IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15-11-2016
PRONOUNCED ON : 29-11-2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.1236 of 2015

M/s. Kenkere Infra Tech
Rep. by its Managing Partner
Through the Authorized Person
Mr. Rajagopal Thilak ... Appellant/Defendant

Vs

M/s. Sathya Granites
Rep. by its Proprietor P.K.Pownraj ... Respondent/Plaintiff

Appeal suit filed under Section 96 of the Code of Civil Procedure read with Order 41 and 41-A of CPC and Order IV of the Madras High Court Appellate Side Rules against the judgment and decree dated 27-02-2015 made in O.S.No.63 of 2010 on the file of the Additional District Judge, Dharmapuri.

For Appellant : Mr.S.Sathiyaseelan

For Respondent : Mr.S.Ramesh

JUDGMENT
(Judgment of the Court was delivered by A.SELVAM,J.)

This appeal suit has been directed against the judgment and decree dated 27-02-2015 passed in O.S.No.63 of 2010 by the Additional District Court, Dharmapuri.

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2. The respondent herein as plaintiff has instituted O.S.No.63 of 2010 on the file of the Trial Court praying to pass a money decree wherein the present appellant has been shown as sole defendant.

3. The material averments made in the plaint are that the plaintiff has supplied iron ore to defendant as per terms and conditions reached between them. The quantity of iron ore is

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38,673MTs.The worth of the same is Rs.8,83,36.866.60p., and the same has been send through bill No.029/08-09 dated 30-01-2009. The defendant has paid the amount to plaintiff by way of cheque payable in Dharmapuri. As per the terms and conditions and also understandings, the defendant is bound to supply H-Form to the plaintiff, after completion of transaction. But the defendant has failed to give the same to the plaintiff. Under the said circumstances, various letters have been given to the defendant. On 19-06-2010, the plaintiff has sent a letter to the defendant to pay an amount of Rs.35,33,475/- together with interest at the rate of 2% per mensem. The plaintiff has also sent a final notice to the defendant. The conduct of the defendant is not fair and also against prevailing procedure. The defendant is liable to give H-Form to the sales-tax authorities. On 17-12-2009 and 19-12-2009, the defendant has demanded the plaintiff to send revised invoice and permit. The defendant has received original invoice and permit etc. The plaintiff has issued a legal notice on 02-07-2010 to one D.K. Suri who is one of the Associates of the defendant and his name is D.K. Suresh. But he has been called as D.K. Suri. The plaintiff has sent several letters to the said D.K Suresh alias D.K. Suri. The defendant has sent a false reply notice. On 20-07-2010, the plaintiff has sent a final legal notice. Even after receipt of the same, the defendant has not complied with the demand made by the plaintiff. Under the said circumstances, the defendant is liable to pay the amount mentioned in the plaint and therefore, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the defendant it is averred that the defendant has received 38,673MTs of iron ore under the Bill No.029/08-09 dated 30-01-2009 from the plaintiff. The amount claimed in the invoice is Rs.7,20,09,126/-. It is false to say that the defendant has not send H-Form to the plaintiff till date and therefore, liable to pay Rs.35,33,475/- with 2% interest. The person mentioned by name D.K. Suresh has no connection with the defendant. The defendant has always been ready and willing to issue H-Form legally to the plaintiff. The plaintiff has not approached the Court with clean hands and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the Trial Court has framed necessary issues and after analyzing both the oral and documentary evidence has decreed the suit as prayed for. Against the judgment and decree passed by the Trial Court, the present appeal suit has been preferred at the instance of the defendant as appellant.

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6. Before contemplating the rival contentions raised on either side, the Court has to narrate the crux of the plaint. It is an admitted fact that by Bill No.029/08-09 dated 30-01-2009, the plaintiff has supplied 38,673MTs of iron ore to the defendant. It is also equally an admitted fact that the cost of iron ore has already been received by the plaintiff. But as per terms and conditions of the contract, the defendant has to supply H-Form so as to settle sales-tax. But the same has not been given by the defendant. Under the said circumstances, the present suit has been instituted for the relief sought in the plaint.

7. The defence put forth on the side of the defendant is that the defendant has always been ready and willing to issue H-Form to the plaintiff. But the plaintiff has not approached the Court with clean hands and therefore, the relief sought in the plaint cannot be granted.

8.The learned counsel appearing for the appellant/ defendant has repeatedly raised the following points:

(i) The relief sought in the plaint hinges upon Ex-A1 and the same is nothing but a xerox copy and since the plaintiff has not complied with the mandatory provisions of Order VII Rule 14 of the Code of Civil Procedure, 1908, the Court cannot give much adherence to Ex-A1. But the Trial Court has erroneously relied upon the same.

(ii) The entire transaction has taken place in Karnataka and as per Section 19 of the Code of Civil Procedure, 1908, the Trial Court is not having territorial jurisdiction and the Court of Karnataka is having the same and therefore, the judgment and decree passed by the Trial Court are nothing but void.

9.The learned counsel appearing for the respondent/ plaintiff has contended that on the side of the defendant one Rajagopal Thilak has been examined as D.W.1 and he candidly admitted most of the averments made in the plaint and even assuming that no credence can be given to Ex-A1, on the basis of the evidence given by D.W.1, the present suit is liable to be decreed and further part of the transaction has taken place from Dharmapuri and further, with regard to jurisdiction, already an application has been filed on the side of the appellant/defendant and after hearing both sides, the same has been dismissed. The Trial Court after considering the documents filed on the side of the respondent/plaintiff has rightly decreed the suit and therefore, the contentions put forth on the side of the appellant/defendant cannot be accepted.

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10. It is an admitted fact that Ex-A1 is nothing but a xerox copy. It is also a settled principle of law that without comparing with original, a xerox copy cannot be marked.

11. The learned counsel appearing for the appellant/defendant in support of the first limb of argument has relied upon the following decisions:

(1) 2012 (8)SCC 706 (Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman Vs. Ponniamman Educational Trust, represented by its Chairperson/Managing Trustee) wherein the Honourable Supreme Court has held that non-compliance of Order 7 Rule 14(1) and 14(2) of the Code of Civil Procedure, 1908 vitiates the cause of action and therefore, the suit cannot be proceeded with.

(2) In 2010 (10) SCC 523 (Shalimar Chemical Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and others), the Honourable Supreme Court has held that if there is any objection with regard to marking of a document, the Trial Court should not have marked xerox copies as exhibits.

12. In the instant case, as pointed out earlier, Ex-A1 is nothing but a xerox copy. Ex-A1 is a sale invoice dated 30-01-2009. The entire transaction between the parties is routed only through Ex-A1. The Trial Court has marked Ex-A1 subject to objection raised on the side of the defendant.

13. Even assuming that Ex-A1 is not having evidentiary value, the Court has to meticulously analyse the evidence given by D.W.1, in cross-examination. During the cross-examination, D.W.1 has clearly admitted to the effect that in the written statement filed on the side of the defendant, it is clearly stated to the effect that the defendant has received iron ore worth of Rs.8,83,36,866.60p from the plaintiff. Further, he has admitted the contents of Ex-A1 and his specific evidence is that the defendant has not issued H-Form to the plaintiff even after lapse of one year. Further, he has stated in his evidence that D.K.Suri alias D.K. Suresh is also one of the promoters of the Company. In fact, the evidence given by D.W.1 is nothing but a befitting answer to the first limb of argument advanced on the side of the appellant/defendant. Therefore, the first limb of argument put forth on the side of the appellant/defendant is totally against the available evidence on record and the same cannot be accepted.

14. The second limb of argument is that the entire transaction has taken place in Karnataka and therefore, the Trial Court is not having territorial jurisdiction to try the

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suit. Under the said circumstances, the judgment and decree passed by the Trial Court are nothing but void. In support of the contention, the following decisions are relied upon:

(1) 2011 (11) SCC 198 (Sarup Singh and another Vs. Union of India and another), wherein the Honourable Supreme Court has held that if a decree has been passed without jurisdiction, the same is non-est in law.

(2) In 2009 (12) SCC 280 (Muthavalli of Sha Madhari Diwan Wakf Vs. Syed Zindasha), the Honourable Supreme Court has held that where a Court lacks inherent jurisdiction, the procedural provision of estoppel, waiver or res judicata shall also not apply.

15. For considering the second limb of argument put forth on the side of the appellant/defendant, the Court has to look into the documents filed on the side of the plaintiff and the same have become emanated in Dharmapuri. Even the defendant has sent reply to the plaintiff by using Dharmapuri address. Therefore, it is quite clear that the Trial Court is having part of cause of action to try the present suit.

16. The learned counsel appearing for the respondent/defendant has drawn the attention of the Court to the decision reported in 2005 (7) SCC 791 (Harshad Chiman Lal Modi Vs. DLF Universal Ltd.,), wherein the Honourable Supreme Court has held that objection to territorial and pecuniary jurisdiction have to be taken at the earliest possible opportunity and in any case, before settlement of issues and cannot be allowed to be taken at a subsequent stage. It has is already been pointed out that even in the Trial Court, the application taken out on the side of the appellant/defendant with regard to jurisdiction, has also been dismissed.

17. Further, as stated supra, on the basis of documents filed on the side of the plaintiff, the Trial Court is having part of cause of action and the same would be sufficient to try the present suit. Therefore, viewing from any angle, the second limb of argument put forth on the side of the appellant/defendant is sans merit.

18. The Trial Court after pondering the available evidence on record, has rightly decreed the suit. In view of the foregoing elucidation of both the factual and legal aspects, this Court has not found any valid ground to make interference with the judgment and decree passed by the Trial Court and therefore, the present appeal suit deserves to be dismissed.

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In fine, the appeal suit is dismissed with costs. The judgment and decree dated 27-02-2015 passed in O.S.No.63 of 2010 by the Trial Court are confirmed. The connected miscellaneous petition, M.P.No.1 of 2015 is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

glp

To

The Additional District Judge,
Dharmapuri.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Ramesh, Advocate, S.R.No.70219

Appeal Suit No.1236 of 2015

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