IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14 -10 - 2015

(Judgment Reserved on 31-08-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.517 of 2014

Global Waste Recyclers Limited,
(formerly Global Waste Recyclers Private Limited),
Represented by its Managing Director,
Mr.Bharath L.Pujara,
having its Registered Office at:
No.200, Peters Road,
Saravana Complex, Third Floor,
Royapettah, Chennai-600 014. .. Plaintiff

Vs.

1. Mr.S.H.Durai,
Proprietor M/s.Arasi Traders,
No.9, Padmanaban Nagar Main Road,
Choolaimedu, Chennai-600 094.

2. The Lakshmi Vilas Bank Limited,
Represented by its Branch Manager,
Mount Road Branch,
No.356 (Old No.646), Anna Salai,
Thousand Lights, Chennai-600 006. .. Defendants

Plaint filed and numbered as Civil Suit, under Order 4 Rule 1 of the Madras High Court Original Side Rules, read with Order 7 Rule 1 of the Code of Civil Procedure, praying for judgment and decree:

(a) to direct the first defendant to pay a sum of Rs.33,73,203/- to the plaintiff together with interest at the rate of 10.75% p.a. from the date of plaint till the date of realisation, and

(ii) to direct the first defendant to pay the costs of this suit.

For plaintiff : Mr.Santosh Ukkur for
M/s.Tatva Legal Chennai
For defendants : D1 - set ex-parte - order dated
09.07.2015
Mr.A.Arun Babu for D-2
D-2 - exonerated - order dated 09.07.2015

JUDGMENT

It is the case of the plaintiff-Company that they are engaged in waste paper business for the past 40 years; for the purchases made by them, they pay money through net-banking (RTGS - Real Time Gross Settlement) or by issuing cheque; that on 08.08.2011, the Managing Director of the plaintiff-Company instructed Mr.B.Manoharan (Accountant) to transfer a sum of Rs.25,51,763/- to the account of M/s.Naveen Traders, Chennai in respect of Bill Nos.366 to 381 and he was further instructed to issue cheque for Rs.1,59,127/- to the first defendant in respect of Bill No.2706, dated 04.08.2011; that by mistake, the said Accountant transferred Rs.25,51,763/- to the first defendant-Company's Bank Account maintained with the second defendant-Lakshmi Vilas Bank, Chennai, instead of transferring the funds to M/s.Naveen Traders and the said M/s.Naveen Traders maintained Bank Account with Tamil Nadu Mercantile Bank; that the said Accountant Manoharan issued cheque bearing No.300184, dated 08.08.2011, drawn on HDFC Bank Limited, Gopalapuram Branch, Chennai to the first defendant in respect of settlement of Bill No.2706, that on

09.08.2011, M/s.Naveen Traders reminded the plaintiff for non-receipt of Rs.25,51,763/-; the plaintiff requested the first defendant to return the money as the same had been inadvertently transferred to first defendant's Bank Account instead of M/s.Naveen Traders; the first defendant not only refused the said request, but also threatened the employees of the plaintiff-Company; on 10.08.2011, the plaintiff made a representation to the second defendant-Bank in which the first defendant maintained their Account, thereby not to allow the first defendant to withdraw the amount, as the same was given wrong credit; that it was learnt from D2-Bank that D1 withdrew the amount of Rs.25,51,763/- on 09.08.2011 itself; that on account of the unruly behaviour of the men of the first defendant, the plaintiff-Company lodged a complaint with the Commissioner of Police, Egmore, Chennai on 10.08.2011; that the plaintiff approached this Court to recover Rs.25,51,763/- due from the first defendant to the plaintiff as the same was wrongly paid to the first defendant, that no amount is due to the first defendant or to the two proprietorship firms (Arasi Traders and Akshaya Traders) which supplied waste paper to the plaintiff through the first defendant, that the defendant having enjoyed the benefits of the money paid by mistake from 08.08.2011, is liable to pay interest on the same to the plaintiff from 08.08.2011 till the amount is returned

to the plaintiff, as the first defendant refused to return the amount and also prevented the plaintiff from making profits; that the amount had been drawn from the Overdraft facility of the plaintiff with the HDFC Bank, that the plaintiff claims interest @ 10.75% per annum, which is the Cash Credit (Overdraft) rate payable to the bankers, that the first defendant is liable to pay Rs.8,21,440/- to the plaintiff towards interest calculated at the said rate of 10.75% per annum from 08.08.2011 to 06.08.2014 and hence, the plaintiff-Company prayed for a judgment and decree to direct the first defendant to pay Rs.33,73,203/- to the plaintiff, together with interest @ 10.75% per annum from the date of plaint till the date of realisastion and also prayed for directing the first defendant to pay for costs of the suit.

2. The second defendant-Bank is arrayed as a formal party in this suit as the first defendant utilised his account with the second defendant-Bank for withdrawal of Rs.25,51,763/- and hence, no relief is claimed against the second defendant-Bank.

3. By order dated 09.07.2015, the first defendant was set ex-parte by this Court and by the same order, the second defendant-Bank was exonerated of the reliefs prayed for in the suit.

4. Upon hearing the learned counsel appearing for the plaintiff and perusing the evidence of P.W.1 - Mr.B.Manoharan, who was the Accountant of the plaintiff-

Company and also perusing the documentary evidence marked in Exs.P-1 to P-18, it is seen that the plaintiff-Company proved their suit claim.

5. Accordingly, the suit is decreed as prayed for, as against first defendant, with costs. Suit dismissed against D2. No costs.

<u>Witnesses examined on the side of plaintiff:</u>

P.W.1	Mr.B.Manoharan (Accountant---- Authorised Signatory of the plaintiff-Company)

<u>List of documents marked on the side of plaintiff:</u>

Exhibit No.	*Dated*	*Description*
P-1	21.08.2015	Extract of the Resolution passed by Circulation under Section 175 of the Companies Act, by the Directors of the plaintiff-Company on 21.08.2015 authorising P.W.1 - B.Manoharan to adduce evidence on the side of the plaintiff
P-2	28.01.2011	Sanction letter for credit facilities issued by HDFC Bank Limited, G.N.Chetty Road, Chennai, to the plaintiff-Company
P-3 - series	28.07.2011 and 29.07.2011	Certified copies of Cash/Credit Bills issued by M/s.Naveen Traders, Chennai, in favour of the plaintiff-Company
P-4	04.08.2011	Certified copy of Cash/Credit Bill issued by the first defendant-M/s.Arasi Traders to the plaintiff-Company

Exhibit No.	*Dated*	*Description*
P-5	08.08.2011	True copy of Payment Voucher issued by the plaintiff-Company to the first defendant-M/s.Arasi Traders
P-6	08.08.2011	True copy of E-mail, dated 08.08.2011 from HDFC Bank to the plaintiff-Company
P-7	09.08.2011	True copy of the letter from Mr.B.Manoharan of the plaintiff-Company to the Managing Director of the plaintiff-Company
P-8	10.08.2011	True copy of the letter from the Managing Director of the plaintiff-Company to the Commissioner of Police, Chennai City, Chennai
P-9	10.08.2011	True copy of the letter from the Managing Director of the plaintiff-Company to the Senior Manager of M/s.Lakshmi Vilas Bank Limited, Chennai--second defendant
P-10	11.08.2011	True copy of the letter from the Managing Director of the plaintiff-Company to the Branch Manager of HDFC Bank, Gopalapuram Branch, Chennai
P-11	23.01.2012	True Copy and Carbon copy of the First Information Report (FIR) in Crime No.49 of 2012 on the file of the Central Crime Branch (CCB), Egmore, Chennai, registered for the offences under Sections 403, 420 and 506 (Part-I) IPC
P-12	01.08.2011 to 31.08.2011	True copies of the Statement of Accounts of the plaintiff-Company maintained with HDFC Bank, Gopalapuram Branch, Chennai

Exhibit No.	*Dated*	*Description*
P-13	19.11.2012	True copy of the Fresh Certificate of Incorporation Consequent upon Change of Name on Conversion to Public Limited Company, issued by the Registrar of Companies, Chennai and Andaman and Nicobar Islands (Government of India, Ministry of Corporate Affairs)
P-14 series	01.04.2008 to 30.07.2014	Ledger Account in respect of M/s.Arasi Traders issued by the plaintiff-Company
P-15 series	01.04.2008 to 30.07.2014	Ledger Account in respect of M/s.Akshaya Traders issued by the plaintiff-Company
P-16 series	01.04.2010 to 31.03.2012	Ledger Account in respect of M/s.Naveen Traders issued by the plaintiff-Company
P-17	16.07.2014	Newspaper Advertisement of the New Indian Express -- Tender-cum-Auction Sale notice, published by the second defendant-Lakshmi Vilas Bank Ltd., Mount Road Branch, Chennai
P-18	01.08.2014	Certificate of Encumbrance on Property, issued by the Sub-Registrar, Kodambakkam, Chennai in respect of the property of the first defendant in Door No.12, Padmanabha Nagar Mani Road, Choolaimedu

<u>Witnesses examined on the side of defendants:</u> Nil
<u>List of documents marked on the side of</u> defendants: Nil
<u>List of Court documents marked</u>: Nil

sd/.G.C.J
14.10.2015

//Certified to be a true copy//
Dated this the day of 2015.

R.S/27.11.2015 COURT OFFICER

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