

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 16.12.2014

Pronounced on : 23.12.2014

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR
A.S.No.859 of 2003

M/s.Lakshmi Automatic Loom
Works Limited
1100, Avanashi Road
Coimbatore - 37

.. Appellant/ Plaintiff

-Vs-

M/s.Vibromech Engineers &
Services Limited
rep. by its Managing Director
435, Mount Road, Nandanam
Chennai - 600 035

.. Respondent/ defendant

Appeal Suit filed under section 96 of C.P.C as against the decree of the Additional District Judge (FTC No.1), Coimbatore dated 26.9.2002 made in O.S.No.261/2001.

For Appellant : Mr.V.Narayanaswami

For Respondents : Mr.Anand Sashitharan

J U D G M E N T

The unsuccessful plaintiff in O.S.No.261/2001 on the file of the Court of Additional District Judge (FTC No.1), Coimbatore is the appellant in the first appeal. The appellant filed the said suit against the respondent/defendant for recovery of a sum of Rs.6,81,009.74 with litigation cost based on the following averments.

2. On the order of the respondent/defendant company, the appellant/plaintiff company supplied castings to the tune of Rs.13,79,735.44. The cost of said castings supplied as per the trade custom, would carry an interest at the rate of 21.75% in case the cost of the goods supplied was not paid within the credit time. In accordance with the accounts maintained by the appellant/plaintiff, a sum of Rs.14,95,899.24 (consisting of Rs.13,79,735.44 towards principal and Rs.1,16,163.80 towards interest) was due from the respondent/defendant as on 30.06.1996. When demanded, the

respondent/defendant informed the appellant/plaintiff through fax that they would pay the amount within three months. A reply was sent through fax informing the respondent/defendant that their request could not be accepted, as a huge sum was due from the respondent/defendant and the creditors of the appellant/plaintiff were also pressurising for payment. A demand for minimum payment of the amount due was made. Since no reply was received from the respondent/defendant, a lawyer's notice dated 02.09.1996 was issued to the respondent/defendant and the same was replied by the respondent/defendant by letter dated 14.09.1996 stating that a detailed accounts statement would be sent by them within 15 days. Once again the appellant/plaintiff issued a rejoinder through their counsel on 17.09.1996 for which the respondent/defendant sent a reply on 15.10.1996 agreeing to pay the amount. However, the said amount was not paid as undertaken. Hence the appellant/plaintiff was constrained to file a company petition before the High Court, Madras, for winding up. In the said petition an order came to be passed directing deposit of the admitted amount within three months. On 03.07.1998, the respondent/defendant contending that only a sum of Rs.13,38,916.21 alone was due from the company to the appellant/plaintiff filed a counter statement and subsequently produced a demand draft dated 18.1.1999 for a sum of Rs.1,98,355.11 and yet another demand draft dated 16.03.1999 for Rs.4,80,909.42. After such payment, a balance sum of Rs.7,01,009.74 was due from the respondent/defendant to the appellant/plaintiff towards the principal. Subsequently, the respondent/defendant calculated interest at the rate of 11% from 09.01.1995 to 30.06.1996, arrived at a figure Rs.58,750/- and paid a sum of Rs.20,000/- out of it. As on 23.03.1999, after giving credit to all the payments made by the respondent/defendant, a sum of Rs.6,81,009.74 remained due towards the interest. Hence the appellant/plaintiff was entitled to recover the said amount with interest at the rate of 21.75% per annum.

3. The suit was resisted by the respondent/defendant on the basis of the averments made in the written statement which are in brief as follows:

Since the entire transaction took place at Chennai, the trial court at Coimbatore did not have jurisdiction to try the case. As the plaintiff company is a Public Limited company, the suit should have been filed in accordance with Order XXIX Rule 2 of CPC and the pleadings should have been verified either by the Secretary or by a Director or by a Principal Officer of the company. The person who verified the plaint claiming to be the Company Secretary is not supported by a resolution of the Board of Directors. The suit should be dismissed as filed by a person not properly authorised by the Board of Directors. The Original Side Appeal in O.S.A.No.2255/1998 filed against the order passed in company petition was dismissed by a Division Bench of the High Court on 22.09.1999, since the respondent/defendant had paid the entire amount due to the appellant/plaintiff. As such thereafter no amount was due from the respondent/defendant. Having received the entire principal amount in the company petition and the original side appeal arising there from

as the price for the goods supplied, the appellant/plaintiff is not entitled to sue for the interest amount. The suit filed for the recovery of the interest alone is not maintainable. At no point of time the respondent/defendant agreed to pay interest on the invoice value of the goods supplied. There was no cause of action and the suit should be dismissed.

5. Based on the above said averments, the learned trial judge framed four issues that are as follows:

1) Whether this court has pecuniary jurisdiction to try the suit?

2) Whether the suit is not filed under Order 29 Rule 2 CPC?

3) Whether the plaintiff is entitled to the amount claimed in the suit?

4) To what other relief the plaintiff is entitled?

6. After framing of the issues, the parties went for trial in which one witness was examined as PW1 and 27 documents were marked as Exs.A1 to A27 on the side of the appellant herein/plaintiff. One witness was examined as DW1 and Ex.B1, namely the certified copy of the judgment pronounced by the High Court in O.S.No.2255/1998 was produced as the sole document on the side of the respondent herein/defendant.

7. The learned trial Judge considered the pleadings and evidence and upon such consideration, held that the defence plea regarding the maintainability of the suit and jurisdiction would not be sustained. However it held that the appellant/plaintiff was not entitled to claim interest; that the entire amount due to the appellant/plaintiff was paid during the pendency of the company petition and also the original side appeal arising from the company petition and that after having received the entire amount towards the principal amount as per the invoices, the appellant/plaintiff could not separately maintain a suit for recovery of interest alone. Based on the said findings, the learned trial judge dismissed the suit without cost by judgment and decree dated 26.09.2002. The decree of the trial court dismissing the original suit O.S.No.261/2001 is under challenge in the present first appeal on various grounds set out in the memorandum of grounds of first appeal.

8. The points that arise for consideration in this appeal are as follows:

1) Whether the payment made during the pendency of the company petition in C.P.No.86/1997 and O.S.No.2255/1998 was in full discharge of the claim of the appellant/plaintiff in respect of castings supplied to the respondent/defendant?

2) Whether the judgment in O.S.A.No.2255/1998 declining the relief of winding up absolved the respondent/defendant from making payment of interest on the amount due to the plaintiff?

3) When the entire principal amount had been paid during the pendency of the company petition and the appeal arising therefrom, whether the appellant/plaintiff could maintain the suit for the recovery of the interest alone?

9. The arguments advanced by Mr.V.Narayanaswami, learned counsel appearing for the appellant and by Mr.Anand Sashitharan, learned counsel for the respondent were heard. The materials available on record including the pleadings, evidence both oral and documentary, were also perused.

10. The claim of the appellant/plaintiff was turned down by the trial court on the following grounds:

- i) The entire amount due to the appellant/plaintiff was paid by the respondent/defendant during the pendency of the company petition and the original side appeal arising from the company petition; and
- ii) The suit for recovery of interest alone on the invoice amount for the goods supplied shall not be maintainable.

11. Assailing both the reasons assigned by the learned trial judge, the learned counsel for the appellant/plaintiff argued that the finding rendered by the Division Bench of the High Court in O.S.A.No.2255/1998 declining the relief sought for in the company petition, namely an order to wind up the respondent/defendant company, should not be taken as an adjudication of the money claim of the appellant/plaintiff against the respondent/defendant; that the said order, would, at the best show that the High Court was satisfied with the capacity and ability to discharge the debts of the appellant/plaintiff by the respondent/defendant company and that hence no order for winding up could be granted; that no definite finding was given in the original side appeal to the effect that the entire debt due to the appellant/plaintiff from the respondent/defendant stood wiped out and that no finding was recorded to the effect that the respondent/defendant was not bound to pay interest. It is the further contention of the learned counsel for the appellant that the company petition seeking an order to wind up the respondent/defendant company could not be equated with a suit filed for recovery of the amount due to the appellant/plaintiff to attract Order II Rule 2 CPC.

12. Per contra, it is the contention of the learned counsel for the respondent/defendant that the amount paid during the pendency of

Original Side Appeal before the Division Bench of the High Court was in full quit of the claim of the appellant/plaintiff; that in view of the same, the subsequent suit filed by the appellant/plaintiff for recovery of money allegedly due on the suit transaction did not have a valid cause of action after the disposal of the original side appeal; that in any event, the appellant/plaintiff, having received the payments made by the respondent/defendant and appropriated it towards the principal amount, cannot maintain a separate suit for the recovery of interest alone and that therefore, the well considered judgment and decree granted by the trial court dismissing the suit filed by the appellant/plaintiff cannot be assailed successfully before this court in this appeal.

13. In support of his contention that a suit for recovery of interest alone for the goods supplied shall not be maintainable, learned counsel for the respondent relied on the judgment of a Division Bench of the Bombay High Court in Vijaykumar Satishchandra & Co. vs. Rajgopal Badrinarayanan Malpani reported in (1996) 98 BOMLR 425. The said judgment shall not be relevant for the question raised in the present case, namely whether a suit for recovery of interest alone on the invoice amount for the goods supplied shall be maintainable. In the case before the Division Bench of the Bombay High Court, the question of acknowledgment of the liability and the nature of transaction viz. whether each transaction to be taken as separate transaction giving rising to a separate cause of action or all the transactions should be taken as series of transaction so as to enable the making of a claim based on the final tally of accounts.

14. Yet another judgment relied on by the learned counsel for the respondent/defendant is one decided by a learned single judge of this court in S.Mangalaswamy vs. Masthan Rowther reported in 1973 (2) MLJ Notes of unreported cases 1. The said judgment also does not support the contention of the learned counsel for the respondent/defendant. In the said case, the finding was that there was no agreement to pay interest for the goods supplied. However, the plaintiff therein filed the suit for recovery of the amount reflected in the account statement signed by the defendant therein which included interest. It was held therein that no interest could be claimed in accordance with the original contract, namely the supply of goods on credit. However on the basis of the acknowledgment made by signing the accounts statement, the plaintiff therein was held to be entitled to recover the amount which reflected interest in the said accounts statement. In the said judgment it was not held that in no case the supplier of goods shall be entitled to recover interest on the cost of the goods for belated payment, namely payment beyond the credit period reflected in the invoice.

15. On the other hand, learned counsel for the appellant/plaintiff has relied on the following judgments in support of his contention that even after payment of the principal amount, a suit for the unpaid interest shall lie and such suit shall be very much maintainable. They are:

i) Andhra Cotton Mills Ltd. rep by its Deputy General Manager, Prodattur vs. Sri Lakshmi Ganesh Cotton Ginning Mill, rep. by its Partner, K.M.Mohana Rao reported in 1996(1) ALT 537, wherein a single judge of the Andhra Pradesh High Court has held in categorical terms that a suit filed for recovery of interest alone shall be maintainable and the court is competent to grant the relief.

ii) M.Mahendran v. The Chairman-cum-Managing Director & others reported in 2009-4-L.W. 342, wherein a learned single Judge of this court has held that even after the principal amount was repaid, the creditor is entitled to interest.

16. Nowhere in the Sale of Goods Act or in the Indian Contracts Act it has been stated that in the absence of a contract for payment of interest the supplier of goods is not entitled to claim interest for delayed payment by virtue of a trade custom or that he cannot maintain a claim by filing a suit for recovery of interest alone, if the principal amount has been paid. Strictly speaking, when the debtor makes payment to the creditor entitled to claim interest, such creditor shall have the option of applying it towards interest at the first instance and then the balance towards the principal. However, when the debtor makes the payment with a specific instruction that it should be appropriated towards the principal, it shall be open to the creditor either to appropriate it towards the principal or to refuse to accept such payment. In case he accepts to receive it for appropriation towards principal, the same cannot be considered to be a waiver of his claim towards interest. At the best, subsequent to the discharge of the liability towards the principal, the debtor shall not be liable to pay interest. However, his liability towards the interest accrued till the payment of the principal debt shall continue even after the payment of the principal amount of debt. Any other interpretation will give an upper hand and premium to unscrupulous debtors to make payment of amount equal to principal amount alone with a request to appropriate it towards the principal and thereafter disown the liability to pay even the accrued interest. The equity and fair play of justice also will not support the theory which is sought to be propounded on the side of the respondent herein/defendant.

17. For the above said reasons, this court comes to the conclusion that the contention of the learned counsel for the respondent/defendant, that the payment of the principal amount without making payment of interest would totally absolve the debtor from his liability to pay interest and that a suit filed for recovery of interest alone is not maintainable, has got to be rejected as untenable. On the other hand, the contention of

the appellant/plaintiff that the liability of the defendant/debtor to pay interest upto the date of payment of the principal amount shall continue even thereafter and that a suit filed for recovery of such interest shall be very much maintainable has got to be countenanced.

18. An attempt was made on behalf of the respondent/defendant that there was no contract for payment of interest at a particular rate and that therefore, the appellant/plaintiff was not entitled to interest. Of course it is true that there is no reference to payment of interest for belated payment of the invoice amount in the invoice produced as Ex.A11. However, the claim of the appellant/plaintiff is based on trade custom rather than express contract. In Ex.A4-notice dated 02.09.1996, while claiming interest at the rate of 21.75%, specific reference to the trade custom was made. The reply to the above said notice is Ex.A5. In the said reply notice, the claim of the appellant/plaintiff that there was a trade custom entitling them to claim interest at the rate of 21.75% was not at all disputed by the respondent/defendant. On the other hand, it was simply stated that they were looking into the accounts with regard to the claim made in the notice and they would be sending a detailed reply within 15 days. For the said reply a rejoinder notice dated 17.09.1996 came to be sent to the respondent/defendant and the same is Ex.A6. The further reply to Ex.A6 sent by the respondent/defendant to Ex.A6 is Ex.A7. In that reply alone, the respondent/defendant had stated that the invoice did not contain any stipulation regarding payment of interest and that in any event, the interest claimed at 21.75% was unsustainable. Even in the said reply notice the averment in the notice dated 02.09.1996 regarding the existence of a trade custom, in accordance to which interest was claimed had not been refuted by making averment that no such trade custom prevailed.

19. In this regard PW1 has given cogent evidence to the effect that they used to supply goods to their customers on credit for 45 days alone; that if the invoice amount was paid within 45 days, no interest would be collected; that in case of payment beyond 45 days, the customer had to pay interest and that such liability to pay interest was cast on the customer by virtue of their trade custom. It was also stated by PW1 in clear terms that they had availed loan from the bank and the bank was charging interest at a particular rate and they in turn claimed interest on the very same rate of interest from the respondent/defendant. The credibility of the said testimony of PW1 was not shaken or impaired by the respondent/defendant by cross examination or by adducing reliable contra evidence.

20. Excepting the interested testimony of DW1 to the effect that they did not adopt the practice of making payment of the invoice amount within 45 days, there is no other evidence. However, DW1 himself, in his evidence, admitted that under Ex.A2 a sum of Rs.2000/- was sent to the appellant/plaintiff on 05.07.1999 and

that they calculated interest at the rate of 11% and sent the said amount of Rs.20,000/- to the plaintiff. It is also an admission made by him that in the letters marked as Exs.A26 and Ex.A27 they had admitted that they agreed to pay interest. In view of the above said clear and categorical admission, the contention of the respondent/defendant that there was no trade custom as projected by the appellant/plaintiff and they (respondent/defendant company) were not liable to pay interest to the appellant/plaintiff cannot be sustained. On the other hand, based on the admission, we have to arrive at a conclusion that the trade custom pleaded by the plaintiff for recovery of interest stands substantiated not only by the testimony of PW1, but also by the above said admission made by DW1, besides the admission made by the respondent/defendant in Exs.A26 and A27. Such a contention was upheld by a Division Bench of this Court in M/s.Rashid Leathers (P) Ltd v. M/s.Super Skin Traders reported in (1988) 1 MLJ 232.

21.The next contention raised by the respondent/defendant is that when the appellant/plaintiff filed a company petition in C.P.No.86/1997 to pass an order of winding up against the respondent/defendant, part payments were made and during the pendency of the original side appeal arising from the company petition, payments were made covering the entire amount of principal; that such payments were made in full quit of the claim made by the appellant/plaintiff and that therefore, no cause of action survived thereafter for filing the suit for recovery of the interest. The further contention of the respondent/defendant is that when the Division Bench of this High Court in O.S.A.No.2255/1998 declined the relief sought for in the company petition on the premise that the entire principal amount was paid and the claim of the appellant herein/plaintiff for interest could not be the ground on which an order for winding up could be passed; that the said view was taken on the premise that the appellant/plaintiff was not entitled to claim interest and that on that ground also the suit filed for recovery of interest should be held not maintainable.

22. Yet another contention raised by the respondent/defendant is that the judgment of the Division Bench of this court in O.S.A.No.2255/1998 would bar the present suit filed by the appellant/plaintiff for recovery of interest, presumably under Order 2 Rule 2 CPC.

23. As rightly contended by the learned counsel for the appellant/plaintiff, none of the above said contentions raised on behalf of the respondent/defendant is sustainable. Suppose the company petition resulted in a winding up order and the appellant made his claim before the Official Liquidator and claimed for interest came to be negatived therein, then the same would amount to a res judicata for the present suit. If a claim before the Company Court or the Official Liquidator was made for the principal amount and interest, then it may attract Order II Rule 2

CPC, as the appellant had omitted to sue on the part of the cause of action. The same is not the case here. The appellant/plaintiff prayed for an order of winding up against the respondent/defendant projecting the principal as well as interest components towards the liability of the respondent/defendant. Therefore, neither the proceedings in the company petition, nor the judgment pronounced in the original side appeal arising from the company petition declining the prayer seeking an order for winding up of the respondent/defendant company shall provide a bar for the present suit either on the principle of res judicata or under Order II Rule 2 CPC. Point Nos.2 and 3 are answered accordingly.

24. A perusal of the judgment of the Division Bench of this court in O.S.A.No.2255/1998 will make it clear that the payments made during the pendency of the company petition and during the pendency of the original side appeal were not accepted in full discharge of the claim of the appellant/plaintiff and that still there was a dispute regarding the amount to be paid as interest. The view taken by the Division Bench to the effect that the prayer for an order of winding up for the claim of interest would be an arm twisting exercise to compel the company facing company petition for winding up to come to terms, was one of the reasons for dismissing the company petition. The relevant portion of the judgment of the Division Bench is extracted below:

" All too often persons who seek winding up of companies on the ground of its inability to pay its debts are merely extending pressure on the company to pay the monies claimed by them as due. While a winding up order may be made in cases where it is found to be warranted, the winding up petitioners cannot as a matter of course be used to 'twist the arm' of the company not only to pay the admitted dues or debts in respect of which the company has no bonafide defence tenable in law, but also pendente lite interest."

The Division Bench was also of the view that since admittedly a major part of the claim, namely the principal amount was paid and the disputed question of liability to pay interest alone was to be adjudicated upon, it came to the conclusion that the respondent/defendant company could not be said to be a company unable to pay its debts and it could not be ordered to be wound up. A clear understanding of the judgment of the Division Bench will make it clear that the question whether the amounts paid by the respondent/defendant were in full discharge of the claim of the appellant/plaintiff in respect of the price of the castings supplied to the respondent/defendant was not decided and it was left open by the Division Bench.

25. The appellant/plaintiff has produced a statement of accounts showing the cost of castings supplied and adjustment of the amounts paid by the respondent/defendant towards the cost keeping a separate column for interest, which is provided in the tabular column as below:

Date	Amount received towards Principal Rs.	Balance Principal Amount due Rs.	Interest Amount Rs.	Percentage	No. of days
30 Jun 96		1343236.75	99252.32 133394.45	21.75% 20.25%	124 179
29 Apr 97	135638.87	1207597.88	103175.18 20045.46 43026.88 21850.90	20.25% 18.86% 17.34% 18.87%	154 33 75 35
20 Feb 98	25670.00	1181927.88	18331.22	18.87%	30
22 Mar 98	174155.27	1007772.61	14588.13	18.87%	28
19 Apr 98	23189.00	984583.61	7924.14 24075.09	18.36% 17.85%	16 50
24 Jun 98	50094.00	934489.61	14167.12	17.85%	31
25 Jul 98	55225.00	879264.53	61489.50	17.85%	143
15 Dec 98	200000.00	679264.53	12623.15	17.85%	38
22 Jan 99	198355.11	480909.42	14111.07	17.85%	60
23 Mar 99	480909.42	0.00	0.00		
	1343236.75		588054.61		
Interest as per admitted liability due as on 30.06.1996			112955.13		
TOTAL			701009.74		
LESS 05 July 99 Amount received towards interest			20000.00		
Balance interest due upto 23.3.99			681009.74		

From the same it will be clear that whatever amount was paid by the respondent/defendant, the same was appropriated towards the principal, showing the interest in a separate column for which no interest has been claimed as it would amount to claiming interest on interest. It is pertinent to note that for a particular period alone

the maximum interest of 21.75% has been applied and thereafter due to the reduction in the bank rate of interest, the interest was reduced to 20.25%, 18.87% and at last to 17.34% per annum. The appellant/plaintiff has proved that the amount due from the respondent/defendant as on the date of filing of the suit was Rs.6,81,009.74.

26. As pointed out supra, the appellant/plaintiff could have very well appropriated the amounts paid by the respondent/defendant first towards interest and the balance towards principal. If such a procedure had been adopted by the appellant/plaintiff, the amount now claimed in the plaint shall be the balance amount of principal and he would also be entitled to claim interest on that amount. However fair play is seen on the part of the appellant/plaintiff by appropriating the payments made by the respondent/defendant towards the principal alone, keeping the interest in a separate column and by claiming the interest alone in the present suit. The learned trial judge, without properly appreciating the pleadings and evidence and without applying proper principles of law, has arrived at an erroneous conclusion that the appellant/plaintiff was not entitled to a decree as prayed for. This court, on re-appreciation of evidence, comes to the conclusion that the appellant/plaintiff is entitled to a decree as prayed for. Point No.1 is answered accordingly.

In the result, the appeal is allowed. The judgment and decree of the I Additional District Judge (FTC No.1), Coimbatore dated 26.11.2002 made in O.S.No.261/2001 is set aside. O.S.No.261/2001 is allowed with cost and a decree directing the defendant to pay a sum of Rs.6,81,009.74 is granted. However, there shall be no order as to cost in the first appeal.

Sd/-

Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

asr

To

1. The Additional District Judge (FTC No.1),
Coimbatore

2. The Section Officer
VR Section,
High Court, Madras

A.S.No.859 of 2003

TEJ (CO)

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