

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
27.06.2017	26.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

C.S.No.443 of 2011

M/s.Hartford Academy of Insurance
and Education Pvt., Ltd.,
rep.by its Director Mr.MOH Iqbal
MOH Buildings, III Floor
No.576, Anna Salai
Teynampet, Chennai-600 006

... Plaintiff

-VS-

M/s.Reliance Life Insurance Company Ltd.,
9th & 10th Floor, Building No.2
R-Tech Park, Nirlon Compound
Next to Hub Mall, Behind I-Flex Building
Goregaon (East), Mumbai-400 063

and also at

M/s.Reliance Life Insurance Company Ltd.,
114, Mena Kampala Arcade
4th Floor, B-Wing
Sir Theyagarayah Road
T.Nagar, Chennai-600 017

... Defendant

PRAYER: Suit is filed under Order VII Rule 1 of the Code of Civil Procedure read with Order IV Rule I of the Original Side Rules seeking for the following reliefs:

- (a) directing the defendants to pay them a sum of Rs.94,72,225/- together with further interest on the principal sum of Rs.61,50,795/- at 18% per annum from the date of the plaint till date of realization;
- (b) directing the defendants to pay the cost of the suit; and
- (c) for such further or other relief as may be deemed fit and necessary.

For Plaintiff : Mr.T.Viswanatha Rao

For Defendant : Mr.S.Namasivayam

J U D G M E N T

Suit for recovery of money.

2. The averments contained in the plaint are briefly stated as follows:

2.1. The plaintiff is an Institute approved, affiliated and accredited to the Insurance Regulatory Development Authority (IRDA) a statutory body and the defendant is a reputed Insurance Company

having its registered Office at the address mentioned in the plaint and also functioning through its Units within the city of Chennai. Under the provisions of IRDA Act and Rules and Regulations relating to the recruitment of agents, the Insurance Company can recruit agents to work in their organization, only after such agents have undergone training imparted by an Institute approved by and accredited to IRDA. The accredited Institute of Training for the purpose of imparting such training as per the Rules and Regulations can take such candidates as sponsored by various Insurance Companies and thereby the candidates, who are enrolled for such training have to undergo requisite period of training as detailed in the plaint and also the training should be imparted to them covering the syllabus already prescribed by the Authority and after completion of the training, the Institute shall issue a Certificate to the Insurance Company, which had sponsored the said candidates for training, certifying that the said candidates have undergone the training as required and the Company, which sponsors the candidates, is liable to bear the entire costs and expenses of such training. The Company has to also take appropriate steps by submitting necessary applications enabling the candidates, who had undergone the training, to appear for examination after obtaining necessary endorsement from the Training Institute, which

had imparted the training to them and thereafter, when the candidates pass the examination, they are qualified to act as agents and can be appointed as such by the Insurance Companies. The candidates, who have not undergone the requisite training, are not permitted to appear for the examination and also cannot be directly recruited by the Insurance Companies as its agents. The defendant – Company as well as its units having their Office at various places approached the plaintiff – Institute for the purpose of imparting training to their sponsored candidates and accordingly, the plaintiff also responded to them favourably and accepted the offer and thereby pursuant to the agreement / engagement of the plaintiff by the defendant and its Units, the defendant had been sending candidates for getting necessary training at the various units of the plaintiff and accordingly, the plaintiff had also imparted training to the candidates sponsored by the defendant as required and been sending back such candidates for the purpose of enabling them to appear for the examination for being qualified as agents. The defendant Company and its Units, including AMP SANMAR, had been utilizing the services of the plaintiff for the above said purpose from 26.05.2006 onwards and the correspondences with reference to the same made between the plaintiff and the defendant - Company and its Units and also AMP

SANMAR would go to show that periodically, the defendant - Company and its Units and also AMP SANMAR had been sponsoring candidates to the plaintiff Institute from 2005-2006 to 2007-2008. As regards the expenses to be incurred with reference to the impartation of the training to the sponsored candidates, the plaintiff used to submit the completion certificate of the sponsored candidates' training to the defendant and raise their bills for payment of amount being the costs incurred by the plaintiff towards impartation of the training for the sponsored candidates and on the receipt of the same, the defendant used to make necessary arrangements to remit the amounts due to the plaintiff towards costs incurred by the plaintiff for the said training. The defendant also used to make part-payments at times and the entire transactions were treated by both parties as under a running account and accordingly, believing the representation of the defendant, the plaintiff in good faith had been imparting prescribed statutory training to the sponsored candidates of the defendant and its Units now and then as requested by the defendant and by the said process, the plaintiff is entitled to receive a total sum of Rs.61,50,795/-, which remained unpaid to the plaintiff by the defendant and the plaintiff had been periodically requesting the defendant to pay the said amount and settle their bills. But, the

defendant had failed to remit the amount and discharge their contractual obligations. As per the running account between the parties, the plaintiff had given credit for various payments of the defendant by way of cheques and the last of such being on 21.05.2008. Inasmuch as the defendant had failed to honour its obligations under the contract, the plaintiff issued a legal notice, dated 04.08.2010, to the defendant - Company and its Units for the payment of the outstanding amounts long overdue and to the same, the defendant had sent a reply, dated 14.08.2010, informing that they are in the process of verifying the contents of the notice and also advised the plaintiff to provide a copy of the agreement and copy of the original invoices. As the above said documents had already been submitted earlier and also acknowledged by the defendant Company and its Units, the plaintiff informed the same accordingly and thereafter the defendant did not evince any positive approach to settle the lawful amount to which the plaintiff is entitled to. According to the plaintiff, only subject to the agreement and understanding entered into between the parties, the plaintiff had accepted the candidates sponsored by the defendant and its Units and imparted training and as such as per the agreement entered into between the parties, the defendant is liable to disburse the outstanding sum of Rs.61,50,795/- and also liable to pay

interest to the plaintiff on the said amount. The entire suit transaction took place at Chennai, where the plaintiff and the defendant have their respective Offices and the services of the plaintiff for impartation of training to their sponsored candidates were engaged by the defendant agreeing to reimburse the plaintiff for the costs incurred by them therefor and hence, the plaintiff is entitled to maintain the suit in this Court and hence, the suit for recovery of the amount.

3. The averments contained in the written statement in brief are as follows:-

3.1. The suit is not maintainable either in law or on facts. The suit is barred by limitation. As per the Letter of Intent, dated 01.01.2007, entered into between the parties, the alleged amount claimed in the suit became due between April, 2008 and March, 2010 and thus, the suit filed by the plaintiff in June, 2011 is bared by limitation and liable to be dismissed. Further, the suit is also liable to be dismissed for want of jurisdiction as the Letter of Intent entered into between the parties was entered into in Mumbai and neither the agreement was entered nor the training classes were conducted by the plaintiff in Chennai within the jurisdiction of this Court. The cause of

action for the suit neither in part nor in whole arose within the jurisdiction of this Court. Even assuming that part of cause of action arisen within the jurisdiction of this Court, the suit has to fail for want of obtainment of leave from this Court before the institution of the suit as per the Original Sides Rules of this Court. The defendant – Company was formed in 2005 by acquiring AMP SANMAR and accordingly, on the plaintiff approaching the defendant and after rounds of discussions, the parties entered into a Letter of Intent, dated 01.01.2007, in Mumbai for the purpose of engagement of the plaintiff's services with reference to the imparting of training to the sponsored candidates of the defendant Company so as to recruit them as agents of the defendant – Company. The Letter of Intent entered into between the parties provides various conditions and *inter alia* the bills have to be presented by the plaintiff within seven working days of completion of the training programme and the bills were to be raised for the number of candidates passing IRDA Examination alone and further, according to the defendant, the Letter of Intent, dated 01.01.2007, specifically mentions that the said agreement was in supersession of all previous agreements / contracts entered into between the parties and on the expiry of the said Letter of Intent in June, 2007 no review or renewal was carried out and the arrangement between the parties

came to an end at the end of June, 2007. As per the contractual engagement made between the parties, the defendant is to pay the plaintiff on the verification of the results of the successful candidates and inasmuch as on verification of the records, it is found that there was no payment due to the plaintiff by the defendant, the defendant by letter, dated 14.03.2009, sought confirmation of nil balance from the plaintiff and as a counter-blast to the same, it is stated that the present suit has been laid seeking for a claim, which is barred by limitation. The plaintiff had deliberately given the Chennai address of the defendant - Company only for the purpose of invoking the jurisdiction of this Court, whereas, as adverted to already, this Court has no jurisdiction to entertain the suit in any manner. It is false to state that the plaintiff is entitled to receive the amount from the defendant merely on imparting training to the sponsored candidates. The plaintiff has deliberately suppressed the crucial requirement that only on successful completion of training and passing of the IRDA Examination by the sponsored candidates, the plaintiff would be entitled to the reimbursement of the expenses by the defendant - Company. The defendant has made payment to the plaintiff for the training imparted prior to 01.01.2007 and with effect from 01.01.2007, the training imparted by the plaintiff and payable by the

defendant were covered by the Letter of Intent, dated 01.01.2007. The plaintiff has suppressed the above factum of payment by the defendant and also Letter of Intent, dated 01.01.2007, which has brought in new terms and conditions, in supersession of earlier agreements and laid the false suit. The defendant further states that there was neither a running account nor an acknowledgment of liability in writing as prescribed in Section 18 of the Limitation Act and hence, the plaintiff cannot maintain the time barred suit. The defendant denies all the averments contained in various paragraphs of the plaint and therefore, according to the defendant, inasmuch as the suit claim is time barred and the amounts due to the plaintiff had already been paid and further, as the suit has not been properly laid in the jurisdictional Court, the suit is liable to be dismissed.

4. On the above pleadings set out by the respective parties, the following issues have been framed for determination:

- (i) Whether the suit is bad for want of territorial jurisdiction as contended by the defendant?
- (ii) Having admitted the agreement and understanding between the parties, wherein the defendant engaged the services of the plaintiff for imparting training at

various training centres for pre-licensing IRDA Examination, is not the defendant liable to pay fees and licensing charges as claimed by the plaintiff?

- (iii) Whether the defendant paid fees and training charges in this regard to the plaintiff as per the running account as pleaded by the plaintiff in the suit?
- (iv) Whether the suit claim is barred by limitation as contended by the defendant? and
- (v) To what relief the plaintiff is entitled to?

5. In support of the plaintiff's case, P.W.1 has been examined and Exs.P1 to P32 have been marked and in support of the defendant's case, D.W.1 has been examined and Exs.D1 to D12 have been marked.

ISSUE No.III & IV:

6. The suit has been laid by the plaintiff for recovery of money with reference to the amount incurred by it for the imparting of training to the sponsored candidates of the defendant – Company and its Units as per the requirement of IRDA Act and Rules and Regulations. As seen from the pleadings put forth by the respective parties and the evidence adduced in the matter, under the provisions of IRDA Act and Rules and Regulations, the

Insurance Company before enlisting the agents in their Institution should ensure that such agents have undergone the requisite training under the IRDA Act from the accredited Institutions like the plaintiff and it is also found that on the sponsorship of such candidates by the Insurance Companies to the accredited Institutes, like the plaintiff, the plaintiff on its part used to impart necessary training to such sponsored candidates for the requisite period as required and thereafter, it is found that the accredited Institute should forward such candidates to the Insurance Companies, after the completion of the training, so as to enable the Insurance Company to take further process i.e., to enable the Insurance Company for forwarding such candidates to undergo the IRDA Examination and it is found that as such it is the accredited Institute, who, at the inception has to bear the expenses for the impartation of the training to such sponsored candidates and only after the completion of the training, they used to raise the bills to the sponsoring Companies and on raising such bills, it is found that the sponsoring companies should settle the amount. According to the plaintiff, its services were utilized by the defendant – Company and its units for the requisite training of their sponsored candidates under various documents / agreements, particularly, under Ex.P28, dated 28.06.2005, Ex.P1 commencing from 01.01.2006 and Ex.D2, dated 01.01.2007. As regards the engagement of the plaintiff, for imparting training to their sponsored candidates under the

above mentioned documents / agreements, no dispute is raised by the defendant as such. It is, thus, found that in all on a perusal of the above said documents / agreements, the sponsored candidates had to undergo necessary training for the prescribed period and it is further found that only after the completion of the training of the sponsored candidates, the accredited Institute, like the plaintiff, used to send completion certificates to the sponsoring Companies and it is also found that the plaintiff should raise the bills within a particular period of time on the completion of the training to the sponsoring Companies or the persons nominated on behalf of the sponsoring Companies and further it is also noted that in case any sponsoring candidate is unable to complete the training or undergo the training within the prescribed period or with necessary attendance, the sponsoring candidates are permitted to complete the balance period of training in the subsequent batches so as to complete the training for undergoing the IRDA Examination for getting recruited as agents. It is found that and also not in dispute that the defendant – Company acquired the assets and liabilities of AMP SANMAR and therefore, it is found that the agreements entered into between the plaintiff and AMP SANMAR prior to the taking over of AMP SANMAR by the defendant Company, should also be honoured by the defendant Company and with reference to the same, there is no serious dispute. Therefore, it is noted that the conditions stipulated in the above mentioned three agreements are

found to be varying to some level as regards the period of training and the amount or fees to which the accredited Institutes are entitled to for the impartation of the training. It is found that the plaintiff should present the bills within seven days of the completion of the training so as to enable the sponsoring Company to process further for making necessary payments. It is further seen that the earlier agreements i.e., Exs.P28 and P1 had been superseded by Ex.D2 agreement and it is also found that as per the conditions set out in Ex.D2, the said agreement, dated 01.01.2007, is valid till June, 2007 and the same will be reviewed in the month of June, 2007. It is not in dispute that Ex.D2 agreement had not been renewed from June 2007. As seen from the conditions mentioned in Ex.D2, it is found that the fees to which, the plaintiff is entitled to, would be in respect of the candidates, who had passed the IRDA Examination. Hitherto, it is seen that the plaintiff would be entitled to claim the fees on the completion of the training of the sponsored candidates and the fees would be on the basis of the number of candidates sent for training. Therefore, with reference to the above condition, it is found that the same had been newly incorporated in Ex.D2 and therefore, from the date of Ex.D2 onwards it is seen that only as regards the candidates, who had passed the IRDA Examination, the plaintiff would be entitled to charge the fees vis-a-vis the training imparted by them to such candidates.

7. Now, according to the plaintiff, for the services rendered by it with reference to the impartation of training to the sponsored candidates of the defendant - Company and its Units, though it had been raising the bills as soon as the training of the sponsored candidates is completed, according to the plaintiff, inasmuch as still a sum of Rs.61,50,795/- is due from the defendant and the last settlement / payment made by the defendant being on 21.05.2008, as the amount due to the plaintiff from the defendant being in the nature of a running account, according to the plaintiff, it had caused a legal notice, dated 04.08.2010, marked as Ex.P26, calling upon the defendant to pay the said sum. Further, according to the plaintiff, the defendant without repudiating its liability to pay the amount demanded under Ex.P26 had sent a reply, dated 14.08.2010, marked as Ex.P27, stating that they are in the process of verifying the veracity of the contents of the notice and directed the plaintiff to provide certain documents for verification. Further, according to the plaintiff, the documents sought for by the defendant under Ex.P27 had already been communicated to the defendant and the same having also been intimated, it is stated that inasmuch as there was no further response on the part of the defendant, the plaintiff had been necessitated to institute the suit for the suit amount with interest.

8. The defendant has put forth pleas in such a manner that it has not

altogether denied the engagement of the plaintiff's services for their sponsored candidates and it is found that the defendant had also admitted the documents / agreements made with the plaintiff under Exs.P28, P1 and D2. However, it is the case of the defendant that the plaintiff at the best would be entitled to claim fees only in respect of the candidates, who had passed the IRDA Examination as per the conditions stipulated in the agreement marked as Ex.D2. It is the further case of the defendant that all the amounts due to the plaintiff had been settled and it is stated that only when the defendant sought for nil balance confirmation from the plaintiff, the plaintiff woke up and raised a claim of further payment of the suit amount, which according to the defendant is barred by limitation and therefore, the suit is liable to be dismissed.

9. It is the further case of the defendant that there is no running account or mutual account between the parties and therefore, the plaintiff cannot invoke the above factor for saving the suit from limitation. It is also the plea of the defendant that the suit laid by the plaintiff before this Court is not maintainable as this Court has no jurisdiction to entertain the suit, inasmuch as the agreement had been entered into between the parties at Mumbai and also no part of the cause of action had arisen in Chennai.

10. As regards the question of limitation is concerned, it is found that according to the plaintiff, the last payment was made by the defendant vis-a-vis services rendered by it for the impartation of the training to its sponsored candidates, on 21.05.2008. It is stated that thereafter, the defendant did not make any payment and inasmuch as the suit amount remained to be paid by the defendant, it is the case of the plaintiff that the suit had been levied after the issuance of the legal notice. It is found that the suit has come to be laid by the plaintiff on 06.06.2011.

11. According to the plaintiff, inasmuch as the liability is based upon the reciprocal promises / obligations and the plaintiff can raise the bills only after the performance of the reciprocal promises or obligations of the respective parties, the suit is not barred by limitation. With reference to the same, as rightly put forth by the plaintiff, it is found that as per the conditions stipulated under Exs.P28, P1 and D2, it is noted that a particular time frame has been agreed to between the parties for imparting training to the sponsored candidates. It is found that only after the completion of the training of the candidates, the plaintiff is required to submit the bills within seven days. Further, it is also noted that as regards the candidates, who had not completed the requisite period of training or lacks in attendance, such

candidates are permitted to undergo further training so as to complete the requisite period of training and in such circumstances, as rightly, put forth by the plaintiff, only on the completion of the training by such candidates, the plaintiff would be required to present or raise the bills to the defendant for claiming the amount. In addition to that, it is found that the plaintiff as per Ex.D2 would be entitled to raise bills only in respect of the candidates, who have passed the IRDA Examination. Therefore, the role of the plaintiff in this scenario is only to impart training to the sponsored candidates for the requisite period. After the completion of the training, on the candidates being sent to the defendant - Company for further process i.e., to enable them to undergo the IRDA Examination, it is found that the said further role is to be undertaken only by the defendant - Company. It is, thus, seen that the plaintiff is noway connected as regards the writing of the IRDA Examination by the candidates concerned and also as to whether such candidates had qualified the IRDA Examination for which they had undergone training. In this connection, as rightly put forth by the plaintiff, the above role is to be performed only by the defendant and this has been clearly admitted by D.W.1, who has been examined on behalf of the defendant - Company. D.W.1, during the course of cross-examination, has admitted that the sponsored candidates have to undergo the requisite period of training and if any candidates are deficient in the period of training, they have to complete the training by

attending the classes once again and then only, the plaintiff would be paid the fees. It is, thus, found that the candidates should undergo the period of training as agreed to between the parties under the agreement. Further, as per the version of D.W.1, the training programme is a continues process till the candidates complete the requisite training and further, he has also admitted that in Ex.D2 the period of training is not specifically mentioned. D.W.1 has also further admitted that if the candidate has not successfully passed in the IRDA Examination, there may not be any payment on their part and sending the candidate, who completed the training imparted, for IRDA Examination is their concern and nothing to do with the plaintiff and as soon as the candidates have successfully passed the IRDA Examination, it is their duty to communicate the same to the plaintiff, but they have not produced any such document to show that the communication is duly made.

12. Therefore, in the light of the above position, it is found that considering the nature of the agreements entered into between the parties with reference to the training to be imparted to the sponsored candidates and the circumstances under which the plaintiff would be entitled to raise the bills on the defendant, it is seen that though previously the plaintiff was permitted to raise the bills on the completion of the training, however, as per Ex.D2, the plaintiff would be entitled to raise the bills only with reference to the

candidates, who had qualified the IRDA Examination and therefore, it is found that unless the plaintiff is well informed of the candidates, who had qualified the IRDA Examination by the defendant, till such point of time, the plaintiff would not be in a position to raise the bills on the defendant towards the fees incurred by them for imparting training to such candidates. When it has been clearly admitted by D.W.1 that as regards the said task, it is their concern and duty and when there is no document forthcoming on the part of the defendant that they had duly intimated the plaintiff with reference to the number of candidates, who had qualified or passed the IRDA Examination, it is found that till such point of time, the plaintiff would not be in a position to raise the bills towards the fees incurred by them for imparting training. In this connection, it is found that the plaintiff under Ex.P20 had also called upon the defendant to mark the passed candidates and certify the statement as regards the training figures submitted by the plaintiff under the same. With reference to the same, D.W.1 would only state that he does not remember that they had sent any reply on receipt of Ex.P20 and therefore, when it is found that though the plaintiff had called upon the defendant to furnish the qualified candidates of the IRDA Examination, inasmuch as the same is not forthcoming on the part of the defendant, it is found that in the light of the above discussions, considering the various conditions stipulated under the agreements entered into between the parties, the agreements as put forth by

the plaintiff, envisages various reciprocal promises and obligations amongst and between the parties and unless the promises and obligations of both parties are completed, it is found that till such point of time, the plaintiff would not be entitled to raise the bills for the payment. Therefore, it is found that inasmuch as the defendant had not submitted the list of candidates to the plaintiff in response to Ex.P20, the contention of the defendant that the suit is barred by limitation as such cannot be readily accepted.

13. That apart, it is found that as per the averments contained in the written statement, the defendant has admitted that as per the Letter of Intent, dated 01.01.2007, entered into between the parties, the alleged amount as claimed in the suit became due between April, 2008 and March, 2010. The same is mentioned in Para-2 of the written statement and also admitted in Para-14 of the written statement. Therefore, it is found that as the suit amount pertains to the period between April, 2008 and March, 2010, the suit laid by the plaintiff in June, 2011 is not time barred.

14. The plaintiff has put forth a plea that the suit is not barred by limitation as the claim is based upon a running account between the parties. However, as rightly contended by the defendant's counsel, running account or mutual account or current account as the case may be, relied upon by the

plaintiff would not be applicable to this case as there is no money due to the defendant on the part of or from the plaintiff and it is found that there is only one account, where the plaintiff is shown as a creditor and the defendant is shown as a debtor and as there is no reciprocity as to any amount due from plaintiff to the defendant as such, it could be seen that the plaintiff cannot contend that his suit is based upon the running account or mutual account or current account as the case may be and hence, the suit is not barred by limitation. However, on that score it cannot be held that the plaintiff's suit is barred by limitation.

15. Considering the discussions above made, it is found that the plaintiff gets its right only on the information supplied by the defendant – Company i.e., that such of those candidates, who had undergone the training had been permitted to write the IRDA Examination and only such of those candidates, who had appeared for the examination had qualified the same and only thereafter, it could be seen that as per Ex.D2, the plaintiff would be in a position to raise the bills with reference to the expenses incurred by it for the candidates to whom, the plaintiff had imparted training and who had also qualified the IRDA Examination. Therefore, in such view of the matter, it could be seen that the case of the plaintiff or the cause of action for the plaintiff to institute the suit would only arise when the reciprocal promises

and obligations as enjoined upon the respective parties are duly satisfied and completed by the respective parties. In such view of the matter, it is found that inasmuch as there is no specific article provided under the Limitation Act, 1963 as such, with reference to the facts and circumstances of the present case, as rightly contended by the plaintiff's counsel and also in my considered opinion, the residuary article, namely, Article 137 of the Limitation Act would be applicable to the present case and as per the above said Article, it could be seen that where for any other application for which no period of limitation is provided elsewhere in this division, the period of limitation would be three years and the time from which period begins to run is when the right to apply accrues. Applying the same to the present case, it is found that only on the defendant supplying the information about the successful candidates of the IRDA Examination, the plaintiff being in a position to raise bills, it is found that the right to apply for the suit claim would arise only on the defendant furnishing the requisite information. In such view of the matter, applying the same, when it is found that the defendant having not established that he has furnished the information sought for by the plaintiff on the successful candidates who had qualified the IRDA Examination as called for under Ex.P20 and with reference to the same, D.W.1 also not giving proper response and avoiding the same and the defendant also having not established the supply of requisite information sought for by the plaintiff to enable him to

raise the bills and further, even with reference to the suit notice, the defendant having not specifically disputed the claim made by the plaintiff and on the other hand, in the reply notice only would state that the claim made by the plaintiff is under the process of verification and therefore, it could be seen that even thereafter, as the defendant did not respond favorably to the plaintiff's case, it is found that the suit had come to be laid by the plaintiff and only after the institution of the suit, it is found that the defendant by way of the written statement has taken a plea that the plaintiff having not filed the suit within three years from the date of last payment i.e., 21.05.2008, it is contended that the suit laid by the plaintiff is time barred. However, as discussed above, when even according to the defendant and also not seriously disputed that the plaintiff's case is based upon the three agreements as adverted to above and also the defendant having admitted in the written statement that the amount claimed became due between April, 2008 and March, 2010 and coupled with the above position, when the defendant has also not established to have been furnished the information sought for by the plaintiff on the successful candidates who had qualified the IRDA Examination, it is found that the suit laid by the plaintiff is not hit by the law of limitation.

16. With reference to the above issue of limitation, the plaintiff's counsel

in support of his contentions, relied upon the decisions reported in **AIR 2001 SC 2763 (Pallav Sheth v. Custodian and others)**, **1978 (1) MLJ 331 (V.K.Abraham v. N.K.Abraham)**, **AIR 1985 Kerala 126 (Komu Haji Hysrose Haji v. Moosakutty Bava** and **2012 (3) AD (Delhi) 796 (Bharath Skins Corporation v. Taneja Skins Company Pvt. Ltd.)**. Per contra, in support of his contentions, the learned counsel for the defendant placed reliance upon the decision reported in **1959 AIR 1349 (The Hindustan Forest Company vs. Lal Chand and others)** and the decision of this Court, dated 06.02.2017, passed in **A.S.(MD) No.71 of 2007 (R.Rajeswari vs. M/s.Kanthasamy Traders, Cotton Merchant)**.

17. In the light of the discussions above made, having analysed the claim of the plaintiff and finding that the suit is not based upon the mutual, open and current account, and on the other hand, the suit is based upon the reciprocal promises / obligations agreed to be performed by the respective parties based upon the agreements entered into between them as adverted to earlier, it is found that only the residuary Article as such provided under Article 137 of the Limitation Act would apply and therefore, the principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

18. In view of the discussions made above and the discussions made under Issue No.II, I hold that the suit laid by the plaintiff is not barred by limitation and further the suit laid by the plaintiff is not based upon the running account as pleaded by the plaintiff in the suit and that the defendant has not paid the fees and training charges due to the plaintiff. Accordingly, Issue Nos.III and IV are answered in favour of the plaintiff.

ISSUE NO:II:

19. Considering the discussions made under Issue Nos.III and IV, it is found that the suit laid by the plaintiff is under three agreements as already adverted to above. That apart, prior to the institution of the suit, the plaintiff has also issued a legal notice and the defendant has not strictly repudiated the claim of the plaintiff in the reply notice, but only would state that the claim of the plaintiff is under the process of verification. As discussed above, the plaintiff would get a cause of action to levy the suit only after the defendant furnishing the information that such of those candidates, who had undergone the training, had been permitted to write the IRDA Examination and only such of those candidates, who had appeared for the IRDA Examination, had qualified the same. But, the defendant has not established that he has responded to the information sought for by the plaintiff with reference to the same under Ex.P20. Therefore, it is found that the plaintiff has been necessitated to institute the suit for the amount due it from the

defendant. Only in the written statement, they have taken a plea that the suit is barred by time and further that they have also paid the amount to which the plaintiff is entitled to pursuant to the contract entered into between the parties.

20. However, as rightly argued by the plaintiff's counsel, the claim of the defendant that they have paid the amount due to the plaintiff under the agreements entered into between the parties has not been established by the defendant as such despite the defendant having the best evidence in its custody and further, according to the plaintiff's counsel, the defendant having not produced the same despite being called upon to furnish the same, he submitted that the Court should take adverse inference against the defendant.

21. In this connection, the plaintiff in support of his legal claim, has also produced the ledger account maintained by it marked as Ex.P25. A perusal of the same would go to show that the defendant is liable to meet the suit claim prayed for by the plaintiff. If according to the defendant, it has discharged all the amount for which the plaintiff is entitled to under the agreement as rightly contended, the defendant on its part should have endeavoured to produce the accounts or ledgers maintained by it with reference to the same. On the other hand, it is found that the defendant has

not cared to place the accounts or ledgers maintained by it or the Auditor's report with reference to the suit transactions. In this connection, it is found that the defendant in spite of being called upon to produce its accounts has not cared to produce the same and only some invoices or vouchers have been produced on the part of the defendant. As rightly argued, D.W.1 has no direct knowledge about the suit transaction and speaks about the case only based upon the records. That apart, it is found that D.W.1 has also not worked in the Accounts Section of the defendant – Company. In this connection, the learned counsel for the plaintiff pressed into service the decision reported in **2008-3-L.W.609 (S.Babu v. M/s.J.K.Industries Ltd., Madurai)** and the same is also taken into consideration as applicable to the case at hand. Therefore, in such view of the matter, when the defendant has not produced the best evidence available in its custody and on the other hand has cared to place only certain invoices and vouchers, it could be seen that the defendant has taken a false plea that it has discharged the amount due to the plaintiff for the training imparted by it to its sponsored candidates. On the other hand, as rightly put forth by the plaintiff's counsel, only on the defendant furnishing the information as to the number of candidates, who had passed the IRDA Examination for enabling the plaintiff to make the claim and the defendant not established by any acceptable and reliable evidence that such information has been furnished, and further when it could be seen that the defendant

having also not placed the best evidence i.e., ledger accounts maintained by it with reference to its claim of discharge or payment, as rightly argued by the plaintiff's counsel that for the purpose of this case, the defendant has put forth the contention that it has already made the payment due to the plaintiff. However, the defendant all along having not repudiated the claim of the plaintiff prior to the institution of the suit and only after institution of the suit has come forward with the written statement that it has discharged the amount, but they have failed to establish the same by producing the best evidence and when it is found that the plaintiff has placed its accounts and other documents to sustain its claim for the suit amount and the defendant having also not repudiated the training imparted by the plaintiff to its sponsored candidates under the three agreements above referred to and when the defendant failed to establish that it has completed its task placed on its shoulder as provided under the agreements, it could be seen that the defendant is liable to pay the fees and charges i.e., the suit claim to which the plaintiff is entitled to, I hold that the defendant is liable to pay the suit claim to the plaintiff with interest as prayed for and accordingly, Issue No.II is answered in favour of the plaintiff.

ISSUE NO.I:

22. The defendant has raised a plea that this Court has no territorial

jurisdiction to entertain the suit filed by the plaintiff. However, considering the agreements entered into between the parties marked as Exs.P28, P1 and D2 cumulatively and also the fact that the defendant's predecessor-in-interest, namely, AMP SANMAR admittedly was having its Office only at Chennai and even the defendant is having its Branch Office at Chennai and the last agreement entered into between the parties though would state that the defendant's registered Office is at Mumbai, on the other hand the plaintiff having established that the contract concluded only at its Office at Chennai and considering the fact that the training of the sponsored candidates is done only at Chennai and further the suit has been laid in respect of the training imparted by the plaintiff to the sponsored candidates of the defendant and the above factors, as rightly put forth by the plaintiff, point out that the cause of action or part of the cause of action had arisen only in Chennai and both the Office of the plaintiff and the defendant, in particular the Administrative Office of the defendant are located in Chennai, when the three agreements had been entered into between the parties and further when it is proved that the agreements were concluded only at Chennai after obtaining the plaintiff's signature therein, it could be seen that this Court has territorial jurisdiction to entertain the suit and therefore, the contention put forth by the plaintiff that the Court has no territorial jurisdiction to entertain the suit as such cannot be countenanced. I, therefore, hold that this Court has territorial jurisdiction to

entertain the suit. Accordingly, the Issue No.I is answered in favour of the plaintiff and against the defendant.

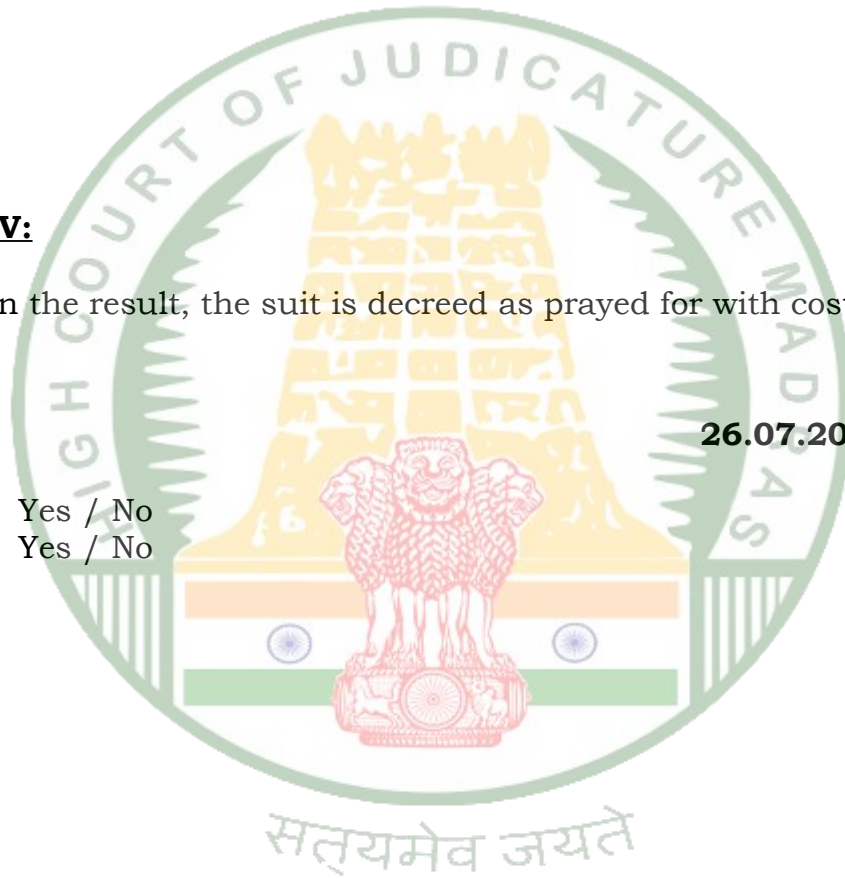
ISSUE NO.V:

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

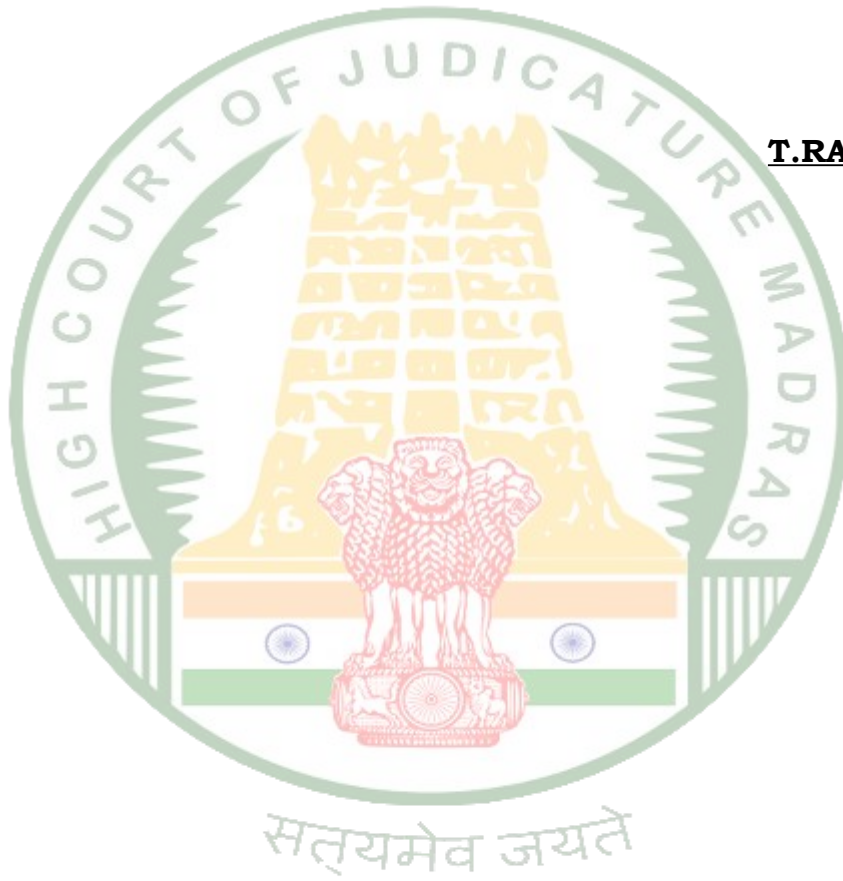
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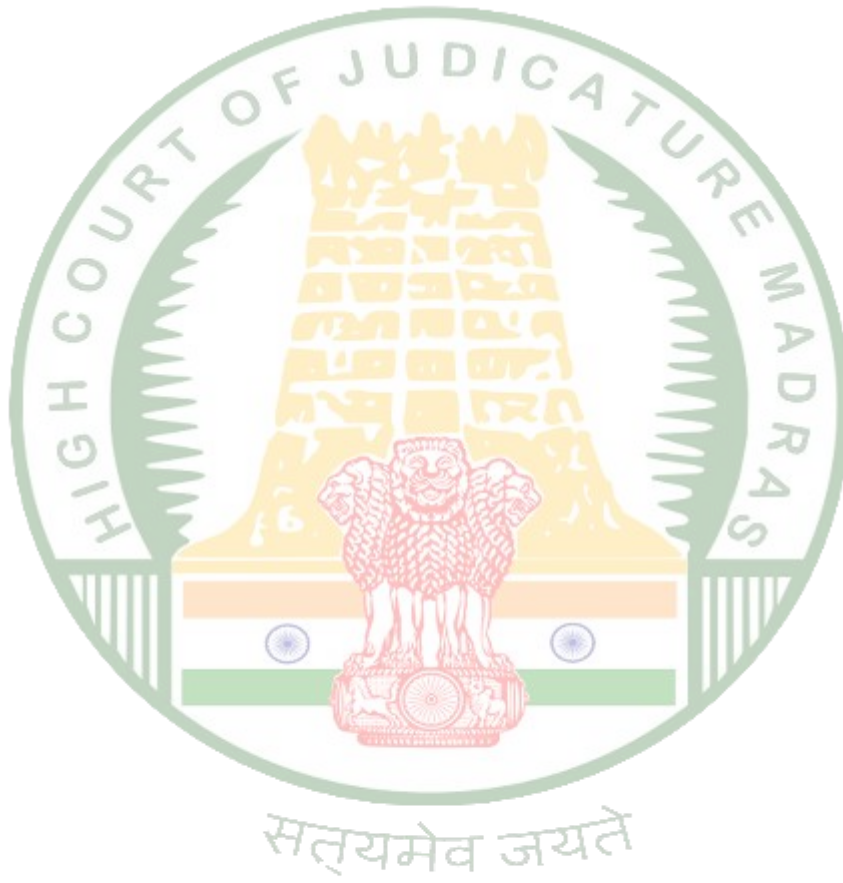
T.RAVINDRAN, J.

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JUDGMENT
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C.S.No.443 of 2011

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