

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

CORAM

THE HONOURABLE MRS. JUSTICE **S.VIMALA**

C.S.No.197 of 2000

M/s.Southern Petrochemical
Industries Corporation Ltd.
Rep. by its Director & Secretary,
97, Mount Road,
Guindy,
Chennai-600 032 ... Plaintiff

Vs.

1.M/s.Karthik Agencies,
rep. by its Prop.R.Ramaswamy,
448/1, Mochakottam Palayam,
Karur-639 002.
2.R.Ramaswamy ... Defendants

PRAYER: Plaint under Order VII, Rule 1 of C.P.C., praying for judgment and decree against the defendants jointly and severally for:

(a) sum of Rs.43,73,149.08 with interest @20% p.a. on the principal amount of Rs.26,74,692.08/- from the date of the plaint till realisation of the suit amount.

(b) For the cost of the suit

For Plaintiff : Mr.M.Sridhar
for M/s.L.Jayakaumar and Associates

For Defendants : No appearance (D1 and D2)

J U D G M E N T

The plaintiff has filed a suit for recovery of a sum of Rs.43,73,149/- with interest at the rate of 20% p.a. on the principal amount of Rs.26,74,592.08 from the date of the plaint till the date of realization.

2. The plaintiff is engaged in the business of manufacturing fertilizers and their products are marketed through dealers at various places in India.

3. The first defendant is a Proprietorship concern of which the second defendant is the Proprietor. Based on the representation given by the second defendant that he would take dealership for the plaintiff's products on non-exclusive basis and that he would show appreciable turn over, the plaintiff appointed the first defendant as a dealer by virtue of the agreement dated 19.12.1998.

4. According to the agreement, the plaintiff was supplying several items of their fertilizer products to the defendants upto 26.12.1999.

4.1. In respect of the products supplied to the defendants upto 26.12.1999 running account is maintained by the plaintiff. An amount of Rs.27,98,458.08 is an outstanding amount as on 31.12.1997 in respect of the products supplied for the period from 31.10.1996 to 26.12.1997. Under terms and conditions of the agreement, which is evidenced by Invoices

and Supply Order, the plaintiff is entitled to claim interest

at 26% p.a. on the outstanding amount, which was later reduced to 20% on and from 01.04.1998. The defendants have failed to settle the amount, even though they have agreed to make prompt payment as per Clause 9 of the agreement dated 19.12.2008.

5. The plaintiff has also issued pre-suit notice under Ex.P142, which is evidenced by Acknowledgment under Ex.143 and even thereafter, the defendants did not make payment. Hence, the plaintiff is compelled to file the suit.

6. One J.Rajan is examined as P.W.1 and he has spoken about the suit transaction, which is proved through Ex.P3 to Ex.P84 which are invoices and corresponding delivery notes.

7. Payment made by the defendants under Ex.P85 to Ex.P136-Cheques remained unrealized, on account of insufficient funds. Therefore, the claim of the plaintiff that they have supplied fertilizers to the defendants and that the defendants are liable to pay the suit claim is proved through oral and documentary evidence. The non-payment is also evidenced through return of cheques. Therefore, the plaintiff is entitled to a decree as prayed for.

8. The defendants have disputed the claim in the written statement on the ground that they are Commission agents and not dealers and that they did not issue any cheque.

8.1. Even though such specific defence is taken by the defendants, in order to substantiate the same, the defendants did not appear before the Court. Despite grant of sufficient

time by the learned Master while recording evidence, the defendants have not chosen to cross examine the plaintiff. The silence on the part of the defendants by non-cross examining the plaintiff as well as by failing to lead evidence, would go to show that they have no case to contest. In such circumstances, the plaintiff's entitlement to the decree cannot be disputed.

8.2. The suit is to be decreed with modification in the subsequent rate of interest alone. After the decree, the rate of interest shall be 6% per annum.

9. In the result, the suit is decreed as prayed for with costs. The defendants shall pay a sum of Rs.43,73,149/- with interest at the rate of 20% p.a. on the principal amount of Rs.26,74,592.08 from the date of the plaint till the date of decree. Thereafter, the said amount is payable with interest at 6% p.a.

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sd/.S.V.J

03.06.2015

//Certified to be a true copy//
Dated this the day of 2016

R.s/23.02.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.