

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01 / 09 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.29 OF 2000

Textile connection,
149, Poonamallee High Road,
Chennai 600 010
A partnership Firm,
Rep by its Managing Partner
Sri C.P.Vikas

.. Plaintiff

Versus

1. Burlington's Exports
B-75, Wagle Industrial Estate,
Thane, Maharashtra,
Rep herein by its Partner,
Sri Andre Kapoor

2. Sri Andre Kapoor

3. Sri Rudra Kapoor

4. Sri Kershaw Colabawala

5. Ms.Shai Kapur,
Partner: BURLINGTON'S EXPORTS,
No.M-3/4, Breach Candy Apartments,
B.D.Road, Mumbai

*(The 5th defendant has been impleaded as per
order dated 16.04.2009 made in A.No.5037 of 2008)*

.. Defendants

PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules, 1956 read with Order VII Rule 1 CPC praying for a judgment and decree against the defendants jointly and severally for Rs.39,67,144/- with interest on Rs.26,21,139.00 at the rate of 24% p.a. from the date hereof till the date of realization in full and for the costs of the suit.

For Plaintiff : Mr.S.Ramanarayanan
for M/s.Sampathkumar and Associates

For Defendants : Mr.C.Mohan for
1 to 3 and 5 M/s.King and Patridge

For Defendant-4 : Mr.K.Dharanidaran

J U D G M E N T

The suit is filed for recovery of Rs.39,67,144/- with interest on Rs.26,21,139.00 at the rate of 24% per annum from the date of filing of the suit till the date of realization in full.

2. The plaintiff is a Partnership Firm registered under the Indian Partnership Act, carrying on business in Chennai. The first defendant is also a Partnership Firm dealing in export of textile garments. The defendants 2 to 5 are the partners of the first defendant Firm. The plaintiff is a regular supplier of cotton fabrics to the first defendant based on the orders. The first defendant would convert these fabrics into

garments and export such garments. The first defendant also would occasionally prefer some changes to the samples and the plaintiff would also make fresh samples in accordance with the instructions received from the first defendant. On this basis, the first defendant would place trial order for 100 metres and that would be supplied by the plaintiff. Subsequently, bulk orders would be placed and purchase orders, setting forth the terms and conditions for the supply, would be issued. The purchase orders would be countersigned by the plaintiff. Supplies were made either directly or by sending documents through bank.

3. The case of the plaintiff is that the documents sent through Bank were cleared within reasonable time and those sent directly were always made belatedly, the delay being any time between 3 and 12 months though the purchase order would specify 30 days for payment. Hence, there had been a history of blocking substantial funds.

4. While so, suddenly during June 1998, the first defendant wrote to the plaintiff saying that he obtained quotations from several suppliers and found that the prices over last two years had been 20% to 30% higher than the other suppliers and as a consequence, he had been

losing business. The first defendant asked the plaintiff for a credit note for 10% value of the supplies made during 01.04.1996 to 30.06.1998 and said that it would be adjusted against future supplies. Later, the first defendant said that it proposed to debit the plaintiff with Rs.16 lakhs. Against this, the plaintiff agreed for reduction of 5% of price in future bills and not for giving deduction of 10% in the past supplies. The first defendant sent a debit note for Rs.8,00,994/-

5. The plaintiff alleging that the defendants had not paid for the goods supplied between 01.04.1996 and 30.06.1998, had instituted the above suit for the payment of Rs.39,67,144/- being the principal and interest due from the defendants.

6. Though initially the suit was filed against defendants 1 to 4, another partner subsequently was impleaded. As the repeated demands of the plaintiff was not heeded to, the suit was filed by the plaintiff for recovery of the suit claim.

7. The defendants denying the facts supporting the cause of action in the plaint, contended that the plaintiff had given the calculation

as to what are the actual dues, how much is the interest and at what rate and how the plaintiff is making the suit claims. The defendants claimed that it being the Export Company, must cater to the customers' expectations with good quality fabrics. Thus, the supplies received from the plaintiff were inspected for quality, only after the payment was made. But, after inspection, if they were found to be of substandard or inferior quality, they were returned to the plaintiff. Since the payment was already made to such goods through the bank, the defendants had the practice of raising Debit Notes for the amounts of goods so rejected. The defendants contended that the plaintiff would fail to supply the goods on time in certain occasions. Then, the goods would be sent not through bank supplies, but directly to the defendants. The defendants, on receipt of the goods, had to inspect them for quality and specifications and then would return the portion of the rejected, substandard fabric and pay the balance. The defendants claimed that the payment was delayed at times only due to the long process.

8. It is also the case of the defendants that such transactions of the above two kinds was continuous and on going between both the parties. The bills were cleared not individually, but, in a lot. For the sake

of convenience, Debit Notes were also not raised immediately after rejection of the goods, but only at the time when a bunch of the bills of the plaintiff were cleared. Such payments were made through bank drafts and Debit Notes were also sent along with it, with a covering letter mentioning about the particulars of the bills cleared in that payment and the particulars of Debit Notes raised therewith. When the plaintiff accepts the drafts and encashes the same, it was presumed by the parties that the plaintiff had also accepted the Debit Notes. Thus, the defendants rely upon various Debit Notes raised by them and the covering letters sent to the plaintiff. The defendants also had, in the written statement, set out the summarised position of plaintiff's account in the books of defendants as on 18.03.2000. Thus, the defendants claimed that the amount they must pay to the plaintiff as per their account books is only Rs.2,42,995.40 and the said amount was also paid on 07.03.2001 by way of demand draft, which is acknowledged by P.W.1. Hence, sought for dismissal of the suit.

9. This Court, upon perusal of the pleadings and other materials on record, has framed the following issues for consideration on 02.07.2001.

"i. *Whether the plaintiff is not entitled to recover the suit amount?*

- ii. Whether the plaintiff is not entitled for interest on the suit claim at the rate of 24%?*
- iii. To what relief? "*

10. The Managing Partner of the plaintiff's company examined himself as P.W.1 and in lieu of chief examination, filed his proof affidavit and marked Exs.P1 to P308. Mr.V.Mohan, Authorised representative of defendants 1,2,3 and 5 was examined as D.W.1 has filed the proof affidavit and Mr.Sanjeeva Shetty, Accountant of the first defendant's firm was examined as D.W.2. 18 documents were marked as Exs.D1 to D18 on the side of the defendants.

11. Issue Nos.1 and 2: The total purchase made by the defendants is Rs.1.99,27,851.60. The total payments made by the defendants as admitted in the written statement itself is Rs.1,73,73,853.40. Thus, the balance amount payable by the defendants is Rs.25,53,998.20, which is close to the suit claim of Rs.26,21,139.00. As given in the written statement, the defendants have deducted the Debit Notes to the tune of Rs.23,11,002.80, which has not been given credit to by the plaintiff. It is the case of the plaintiff that the supplies made

between 01.04.1996 and 30.06.1998, the payments have not been made by the defendants. It is pointed out by the learned counsel for the defendants that in Ex.P.11, ten invoices for the period between 15.05.1995 to 17.11.1995 amounting to Rs.1,56,899/- have been included. This is clearly outside the claim period in the suit and cannot be added. That apart, each invoice was an independent invoice providing for interest commencing, if payment was not made within 30 days.

12. It is argued by the learned counsel for the defendants that if each invoice had separate schedule, cause of action and invoice for the period mentioned in the suit, the same would be clearly barred by limitation. Hence, it was contended that the suit is filed, without application of mind, based on incorrect accounts. In spite of this, the plaintiff has not taken steps to revise the statement of accounts. As per the written statement filed by the defendants, an outstanding of Rs.2,42,995/- was paid to the defendants after filing of the suit, on 07.03.2001. The defendants relied on Ex.P.11-Statement of accounts to show that that the claim of the plaintiff was unreliable and incorrect. According to the defendants, item Nos. 1 to 10 were prior to the period claim even as per the plaint averments and items numbers 11 to 17 were

barred by limitation as the supply period was more than three years from the payment date and the filing date of the suit. The total amount mentioned in Ex.P.11 would show a principal of Rs.25,06,110/- as against the suit claim of Rs.26,21,139/- plus the interest of Rs.10,06,106/- as against the suit claim. That apart, from the interest, which was not due and payable has been provided at a flat 24% per annum. Exs.P12 to P303 are only invoices filed during regular business and they would not reflect non payment of the defendants.

13. The plaintiff has not filed any evidence on record even to remotely challenge the correctness of the statement of accounts filed by the defendants. When the Court is at the first instance of scrutinizing the correctness of the statement of accounts and rationality and cogent reasons, it should be based on evidence. To evidence the payment received by the plaintiff, the defendants had filed Exs.D2, D3 and D4 and the same were marked through plaintiff, which would clearly go to show that these Debit Notes have not been factored in. Even while scrutinizing the evidence of D.W.1, instead of going into the terms of the Debit Note, the plaintiff has only questioned the competency of the witness. Admittedly, the statement of accounts filed by the defendants had not

been countered or controverted by the plaintiff.

14. With respect to the allegation of substandard and inferior quality of goods supplied by the plaintiff, it is submitted by the plaintiff that no test report had been filed before this Court and there is no Lab Report certifying the quality of the goods. It is also further contended that if the goods are of defective quality and not in accordance with the specifications, the defendants ought to have returned the goods to the plaintiff. The return of the goods alleged by the defendants had not been proved by them, according to the plaintiff. It is submitted by the learned counsel for the defendants that the plaintiff and the first defendant Firm have been doing business for several decades. The relationship between the first defendant and the plaintiff was utmost cordial, without any problem till the filing of the suit. Admittedly, C.P.Nair was the person administering and running the plaintiff's Partnership Firm. As for more than two decades, there was no issues with their business and business was being run on trust. In fact, the documents produced by both the parties and exchange of correspondence between them were all addressed only to Mr.C.P.Nair. The present Managing partner is son of C.P.Nair. It is admitted by P.W.1 in the cross examination that his father

C.P.Padmanaban Nair was not a partner. His sister C.P.Bindu and working partner K.V.Mohanan are the other partners. Though the plaintiff is a Registered Firm, no document before this Court was filed. Admittedly, the Partnership Deed is not marked.

15. It is not in dispute that all the transactions relating to the suit were only take care of by the said C.P.Nair, who is the father of P.W.1 and P.W.1 had taken over the business only after the demise of his father C.P.Nair. The registration though said to have happened on 08.09.1999, just prior to the filing of the suit, admittedly, the partnership deed is not marked.

16. According to the defendants, the suit itself is a speculative one. When the main dispute is only with regard to the Debit Notes alleged to have been raised by the defendants, the plaintiff has not filed his reply statement giving revised calculations. It is also admitted by the defendants that the Debit Notes were raised for late supplying, air freight charges, darning charges and certain percentage for defective fabrics. The admission of P.W.1 that on 16.11.98, Debit Note was raised after acceptance by C.P.Nair and the same was said to be with regard to the

excess charges.

17. It is contended by the learned counsel for the plaintiff that the defendants had not produced any document with regard to the inferior quality or belated supply or even for the excess pricing. The failure of the defendants to produce the lorry receipts with respect to the return of the materials of defective quality would entitle the plaintiff for a decree. The plaintiff, who has filed the suit, has to fall or succeed only based on his case and cannot pick holes in the case of the defendants. When the plaintiff has claimed that the outstanding payment from the defendants is as per the suit claim, the burden is on the plaintiff to prove the same. Having failed to substantiate the pleadings irrespective of the weakness of the defendants' case, the suit has to be dismissed.

18. In the result, the suit is dismissed. No costs.

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PUSHPA SATHYANARAYANA.J.

After pronouncement of the judgment today, learned counsel for the defendants prayed for discharge of security already furnished pursuant to the order of this Court in A.No.43 of 2000 in C.S.No.29 of 2000. A perusal of the records would disclose that this Court had earlier by order dated 17.04.2000 in A.No.43 of 2000 had permitted the defendants to furnish their immovable property situated at Unit No.320, 3rd Floor, Wadala Udyog Bhavan at Mumbai in lieu of their factory premises situated at B-75, Wagle Industrial Estate, Thane, as security for the suit claim, with an undertaking not to alienate the same. In view of the dismissal of the suit, the said request of the defendants is acceded to and the security given is discharged.

01/ 09 / 2016

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PUSHPA SATHYANARAYANA, J.

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