

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2017

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.246 of 2013

M/s. Rajsriya Automotive Industrial P. Ltd.
rep. by its Authorised Signatory
Mr.P.Subbaraayan ... Appellant/Defendant

Vs.

M/s.FIEM Industries Limited
Rep. by its Executive Director,
Mr.J.S.S.Rao ... Respondent/Plaintiff

Appeal Suit is filed under section 96 of Civil Procedure Code to set aside the judgment and decree of the learned Additional District Judge, Krishnagiri made in O.S.No.52 of 2011 dated 19.03.2013.

For Appellant : Mr.S.Ragunathan

For Respondent : Mr.J.Hariharan

J U D G M E N T

The defendant in O.S.No.52 of 2011 on the file of the Additional District Judge, Krishnagiri is the appellant. The suit was filed for recovery of a sum of Rs.9,89,639/- with subsequent interest at 12% from 21.01.2008 to 20.03.2011. The suit was filed on 06.06.2011. The basis of the suit claim is that both the plaintiff and the defendant are manufactures of automobile spare parts and there had been supply of goods between them. According to the plaintiff, when the accounts were taken on 18.01.2008, it was found that the defendant owes a sum of Rs.2,55,000/- as on 31.10.2007 to the plaintiff and thereafter, several supplies were made upto 21.01.2008 for the value of about 23,89,065.15. After giving credit to the value of the goods supplied by the defendant to the plaintiff, the actual balance due to the plaintiff was worked out at Rs.9,89,638.84. According to the plaintiff, the defendant had acknowledged the liability under Ex.A32, dated 18.03.2009 as well as Ex.A33, dated 04.10.2010. A legal notice was issued by the plaintiff on 08.01.2011, since the defendant sent reply on 25.02.2011 denying the liability, the plaintiff had come forward with the suit.

2. The suit was resisted by the defendant contending that the amount claimed is not correct and the fact that there was a reconciliation of accounts on 18.01.2008 and an amount due fixed at Rs.2,55,000/- upto 31.10.2007 was also denied. The so called admission of liability under Ex.A32 and Ex.A33 was specifically denied by the defendant. It was also pointed out that the legal notice dated 08.01.2011 does not contain a reference of Ex.A32 which was admittedly dated 18.03.2009. The primary contention of the defendant was that the suit filed on 06.06.2011 is barred by limitation as admittedly the last supply effected by the plaintiff to the defendant was on 21.01.2008. On the above pleadings, the learned Trial Judge framed the following issues:

- "1) Whether the plaintiff is entitled to the suit amount?
- 2) To what other reliefs the plaintiff is entitled to?"

3. Two witnesses were examined on the side of the plaintiff and 38 documents were marked. One witness is examined on the side of the defendant and 3 documents were marked. On a consideration of oral and documentary evidence, the learned Trial Judge concluded that the claim of the plaintiff based on the accounts as well as reconciliation statement acknowledged under Ex.A32 is true and valid. On the question of limitation, the Trial Judge concluded that the receipt of Ex.A33 having been admitted by the defendant and from the endorsement in the Ex.A33 it could be seen that the accounts officer of the defendant had received it with an endorsement "subject to verification". The fact that the defendant not responded after verification should be construed as an acknowledgment of the debt. On the aforesaid findings, the learned Trial Judge decreed the suit as prayed for. Aggrieved over the same, the defendant preferred this appeal.

4. I have heard Mr.S.Ragunathan, learned counsel appearing for the appellant and Mr.J.Hariharan, learned counsel appearing for the respondent.

5. The only contention that is urged before me is the question of limitation. Mr.S.Ragunathan, learned counsel appearing for the appellant would submit that Ex.A32 is only a xerox copy and the very contents in Ex.A32 would show that it cannot be correct. He would also contend that the plaintiff has not made out any ground for reception of secondary evidence as contemplated under Section 65 of the Evidence Act. According to the learned counsel, even in the proof affidavit filed by P.W.1 there is no reason set out for non production of original of Ex.A32. Ex.A32 is a letter addressed to the defendant company hence, they should be in possession of the original. In cross examination, P.W.1 has only admitted that Ex.A32 is only a xerox copy. He does not give any reason for non-production of the original. Therefore, according to the learned Counsel Ex.A32 should not have been admitted into

evidence and the same cannot be looked into. In so far as Ex.A33 is concerned, learned counsel would submit that there is no acknowledgment of debt. It is only stated that copy is received "subject to verification". It would only amount to acknowledgment of receipt of a letter and cannot be treated as an acknowledgment of liability of the defendant.

6. Per contra, Mr.J.Hariharan, learned counsel appearing for the respondent/plaintiff would contend that the receipt of Ex.A33 is admitted by D.W.1 in cross examination. The correctness of Ex.A1 namely, the reconciliation statement is also admitted. Therefore, unless it is shown that the defendant had disputed the claim of the plaintiff after 04.10.2011 i.e., the date of Ex.A35, it should be construed that they have acknowledged the liability and therefore, the suit filed on 06.06.2011 is within time. On the above contentions, the following point arises for determination of appeal.

Whether the Trial Judge is right in holding that the suit is not barred by limitation?

7. On the admitted facts it could be seen that the transaction between the plaintiff and the defendant were only upto 21.01.2008. The cause of action for the claim commences atleast on 21.01.2008. The suit should have been filed within three years from the said date i.e., on or before 21.01.2011. Admittedly, the suit has been instituted on 06.06.2011 beyond the period of three years. Therefore, it is for the plaintiff to show that the suit is within time. In order to show that the suit is within time, the plaintiff would rely upon Ex.A32 and Ex.A33. Therefore, it takes us to the question whether there was an acknowledgment of debt under Ex.A32 or Ex.A33. In so far as Ex.A33 is concerned, the receipt of the same is not denied. It is a letter addressed by the plaintiff to the defendant company and while receiving the same, an endorsement has been made which reads as follows:

'subject to verification'

'received by'

'signature'

8. It is stated that the signature found in Ex.A33 acknowledging the receipt of the said letter is that of one Mr.Nagaraj working in the accounts department of the defendant company. On the face of it, Ex.A33 does not contain an acknowledgment of debt. The learned Trial Judge presumed an acknowledgment on the ground that the defendant company has not responded after verifying the accounts. I do not think the said reasoning could be sustained. When the suit is prime facie barred by limitation, it is for the plaintiff to establish that there was an acknowledgment of debt within three years prior to the filing of the suit. Silence on the part of the defendant can never be an acknowledgment.

Therefore, the finding of the Trial Court that failure on the part of the defendant to verify the accounts and respond after Ex.A33, cannot by any means amount to acknowledgment of the debt.

9. So far as Ex.A32 is concerned, as already pointed out it is only a xerox copy. The requirements of Section 65 of the Evidence Act have not been satisfied to enable the Court to receive secondary evidence. The said letter is addressed to the plaintiff. Therefore, the plaintiff should be in possession of the original. No reason has been assigned for non production of the original. In fact, in cross examination, P.W.1 would admit that it is only a xerox copy. There is not even an attempt to show that the original has been lost or it is with the defendant. Apart from the above, the very contents of Ex.A32 raises a doubt about its genuineness. Admittedly, under Ex.A31, reconciliation statement, the amount due was worked out only at Rs.2,55,000/- as on 31.01.2007. But, a reading of Ex.A32 shows that a sum of Rs.9,89,638.84 is referred to be due as per the reconciliation statement dated 18.01.2008. There is no reference of Ex.A32 in the legal notice issued by the plaintiff on 05.01.2011. Therefore, in my considered opinion Ex.A32 cannot be relied upon to show that there was an acknowledgment of debt.

10. For the foregoing reasons, I find that the plaintiff has not proved acknowledgment of debt, within three years prior to the date of filing of the suit. In the absence of such proof, the learned Trial Judge was not right in holding that the suit is not barred by limitation and granting a decree. Therefore, the appeal stands allowed and the judgement and decree of the Trial Court are set aside. The suit in O.S.No.51 of 2011 is dismissed. However, considering the fact that the appellant has succeeded in this appeal only on the ground of limitation, I am not ordering costs both in the suit as well as in the appeal.

11. It is submitted by Mr.S.Raghunathan, learned counsel appearing for the appellant that pursuant to an interim order, the appellant has deposited 50% of the decree amount to the credit of the suit. Now that, the appeal has been allowed and the decree has been set aside, the appellant/defendant is at liberty to withdraw the said amount deposited by it to the credit of the suit on production of the copy of this judgment.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

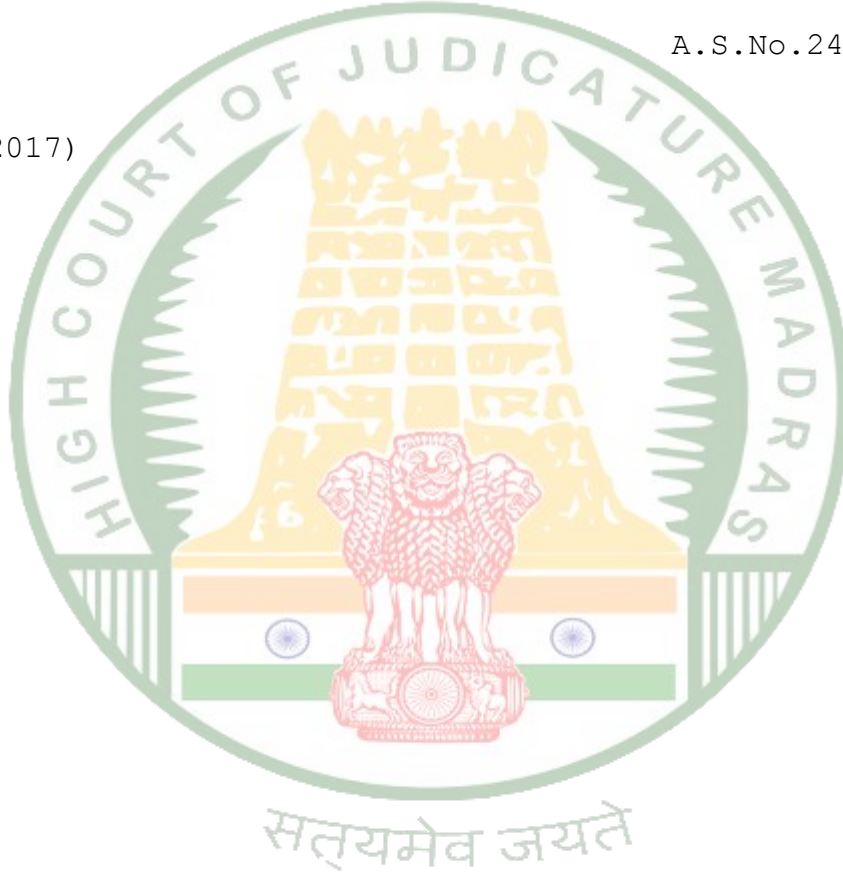
To

1. The Additional District Judge,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court, Madras 104.

+lcc to Mr.S.Raghunathan, Advocate, S.R.No.59543
+lcc to Mr.V.Nicholas, Advocate, S.R.No.59245

A.S.No.246 of 2013

NM(CO)
CA(09/10/2017)



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