IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.07.2017

PRONOUNCED ON: 12.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.537 of 2014

Vijaykumar Sharma, Proprietor
M/s.Prasad Suppliers, Chennai-108 ... Plaintiff

Vs

R.Sathyamoorthy, Proprietor
M/s.Enterprises, Chennai-120 ... Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of CPC for the reliefs as stated therein.

For Plaintiff : Mr.C.Rajan

For Defendant : Mr.Adaikala Arockiaraj

JUDGEMENT

This civil suit has been filed, to pass a judgement and decree, against the Defendant:-

(a) directing the Defendant to pay a sum of Rs.44,24,965/- together with interest at 18% per annum on the said amount from the date of the plaint till the date of payment.

(b) for costs of the suit.

2. In the plaint, it had been stated that Vijaykumar Sharma is the Proprietor of the Plaintiff Company, M/s.Pradeep Suppliers and is an authorised dealer in welding accessories, lifting tackles, safety items and other related tools and accessories and is carrying on business at No.162, Broadway,

Chennai-108. It had been stated that R.Sathyamoorthy, who is the Proprietor of Defendant Company, M/s.R.S.Enterprises at No.23, Gandhi Street, Athipattu, Chennai-120, is one of the customers of the Plaintiff Company. The Defendant has made purchases continuously on credit basis and materials were supplied by the Plaintiff. These business transactions had continued from 2010 onwards. It had been stated that in the course of the business from 7.7.2010 to 24.2.2012, a sum of Rs.66,24,965/- was payable by the Defendant. It had been stated that the Defendant had paid a sum of Rs.22,00,000/- on various occasions. There was a balance of Rs.44,24,965/- payable by the Defendant. The Defendant had made a payment of Rs.2 lakhs on 26.7.2011 by cheque no.196515 drawn on Axis Bank, T.Nagar. Thereafter, further cheques were issued by the Defendant, bearing nos. 196516, 196517 and 196518, all drawn on Axis Bank, T.Nagar. However, among the cheques issued by the Defendant, the cheques for Rs.3 lakhs, dated 7.7.2010, for Rs.7 lakhs dated 23.11.2010, for Rs.5 lakhs dated 29.11.2011, for Rs.5 lakhs dated 10.5.2011 and for Rs.2 lakhs dated 22.6.2011 had been honoured. Other cheques, namely, for Rs.2 lakhs dated 26.11.2011, for Rs.2 lakhs dated 30.11.2011 and for Rs.2 lakhs dated 23.02.2012, bearing cheque nos.196517, 196516 and 196518, had been returned as unpaid.

3. It had been further stated in the plaint that since another Company by name M/s.Prasad and Company was due and payable to the Defendant, the Defendant gave a letter dated 16.7.2012 to the said M/s.Prasad and Company, admitting the liability of Rs.44,00,000/- payable by the Defendant to the Plaintiff and requested M/s.Prasad and Company to debit their

bills at Rs.3 lakhs every month in favour of the Plaintiff. Since the amount was not paid, the Plaintiff issued a notice dated 27.12.2013. A reply was sent by the Defendant dated 8.1.2014. Claiming that the amount of Rs.44,24,965/- together with interest 18% p.a. was due, the suit had been filed for recovery of the said amount with costs.

4. In the written statement filed by the Defendant, it had been stated that from 2010, the Defendant had been purchasing welding accessories and machineries from the Plaintiff. It had been stated that the products were not the company products and were local products with inferior quality. It had been stated that the Plaintiff attended to the defects after much repeated requests and delay. It had been further stated that the Defendant had paid money for the goods purchased by them to the Plaintiff. With respect to the cheques dishonoured, cash has been paid subsequently. However, the Plaintiff did not return the dishonoured cheques. It had been stated that the Defendant is not liable to pay any amount and consequently, it was claimed that the suit should be dismissed.

5. On consideration of the pleadings, the following issues were framed:-

1. Whether the Plaintiff is entitled for Rs.44,965/-?
2. Whether the suit is maintainable?
3. Whether the Defendant has paid all the cheque amounts mentioned in the plaint?
4. Whether the suit is barred by limitation?
5. Whether the Plaintiff has cause of action to file the suit?

6. To what relief the Plaintiff is entitled to?

6. The parties went to trial. During the trial, the Proprietor of the Defendant Company, since he admitted the purchase of goods and further claimed discharge, was called upon to lead evidence and he examined himself as DW.1 and marked Ex.D1 to Ex.D3. Ex.D1 is the copy of the advocate notice issued by the Plaintiff dated 27.12.2013. Ex.D2 is the reply notice dated 8.1.2014 and Ex.D3 is the statement of accounts of Axis Bank, T.Nagar, for the Defendant Company M/s.R.S.Enterprises. On the side of the Plaintiff, the Proprietor of the Plaintiff Company examined himself as PW.1 and he marked Ex.P1 to Ex.P8. Ex.P1 is the extract of the ledger of the Plaintiff's Company with respect to the Defendant Company. Ex.P2 (series) are the invoices for supply of materials to the Defendant. Ex.P3, Ex.P4 and Ex.P5 are the returned cheques. Ex.P6 is the letter from the Defendant to M/s.Prasad and Company. Ex.P7 is the advocate notice issued by the counsel for the Plaintiff. Ex.P8 is the reply notice.

7. This court heard the learned counsel on either side and also perused the materials placed on record.

8. **Issues (2) and (5):-** These issues have been raised since the Defendant had raised a contention in his written statement that there was no cause of action for filing the suit. It is seen that in the written statement itself, the Defendant had admitted that he had purchased the materials from the Plaintiff from year 2010 onwards. To substantiate the said purchase, the Plaintiff has also produced Ex.P2 (series), invoices. The invoices are for the period continuously from 27.9.2010 to 252.2011. These invoices have not been

seriously challenged by the Defendant. Since there had been business transactions between the Plaintiff and the Defendant and since the Plaintiff had claimed money for the goods supplied, delivered, but unpaid, I hold that this civil suit is maintainable. Accordingly, these issues are answered in favour of the Plaintiff.

9. **Issue (4):-** The business transaction between the Plaintiff and the Defendant commenced in 2010 and went up to 2011. Subsequently, by Ex.P3, Ex.P4 and Ex.P5, further cheques were issued. Ex.P3 was dated 26.11.2011, bearing cheque no.196515 for Rs.2 lakhs, Ex.P4 was dated 30.11.2011 for Rs.2 lakhs bearing cheque no.196516 and Ex.P5 was dated 23.2.2012 for another sum of Rs.2 lakhs bearing cheque no.196518, all drawn on Axis Bank, T.Nagar Branch. The suit had been filed on 23.4.2014. Ex.P5 is the last date on which payment had been made, but that cheque had been returned unpaid. Endorsements of the Bank are also available. Consequently, the suit having been filed within a period of three years, I hold that the suit is not barred by the law of limitation. Accordingly, this issue is answered in favour of the Plaintiff.

10. **Issue (3):-** In the plaint, the Plaintiff had given the details of the cheque payments made, the details of the honoured cheques and the details of the dishonoured cheques. The details are as follows:-

Cheque No.527665	7.7.2010	Rs.3,00,000/-	cashed
Cheque No.014030	23.11.2010	Rs.7,00,000/-	cashed
Cheque No.014071	20.1.2011	Rs.5,00,000/-	cashed
Cheque No.014072	10.5.2011	Rs.5,00,000/-	cashed
Cheque No.196515	22.6.2011	Rs.2,00,000/-	cashed
Cheque No.196517	26.11.2011	Rs.2,00,000/-	returned
Cheque No.196516	30.11.2011	Rs.2,00,000/-	returned
Cheque No.196518	23.02.2012	Rs.2,00,000/-	returned

11. Ex.D3 is the statement of accounts of the Defendant with respect to Axis Bank. With respect to the first cheque dated 7.7.2010, bearing no.527665, it is reflected in Ex.D3. Similarly, the second cheque dated 23.11.2010, bearing no.014030 for Rs.7 lakhs is also reflected in Ex.D3. Third cheque bearing No.014071 dated 29.1.2011 is also reflected in Ex.D3. Fourth cheque bearing no.014072 dated 10.5.2011 for Rs.5 lakhs and fifth cheque no.196515 dated 22.6.2011 for Rs.2 lakhs are also reflected in Ex.D3 However, three dishonoured cheques, viz. Ex.P3 dated 26.11.2011, bearing cheque no.196517 for Rs.2 lakhs, Ex.P4 dated 30.11.2011, bearing cheque no.196516 for Rs.2 lakhs and Ex.P5 dated 23.02.2012, bearing cheque no.196518 for Rs.2 lakhs are not reflected in Ex.D3 document. Consequently, it is clear that payment for the said three cheques have not been made.

12. It is the contention of the Defendant that even though the said three cheques had been dishonoured, subsequently, he had paid cash. But, there is no documentary evidence to prove such payment by cash and there is also no receipts produced. There is also no letter sent by the Defendant to the Plaintiff that he had made payment by cash. In the absence of any documentary evidence, I am not inclined to accept the contention of the Defendant that towards the said three dishonoured cheques, he had paid cash. Accordingly, the issue (3) is answered against the Defendant.

13. **<u>Issues (1) and (6):-</u>** This issue relates to the suit claim. It is an admitted fact by the Defendant that he had been purchasing materials from the Plaintiff from the year 2010 onwards. Ex.P2 (series), which are the original invoices, have been filed to substantiate the facts that there was business

transaction between the Plaintiff and the Defendant and that the goods supplied, delivered and received by the Defendant. Towards the sale of goods, the Defendant had made payments only as enunciated in the plaint, namely, to an extent of Rs.20 lakhs. Consequently, the Plaintiff has claimed the balance amount payable by the Defendant in the suit claim. The contention of the Defendant that the goods were of defective quality cannot be countenanced since the Defendant has not raised the same at the time of delivery of the goods. He had received the goods and utilised the same for his business purposes.

14. The second contention of the Defendant that since amount was due from M/s.Prasad and Company, he had authorised M/s.Prasad and Company to pay the amount to the Plaintiff cannot be countenanced since M/s.Prasad and Company and the Plaintiff have no privity of contract. The invoices reflect that there was an agreement and contract only between the Plaintiff and the Defendant and the Defendant cannot shift the burden of payment to another entity. As a matter of fact, the very fact that M/s.Prasad and Company was asked to make payments to the Plaintiff reflects that the Defendant had admitted liability. The Defendant did not produce any document to show that he had discharged the debt.

15. During the cross examination, the Defendant had admitted that he had purchased the goods from the Plaintiff Company to an extent of

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Rs.66,24,965/-. He had also admitted that he had paid Rs.22 lakhs by way of cheques which had been cleared and he had also given three cheques for Rs.2 lakhs each, which were dishonoured. Even though the Defendant claimed that he had made payments in cash, there is no evidence to substantiate the same. Consequently, I hold that the Plaintiff is entitled for the suit claim as prayed for. Accordingly, the issues (1) and (6) is answered in favour of the Plaintiff.

16. In the result, this civil suit is decreed for a sum of Rs.44,24,965/- (Rupees forty four lakhs twenty four thousand nine hundred and sixty five only) together with interest at 12% per annum from the date of the plaint till the date of decree and thereafter at the rate of 6% p.a. till the date of realisation. The Plaintiff is also entitled for the costs of the suit. Time for payment is three months.

12.07.2017

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To:

1. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CS.No.537 of 2014