

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.10.2016

PRONOUNCED ON: 01.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.80 of 2009

M/s.G-Tech Stone Limited by its
Assistant Manager Mohan
Chennai 600018

Plaintiff

Vs

1. M/s.JK Coal Corporation, Chennai-17

2. R.Kumar, Partner, M/s.JK Coal Corporation
Chennai-34

3. M.Jakir Hussain, Partner, M/s.JK Coal Corporation
Chennai-1

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC.

For Plaintiff : Mr.G.M.Mani

For Defendant : Set Exparte

JUDGEMENT

This civil suit is filed to pass a judgement and decree, (a) directing the Defendants, jointly and severally, to pay a sum of Rs.32,29,219/- to the Plaintiff with interest at the rate of 12% p.a on Rs.23,75,000/- from the date of the plaint till the date of realisation.

2. The case of the Plaintiff, in a nutshell, as set out in the plaint, is

that the Plaintiff Company, registered under the Companies Act, was carrying on the business of buying and selling of steaming (non coking) coal. The 1st Defendant Firm had purchased 5000 MT of steaming (non coking) coal from one M/s.Perfect Stone Limited. The 1st Defendant, by letter dated 4.5.2004, had requested the Plaintiff to pay the customs duty and other freight charges for such purchase since they had no sufficient funds, agreeing to repay the said charges with profit at the rate of Rs.490/- per MT of coal. On such request, the Plaintiff had paid the customs duty, etc. to the tune of Rs.24,50,000/-. When the Plaintiff had raised a debit note, dated 10.06.2004, the 1st Defendant, accepting its liability to the tune of Rs.23,75,000/-, issued a cheque no.410657, dated 27.09.2005, drawn on ABN Amro Bank for a sum of Rs.23,75,000/- to the Plaintiff. When the Plaintiff had presented the said cheque with its Banker for encashment, it was dishonoured, vide return memo dated 26.10.2005, with an endorsement 'funds insufficient', which was communicated to the Plaintiff on 27.10.2005. Hence, the Plaintiff had issued a legal notice, dated 21.11.2005 to the Defendants, calling upon them to pay the cheque amount within 15 days, to which, the Defendants had sent a reply dated 08.12.2005, with untenable contentions and to the said reply, the Plaintiff had also sent a further reply dated 3.1.2006. Thereafter, the Plaintiff had filed a criminal complaint against the Defendants in CC.No.3335 of 2006, on the file of the 13th Metropolitan Magistrate, Egmore, Chennai under Section 138 of the Negotiable Instruments Act and the same is pending. Till date, the Defendants have not come forward to

settle the cheque amount. In such circumstances, this civil suit has been filed for the reliefs as stated above.

3. On the memo filed by the learned counsel for the Plaintiff, stating that the 3rd Defendant died as early as on 14.05.2009, it was observed by this court, by order dated 09.06.2015, that it was not necessary to implead the legal heirs of the deceased 3rd Defendant/Partner.

4. Though the Defendants 1 and 2 were served as early as on 11.03.2009 and 5.3.2009, no written statement had been filed by the Defendants and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the Defendants 1 and 2 were set exparte and Exparte Evidence was ordered by the order of this court, dated 18.08.2011.

5. One S.Mohan, the Assistant Manager of the Plaintiff Company, had filed the proof affidavit for his chief examination and receipt of 12 documents as documentary evidence to prove the suit claim. In the Evidence, S.Mohan examined himself as PW.1 and marked Exs.P1 to P12 as documentary evidence in order to prove the suit claim.

6. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P12 adduced by PW.1, this Court is of the view that the plaintiff has proved the suit claim and hence, the Plaintiff is entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for with costs. Time for payment is three months.

01.11.2016

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiff:-
 1. P.W.1 - S.Mohan
2. List of Exhibits Marked on the side of the Plaintiff:-
 1. Ex.P1 is the proceedings of the Plaintiff Company authorising the Plaintiff to adduce evidence before this court, dated 01.07.2003
 2. Ex.P2 is the certified copy of the confirmation letter from the 1st Defendant to the Plaintiff, dated 04.05.2004
 3. Ex.P3 is the certified copy of the debit note sent by the Plaintiff to the 1st Defendant, dated 10.06.2007
 4. Ex.P4 is the certified copy of the rough calculation showing the debit due from the Defendants
 5. Ex.P5 is the certified copy of the cheque for a sum of Rs.23,75,000/- in favour of the Plaintiff, dated 27.09.2005
 6. Ex.P6 is the certified copy of the cheque memo issued by ICICI Bank, dated 26.10.2005
 7. Ex.P7 is the certified copy of the letter sent by ICICI Bank to the Plaintiff, dated 26.10.2005
 8. Ex.P8 is the certified copy of the written memo issued by ABN-Amro Bank, dated 26.10.2005
 9. Ex.P9 is the certified copy of the legal notice issued by the counsel for the Plaintiff to the Defendants
 - 10.Ex.P10 (series) is the certified copies of the acknowledgement for proof of service of notice to the Defendants.
 - 11.Ex.P11 is the reply notice by the counsel for the Defendant, dated 08.12.2005
 - 12.Ex.P12 is the rejoinder notice by the counsel for the Plaintiff to the counsel for the Defendants.

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

01.11.2016

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.80 of 2009

01.11.2016