

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2017

CORAM

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.S.No.335 of 2000

M/s. Sree Nadee Enterprises

Rep. by its Proprietor

B.Chakravarthy,

S/o. S.Bakthavatchalam Naidu,

No.1/19, Pijala Subramaniam Street,

Second Floor, Rear Block,

T.Nagar, Chennai - 600 017.

.. Plaintiff

vs

M/s. GP/VO Machino Import

Rep. by its representation

in India V.G.Belykh,

E.P.15, Chanakyapuri,

Russian Trade Office (New Complex)

New Delhi - 110 021.

.. Defendant

Civil Suit filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of CPC, seeking Judgment and Decree against the defendants (a) directing the defendant to repay a sum of Rs.31,04,806.25/- to the plaintiff paid as advance to the defendant with future interest on Rs.22,75,000/- at the rate of 24% per annum from the date of the plaint till realisation and for costs.

For Plaintiff : Mr.Dhanaram
for Mr.G.Ethirajulu

For Defendant : No appearance (set exparte)

J U D G M E N T

The brief facts of the case is as follows :

(a) The defendant entered into a contract with the plaintiff on 10.01.1996 to sell the unserviceable materials lying in the base camp at Petthanaickenkuppam, Cuddalore for a sale consideration of Rs.4.55 crores. Pursuant to the contract, the plaintiff paid an advance of Rs.22,75,000/- on 02.03.1996. The plaintiff as per the contract took all steps to get No Objection Certificate from ONGC, RBI and other departments and also got the No Objection Certificate from ONGC on 22.07.1997. The defendant also effected amendments in the contract on 21.07.1997 and 31.07.1997 regarding price, mode of payment and schedule of payment.

(b) To the shock and surprise of the plaintiff, the defendant sought to cancel the contract dated 10.01.1996 by sending communication dated 16.09.1997. Since the representations of the plaintiff went in vain, he was constrained to file O.S.No.169 of 1997 on the file of the Sub-Judge, Cuddalore against the defendant for permanent injunction restraining them from taking possession or dealing with the materials described in the annexure to the contract dated 10.01.1996.

(c) Against the order of interim injunction, the defendant moved this Court by way of revision and a compromise was entered into between the plaintiff and the defendant. Since the plaintiff could not deposit the amount as per the terms of compromise, the suit was ordered to be struck off. This Court in its order made in the revision petition made it clear that the plaintiff has no right over the subject matter of the suit. The plaintiff came to know subsequently that during subsistence of the contract, the defendant attempted to sell the unserviceable materials covered under the contract, dated 10.01.1996 between the plaintiff and defendant to third parties by making advertisement in the Hindu and also spreading that there is no contract with respect to the said properties with anyone in India.

(d) The acts of the defendant led to reduction in price and the plaintiff was not in a position to market the unserviceable materials in the open market. The plaintiff is entitled to the advance amount paid by him with interest. Legal Notice has also been issued by the plaintiff on 16.08.1999, for which the defendant also sent reply on 27.11.1999.

3. The defendant was called absent and set exparte. The plaintiff has been examined as P.W.1 and Exs.P.1 to P.19 were marked. Both

P.KALAIYARASAN, J

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the orders in Civil Revision Petition, dated 09.01.1998 and 12.02.1998 are marked as Ex.P.8 and Ex.P.9. As per the order of this Court under Ex.P.9, the plaintiff is not entitled to any right over the subject matter of the suit. The subject matter of the said suit is unserviceable materials. The contract dated 10.01.1996 is marked as Ex.P.1. Article 4 speaks about the advance amount. As per the contract, the plaintiff paid the advance of Rs.22,75,000/- to the defendant under Ex.P.2. The terms of contract does not speak about forfeiture of any advance on termination.

4. The plaintiff has made out a case and he is entitled to claim the advance paid by him with interest.

In fine, the suit is decreed as prayed for with costs.

09.06.2017

Speaking order

Index : Yes / No

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C.S.No.335 of 2000<http://www.judis.nic.in>