

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.268 of 2011
and MP.No.1 of 2011

1. M/s Mano Auto Spares,
represented by its Proprietor,
J. Muralidass
No.17, North Street,
New Saram,
Puducherry - 605 013
2. Ms.Mano Auto Spares,
represented by its Authorised Signatory,
J. Suresh
No.17, North Street,
New Saram,
Puducherry - 605 013
3. M/s Mano Agencies Electricals & Hardwares,
Jayaraman
Puducherry - 605 001
No.17, North Street,
New Saram,
Puducherry

..... Appellants/Defendants

VS

M/s Associated Electrical Agencies
represented by its Power of Attorney Agent,
S. Balasubramanian,
Pottipatti Plaza, II floor,
New No.77, Nungambakkam High Road,
Chennai - 600 034
(Amended as per Order of Court dt.10.9.2013
made in MP No.1 of 2013) Respondent/Plaintiff

Appeal filed under Order XL1-A Rule 1 r/w Sec.96 of Civil Procedure Code against the judgment and decree dated 30.09.2010 passed by the learned II Additional District Judge, Puducherry in O.S.No.127 of 2006.

For appellants : Mr.B. Natarajan

For respondent : Mr.T. Sai Krishnan for
M/s Sai Bharath & Ilan

JUDGMENT

This appeal has been filed by the defendants in the suit in O.S.No.127 of 2006. The said suit was filed by the respondent herein seeking money decree for a sum of Rs.6,28,051.10 along with subsequent interest at the rate of 12% p.a on Rs.4,76,182.30.

2. According to the plaintiff, the defendant was appointed as " Stockist" for sale of Nippo Battery Cells and the defendant had not made payments for the goods sold and delivered under five invoices, which were marked as Exs.A.4 to A.8. Apart from the amounts due under the said invoices, the plaintiff had claimed a sum of Rs.2,21,937/- towards sales tax paid due to non-issuance of "C" forms by the defendant. The amount claimed under invoices is Rs.2,54,245.30. The plaintiff also included over due interest for the defaulted payment, which amounts to a sum of Rs.1,46,546/-.

3. The said suit was resisted by the defendants contending that the supplies were never made and also that it had furnished required "C" forms for the Financial Year 2002-2003 on 12.12.2003.

4. The trial Court, on the above pleadings, framed the following issues:

1. Whether the D1 Company is not in existence as on the date of suit filed?

2. Whether there are counter claim and dues to be paid by the plaintiff to the defendants Nos.1 and 2?

3. Whether the cheque for Rs.2,54,243.30 was issued as blank for the purpose of security as alleged in para 6 of written statement of D1 and D2?

4. Whether the defendants No.1 and 2 are not liable to pay suit claim amount to the plaintiff?

5. Whether the plaintiff is entitled to the suit claim amount with costs?

6. To what other relief are the plaintiffs entitled to?

5. On the side of the plaintiff, P.Ws.1 and 2 were examined and Exs.A.1 to A.48 were marked. On the side of the defendants 1 and 2, D.W.1 was examined and Exs.B.1 to B.22 were marked.

6. Upon consideration of the evidence available on record, the learned trial Judge concluded that the goods were in fact, delivered to the defendant at Pondicherry through TVS Southern Roadways Limited. It was also found that the required "C" forms were not submitted, which resulted in the plaintiff being forced to pay a sum of Rs.2,21,937/-, claimed as Sales Tax. On the above findings, the learned trial Judge decreed the suit as prayed for. Aggrieved over the same, the defendants have filed the present appeal.

7. Heard Mr.B. Natarajan, learned counsel for the appellants and Mr.T. Sai Krishnan, learned counsel appearing for M/s Sai Bharath & Ilan for the respondents.

8. Mr.B. Natarajan, learned counsel appearing for the appellants would contend that there is no proof for delivery of the goods covered by invoices. He would also contend that according to the plaintiff, the goods were supplied during February 2003 and there was no supply after 17.02.2003. Therefore, the learned counsel would contend that the suit, in respect of the sum of Rs.2,54,245.30, claimed towards the value of the goods sold and delivered, under invoices viz., Exs.A.4 to A.8, is barred by limitation. The suit was filed on 01.06.2006.

9. Pointing out the averments made in the plaint that the last consignment were supplied to the defendant in the month of February 2003, Mr. Natarajan, learned counsel would contend that the limitation, for filing the suit on the basis of goods sold and delivered, is three years from the date of supply i.e, by the end of February 2003. The suit, having been filed on 01.06.2006, according to him, is barred by limitation.

10. As regards the amount claimed towards sales tax paid for non issuance of " C' forms, Mr.Natarajan, learned counsel would contend that the defendants have submitted a copy of "C" form on 12.12.2003. According to him, the learned trial Judge has not considered the documents filed to show that "C" forms were furnished on 12.12.2003.

11. Mr.Sai Krishnan, learned counsel appearing for the respondent would submit that the account is a mutual running current account and as such, the defendant has made payment during April 2003, therefore, the period of limitation would start only from 01.04.2004 and not from the date of delivery of the goods, Therefore, according to the learned counsel, the suit filed on 01.06.2006 is within time. In support of his contention, he would rely upon the statement of accounts, filed as Ex.A.32.

12. As regards non-filing of the "C" forms, the learned counsel would contend that the letter dated 12.12.2003 did not contain the "C" form. He would rely upon the letter dated 27.02.2004, wherein, the plaintiff has made it clear that the "C" form, said to have been sent along with the letter dated 12.12.2003, has not been received by the plaintiff and the defendant had undertaken to produce the copy of the counter foil of the "C" form bearing Number 868610 after consulting their auditors. Till 27.02.2004, they have not furnished the "C" form. The receipt of the letter has not been denied by the defendant. Hence, according to the learned counsel though the letter dated 12.12.2003, marked as Ex.B16 refers to "C" form, being enclosed, it is made clear from the letter dated 27.02.2004, marked as Ex.A.20 that "C" form was not annexed to the letter dated 12.12.2003.

13. On the above contentions, the following points have arisen for consideration in this appeal:

i) Whether the plaintiff has established the delivery of goods sold under the invoices Exs.A.4 to A.8 dated 31.1.2003 to 17.02.2003 to the defendant?

ii) Whether the suit in respect of the said claim is not barred by limitation?

Iii) Whether the plaintiff is entitled to a sum of Rs.2,21,937/-, paid towards tax because of non-furnishing of "C" forms for the Financial Year 2002-2003?

(i) Point No:1

As regards delivery of goods to the defendants, under invoices viz., Exs.A.4 to A.8, it is seen that they have been despatched through TVS Southern Roadways Limited, under Lorry Receipt Nos.563275, 563277, 563344 and 563345. The carrier viz., TVS Southern Roadways Limited, by their letter dated 19.02.2009, marked as Ex.A.46, has informed the plaintiff that the goods have been delivered to the consignee and cash receipt numbers were also given in the said letter. This conclusively establishes that the defendant had, in fact, taken the delivery of the goods from the Carrier viz., TVS Southern Roadways

Limited . Therefore, the first contention of the learned counsel for the appellant that there is no proof of the goods sold under invoices Exs.A.4 to A.8,, having been delivered to the defendant, fails and this point is answered against the defendants/appellants.

(ii) Point No.2:

(a) On the question of limitation, it is seen that invoices viz., Exs.A.4 to A.8 are between the period from 31.1.2003 to 17.02.2003. Therefore, the last date for filing of the suit, at best, could be 17.02.2006. As already pointed out, the suit has been filed on 01.06.2006. The plaint does not contain any averment as to how the suit filed on 01.06.2006 for recovery of value of the goods sold during January and February 2003 in time. The question of limitation has not been raised in the written statement and there is no issue framed with reference to the same. In view of Sec.3 of the Limitation Act, the Court is bound to see whether the suit is within time or not irrespective of the plea in the written statement.

(b) The learned counsel for the appellant would contend that the last date of the sale was 17.02.2003. Therefore, the suit, said to have been filed for recovery of money due, under the invoices, within three years from the date of the invoice, at best, within three years from the date of last invoice i.e., 17.2.2006. The suit, filed on 01.06.2006, is therefore, barred by limitation.

© Mr.Sai Krishnan, learned counsel for the respondent, however, would contend that the suit is based on the statement of accounts, which is a mutual open current account. Therefore, the suit filed within three years from 31.03.2004 i.e., the date of the closure of the accounts is within the time.

(d) In order to invoke Article I of the Limitation Act, which provides a period of three years for a suit based on a mutual open and current account, there should have been reciprocal demands between the parties.

(d) In the case on hand, the statement of accounts does not reflect any reciprocal promise between the parties. No doubt, it is true that certain amounts have been credited by the plaintiff towards freight charges and other charges, but the same cannot convert the account into a mutual open current account, within the meaning of Article I of the Limitation Act, particularly, when there is no shifting of balances. The supplies were made by the plaintiff and payments were made. Therefore, from the statement of accounts, it cannot be concluded that the transaction between the parties was that of a mutual open current

account and the suit is for the balance due on account. Therefore, the contention of the learned counsel for the appellant, on the question of limitation, with reference to the claim made for the value of the goods sold and delivered under invoices Exs.A.4 to A.8, has to be sustained and Point No.2 is answered accordingly.

(iii) Point No.3

(i) It is the consistent case of the plaintiff that "C" form for the Financial Year 2002-2003 has not been furnished by the defendant so as to enable it to claim tax rebate. Though it is the contention on the side of the appellants/defendants that "C" form, bearing No.868610 was furnished to the plaintiff along with its letter dated 12.12.2003, the same does not appear to be correct. In fact, under Ex.A.20 dated 27.2.2004, the plaintiff has requested the defendant to furnish at least a copy of the counter foil of the "C" form, bearing No.868610, which is claimed to have been sent to the plaintiff along with the letter dated 12.12.2003. In the absence of the proof of the said "C" form, having been delivered to the plaintiff, the defendant cannot contend that it is not liable to reimburse the tax paid by the plaintiff because of non-furnishing of "C" form by the defendants. In fact, the receipt of the letter dated 27.2.2004, sent by the plaintiff, has not been denied by the defendant and there is no reply.

(ii) Apart from that, a suit notice had been issued by the plaintiff on 18.8.2004, in which, it has been clearly stated that "C" form for the sales for the Financial Year 2002-2003 has not been sent to the plaintiff by the defendant. Though the defendant has sent a reply, through its counsel, on 8.10.2004, the said reply does not claim that "C" form has already been submitted on 12.12.2003. Therefore, the trial Court was right in concluding that the defendant/appellant had not furnished "C" form, which resulted the plaintiff, being forced to pay a sum of Rs.2,21,937/-, towards sales tax. The plaintiff is entitled to recover the same. Therefore, Point No.3 is answered in favour of the plaintiff. The cause of action for the said recovery arose in the year 2004 and sales tax assessment was completed by the sales tax officials and the plaintiff was forced to pay the same.

14. In view of the foregoing discussions, the plaintiff will not be entitled to a decree for a sum of Rs.2,54,243.30, claimed by it, towards the value of the goods sold and delivered, under invoices Exs.A.4 to A.8, since I have concluded that the suit is barred by limitation. As regards the claim of the plaintiff to the sum of Rs.2,21,937/-, paid by it, towards sales tax, the plaintiff will be entitled to a decree.

15. In the result, the appeal is partly allowed and the decree of the trial court is modified as follows:

(a) the suit in respect of a sum of Rs.2,54,245.30/- being the value of the goods sold and delivered between 31.01.2003 and 17.02.2003, stands dismissed.

(b) there will be a decree for a sum of Rs.2,21,937/-, in favour of the plaintiff with interest at the rate of 12% per annum from the date of suit till the date of the decree and thereafter at the rate of 9% till the date of realisation with proportionate costs. There will be no order as to costs in this appeal.

16. It is represented by the learned counsel on either side that pursuant to the conditional order, made in the stay petition, a sum of Rs.2,00,000/- has been deposited to the credit of the suit in O.S.No.127 of 2006 and the same has been kept in the fixed deposit with Indian Overseas Bank Main Branch, Puducherry. The plaintiff/respondent would be entitled to withdraw the amount along with the accrued interest and adjust with the decree amount.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The II Additional District Judge, Puducherry

2. V.R. Section, High Court, Madras

+lcc to M/s.Sai Bharath & Ilan, Advocate sr.64676

A.S.No.268 of 2011

ak(co)
ss(27/10/2017)