

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.928 of 2010
and M.P.No.1 of 2010

Sri Ratna Engineering Company,
a Partnership firm,
represented by its Partners
1.Sridhar
2.Srinivasan
3.Ravi
4.SrinathAppellant/Defendant
Plot No.108/2,D.No.5/14,
Balaji Avenue, Valluvar Salai,
Ramapuram,Chennai-89.

(Cause title accepted vide order
of Court dt.07.10.10 made in
C.M.P.1362/05)

..Vs..

M/s.Greaves Cotton Ltd.,
Rep.by Dy.Manager,
Port and Administration,
T.Kirshnamurthy,26, II Line Beach, Chennai-1.
...Respondent /Plaintiff

Prayer: Appeal filed Under Section 96 CPC, against the
judgment and decree made in O.S.No.2874 of 2002 dated 19.04.2004
on the file of the Court of Additional District Judge (Fast
Track Court-V) Chennai.

For Appellant : Ms.P.Srividya
For Respondent : Mr.Karthik Ramanathan

JUDGMENT

The defendant in O.S.No.2874 of 2002 is the appellant.
The suit was filed for recovery of a sum of Rs.6,01,500/- (Rupees
six lakhs one thousand and five hundred only) with interest at
24 % p.a. being the cost of 2 power tillers and 2 engines and 24
nos. of tynes sets and other spare parts entrusted by the
plaintiff with the defendant.

2. According to the plaintiff under an understanding entered into between the parties on 23.02.1999, the defendant had agreed to store the machinery belonging to the plaintiff and despatch the same as per the directions of the plaintiff. Certain charges were agreed to be paid by the plaintiff to the defendant who has engaged the services of the defendant. According to the plaintiff, the contract was terminated on 26.11.2001 and upon termination, the plaintiff had sought for return of 2 power tillers, 2 engines, 24 nos. of tynes sets and other spares of a total value of 5.62 lakhs. The plaintiff had sent a legal notice dated 28.01.2002 seeking either return of the goods or the value of the same. The defendant did not send any reply. The demand of the plaintiff was also not complied with. Hence the plaintiff had filed the above suit for recovery of the value of the goods with interest. After filing of the suit on 02.04.2002, the defendant had chosen to send a legal notice on 28.06.2002 claiming that the plaintiff has not paid the charges as agreed to by it under the Minutes dated 23.02.1999 and that they are having only one power tiller and certain spares in their custody. The defendant called upon the plaintiff to pay Rs.1 lakh and take back the goods that were available with him.

3. The defendant in its written statement admitted the agreement dated 23.02.1999. The defendant would claim that it is not in a possession of 2 power tillers and had only 1 power tiller and certain spares. It is also contended by the defendant that the plaintiff has not paid a sum of Rs.66,000/- (Rupees sixty six thousand only) which is due and payable towards maintenance and service charges, and therefore the defendant cannot be made liable for the suit claim.

4. On the above pleadings the learned Additional District Judge, Fast Track Court-V, Chennai framed the following issues:-

1. Whether the plaintiff is entitled to the suit claim?

2. To what relief the plaintiff is entitled to?

5. On the side of the plaintiff, PW-1 was examined and exhibits A-1 to A-12 were marked. On the side of the defendant DW-1 was examined and exhibits B-1 to B-18 were marked.

6. Upon consideration of oral and documentary evidence, the learned Trial Judge concluded that the plaintiff had proved the entrustment of the machinery with the defendant. On the claim by the defendant regarding the security charges, godown charges, the Trial Court came to the conclusion that in the absence of the counter claim by paying necessary Court Fee, the claim of the defendant cannot be considered. In fact, no issue was framed by the Trial Court on the claim made by the defendant.

7.The learned District Judge therefore decreed the suit with interest at 6% p.a. as against 24% claimed by the plaintiff. Aggrieved by the said judgement and decree the defendant has preferred the above appeal.

8.Heard Ms.P.Srividya, learned counsel appearing for the appellant, and Mr.Karthik Ramanathan, learned counsel appearing for the respondent.

The following issues arise for the determination in the appeal:

- 1.Whether the defendant has established its claim that it had only 1 power tiller as against 2 claimed by the plaintiff?
- 2.Whether defendant is entitled to claim adjustment of sum of Rs.66,000/- claimed by the plaintiff towards rent, and security charges, without filing a counter claim and paying necessary Court Fee within the time prescribed by law?

Point.No. 1. The fact that there was understanding on 23.02.1999 and that the terms of the understanding is not in dispute. The only dispute is with reference to the number of tillers that were available with the defendant on the date of the termination of contract under Ex.A-7 i.e., on 26.11.2001. While the plaintiff would claim that 2 power tillers 2 engines and 24 nos. of tynes sets and other spares valued at Rs.5,62,000/- (Rupees five lakhs sixty two thousand only), the defendant in his written statement would contend that only 1 power tiller and 2 engines and some tynes sets.

9.The Trial Court on consideration of exhibits A-3 to A-6, has come to the conclusion that the claim of the defendant that it has only 1 power tiller left with it, is not correct. In fact, under Ex.A-3 dated 08.08.2001, the plaintiff has called upon the defendant to return 14 power tillers to its stores along with cage wheels. The defendant had sent a reply on 24.09.2001 stating that it had returned the tillers as per delivery note dated 24.09.2001 and it is specifically stated that 2 power tillers will have to be returned and out of 2, one will have to be collected by the plaintiff from M/s.Coromandel Agro, Nellore. On 25.09.2001, under Ex.A-5, the plaintiff had written to the defendant making it clear that even after adjusting the power tiller collected by the plaintiff from M/s.Coromandel Agro, Nellore, there should be 2 power tillers available with the defendant, and it was also made clear in and by the said letter, that the plaintiff had also required the defendant to return the 2 power tillers and 2 engines at the earliest.

10. On 23.10.2001 under Ex.A-6, the defendant had objected to the act of the plaintiff in removing the power tillers from its place. It is only thereafter, the plaintiff has cancelled the agreement under Ex.A-7 on 26.11.2001. The plaintiff required the defendant to pay up the cost of the goods that were left with the defendant which have not been returned. Therefore, it is clear from the documentary evidence available on record that the defendant had not returned the 2 power tillers which were in its possession. The plaintiff has thus, proved the entrustment of the goods with the defendant and the fact that the defendant did not choose to send a reply to the legal notice dated 28.01.2002 would militate against the claim of the defendant. Even in the notice dated 28.06.2002 which was sent after the filing of the suit claiming a sum of Rs.1 lakh (Rupees one lakh only) there is no reference to the notice dated 28.01.2002. The defendant has produced exhibits B-1 to B-18. Those documents only show that some of the power tillers were returned by the plaintiff and even as per Ex.B-11 dated 24.09.2001, 5 nos. of power tillers complete set, and 2 nos. of power tillers without engine and spares alone were despatched to the plaintiff by the defendant. Under the delivery challan dated 24.09.2001 marked as Ex.B-12, certain spares that were left out in the delivery challan dated 18.02.2001 were returned back. The cumulative effect of the entire evidence would go to show the entrustment of the machinery and the spares with the plaintiff. The defendant is unable to establish its plea of return of this goods.

11. Ms.P.Srividya, learned counsel appearing for the appellant would contend that a claim for rent and security charges being the part of the same transaction, the defendant is entitled to seek adjustment of the same without paying Court fee. She had also drawn the attention of this Court to the decision in the case in Ambika Palayakat Company -vs- N.Kannappa Pillai [1951(2)MLJ 182]. That was the case where the defendant had claimed a sum of Rs.2,274-3-0 as damages for breach of warranty and further a sum of Rs.3,000/- towards damages for loss of reputation in the suit filed by the plaintiff for recovery of the price of the goods sold and delivered. The Trial Court had directed the defendant to pay Court fee of Rs.3,000/- (Rupees three thousand only) as it was claimed as damages for loss of reputation. The said order was challenged before this Court. It was held that the claim regarding breach of warranty is based on supply of goods of good quality and as such, it will have a direct effect on the value of the goods. Therefore, the defendant can plead adjustment of the same without paying Court fee. However, in so far as the claim of relief to damages for loss of reputation, this Court had held that the defendant will have to pay Court fee. As can be gathered from the facts of the present case, the two claims are independent of each other. The plaintiffs

claim is in respect of the value of the goods entrusted with the defendant which is not returned by the defendant on termination of the contract, and the defendants claim is in respect of security and godown charges. They are not part of the same transaction. Therefore in my opinion, the judgment referred to by the learned counsel does not support her case.

12.The learned counsel would further contend that in any event, the defendant should have been given some time to pay the Court fee on the ground that claim by the defendant is one of set off. For the said purpose, the learned counsel would rely upon the judgment of Division Bench of this Court in Giovanola Binny Limited .v. Indian Institute of Technology, 1992 (2)LW 444 (DB). The said judgment of the division bench arose out of a interim decree passed by the Trial Court. The Division Bench had found the Trial Court was wrong in holding that the defendant can claim the adjustments unless it pays Court fee.

13.Taking into account the fact that the suit is pending, the Division Bench had given liberty to the defendant to pay the Court fee. I am afraid that the said decision cannot be relied upon to support the claim of the defendant in the present case, as the defendant had not either claimed set-off or made a counter claim and it has not chosen to pay any Court fee. The written statement does not contain prayer of recovery of money against the plaintiff. Therefore, I do not find any error on the part of the Trial Court, when it rejected the claim of the defendant.

14. Mr.Karthik Ramanathan, learned counsel appearing for the respondent would rely upon two Division Bench judgments of this Court in N.Savithri -vs- United Commercial Bank reported in 1993 (1) LW 655 . para 14 of the said judgment reads as follows:-

"14.Apart from that as regard the shares in Cambodia Mills Limited as well as the shares in Coimbatore Spinning and Weaving Mills Limited, the defendant is not entitled to get any relief in this proceeding as there is neither a plea for set-off nor a counter claim. The defendant has not paid the requisite court-fee. There is no question of equitable set-off or, adjustment as against the amount due to the plaintiff. A Division Bench of this Court has considered this question in Sri Samby films . vs. Vijaya Pictures MANU/TN/0715/1990: (1990) 2MLJ405. It is held that even in respect of equitable set-off, the court fee has to be paid by the defendant. In the present case, apart from making an offer to pay the requisite

court-fee, the defendant has not paid any court fee nor has she set out even the amount which will have to be adjusted as against the amount claimed by the plaintiff."

15.The learned counsel also relied upon the judgment of a Division Bench of this Court in L.P.A.No.232 of 2001 dated 20.12.2004 where in the Division Bench para 8 of the said judgment had held as follows;

"8.As seen from the written statement, the appellant/defendant has not claimed set off, paying necessary court-fees, as contemplated under law. If set off, which is legally called adjustment, had been claimed, by paying court fees, then only the court is bound to adjudicate that claim, as a plaint in a cross suit, so as to enable the court to pronounce a final judgment, in respect of both the original claim and of the set off, as contemplated under Order VIII Rule 6(2) C.P.C. Unfortunately, in our considered opinion, though the defendant had not claimed set off as insisted under Order VIII Rule 6 C.P.C".

16.In the light of the above categorical pronouncement of the Division Bench of this Court I am unable to agree with the contentions of the learned counsel of the appellants that without claiming set off or making a counter claim the defendant would entitled to plead adjustment of the monies allegedly due to it by the plaintiff.

17.In view of the foregoing discussions both the points are answered against the appellant and the appeal is dismissed confirming the decree and judgment of the Trial Court. No costs. Consequently the connected miscellaneous petition is closed.

-s/d-

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KP

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The Additional District Judge
Fast Track Court-V, Chennai.

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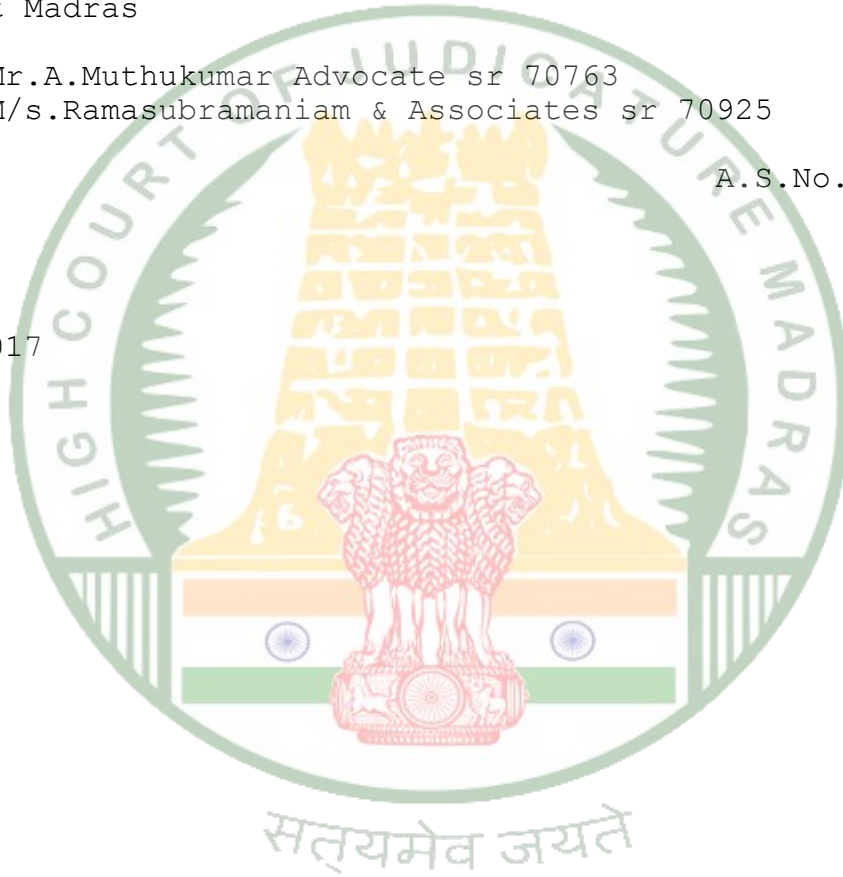
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