposit of Rs.45,000/- made by the first defendant, decreed the suit of the plaintiff for a sum of Rs.24,999.70 ps with interest at 12% P.A. Challenging the decree, the present appeal is filed by the first defendant.

4. The points that arise for consideration are:

1. Whether the first defendant is not liable to pay the amount?
2. Whether the relief granted by the Court below is within the claim made in the suit?

5. **POINTS:**

Though there is a dispute about the tenancy of the premises as to whether it was taken by the first defendant in his individual capacity or on behalf of the plaintiff, the fact remains that the purpose of taking the premises on lease is for running of the footwear shop and the stocks are to be manufactured and supplied by the plaintiff and the first defendant will be doing business in sale of such footwear. Therefore, in view of the termination of the agency, which was found to be not valid, by this Court, the second question would be about the liability of the first defendant to pay the amounts due to the plaintiff or to deliver the stocks, which were available with him after the agreement between the parties was ceased. The learned Subordinate Judge has taken into consideration the debts when the goods were supplied and when part of them were returned and the value thereof. Part of the payments made by the first defendant were also taken into consideration and given credit apart from the deposit of Rs.45,000/-.

6. The learned counsel for the appellant claims that in the plaint only a relief for delivery of the stocks was made and there is no claim for payment of the money and consequently, the relief granted by the Court below is beyond the scope of the suit.

7. It is to be noted that whenever a claim for movable property is made, the party will be entitled to deliver of the movable property which is available and if not to the value of the movable property. It is the case basing on the claim of the appellant that he has got stocks of the goods supplied by the plaintiff and that he is willing to deliver the same. Evidently, the stocks received by him must have been sold and realized the money. Consequently, it can only be a claim for money which has to be ordered by the trial Court. The trial Court after making an exercise or taking into consideration the several documents and accounts between the parties has arrived at the figure of Rs.24,999.70 ps and there seems to be no substantial grievance about the amount determined by the Court below. An additional ground was sought to be canvassed contending that the Court below has not granted interest on the deposit of Rs.45,000/- though given credit in the accounts. The Court has considered this aspect and found that under Ex.A.6 agreement the deposit amount does not carry any interest. Therefore, when the first defendant has contracted to the same he cannot claim that he is entitled for the interest. Consequently, I find no merits in the appeal.

Accordingly, appeal is dismissed. No costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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**JUSTICE N.R.L. NAGESWARA RAO**

Date:30.08.2012  
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