

(SUIT NO.4270 OF 1993)

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and/or realization.

2 Sometime in the year 1988 the 1st defendant approached the plaintiff with a representation that the 1st defendant was acting as an agent of foreign buyers who were the importers of gum karaya and guar gum, splits and powder and that the 1st defendant had orders and contracts from foreign buyers for the export of guar gum, splits and powder. The 1st defendant represented to the plaintiff's officers that they would enter with the arrangement for the export of guar gum, gum karaya etc. Relying on the representations, the plaintiff entered into an arrangement with the defendant no.1 through 2nd defendant for the export of guar gum/splits and powder.

3 The plaintiff also granted export packing credit to the 1st defendant for aggregate value of Rs.83,44,684.15/-. The plaintiff disbursed part of said packing credit advance directly to the 1st defendant. The 6th defendant forwarded broker notes in respect of the contracts for procurement of gum guar/splits and under the directions of 1st defendant requested the plaintiff's Branch Manager-7th defendant to forward demand drafts in favour of the alleged suppliers. Thereafter amounts were disbursed directly to the 1st defendant and demand drafts were drawn in favour of the various suppliers. During the period December-1989 to March-1991 the

plaintiff disbursed packing credit advance in the sum of Rs.83,44,684.15/-. The 1st defendant was required to render accounts for the utilization of the said packing credit and create a charge by way of hypothecation of the goods purchased, offer the said hypothecated stocks for verification, insure the said goods and also furnish the plaintiff with a bank guarantee for the value of packing credit availed of by the 1st defendant. 1st defendant failed and neglected to comply with any of these requirements in spite of repeated demands by the plaintiff. It is also alleged in the plaint that the 7th defendant who at the material time was the Branch Manager of the plaintiff's Bombay office, deliberately and willfully connived and participated in the breach and violation of the terms and conditions of the agreement between the plaintiff and the defendant no.1. The plaintiff became aware of the above misdeeds in March-1991. It is the case of the plaintiff that the defendants have played a fraud on the plaintiff and it has come to light that there were no contract with any foreign buyers and the amount of Rs.83,44,684.15/- has been misappropriated. As the payments were not made, the plaintiff has filed the present suit.

4 Though prayer clauses-(a) and (b) are shown as separate prayers, counsel for the plaintiff states that if prayer clause-(a) is granted, that will take care of prayer clause-(b) as well.

5 As the defendants did not remain present though being served with the writ of summons, this Court by an order dated 12.3.2014 directed the suit be listed for ex-parte decree. The Court also took on record an affidavit of one Yashwant Gore -Chief General Manager of the plaintiff affirmed on 12.3.2014 in lieu of examination-in-chief together with compilation of documents. The defendants though served, have not filed any written statement. Under Order-8 Rule-5 of the Code of Civil Procedure 1908, every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. The defendants not having filed any written statement are deemed to have admitted all the allegations of fact contained in the plaint. In the circumstances, the plaintiff is entitled to a judgment on the basis of the facts contained in the plaint. Suit stands decreed in terms of prayer clause-(a) which reads as under :-

“(a) that the first to seventh Defendants be jointly and/or severally ordered and decreed to pay to the plaintiff the aggregate sum of Rs.1,37,60,586.67 ps as more particularly set out in the statement of claim Exhibit “N” to the plaint with further interest thereon at the rate of 24.25% p.a. from the date of filing of the suit with quarterly rests till payment and/or realization.”

6 The plaintiff is also entitled to cost in the sum of

Rs.25,000/-. Registry to draw up decree accordingly.

(K.R.SHRIRAM,J)