IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON:09.12.2016
DATE OF DECISION:19.12.2016
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.1062 of 2009

M/s.Tamil Nadu Cooperative Marketing
Federation Limited
represented by its Special Officer
Having Office at
No.91, St.Marys Road,
Chennai-600 018.
... Appellant/Defendant

Vs

Neyveli Lignite Corporation Limited
Represented by its Company Secretary
Having Office at Corporate Office
Block-1, Neyveli
... Respondent/Plaintiff

This appeal is filed under Order 41 Rule 1 and 2 r/w Section 96 of C.P.C. Against the decree and judgement passed in O.S.No.11 of 2006 dated 19.12.2008 on the file of the learned Principal District Judge's Court at Cuddalore District, Cuddalore.

For Appellant :Mr.J.Milton Arul Rajendran

For Respondents :Mr.NITHIANANDAN

J U D G E M E N T

The defendant in O.S.No.11 of 2006, who suffered a decree for payment of Rs.5,71,192/- with interest at 15% per annum from the date of plaint till date of realisation is the appellant.

2. The said suit was filed by the Neyveli Lignite Corporation Limited seeking a money decree towards the value of urea (fertilizer) sold to the defendant and its Associates. According to the plaintiff, urea has been supplied to various units of the defendant, as per the orders and instruction of the defendant.

3. The plaintiff's plant manufacturing fertilizers itself was closed on 10.12.2002. Therefore, from the accounts that were struck, it was found that a sum of Rs.7,90,327.41, was due and payable by the defendant towards the price of the urea supplied to its various Units. The plaintiff, by its various letters, has

been requiring the defendant to pay the said sum. Since the defendant did not come forward to pay the entire claim of Rs.7,90,327.41, a legal notice was issued on 18.06.2005. A reply notice was sent by the defendant's counsel on 11.07.2005 wherein while admitting the value of the urea supplied as Rs.7,90,377.41, the defendant would claim that certain deductions which it is entitled to has not been made. It would also further contend that shortage in the supply after deducting the claim, which according to it, the defendant is entitled to, the defendant had paid a sum of Rs.2,19,135/- on 20.07.2005. This led to the plaintiff filing the above suit for recovery of a sum of Rs.5,71,192.41.

4. The defendant resisted the suit contending that the transactions between the plaintiff and defendant commenced actually from the year 1983-1984 and continued till the closure of the Fertilizer Unit in December, 2002. The defendant by its letter dated 4.08.2002 claimed deduction towards non issuance of credit notes under the following heads:

a) A sum of Rs.1,10,310.49 towards letter of credit charges.

b)A sum of Rs.2,16,600.92 towards the alleged shortage in the supply.
c)A sum of Rs.2,44,281/- towards the price difference.

If the above amounts are adjusted, according to the defendant, it will be liable to pay only a sum of Rs.2,19,135/-, which had already been paid. Therefore, according to the defendant, nothing remains to be paid.

5. Upon a consideration of rival pleadings, the learned Principal District Judge, Cuddalore framed the following issues:

1. Whether the defendant is liable to pay the amount claimed in the plaint to the plaintiff?
2. Whether the interest claimed is excessive?
3. Whether the suit is in time?
4. What other relief, the plaintiff is entitled to?

6. On the side of the plaintiff, PW1,(Deputy Manager) was examined and Exs.A1 to A13 were marked. On the side of the defendants D.Ws.1 and 2, (Accountant and Special Junior Assistant of Defendant) have been examined and Exs.B1 to B37 were marked.

7. On a consideration of oral and documentary evidence, the learned Principal District Judge, Cuddalore concluded that the suit is not barred by limitation, taking into account, the admission of the defendant of the fact that the value of the urea supplied by the plaintiff to the defendant, was to the tune of Rs.7,90,327.41. On the plea of the defendant that it is entitled to adjustment on various heads, the learned Principal District Judge Cuddalore held that the defendant had not discharged the onus of showing as to how it is entitled to adjustment of the amount claimed on various heads. Upon such findings, the learned Principal District Judge, Cuddalore rejected the claim of the defendant and decreed the suit.

8. Though the plaintiff had claimed that it is entitled to interest at 24% per annum, in view of the restricted claim of the plaintiff for interest at 15% per annum, the learned Principal District Judge,Cuddalore decreed the suit as prayed for.

9. Aggrieved by the said judgement and decree the defendant has preferred the above appeal.

10. I have heard, Mr.J.Milton Arul Rajendran, the learned counsel for the appellant and Mr.N.Nithianandan, the learned counsel for the respondent.

11. The following points arise for determination in the appeal:

1. Whether the defendant is entitled to deduction of Rs.5,71,192.41 under various heads as claimed by it ?
2. Whether the suit is barred by limitation ?
3. Whether the quantum of interest granted by the learned Principal District Judge Cuddalore is excessive ?

12. At the out set, it should be pointed out that the plaintiff Neyveli Lignite Corporation Limited has not chosen to produce the dealership agreement, though it is admitted that there is such an agreement. Equally, the defendant, which is a Cooperative Marketing Federation Limited and an Organ of the State, had also not produced the dealership agreement. According to me, it only reflects the casual manner in which the proceedings have been conducted by the Corporations. Though, it would have been possible for me to throw out the claim of the plaintiff solely on such non-production, I refrain from doing so, since the defendant had admitted not only the dealership, but also, the quantum and value of the urea supplied and the only defence taken in the suit is that the defendant is entitled to adjustment of certain amounts under certain heads.

Point No.1

13. The claim of the plaintiff that Rs.7,90,327.41 was outstanding towards the value of the urea supplied by the plaintiff to the defendant is admitted. However, the defendant would claim that it is entitled to adjust certain amounts under certain heads and to pay the balance to the plaintiff. The details of adjustment claimed by the defendant are as follows:

a) Shortage value Rs.2,16,600.92
b) Letter of credit charges Rs.1,10,310.49
c) Price difference amounting to Rs.2,44,281/-

Therefore, it has to be seen as to whether, the defendant had proved that it is entitled to adjust the above amounts out of the value of the urea supplied to it by the plaintiff. The claim for such adjustment, was made by the defendant under Ex.B11 dated 04.08.2004. A perusal of the same would show that shortages were alleged to have occurred from 1990-1991 to 2002-2003. However, it is not shown as to whether such claim relating to shortages was made earlier at any point of time. It appears from the records that the defendant had not made any claim relating to shortages as claimed in Ex.B11 prior to it.

14. Mr.N.Nithianandan, the learned counsel appearing for the respondent would point out that in Ex.B9 letter dated 16.04.2004, the defendant has categorically admitted that supplies and remittances for the period from 1999-2000 to 2001-2002 do tally with their accounts and only with reference to the year 2002-2003 and 2003-2004, the defendant had sought for certain details. Even in Ex.B11, the defendant has admitted the closing balance of Rs.7,90,327.41. Though the defendant had produced several documents, it is not shown by the defendant that it had complained about the shortages in any of the earlier documents.

15. Mr.J.Milton Arul Rajendran, learned counsel appearing for the appellant relying upon Exs.B2 and B3 would submit that there was a claim for adjustment of shortages, but a perusal of Exs.B2 and B3 would show the exact quantity of shortage or value thereof is not stated therein. The defendant has also produced various invoices and goods receipt notes. There is no entry regarding any shortage in those documents. Therefore, I am unable to agree with the contention of the learned counsel for the appellant that the defendant/appellant is entitled to adjust a sum of Rs.2,16,600.92 towards the value of the alleged shortages.

16. As regards the letter of credit charges, the reimbursement claimed by the defendant is to the tune of Rs.1,10,310.49. The basis of such claim is not disclosed. The burden of establishing that it is entitled to adjustment is on the defendant. The defendant has not produced any earlier document to show that there was an agreement between the parties as to the letter of credit charges. It is seen from the evidence on record, the letter of credit charges is not payable to the defendants, as supplies were made directly to its units. It is for the defendant to have produced relevant documents to prove that it is entitled to adjust the said sum of Rs.1,10,310.49, towards the letter of credit charges.

17. Apart from the above, I find from Ex.B11, the letter of credit charges, relates to the period during February and May 1988. The suit was filed in 2006 and the defendant has claimed letter of credit charges after nearly 16 years. Hence, I am unable to countenance the plea relating to adjustment of letter of credit charges also.

18. The defendant has claimed that it is entitled to a sum of Rs.2,44,281/- being the price difference in the year 1991-1992. According to the defendant, the Central Government by notification dated 27.08.1992 reduced the retail sale price of urea and hence, the defendant would be entitled to refund of excess price paid to the plaintiff which works out to Rs.2,44,281/-. Reliance is placed upon the notification of the Central Government dated 27.08.1992 issued by the Ministry of Chemicals and Fertilizers. The defendant would claim that it is entitled to reimbursement at the rate of Rs.300/- per tonne of urea. The said notification has been produced as Ex.B16.

19. A perusal of the notification would show that wholesale and retail dealers including the institutional agencies were directed to ensure that the stocks are sold at the price as indicated in the said notification. Such wholesale and retail dealers including the institutional agencies were directed to file claims relating to the stock of urea purchased by them at a higher price than the notified price that was available with them on 24.08.1992. Upon such statement being furnished, they should be compensated for reduction in the consumer price with effect from 25.08.1992. Wholesale dealers including the institutional agencies were directed to submit duly audited statement of accounts. A further clarification was issued under Ex.B17 dated 28.08.1992 wherein, it was made clear that the claims should be preferred on or before 31 October, 1992 in respect of whole sale dealers and on or before 30th November, 1992 in case of retail dealers. It is made clear by the said letter marked as Ex.B17 that claims received after the cut off date will not be entertained.

20. It is the case of the plaintiff that the defendant had not complied with the said requirement contained in the said notifications namely, Exs.B16 and B17 and therefore, the defendant is not entitled to difference in price as claimed by it at Rs.2,44,281/-. DW1 in his oral evidence had in fact admitted that he has not produced any record to show that such a claim was made by the defendant within the time allowed. PW1 has deposed that it could not compensate the defendant, since no claim was received from the defendant within the time allowed. Of course, certain correspondence has been produced as Ex.B5 dated 08.03.1995, wherein the defendant had requested the plaintiff to forward its claim to Government of India. It is not known what follow up action has been taken thereafter. However, in my opinion, the said correspondence will be of no help to the defendant in as much as it is almost three years, after the cut of date fixed by the Central Government under Ex.B17. Therefore, I find that the claim of the defendant that it is entitled to reimbursement of the loss incurred due to reduction on the price of urea cannot also be countenanced.

21. Thus, I find no reason to differ with the learned Principal District Judge,Cuddalore, who had rejected the claim of the defendant regarding adjustment under various heads. Point No.1 is answered against the appellant.

Point No.2

22. As rightly pointed out by the learned District Judge, one line plea regarding limitation was taken in the written statement. The suit has been filed on 17.2.2006. Under Exs.B9 and B11 the defendant had categorically admitted its liability to pay a sum of Rs.7,90,327.41 on 04.8.2004. Therefore, the suit filed within three years from the said date is within the period of limitation. Therefore, Point No.2 is also answered against the appellant.

Point No.3

23. On the question of interest the learned Principal District Judge,Cuddalore has held that the plaintiff will be entitled to contractual rate of interest at 24% per annum as agreed to. It has restricted the rate of interest at 15% per annum. I find no basis for such conclusion of the learned Principal District Judge,Cuddalore. As already pointed out that the dealership agreement has not been produced by either of the parties. So, it is not known what is the agreed rate of interest. I am therefore, of the opinion that even 15% interest granted by the learned Principal District Judge,Cuddalore is on the higher side. In the absence of proof of the contractual rate of interest, Courts have discretion to award interest taking into account of the prevailing market rate. The suit was filed in the year 2006. Therefore, taking into account the relevant factors, I am of the opinion that interest at 12% per annum

from the date of suit till date of decree and 6% per annum thereafter till the date of realisation would be just and reasonable in the circumstances of the case.

24. As a result of the above, the findings and the conclusion of the learned Principal District Judge,Cuddalore relating to liability of the defendant to pay a sum of Rs.5,71,192.41 are confirmed. However, the rate of interest is reduced to 12% per annum on the sum of Rs.5,71,192.41 from the date of suit till date of decree and 6% per annum thereafter till date of realization.

25. With the above modification, the judgement and decree of the Trial Court will stand confirmed. In fine, the appeal is allowed in part, modifying the judgement and decree of the Trial Court made in O.S.No.11 of 2006 dated 19.12.2008 on the file of the learned Principal District Judge, Cuddalore as follows:

a) The plaintiff is entitled to a sum of Rs.5,71,192.41 with interest at 12% per annum from the date of plaint i.e. on 17.2.2006 till date of decree i.e. on 19.12.2008 and 6% per annum thereafter till date of realization.

b) The defendant has to pay a sum of Rs.42,840.50 as costs to the plaintiff and the defendant shall bear its own cost of Rs.11,031/-. Considering the fact that the plaintiff is also negligent in prosecuting the suit, I direct the parties to bear their own costs in this appeal. Consequently the connected M.P.No.1 of 2009 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The Principal District Judge Cuddalore District, Cuddalore.

+1 cc to M/s.N.A.K.Sarma Advocate sr 74158
+2 ccs to M/s.Milton Arul Rajendran Advocate sr 73810

A.S.No.1062 of 2009

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