

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.S.A.No.145 of 2017

1.Mrs.Easun Reyrolle Limited

Represented by its Managing Director
Having its Registered Office at
6th Floor, Temple Tower
No.672 (Old No.476), Anna Salai
Chennai-600 035

2.M/s.Easun Reyrolle Limited

Represented by its Chief Finance Officer
No.389, Rasukumaki, Hullmavu
Begur Hobli, Bannerghatta Road
Bangalore - 560 076

... Appellants/Defendants

Vs.

M/s.PKM Metal Buildings Company Limited

Administrative Office AT # 24/31-First Main Road
2nd Cross, Padi, Olympic Colony
(Near Catholic Syrian Bank)

Chennai - 600 050 rep by its Director ...Respondent/Plaintiff

Appeal filed under Order XXXVI Rule 9 of the O.S.Rules r/w
Clause 15 of the Letters Patent, against the order dated
23.01.2017 made in A.No.6760 of 2016 in Application No.4011 of
2016 in C.S.No.343 of 2015.

Original Side Appeal preferred under Order XXXVI Rule 9 of OS
Rules with clause 15 of letters patent praying that in the
circumstances stated therein and in the affidavit filed
therewith on the file of the High Court will be pleased to set
aside the order dated 23.01.2017 made in A.No.6760 of 2016 in
A.No.4011 of 2016.

Prayer in CS No.343/2015:Civil Suit filed praying that the this
court be pleased to pan a Judgment and decree directing the 1st
and 2nd defendants to pay severable or jointly to the plaintiff.

a) A sum of Rs.35,23,363/- (Rupees Thirty Five Lakhs Twenty Three Thousand three hundred and sixty three only) towards the Principal and a further sum of Rs.16,11,939/- (Rupees Sixteen Lakhs Eleven thousand Nine Hundred and thirty Nine Only) towards the simple interest @ 18% from 15.09.2012 to till date of filing of this plaint totallens to Rs.51,35,302/- and a further interest on of Rs.35,23,363/- at the rate of 18% p.a from the date of filing till the date of realization of the amount due and

b) for the Cost of the suit to be paid to the Plaintiff by the defendants.

Prayer in AS.No.6760 of 2016: Application praying this court to set aside the order dated 25.11.2016 passed by the master Court in A.NO.4011 of 2016 in CS.No.343/2015.

Prayer in A.No.4011/2016: A.No.4011 of 2016 filed to grant an unconditional leave to defend to the defendant to defend the said suit.

For Appellants : Mr.S.Elambharathi

For Respondent : Mr.R.Arumugam

JUDGMENT

(Judgment of the Court was delivered by RAJIV SHAKDER, J)

1. This is an appeal against a judgment and decree dated 23.01.2017 passed by the learned single Judge.

2. The suit was filed by the respondent under Order XXXVII of the Code of Civil Procedure.

3. In the suit, the relief sought was to pass a judgment and decree in a sum of Rs.35,23,363/- along with simple interest at the rate of 18% from 15.09.2012 till the date of filing of the plaint and thereafter, future interest on the suit amount i.e., 35,23,363/- at the same rate of 18% simple interest from the date of institution of the suit till the date of realization.

4. The learned single Judge decreed the suit in terms of prayer made.

5.To be noted, notice was issued in the appeal on 20.07.2017. We note that during the pendency of the appeal, pursuant to our order dated 09.08.2017, the appellant has created a Fixed Deposit equivalent to value of the principal sum i.e., Rs.35,23,363/-. The resultant Fixed Deposit Receipt (FDR) drawn in favour of the Registrar General of this Court.

6.Given this position, learned counsel for the parties agree that the appeal can be disposed of with the following directions:

I) The impugned judgment and decree be set aside. The suit be treated as an ordinary Civil Suit.

II)The appellant will file a written statement within two (2) weeks from the date of receipt of a copy of this order.

III) The respondent will file a replication within one (1) week of receipt of copy of the written statement.

IV) The matter will be placed before learned single Judge on 11.12.2017, for framing of issues.

V) The respondent will file his proof affidavit(s) within one (1) week from 11.12.2017.

VI) The matter will be placed before the learned Master on 19.12.2017, for cross examination of respondent's witnesses.

VII) Immediately upon completion of the cross-examination of the respondent's witnesses, the appellant will file its Proof Affidavit (s) within a period of one (1) week thereafter.

VIII) The learned Master will fix a date for cross-examination of the appellants witnesses in the second week of January 2018.

IX) Immediately upon completion of trial, the learned Master will place the matter before the concerned Court for arguments on 31.01.2018.

X) The amount mentioned in aforementioned FDR shall abide by the result in the suit. The interest from time to time will be reinvested. The appellant will ensure the renewal of the FDR and reinvestment of interest till such time orders to the contrary are issued by the Court.

7. The appeal is disposed of with the above directions.
There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gpa

1.The Registrar General
High Court Madras-104

2.The Joint Registrar Original Side
High Court Madras

3.The Sub Assistant Registrar
Original Side High Court,
Madras(placed before the master for examination)

4.The Section Officer
Original Side High Court Madras

+1 cc to Mr.S.Elambharathi Advocate sr 78677

+1 cc to Mr.R.Arumugham Advocate sr 78666

O.S.A.No.145 of 2017

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