



S.A.No.100 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A. No.100 of 2024
&
C.M.P. No.2936 of 2024

M/s Sri Vijayalakshmi Traders,
Rep by its Partner,
S.Alamelu Mangai Santhi,
No.15/31, Krishappa Street,
Chindadripet, Chennai – 600002.

...Appellant

Vs.

M/s. Sri Om Sakthi Agencies
Rep. by its Managing Partner,
Mr. V.Arumugam,
No.59/60, Anna Salai,
Chennai – 600 002.

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil
Procedure against the Judgment and Decree dated 28.08.2023 in



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A.S.No.75 of 2023 on the file of the VI Additional City Civil Judge at Chennai confirming the Judgement and Decree dated 27.04.2022 made in O.S.No.4450 of 2016 on the file of the XV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. Ajith Kumar

For Respondent : Mr. A.P.Loganathan
For Caveator.

J U D G M E N T

The defendant is the appellant herein challenging the Judgement and Decree passed in A.S.No.75 of 2023 by the VI Additional City Civil Judge, Chennai in and by which the learned Judge has confirmed the Judgement and Decree passed by the XV Assistant Judge, City Civil Court, Chennai in O.S.No.4450 of 2016. The facts in brief are as follows and the parties are referred to in the same rank as before the Trial Court.



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2. The plaintiff has filed the above suit for recovery of a sum of Rs.2,45,665/- towards principal and interest as on 31.07.2016 together with further interest on the principal sum of Rs.1,69,550/- at the rate of 18% p.a from 23.08.2016 till realisation in full.

3. It is the case of the plaintiff that the defendant, a partnership firm had on various dates purchased cement from the plaintiff assuring that the payment would be made within 30 days from the receipt of the goods and orders were placed orally. The plaintiff had supplied cements on time and the cement has been received and acknowledged by the defendant. The plaintiff would submit that on receipt of the goods, the defendant did not clear the entire amounts due under the invoices and had left a sum of Rs.1,69,550/- as outstanding towards the principal amount. Though an year had passed, the defendant did not clear the outstanding and the plaintiff had repeatedly made demands directly and over phone.



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4. As on 31.07.2016, the defendant was due and owing a sum of Rs.1,69,550/- towards supply of goods and Rs.76,115/- towards interest. Since the defendant had failed to clear the outstanding a legal notice dated 15.07.2016 was issued calling upon the defendant to clear the outstanding. Though the defendant had received the said notice, no payment had been made and therefore the plaintiff has come forward with the suit within the period of limitation.

5. The defendant had filed a written statement inter alia contending that the supplies were effected to the proprietary concern of her husband by the same name. After the demise of her husband Selvamani, the proprietary concern was converted into a partnership firm under the name and style of “SREE VIJAYALAKSHMI TRADERS” and the partners are the sons of the late Selvamani. The defendant would therefore take a defense that they are not liable to pay the amounts due. They would also submit that the documents filed along with the plaint are forged documents. They therefore sought for



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the dismissal of the suit.

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6. The Trial Court on considering the pleadings had framed the following issues:

- “1.பிரதிவாதி நிறுவனம் தனிநபர் நிறுவனமா அல்லது பங்குதாரர் நிறுவனமா?
- 2.வாதியின் ஆவணங்களான விலைபட்டியல் செல்லத்தக்கதா?
- 3.வாதியானவர் பிரதிவாதியை செலுத்த கேட்டுள்ள தொகை வாதிக்கு கிடைக்கத்தக்கதா?
- 4.வாதிக்கு கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன?

7. The plaintiff had examined one Saravanan as P.W.1 and Ex.A.1 to Ex.A.28 were marked on his side. On the side of the defendant, the partner of the defendant firm examined herself as D.W.1 and marked Ex.B.1 to Ex.B.3.



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8. The Trial Court on considering the evidence observed that the only defense put forward by the defendant is that the supplies were made to the proprietary concern, which was later been converted into a partnership firm and that no orders had been placed by the partnership firm. However, in her cross examination, D.W.1 has clearly admitted that the signatures in the cheques which have been filed as Ex.A.14 and Ex.A.15 are that of her husband. Since the defendant had failed to prove the existence of the proprietary concern and as D.W.1 has accepted the cheques issued in lieu of payment to the plaintiff, the Trial Court had decreed the suit.

9. Aggrieved by the said Judgement and Decree, the defendant had filed A.S.No.75 of 2023 on the file of the VI Additional City Civil Court, Chennai. The Lower Appellate Court had taken note of the conduct of the defendant. Originally the defendant was set ex parte on 14.11.2017 and an ex parte decree came to be passed. Thereafter, the plaintiff had filed E.P.No.1941 of 2018 for executing the said decree,



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after which the defendant has transferred the ownership of the firm in the name of her sons and re-named the firm as “SREE VIJAYALAKSHMI TRADERS”. It is only thereafter that the defendant had come forward with an application for setting aside the ex parte decree and filing their written statement.

10. The Lower Appellate Court had confirmed the Judgement and Decree of the Trial Court by stating that the plaintiff has proved the supplies by filing the invoices and delivery notes and the defendant has not been able to disprove the above statement and further the defendant had come to the Court with unclean hands. Therefore, the appeal was dismissed.

11. Challenging the same, the defendant / appellant is before this Court.

12. Once again the argument advanced by the learned counsel for the defendant is that the defendant firm did not have any business



dealing with the plaintiff firm and that it was the defendant's husband one Selvamani, who had dealings with the plaintiff. The learned counsel would submit that the plaintiff has come forward with the case that the invoices had been acknowledged by the defendant, however, a perusal of the invoices which have been marked as Ex.A.2 to Ex.A.10 would clearly demonstrate that no such acknowledgement has been obtained by the plaintiff and therefore the onus is on the plaintiff to prove that they had effected supplies to the defendant. The learned counsel would submit that both the Courts below have overlooked the above factors.

13. Heard the learned counsel and perused the records.

14. From the records and the Judgement of the Courts below, it is seen that the defendant had originally allowed the suit to be decreed ex parte and after the filing of the execution petition by the plaintiff in E.P.No.1941 of 2018, the defendant has transferred the ownership of the firm in her sons name and re-named the firm as SREE



VIJAYALAKSHMI TRADERS. Thereafter, an application for setting aside the ex parte decree was filed and the defendant had filed a written statement contending that the supplies had not been effected to the defendant firm but to another entity.

15. That apart, the defendant who claims that there is no acknowledgement in the invoices has not deemed it fit to cross examine P.W.1 on these lines. Further, Ex.A.14 and Ex.A.15 cheques have been issued towards the outstanding amount by the defendant firm and the same has been accepted by D.W.1. Therefore, the allegations contained in the written statement and the evidence is nothing but an afterthought, not support by the evidence. The plaintiff has proved the supplies through the invoices and the statement of accounts produced as Ex.A.11.

16. Both the Courts below have elaborately considered the evidence on record both oral as well as documentary and the pleadings and decreed the suit. I see no reason for reversing the well considered



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Judgement and Decree of the Courts below particularly when the defendant has not only come to the Court with a false case but has also failed to prove the allegations.

17. In the result, the Second Appeal is dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To
1.The VI Additional City Civil Judge,
Chennai.

2.The XV Assistant Judge,
City Civil Court,
Chennai.



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P.T. ASHA, J,

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