IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-04-2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CIVIL SUIT No.420 of 2012

M/s.Vaishnavi Metals
A Partnership firm rep. By its Partner
D.Thangaraj
having their office
at No.116, Egmore High Road
Chennai 600 008 .. Plaintiff

vs

1.Indsolders & Alloys P. Ltd.,
by its Director
S.Swaminathan
No.45, South Usman Road
T.Nagar, Chennai 600 017
2.S.Swaminathan .. Defendants

Civil suit filed under Order VII Rule 1 of the Code of Civil Procedure and under Order IV Rule 1 of the High Court Original Side Rules praying for a judgment and decree directing the defendants to jointly and severally pay a sum of Rs.80,85,000/- together with interest at the rate of 18% per annum on the principal sum of Rs.52,50,000/- from the date of plaint till date of decree and threafter, at such rate as specified in the decree till realisation.

For Plaintiff : Mr.S.A.Rajan

For Defendants : Set ex-parte on 9.9.2014

JUDGMENT

The plaintiff would aver in the plaint, as follows:-

(i) The plaintiff is the dealer in various metals and metal scraps and they sell the same in the wholesale market as well as in retail. Their business was established about 25 years ago, and they are having good reputation and goodwill in the market, in respect of the goods they are trading.

(ii) On account of reputation and goodwill generated, the plaintiff is having a large turnover in the business and the first defendant, who was a manufacturing concern, used to purchase various metals and metal scraps and more particularly, aluminium, magnesium, copper and other metal scraps, ingots, from the plaintiff from the year 1995 and both of them had mutually agreed to maintain a mutual, open and current account and close such account on every accounting year ending and intimate the balance to each other.

(iii) Accordingly, the plaintiff has been maintaining such a running account at their end and so also the first defendant and they had reciprocal exchanges of account statements and the outstanding amounts were also disclosed in the respective year ending accounts and those account statements were also submitted to the statutory authorities by both of them.

(iv) From 1.1.2008 onwards, the plaintiff started maintaining account on "tally" - a computerised accounting system, whereby the maintenance of major ledger sheets had been given up, and the account statements were exchanged by means of Internet between the plaintiff and the first defendant. The purchases of metals by the first defendant and the payments made thereon, were also reflected in the statements maintained by them. The practice adopted, was that invoices were raised and delivered to the first defendant and likewise, all the payments made by the first defendant towards purchases, were credited to the account of the first defendant and at the time of commencement of computerised statement of account on 1.4.2008, the first defendant was due and payable, a sum of Rs.20,01,823.65 by way of opening balance and from that date onwards, the first defendant also effected purchases and made payments and as per the closing balance as on 25.6.2009, a sum of Rs.52,49,999.65 was due and payable by the first defendant to the plaintiff.

(v) The first defendant started incurring loss and did not transact any business on or after 24.11.2008, and the first defendant was also owing huge sum of money to Nationalized Banks and also created mortgage/security in favour of the Nationalized Banks in respect of the fixed assets owned by them. The plaintiff approached the first defendant very many times, calling upon them to settle the loan amount and the second defendant in order to create security for the amounts due and payable, had handed over the original title deeds relating to an immovable property

at Othivakkam Village of Tirupporur in Chengalpattu District on 20.12.2010, and further agreed to convey the said property in favour of the plaintiff, and accordingly, a draft sale deed was also prepared during January, 2011, and thereafter, nothing was fructified.

(vi) The plaintiff made repeated demands to the first defendant calling upon them to settle the amount. On behalf of the first defendant a legal notice dated 12.4.2012, was sent stating among other things, that there is no liability on their part and all the monies due and payable, have been settled to the plaintiff. It is further stated that by adopting illegal means, some documents have been taken from the custody of the first defendant and the plaintiff was called upon to desist from initiating any action. Since the amount due and payable to the plaintiff, has not been settled, the plaintiff came forward to file the present suit for recovery of money and for costs.

2.The defendants were served and they did not enter appearance and therefore, the matter was listed before this Court under the caption "Undefended Board" and this Court vide order dated 9.9.2014, had set both the defendants ex-parte and directed the learned Additional Master No.I to record ex-parte evidence.

3.The Managing Partner of the plaintiff-firm has filed his proof affidavit in lieu of chief-examination, as P.W.1 and marked Exs.P1 to P34.

4.Mr.S.A.Rajan, learned Counsel appearing for the plaintiff, would submit that the amounts due and payable, are reflected in the invoices marked as Exs.P2 to P31 and as on 25.6.2009, the defendants jointly and severally, are liable to pay a sum of Rs.52,49,999.65 and in order to ensure due and proper payment, intend to create security and handed over the sale deed relating to the immovable property, and also agreed to convey the same in their facour and accordingly, they have prepared the draft sale deed and in Ex.P34, legal notice, the defendants took an untenable stand and since the plaintiff through oral and documentary evidences, had probablised their case, prays for decreeing the suit with costs.

5.This Court has considered the submissions made by the learned Counsel appearing for the plaintiff, and also perused the materials including oral and documentary evidences.

6.The following issues are framed for adjudication:-

(1) Whether the plaintiff and the first defendant had a running account?

(2) Whether the defendants jointly and severally, are liable to pay a sum of Rs.52,49,999.65 as on 25.6.2009, with interest?

(3) Whether the defendants with an intent to create security, had handed

over Ex.P1 - sale deed?

(4) Whether the plaintiff is entitled to a judgment and decree as prayed for, with costs?

7.**ISSUE No.(1)**:- A perusal of pleadings coupled with Exs.P2 to P31, would disclose that the plaintiff had effected supply of metal scraps, etc., to the first defendant, who pursuant to the running account, had also effected payments, and due to the fact that the first defendant stated incurring loss, they were unable to discharge the debts and accordingly, they are due and payable a sum of Rs.52,49,999.65 as on 25.6.2009, as evident from Ex.P32 extract of ledger account. Though the defendants sent a notice under Ex.P34, taking a stand that they have discharged the entire amount, no evidence is forthcoming in that regard, for the reason that the defendants did not enter appearance and contest the suit on merits. In the considered opinion of the Court, Exs.P2 to P31 had probablised the case of the plaintiff and therefore, issue No.(1) is answered in affirmative and in favour of the plaintiff.

8.**ISSUE No.(2)**:- The second defendant is the Director of the first defendant-private limited company and being in-charge of the administration and affairs of the first defendant-company, is also liable to pay the suit amount jointly and severally with the first defendant. Therefore, issue No.(2) is answered in favour of the plaintiff.

9.**ISSUE No.(3)**:- Though it is averred by the plaintiff that with an intent to create security for the due repayment of the loan, the second defendant has handed over Ex.P1 sale deed, dated 4.2.1993, no documents have been filed evidencing the creation of security in favour of the plaintiff. It is also to be pointed out at this juncture, that according to the plaintiff, the second defendant has also agreed to convey the property, which is the subject matter of Ex.P1, in their favour, and a draft sale deed also came into being under Ex.P33. However, no further steps have been taken by the plaintiff in that regard, to get the regular sale deed executed in their favour. In the absence of any evidence as to the intention on the part of the defendants to create security in favour of the plaintiff, for the repayment of the amounts due and payable viz. the suit claim, this Court is of the view that there was no intention on the part of the defendants to create security in favour of the plaintiff. Therefore, issue No.(3) is answered in negative and against the plaintiff.

10.**ISSUE No.(4)**:- In the light of Exs.P2 to P32, this Court is of the view that the plaintiff had substantiated the case and therefore, are entitled to get a judgment and decree as prayed for, with costs.

11.In the result, the civil suit is decreed as prayed for, with costs. The defendants are directed to pay jointly and severally, a sum of Rs.80,85,000/- together with interest at the rate of 18% per annum on the principal sum of Rs.52,50,000/- from the date of plaint till decree and thereafter, at the rate of 6% per annum on the principal sum of Rs.52,50,000/- till realisation.

LIST OF WITNESSES AND EXHIBITS:-

P.W.1 T.Muthu Vijayan

Ex.P1	4.2.1993	Photocopy of the sale deed registered as Doc.No.123/1993 at SRO, Tirupporur
Ex.P2	2.4.2008	Office copy of the invoice No.011
Ex.P3	10.4.2008	Office copy of the invoice No.076
Ex.P4	2.5.2008	Office copy of the invoice No.260
Ex.P5	7.5.2008	Office copy of the invoice No.303
Ex.P6	7.5.2008	Office copy of the invoice No.304
Ex.P7	12.5.2008	Office copy of the invoice No.336
Ex.P8	12.5.2008	Office copy of the invoice No.337
Ex.P9	13.5.2008	Office copy of the invoice No.353
Ex.P10	14.6.2008	Office copy of the invoice No.612
Ex.P11	21.6.2008	Office copy of the invoice No.668
Ex.P12	15.7.2008	Office copy of the invoice No.844
Ex.P13	17.7.2008	Office copy of the invoice No.872
Ex.P14	21.7.2008	Office copy of the invoice No.911
Ex.P15	1.8.2008	Office copy of the invoice No.1031
Ex.P16	8.8.2008	Office copy of the invoice No.1080
Ex.P17	12.8.2008	Office copy of the invoice No.1112
Ex.P18	12.8.2008	Office copy of the invoice No.1113

Ex.P19	20.9.2008	Office copy of the invoice No.1395
Ex.P20	20.9.2008	Office copy of the invoice No.1396
Ex.P21	20.9.2008	Office copy of the invoice No.1397
Ex.P22	20.9.2008	Office copy of the invoice No.1400
Ex.P23	20.9.2008	Office copy of the invoice No.1401
Ex.P24	20.9.2008	Office copy of the invoice No.1402
Ex.P25	20.9.2008	Office copy of the invoice No.1405
Ex.P26	20.9.2008	Office copy of the invoice No.1406
Ex.P27	8.11.2008	Office copy of the invoice No.1710
Ex.P28	8.11.2008	Office copy of the invoice No.1711
Ex.P29	22.11.2008	Office copy of the invoice No.1821
Ex.P30	22.11.2008	Office copy of the invoice No.1823
Ex.P31	24.11.2008	Office copy of the invoice No.1830
Ex.P32		Extract of the ledger account
Ex.P33		Photocopy of the draft sale deed
Ex.P34	12.4.2012	Original legal notice sent by the defendants' Counsel to the plaintiff

Sd/M.S.N.J

01.04.2016

//Certified to be a true copy//
Dated this the day of 2016

S.s/10.06.2016 COURT OFFICER

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