IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28 / 07 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.869 OF 2009

M/s.JAY AR Enterprises
Partnership Firm
Having office at No.7, N.S.Krishnan Street,
Easwaran Nagar, Pammal,
Chennai - 600 075.

Rep. By its Managing Partner
P.Janardhan Rao
S/o. P.Raj
Residing at No.A/702, Ragav Regency,
No.90, Santhome High Road,
R.A.Puram, Chennai - 600 028.

By his Power of Attorney
V.Prabhakaran
S/o. V.M. Padmanabhan
Residing at Plot No.1722/A/2
26th Street, Korattur,
Chennai - 600 099. .. Plaintiff

Versus

M/s. SCRAPT TRADERS
Rep. By its Proprietor Basant Shah
Having place of residence
No.264, Vivekananda Road,
Sova Bazaar, Kolkatta - 700 006. .. Defendant

PRAYER: Plaint filed under Order VII Rule 1 of the Code of Civil Procedure read with Order IV Rule 1 of Original Side Rules praying for the following judgment and decree against the defendant:

(a) directing the defendant to pay to the plaintiff a sum of Rs.62,41,356/- with subsequent interest at 24% per annum from the date of plaint till date of decree and till the date of realisation.
(b) award the cost of the suit.

For Plaintiff : Mr.R.Loganathan
For Defendant : No appearance

J U D G M E N T

The suit is filed for recovery of a sum of Rs.62,41,356/- with 24% interest per annum and for other reliefs.

2. The defendant is a dealer in Ferrous, Non-Ferrous and M.S.C.I. Rolling Scraps and Electrical Goods etc., and procured Iron Ore Pines for the purpose of exporting to Overseas Countries. For the said purpose, the plaintiff had paid the defendant a sum of Rs.50,00,000/- (Rupees Fifth Lakhs Only) for sale and supply of 20,000 Metric Tons of Iron Ore Pines and the bill of lading was arranged. Thereafter, on verification, it was found that the Iron Ore Pines were not of the expected quality and the agreement between the plaintiff and the defendant had to break. The defendant, realising his position, agreed to remit the sum of Rs.50,00,000/- back to the plaintiff and accordingly, paid it through a cheque dated 10.04.2006, drawn on ICICI Bank, Kolkatta. The said cheque itself was paid, after a long correspondence between the parties.

3. The plaintiff presented the cheque for realisation on 05.10.2006 and the same was returned by the Bank on 07.10.2006 on the ground of "FUNDS INSUFFICIENT". After the return, the plaintiff had forwarded a debit note indicating the same to the defendant, with respect to the original cheque. The plaintiff also issued a demand notice,

through advocate, on 08.11.2006. It is stated further that in the meanwhile, the defendant had chosen to issue three demand drafts drawn in favour of the plaintiff, dated 25.04.2006, for a sum of Rs.20,00,000/-. The covering letter also averred that the said payment was part of the payment dues, arising out of the cheque, which was dishonoured.

4. Hence, it is contended by the plaintiff that the defendant is liable for the balance of Rs.30,00,000/-, arising out of the liability. Admittedly, the transaction being commercial one, the plaintiff has computed the rate of interest at 24% per annum, from 05.08.2005 till 25.04.2006, and thereafter, on a sum of Rs.30,00,000/-, till realisation of the suit. Thus, there is a liability on the part of the defendant to pay interest as per the agreed terms in addition to the principal amount of Rs.30,00,000/-.

5. After service of notice, the defendant had entered appearance and filed written statement. In the written statement, it is specifically admitted that the defendant issued a post-dated cheque drawn on ICICI Bank, R.N. Mukherjee Branch, dated 05.10.2005, for a sum of Rs.50,00,000/- towards commission amount, only on expectation that the foreign buyer viz., United Overseas Ltd., would issue a letter of credit / documentary credit towards 100% payment towards supply. It is further stated that the said amount of Rs.50,00,000/- was paid as advance

payment of commission for supply of Iron Ore to M/s.United

Overseas Ltd., and the payment made as stated above was only on behalf of M/s.M.J.R. Logistics and without the said M.J.R. Logistics as party, the suit is bad for non-joinder of necessary party and prayed for dismissal.

6. Though the defendant had filed the written statement, as there is no representation or co-operation from his part in proceeding with the trial, he was set *ex parte* on 29.04.2016.

7. The questions that have to be decided are (i) whether the plaintiff is entitled to recover the suit claim against the defendant; (ii) whether the plaintiff is entitled for the interest as claimed; and (iii) what are all the other reliefs.

8. Mr.P.Janardhan Rao, Managing Partner of the plaintiff's firm, on behalf of the plaintiff, has filed proof affidavit for his chief examination to prove the suit claim, besides examining himself as P.W.1., and marked 20 documents as Exs.P1 to P20.

9. Heard the submissions made by the learned counsel for the plaintiff and perused the materials available on record.

10. The suit claim is based on a cheque for Rs.50,00,000/-, which was dishonoured at the behest of the defendant. First of all, it has to be seen whether there was any liability on the defendant to pay the said amount. In this regard, it is relevant to refer to Ex.P9, which is the

reply notice dated 17.11.2006, issued on behalf of the defendant. In the said notice, it is specifically stated as follows:

> "That in order to secure the transaction by and between the parties my client handed over to your client an undated cheque bearing No.169002 dated nil for an amount of Rs.50,00,000/- (Rupees Fifty Lakhs Only) but the same was never issued towards discharge of any legal liability.
>
> That against the said cheque amount which is a valuable security my client paid to your client an amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) through his forwarding letter dated 25/4/2006 by means of three Drafts being D. Draft No.552858, 552859, 552860 all dated 25/4/2006 on Bank of India, Service Branch at Chennai for amounts of Rs.2,00,000/-, Rs.9,00,000/- and Rs.9,00,000/- respectively and the same was also received by your client."

11. From the above reply from the defendant, admittedly a cheque for Rs.50,00,000/- was issued by the defendant and a sum of Rs.20,00,000/- was later paid, in discharge of the above liability. Therefore, the liability of the defendant to pay the plaintiff is admitted by the defendant. In this regard, the plaintiff had also initiated proceedings under Section 138 of the Negotiable Instruments

Act, in C.C.No.155 of 2007. The said C.C.No.155 of 2007 was dismissed, as the complainant had made a claim of Rs.50,00,000/-, when actually he is entitled to claim only Rs.30,00,000/-, as the balance had already been paid. It is also stated that against the said decision, Crl.A.No.816 of 2008 is said to be pending before this Court.

12. The learned counsel for the plaintiff relied on a judgment of this Court in ***S.THANGAMANI VS. M/S. R.S.T. STEELS ETC., [2001 (2) L.W. (Crl.) 536]***. In a similar circumstances, wherein a cheque was for a larger amount and the outstanding was for a lesser amount, this Court had held that so long as there exists liability, with reference to the portion of the cheque amount also the complainant would be entitled to recover the balance of the amount. It will be useful to extract the following paras:

> "9. It is true that the complainant in the complaint would say that the cheque was issued for Rs. 1,50,000/-, even though the liability as on the date of issuance of cheque was of Rs. 1,01,574/-. There is no dispute in the fact that the statutory notice was issued after dishonour claiming only Rs. 1,01,574 and not the entire cheque amount. Thus, it is clear that demand of the complainant/respondent is only the portion of the cheque amount, which was the existing

liability as on the dale of the cheque. These factors have been clearly given in the complaint also.

10. Even though the cheque amount was Rs.1,50,000/-, so long as there exists liability with reference to the portion of the cheque amount, in my view, the complainant would be perfectly well within his right to invoke the required provisions of the Act. Therefore, when the cheque was dishonoured, the complainant sent a statutory notice demanding only the portion of the cheque amount, namely, Rs. 1,01,574/-.

11. The words "such amount" as contemplated under Section 138 of the Negotiable Instruments Act would relate to the portion of the cheque amount because even according to the complaint, though the cheque was obtained for more amount, it was issued only towards discharge of only a portion of the cheque amount, namely, Rs. 1,01,574/-.

12. Therefore, the meaning of the word "such amount" would indicate not with reference to the cheque amount but with reference to the amount of liability, namely, Rs. 1,01,574/-. Therefore, the notice sent by the complainant demanding Rs. 1,01,574/- being the portion of the cheque amount, is perfectly valid and in the said amount had not been paid within 15 days from the date of receipt of the said notice, it

> is natural that the cause of action would arise and, consequently, complainant would be entitled to approach the Court by filing a complaint under Section 138 of the Negotiable Instruments Act.”

13. As the liability under the cheque issued by the defendant is admitted, the plaintiff would be entitled for recovery of the same. However, admittedly, Rs.20,00,000/- was paid by way of three demand drafts, which was received and realised by the plaintiff. The plaintiff will be entitled only for the balance with interest, being the portion of the admitted liability.

14. The next question would be with respect to the entitlement of interest as claimed by the plaintiff. Admittedly, the suit transaction is commercial. The plaintiff has claimed 24% interest per annum. Though in the plaint it was stated by the plaintiff that the suit transaction was pursuant to an agreement dated 11.08.2005, the said agreement was not produced. However, the transaction, being commercial, the plaintiff is entitled to claim interest at 24% per annum, till date of filing of the suit, which is already been done and the interest is claimed. However, with respect to interest to be paid from the date of suit, till realisation of the amount, it will be useful to refer to Section 34 of the Civil Procedure Code.

"34. Interest? (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.- In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II. - For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]"

15. Therefore, it is well settled that interest for the period prior to the suit is payable under contractual interest, and after the institution of the suit, it is governed by Section 34 of the Civil Procedure Code. After institution of the suit, the Court has got discretion to order payment of interest at such rate as the Court deems reasonable. In this case, despite the transaction being commercial, so far as the percentage of interest payable is concerned, excepting the claim made in the plaint, there is no document filed. Therefore, as per Section 34 of the Civil Procedure Code, the discretion lies with the Court.

16. Accordingly, the defendant is directed to pay interest at the rate of 6% per annum on the principal sum adjudged from the date of filing of the suit, to the date of decree, that is, pendente lite. Interest from the date of decree, till the date of realisation i.e., future interest or further interest is also fixed at the rate of 6% per annum.

17. In the result, the suit is decreed, as indicated above. No costs.

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 - Mr.P.Janardhan Rao

LIST OF EXHIBITS MARKED ON THE SIDE OF THE PLAINTIFF

Sl.No.	*Exhibits*	*Description of documents*	*Date*
1	P1	Power of attorney	30.06.2006
2	P2	Cheque for Rs.50,00,000/-	10.04.2006
3	P3	Letter of the defendant	25.04.2006
4	P4	Return Memo	07.10.2006
5	P5	Debit Note	14.10.2006
6	P6	Notice of Demand	08.11.2006
7	P7	Postal receipt	08.11.2006
8	P8	Acknowledgment signed by the defendant	11.11.2006
9	P9	Reply of the defendant counsel	17.11.2006
10	P10	Copy of the complaint in CC 155/2007- II M.M. Egmore	05.12.2006
11	P11	Summon & complaint in C.C.15739/2007 XVII M.M. Kolkatta	05.05.2007
12	P12	Grounds of Revision and Order	
13	P13	Copy of complaint with petition to withdraw	18.01.2008
14	P14	Judgment in CC 155/2007	31.10.2008
15	P15	Notice of demand	21.11.2008
16	P16	Certificate of posting	22.11.2008
17	P17	Postal receipt	23.11.2008
18	P18	Acknowledgment	27.11.2008
19	P19	Acknowledgment	27.11.2008
20	P20	Cheque, Return Memo and Debit Advise	-

LIST OF EXHIBITS MARKED ON THE SIDE OF THE DEFENDANT – NIL

sd/.P.S.N.J

28.07.2016

//Certified to be a true copy//
Dated this the day of 2017

R.s/31.01.2017 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.