

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE V.PARTHIBAN

Original Side Appeal No.436 of 2011

M/s.Arvind Remedies Limited
25/9, Nelson Manickam Road,
Mehta Nagar, Chennai - 600 029.
Presently at No.190,
Poonamallee High Road,
Chennai-600 084. ...Appellant/Defendant

vs.

M/s.C.M.S.Financial Consultants,
M-3-B, Anugraha Colony, III Avenue,
Ashok Nagar, Chennai - 600 003
Rep. by its Managing Director,
S.Sridharan ...Respondent/Plaintiff

Original Side Appeal filed under Order XXXVI Rule 1 of the
Original Side Rules r/w Clause 15 of Letters Patent, against the
decree and judgment passed in C.S.No.670 of 2001 dated
20.07.2010 on the file of this Court.

The Suit praying this Court to pass a Judgment and decree:

a)directing the Defendant to pay the Plaintiffs a sum of
Rs.11,28,050 together with interest thereon at 18% per annum
from this date till date of payment.

b)directing the defendant to pay the Plaintiff the cost of
the Suit.

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For Appellant : Mr.R.Selvakumar

For Respondent : No appearance

J U D G M E N T

(delivered by K.K. SASIDHARAN, J.)

This intra court appeal challenges the judgment and decree dated 20 July 2010 in C.S.No.670 of 2001, directing the appellant to pay a sum of Rs.15,72,914.86/- to the respondent with interest at the rate of 6% PA on the principal amount.

Brief Facts

2. The respondent filed a Civil Suit in C.S.No.670 of 2001 contending that the company was authorised by the appellant for preparation of project report, loan application and other necessary documents and to take up follow up action with State Industries Promotion Corporation of Tamilnadu (for short "SIPCOT"). The respondent, by letter dated 22 April 1998 communicated that 4% of the term loan shall be paid as charges for doing the paper work and taking follow up action. The appellant reduced the charges from 4% to 3.5% by a subsequent communication dated 09.09.1998. Since the Commission amount was not paid even after sanctioning the loan by SIPCOT, the respondent filed the suit in C.S.No.670 of 2001, claiming a sum of Rs.11,28,050/- with interest.

3. The suit was resisted by the appellant contending that the documents relied on by the respondent were all given to help them to process the loan application and as such, no reliance could be placed to fix liability.

4. The learned Single Judge altogether framed three issues. The learned Judge has given a factual finding that there was an agreement to pay commission to the respondent and the appellant failed to pay the amount inspite of sanctioning loan by SIPCOT on the strength of the papers presented by them. The learned Single Judge decided all the issues in favour of the respondent resulting in passing a decree directing payment. Feeling aggrieved, the defendant before the Trial Court is before us.

Submissions

5. The learned counsel for the appellant contended that there was no binding contract executed between the parties agreeing to pay commission at a particular rate. According to the learned counsel, there cannot be a decree for money, as the agreement in question was to do liasoning with a state owned corporation and to take a percentage of the loan amount as

commission for processing the loan. No other contention was taken before us.

6. None appeared on behalf of the respondent.

Points for determination

7 i) Whether there was a contract entered into between the appellant and the respondent agreeing to pay commission at a particular rate?

ii) Whether the learned single Judge was correct in decreeing the suit?

8. The respondent laid the suit in C.S.No.670 of 2001 on the basis of the correspondence exchanged with the appellant.

9. Ex.P2 marked on the side of the respondent indicates that the respondent made a request to pay the processing charges at the rate of 4% on the term loan arranged. The charges would include preparation of Project Report, Structuring of the Loan, filling the application with the institution, follow up action and other related expenses. The mode of payment of the charges was also indicated in the communication, dated 22 April 1998. The respondent wanted payment of service charges at the rate of 1% on in-principle sanction, 2% on final sanction and the balance on disbursement. Ex.P3 dated 29.05.1998 is a correspondence originated from the respondent to the appellant, wherein, it was stated that preliminary clearance was given by SIPCOT. The respondent forwarded the letter issued by SIPCOT dated 29.05.1998 to the appellant. Ex.P4 dated 19 August 1998 was marked on the side of the respondent to show that the respondent forwarded a copy of the sanction letter issued by the SIPCOT sanctioning a sum of Rs.280 lakhs.

10. The appellant, by letter dated 09.09.1998 marked as Ex.P5 intimated the respondent that they would pay service charges at 3.5% on Rs.280 lakhs amounting to Rs.9,80,000/- The respondent, by letter dated 11.09.1998 cited the attention of the appellant that they have agreed to pay service charges at 4%, but however, uni-laterally reduced it to 3.5%. The respondent, therefore wanted the appellant to keep their commitment, meaning thereby, to pay service charges at 4%. Since the appellant failed to pay the charges even at the rate agreed as per Ex.P5, the respondent issued a lawyer notice dated

03.12.1998 calling upon them to pay the amount. It was only in the reply notice marked as Ex.P9, the appellant took up a contention that the agreement was to pay service charges at 1% and not as contended in the notice.

11. The documents marked as Ex.P1 to P11 clearly shows that there was an agreement entered into between the parties. The respondent claimed service charges at 4%. The appellant agreed to pay 3.5% and the same is proved by Ex.P5. In view of the document marked as Ex.P5, the appellant is not correct in its contention that there was no agreement to pay service charges to the respondent. There is no need for execution of a formal contract for payment of service charges. The correspondence exchanged between the parties contained the terms and conditions of the agreement and the same would operate as a contract.

12. The learned counsel for the appellant has taken up a contention that a contract of this nature is not enforceable and as such, the appellant is not liable to pay service charges. There is no substance in the said contention. The agreement was not confined to liasoning. Ex.P2 clearly shows that the respondent agreed to prepare the Project Report, Structuring of the loan, filling application with SIPCOT and to take follow up action. It is not the case of the appellant that the project report was prepared only by them and the respondent acted only as a liasoning agent. The exhibits marked before this Court clearly shows that the respondent has taken up the entire burden subject to payment of service charges. Therefore, it is clear that there was a binding agreement between the parties.

13. Though there was a communication that the respondent wanted service charges at 4%, the fact remains that the suit was filed for service charges at 3.5%. Such a claim was made by the respondent taking into account the letter dated 09.09.1998 marked as Ex.P5. The learned single Judge was therefore correct in arriving at a conclusion that there was an agreement to pay service charges to the respondent at 3.5%. The points 1 and 2 are therefore answered against the appellant.

14. The learned single Judge considered each and every document exhibited and the evidence of P.W.1 and D.W.1 and correctly arrived at a conclusion that the appellant is liable to pay service charges to the respondent. We are therefore of the view that the intra court appeal lacks merits and the same stands dismissed. In short, we confirm the judgment and decree, dated 20.07.2010 in C.S.No.670 of 2001.

15. Since there was no representation on behalf of the respondent, the parties are directed to bear their respective costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

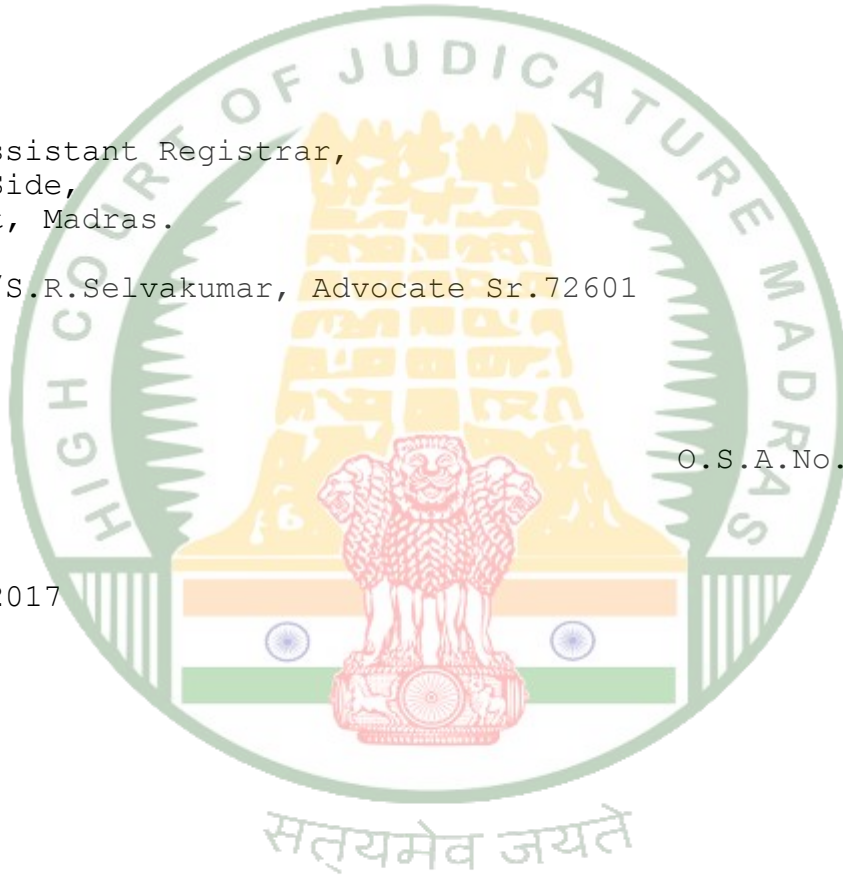
To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to M/S.R.Selvakumar, Advocate Sr.72601

O.S.A.No.436 of 2011

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