

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 20TH DAY OF JULY 2015

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

C.S. No.76 of 2012

AND

A.No.2533 of 2012

D.Mahendra Kumar Jain,
Proprietor,
M/s.Sri Venkateshwara Enterprises,
No.56, Strotten Muthia Mudali St.,
Sowcarpet,
Chennai-600 079. Plaintiff/ Applicant

-Vs-

1. R.Damodaran,
Proprietor,
M/s.Lakshmi Electricals,
26, II Cross St., CIT Nagar West,
Nandanam, Chennai 600 035.

2. G.Sethu Madhavan,
Asst.Vice President,
JLL, P&D.S Level-8,
Tower II,
TVH Belisca Tower,
Block No.94, MRC Nagar,
Chennai 600 028.

...Defendants/Respondents

C.S.No.76 of 2012

Civil Suit praying that this Hon'ble Court be pleased to a) pass a judgment and decree directing the 1st defendant to pay the plaintiff a sum of Rs.1,09,95,994/- and further interest from the date of filing this suit @12% p.a until realization

A.No.2533 of 2012

Application praying that this Hon'ble Court be pleased to pass a Judgment and Decree in terms of the admissions made by the 1st respondent/1st defendant to the extent of Rs.1,08,15,732/- along with interest at the rate of 12% per annum from 19.12.2011 until realization as per the statement of accounts

The suit along with the application coming the day before the court for hearing the court made the following order:

The plaintiff is the applicant. He filed the above suit for recovery of a sum of Rs.1,09,95,994/- together with interest from the 1st defendant. The said claim was made by the plaintiff against the 1st defendant based on a business transaction whereby goods were supplied by the plaintiff to the 1st defendant.

2. The present application is filed by the plaintiff for passing a judgment and decree in terms of the admissions made by the 1st defendant to the extent of Rs.1,08,15,732/- along with interest at 12% from 19.12.2011 until realisation as per the statement of accounts.

3. The case of the applicant is that the 1st defendant is due and liable to pay a sum of Rs.1,09,95,994/- to the plaintiff towards the supply of goods. It is further stated that the 1st defendant has sent

a reply notice dated 12.04.2012 to one M/s.B.A.Continum Private Limited and also to the 2nd respondent/2nd defendant herein suppressing various documents and facts. It is stated that a copy of the said notice was also marked to the plaintiff. Thus, it is stated that on 05.06.2012, the plaintiff sent a reply notice through his Counsel to the 1st defendant explaining in detail the correct facts of the claim. However, it is stated that in the earlier notice dated 12.04.2012, the 1st defendant has admitted its liability to a sum of Rs.70,77,066/- as due and payable to the plaintiff for procuring electrical fittings and other electrical accessories. It is further stated that as per the Statement of Accounts dated 19.12.2011, the 1st defendant has admitted his liability for a sum of Rs.1,08,15,732/- as due and payable to the plaintiff as against the invoices dated 18.08.2011 to 10.12.2011 for procuring electrical fittings and electrical accessories. Therefore, the plaintiff has come forward with the present application seeking for a judgment and decree based on such alleged admission of liability by the 1st defendant.

4. This application is opposed by the 1st defendant. He filed a counter affidavit wherein at paragraph 3, it is stated, by extracting the Statement of Accounts, that total balance due is Rs.70,77,066/-.

5. However, the 1st defendant contended that since the aforesaid amount of Rs.70,77,066/- is lesser than the suit claim, he is not admitting the liability of the amount referred to in this application and therefore, the application has to be rejected.

6. Mrs.Nalini Chidambaram, the learned Senior Counsel appearing for the applicant, after reiterating the contentions raised in the application and also after inviting my attention to the notice dated 12.04.2012 sent by the 1st defendant to the 2nd respondent and also the averments made in the Written Statement filed by the 1st defendant with regard to such admission of liability to the tune of Rs.70,77,066/-, has submitted that though the applicant has prayed for a judgment and decree for a sum of Rs. Rs.1,08,15,732/- as an admitted liability, the plaintiff is restricting his claim in this application only to the tune of Rs.70,77,066/-, however, without prejudice to his rights and contentions for recovering the balance amount in the main suit.

7.Per contra, Mr.M.Kalyanasundaram, the learned Senior Counsel appearing for the 1st defendant contended that there is no admission of liability by the 1st defendant in strict sense and therefore, no decree can be passed, more particularly, when the suit claim is more than the admitted liability as contended by him.

8. Heard both sides.

9. It is seen that the plaintiff has come forward with the present suit for recovery of a sum of Rs.1,09,95,994/- together with interest against the 1st defendant. It is not in dispute that there was business transaction between the plaintiff and the 1st defendant and the goods were supplied by the plaintiff to the 1st defendant. Though the suit was filed for recovery of the above said amount, it is seen from the notice sent by the 1st defendant dated 12.04.2012 to one M/s.B.A.Continum Private Limited as well as the 2nd respondent, there is an admission by the 1st defendant that the 1st defendant is owing to the plaintiff a sum of Rs.70,77,066/-. Paragraph 5 of the said notice reads as follows:

''5. that since amounts became overdue with the said electrical supplier, they filed C.S.No.76/2012 against my client showing you as Garnishee, for recovery of Rs.1,08,15,735/- and also to stop you from transferring the whole outstanding amount payable to my client by 1st of you. The said claim was not incorrect, but factually, my client was owing to the said company said firm has filed the suit for the recovery of the entire dues, as above, against my client alone.''

10. Even in the written statement in the present suit, the 1st defendant at paragraph 4, after extracting the accounts with regard to the business transaction made between the plaintiff and the 1st defendant on various dates, has finally stated that total balance due is Rs.70,77,066/-. Even in the counter to this application, the said fact is not disputed and on the other hand the very same statement of account is reiterated and there is an admission to the effect that total balance due is of Rs.70,77,066/-. When that being the clear admission made by the 1st defendant in respect of the said sum of Rs.70,77,066/- and in the absence of any other contra materials or pleadings indicating such admission made by the 1st defendant was incorrect statement, this Court is left with no other option except to grant a decree in so far as the said sum of Rs.70,77,066/- is concerned.

11. As I consider that the very admission is evident from the written statement as well as the counter by the 1st defendant and the very notice sent by him on 12.04.2012 admitting such liability, there is no need for driving the parties to go for trial even in respect of this amount.

Therefore, this Court is fully convinced that the plaintiff is entitled for a decree in respect of the said admitted

sum.

12. Accordingly, this Court finds that the plaintiff is entitled to an interim decree for a sum of Rs.70,77,066/- and consequently, the 1st defendant is directed to pay the said sum of Rs.70,77,066/- (Rupees Seventy Lakhs Seventy Seven Thousand and Sixty Six Only) to the plaintiff. In so far as the balance amount claimed in the suit is concerned, the parties are directed to go for trial.

13. The Application is ordered accordingly.

sd/.K.R.C.B.J

20.07.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/14.09.2015

COURT OFFICER

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

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