IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.994 of 2014
and
M.P.No.1 of 2015

R.Shanmugam ..Appellant/Defendant

Vs

The Fertilisers and Chemicals
Thiruvangur Ltd, By
Its Senior Regional
Manager Vellore. ..Respondent/Plaintiff

This appeal is filed under Order 41 and Rule 3 A R/W Section 96 of C.P.C. against the Decree and Judgment passed in O.S.No.72 of 2004 dated 25.01.2008 passed by the learned Principal District Judge, Vellore.

For Appellant : Mr.R.Margabandhu

For Respondent : Mr.P.Ranganatha Reddy
for M/s. King and Patridge

J U D G E M E N T

The defendant in O.S.No.72 of 2004 on the file of the Principal District Court, Vellore is the appellant. The suit in OS.No.72 of 2004 was filed by the plaintiff seeking recovery of a sum of Rs.7,08,425/- with future interest at 17% per annum from the date of plaint till the date of decree and thereafter also since the transaction is a Commercial Transaction.

2. The plaintiff is a manufacturer of fertilizers. It is a Government of India under taking. According to the plaintiff the defendant was a dealer of fertilizers at Banavaram in Vellore District. On 31.01.2001, the defendant had requested for supply of various quantities fertilizer under Ex.A1. The said Ex.A1 also states that the delivery of the fertilizers ordered by the defendant may be delivered to his son namely Madhavan. Pursuant to Ex.A1, the plaintiff had delivered various quantities of fertilizers under invoices dated

31.01.2001 marked as Exs. A2, A3 and A4. It is also claimed that the goods were received by the son of the defendant. The delivery challans have been filed as Exs.A5, A6 and A7. Since the defendant did not come forward to pay the value of the fertilizer supplied the plaintiff has demanded payment by letter dated 16.11.2001. The defendant has sent a reply on 26.11.2001 denying the fact that he had ordered fertilizers as claimed by the plaintiff and that they were supplied. In view of the said reply the plaintiff was forced to file the above suit for recovery of the amounts due.

3. The defendant resisted the suit contending that he never placed any order under Ex.A1. According to him Ex.A1 has been created using his signatures which were made even in the year 1997. The defendant would further plead that as early as on 24.02.2000, he had stopped the business and revoked the bank guarantee he had furnished to the plaintiff. The entire claim of the defendant is that there was no orders for the supply of the fertilizers made by him and the same were not supplied to him.

4. On the above pleadings, the learned Principal District Judge, Vellore, framed the following issues.

1. Whether the plaintiff is entitled to recover a sum of Rs.7,08,425.47 with future interest from the defendant as prayed for in the plaint?
2. To what relief is the plaintiff entitled to?

5. On the side of the plaintiff two witnesses were examined and Ex.A1 to A9 were marked and on the side of the defendant one witness was examined and Exs.B1 and B2 were marked.

6. The learned Trial Judge, upon the consideration of the oral and documentary evidence concluded that the plaintiff is entitled to a decree for recovery of money as prayed for in the plaint. The learned Trial Judge disbelieved the case of the defendant. The learned Trial Judge took note of the fact that though the defendant had claimed that he has stopped a business on 24.02.2000 and revoked the bank guarantee the defendant has not produced any document to establish the said cancellation. The claim of the defendant that Ex.A1 was created by the plaintiff was disbelieved. On the above findings, the learned Trial Judge decreed the suit as prayed for with interest at 9% on Rs.4,59,528/- from the date of plaint till the date of decree and thereafter at 6% per annum.

7. Aggrieved the defendant on appeal.

8. I have heard Mr.R.Margabandhu, learned counsel appearing for the appellant and Mr.P.Ranganatha Reddy for M/s.King & Patridge, learned counsel appearing for the respondent.

9. Mr.R.Margabandu, learned counsel appearing for the appellant would contend that the suit is barred by limitation. According to him the goods were supplied on 31.01.2001, whereas the suit was filed on 01.03.2004. Therefore the suit filed after three years from the date of supply is barred by limitation. He would also contend that the Ex.A1 has not been properly proved. Referring to the evidence of P.W.1, wherein P.W.1 has admitted that he was not serving at Vellore at the time of Ex.A1, the learned counsel would contend that the plaintiff has not established the truth and validity of the Ex.A1. He also contends that since Ex.A1 authorises the son of the defendant Madhavan to receive the goods, he should have been made a party to the suit. He would further contend that Ex.A1 does not contain any stipulation regarding interest. Therefore, the trial Court erred in accepting the claim of the plaintiff for interest at 17% from 02.03.2001 till the date of suit.

10. Per contra Mr.P.Ranganatha Reddy, learned counsel appearing for the respondent would contend that Ex.A1 itself says that the dealer would have a 30 days credit period and the Invoices namely Ex.A2 to EX.A5 very clearly stated that the payment on the Invoice is to be made on 02.03.2001. According to him under Article 15 of the Limitation Act, the period of the limitation for the price of the goods, sold and deliverd, to be paid after expiry of a fixed period of credit is three years from the date on which the period of credit expires. Pointing out that the period of credit expired on 02.03.2001 and the suit having been filed on 01.03.2004 is within a period of three years and hence, the same is not barred by limitation. He would also contend that the defendant having admitted the signature in Ex.A1 cannot go back on it and claim that he executed some year 1997. The learned counsel would also contend that the burden of proving that Ex.A1 was signed some time in 1997 as claimed by the defendant is on the defendant. Failing to discharge the said burden the defendant cannot shift the same on the plaintiff and contend that the plaintiff should prove Ex.A1. No doubt the Area Manager of the plaintiff has been examined as P.W.1 would depose that he was not serving in Vellore at the relevant point of time.

11. Mr.P.Ranganatha Reddy, learned counsel for the respondent would contend that the plaintiff being the Government of India undertaking cannot be expected to examine the same person who was working at Vellore at the time of the transaction.

12. On the above arguments, the following points arise for determination:

1. Whether the claim of the plaintiff under Ex.A1, could be sustained?
2. Whether the suit is barred by limitation?
3. Whether the Trial Court was justified the decreeing the suit as prayed for with interest at 17% per annum, till date of the suit?

Point Nos.1 & 2:-

13. Mr.R.Margabandhu, learned counsel appearing for the appellant would rely upon under Article 14 of the Limitation Act, and contend that the period of the limitation is three years from the date of the delivery of the goods. But Article 14 would apply in a case were no fixed period of credit is agreed upon. As rightly, contended by the learned counsel for the respondent, it is Article 15 that would apply to the case on hand as Ex.A1 and Exs.A2 to A5 clearly demonstrate that a fixed period of credit of 30 days was agreed upon between the parties. Exs.A2 to A5 very clearly show that the payment on the said Invoices is due on 02.03.2001. Therefore, it is Article 15 which would apply and not Article 14. If Article 15 is applicable the suit filed on 01.03.2004 is well within time. Therefore, the contention of the learned counsel for the appellant on the ground, the limitation fixed by conclude that the suit is not barred by the limitation.

14. Mr.R.Margabandhu, learned counsel appearing for the appellant would contend that the Ex.A1 has not been proved in accordance with law. He would submit that P.W.1 has admitted that he was not working at Vellore, when Ex.A1 said to have been given by the defendant. Therefore, according to the learned counsel the absence of proof of Ex.A1 the other document namely Exs.A2 to A7 the Invoices and the delivery notes are of no avail. He also contend that the defendant had stopped his business with the plaintiff even 24.02.2000 and he was revoked the bank guarantee on the said date. Drawing my attention to the evidence of P.W.1 wherein, he admits the defendant had revoked the bank guarantee, the learned counsel would contend that Ex.A1 which was given by the defendant in 1997 for some other purposes has been misused by the plaintiff.

15. Per contra, Mr.P.Ranganatha Reddy, learned counsel appearing for the respondent would submit that there is no motive on the part of the respondent which is a Government of India undertaking to fill up a old document to sue upon it. He also pointed out that the Ex.A1 specifically authorizes the son of the defendant namely Madhavan to receive the goods. The delivery challans namely Ex.A5, Ex.A6 and Ex.A7 have been signed by the said Madhavan in token having received the goods.

The defendant would have done well to examine the said Madhavan to disprove the claim of the plaintiff based on Exs.A5 to Ex.A7 namely the delivery challans. He would point out the Ex.A1 contain the signatures of both the father and son. It is also admitted by both the parties the son Madhavan is also a dealer of the plaintiff company. Though the defendant had claimed that he had stopped the business on 02.04.2000 he has not pleaded so in the written statement. The revocation of the bank guarantee has not been set out in the written statement filed by the defendant.

16. Ex.A8 the statement of account filed by the plaintiff would show that the defendant has made payments to the plaintiff even after 24.02.2000. There are several credit entries after 24.02.2000 in the statement of accounts. Those credit entries also show the source of payment namely, South Indian Bank Banavaram; South Indian Bank, Vellore; State Bank of India Vellore and the Vellore District Central Co-operative Bank, Vellore. Without the defendant having made payments the plaintiff would not have given credit such large sums after 24.02.2000. Therefore, the claim of the defendant that he had stopped the business with the plaintiff on 24.02.2000 cannot be accepted. Peculiarly the defendant had admitted his signature in Ex.A1 he would also admit that his son also signed in Ex.A1. He only claims the same that Ex.A1 has been created with the help of a blank form signed in 1997, even the said fact is not pleaded in the written statement. It is only in evidence he has come up with the said claim. The defendant has not chosen to examine his son to prove that the signatures in the delivery challans marked as Ex.A5 to Ex.A7 are not that of the son. Though the plaintiff has denied as Ex.A1 in his unable to let in any evidence in order to disprove Exs.A2 to A4 the Invoices and Ex.A5 to Ex.A7 the delivery challans.

17. The Trial Court has considered the entire evidence and refused to believe the claim of the defendant on the ground that it is not supported by the cogent and convincing evidence. In the light of the above, I do not see any reason to interfere with the said findings of the Trial Court.

18. Lastly, the learned counsel for the appellant would contend that there is no agreement regarding the rate of interest payable under Ex.A1 and hence, the trial Court was not right in decreeing the suit as prayed for in as much as the plaintiff has charged 17% interest on the value of the goods namely Rs.4,59,528/- from 02.03.2001 till the date of filing of the suit.

19. Ex.B1, letter dated 16.11.2001, the plaintiff has demanded a sum of Rs.6,53,298/-. This amount re-presents the value of the fertilizers supplied that is Rs.4,59,528/- with subsequent interest. The plaintiff has given a reply and Ex.B2 were he had only denied the transaction, he had not whispered anything about the interest. In chief examination of P.W.1 it is very clearly stated that interest is charged at 17% as per the practice of the company. I do not see any reason to interfere with the grant of interest at 17% from 02.03.2001 till date of suit. From the date of suit the Trial Court has granted only 9% interest till date of the decree and thereafter the interest granted is only at 6%. Therefore, I do not think the interest awarded by the Trial Court is on the higher side. For the foregoing reasons the appeal fails and the same is dismissed. However, considering the facts and circumstances of the case I make no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jv/dna

To

1. The Principal District Court,
Vellore.

2. The Section Officer, VR Section, High Court, Madras

+ 1 cc to M/s. King & Partridge, Advocate SR.51122
+ 1 cc to Mr.r. Margabandhu, Advocate Sr.51147

A.S.No.994 of 2014
and
M.P.No.1 of 2015

NM(CO)
EU 2.08.17