

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2016

PRONOUNCED ON : 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.799 of 2009

1.G.G.Ravi

2.G.G.R.College of Engineering  
rep.by its Chairman G.G.Ravi  
Pillaiyar Kuppam  
Walajah Taluk, Vellore District

3.Vengammal Educational and  
Charitable Trust  
rep.by its Chairman G.G.Ravi  
Having office at  
2/1, Vaidyam Vasudevan Street  
Saidapet, Vellore ... Appellants / Defendants

-vs-

K.Sathiyamoorthy ... Respondent / Plaintiff

PRAYER: Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, read with Order 41 Rule 1 C.P.C., as against the judgment and decree, dated 08.01.2008, made in O.S.No.14 of 2006, on the file of the Additional District and Sessions Judge, Fast Track Court No.II, Ranipet.

For Appellants : Mr.K.S.Shangar Murali

For Respondent : Mr.S.Sathish Rajan

#### J U D G M E N T

The defeated defendants, in O.S.No.14 of 2006, on the file of the learned Additional District and Sessions Judge, Fast Track Court No.II, Ranipet, are the appellants herein.

2. The plaintiff filed a suit, in O.S.No.14 of 2006, before the learned Additional District and Sessions Judge, Fast Track Court No.II, Ranipet, for a direction to the defendants to pay a sum of Rs.11,34,593/- together with future interest.

3. After contest, the suit was decreed as prayed for by the Trial Court, vide Judgment and Decree, dated 08.01.2008 and hence this appeal by the defendants.

4. The brief averments of the plaint are as follows:

The third defendant is a Trust and it is owing the second defendant Engineering College. The first defendant is the Chairman of both the second respondent Engineering College and the third defendant Trust. The first defendant, though his friend Jayamohan, who is also running an Engineering College along with others under the name and style of Priyadarshini Engineering College at Vaniyambadi and Kodaikkanal Institute of Technology at Kodaikkanal, approached the plaintiff for the supply of computers and necessary spare parts etc., to the second defendant College. Accordingly, the plaintiff bought computers in 61 Nos., and other spare parts, totally worth about Rs.24,87,773/- from M/s.Devaraj Computers Private Limited, on credit basis and supplied the same to the defendants on credit basis. M/s.Devaraj Computers Private Limited issued a delivery challan on 19.06.2001 and the same was accepted by the defendants. Delivery of the aforesaid articles was confirmed by AICTE Council, New Delhi, on 20.06.2001. Therefore, after purchase of the aforesaid articles, the defendants have become bound and liable to pay a sum of Rs.24,87,773/- to the plaintiff. Though the plaintiff requested the defendants for payment, they evaded his request. Thereafter, they issued two unfilled and post-dated 05.08.2011 and 05.09.2011 cheques for Rs.10,00,000/- and Rs.14,87,773/- respectively to the plaintiff. After getting the same, the plaintiff had filled up the name of the payee and gave it to M/s.Devaraj Computers Private Limited. When M/s.Devaraj Computers Private Limited presented the Cheque, dated 05.08.2011, for encashment, it was returned with an endorsement "Insufficient Fund" and the same was intimated to the plaintiff. When the plaintiff intimated the same to the defendants and demanded payment, they replied that they would make arrangement for payment. But, thereafter, they had not make any arrangement as replied. Subsequently, the defendants returned back 29 Computers out of 61 Computers to the plaintiff. The value of the retained Computers in 32 Nos., is Rs.16,34,593/- and for the said value, the defendants issued two cheques, drawn on Punjab National Bank, dated 11.11.2002 and 10.12.2002, for Rs.3,00,000/- and Rs.2,00,000/- respectively. The plaintiff presented those through his Banker, namely, N.A.A.Dt.

Central Co.op., Bank Ltd., and encashed it. After giving credit to the aforesaid amount of Rs.5,00,000/-, the defendants have not paid the balance amount of Rs.11,34,593/- to the plaintiff. Hence, the suit.

5. The brief averments of the written statement filed by the first defendant and adopted by the defendants 2 and 3 are as follows:

At no point of time, the defendants requested the plaintiff to supply computers and the plaintiff had not filed any kind of documents in respect of such a claim. Whereas the plaintiff had not filed any documents for receiving computers by them. The plaintiff filed the baseless suit with an intention to grab money from the defendants. Therefore, the suit is liable to be dismissed. Further, they do not aware the discussions that was taken between the plaintiff and M/s.Devaraj Computers. Though there was no proof for delivery of Computers from M/s.Devaraj Computers to the plaintiff, he had mentioned the delivery date in the plaint. It is incorrect to state that the plaintiff had demanded payment for many times and the cheques stated to have been issued by them are not issued in favour of the plaintiff. The plaintiff sought the relief by misusing the blank cheques. Therefore, they are not liable to pay any amount to the plaintiff. There is no cause of action and the plaint is liable to be dismissed with costs.

6. Based on the above pleadings, the Trial Court formulated as many as five issues for consideration.

7. The plaintiff, in order to substantiate his case, let in evidence as P.W.1 and also examined owner and staff of M/s.Devaraj Computers Pvt., Ltd., as P.W.2 and P.W.3 respectively and marked Exs.A1 to A16. On the side of the defendants', the first defendant examined himself as D.W.1 and he has not marked any documents.

8. After hearing both sides and perusing the evidence both oral and documentary, the Trial Court came to the conclusion that the defendants are liable to pay a sum of Rs.11,34,593/- together with interest at the rate of 12% from the date of filing the suit till the date of realization to the plaintiff and decreed the suit, by Judgment and Decree, dated 08.01.2008.

9. Aggrieved by the Judgment and Decree, dated 08.01.2008, made in O.S.No.14 of 2006, by the learned Additional District Judge, Ranipet, the defeated defendants have preferred this appeal.

10. In the grounds of appeal, the following points are urged:

- i. The Trial Court failed to note that the appellants have not placed any orders to the respondent / plaintiff for supply of the alleged computers which is the subject matter of the suit.
- ii. The Trial Court failed to note that the documents filed by the plaintiff will go to show only the computers have been purchased by the plaintiff from one Devaraj Computers and from the documents filed by the respondent / plaintiff absolutely there is no evidence to show that the computers have been supplied to the appellants.
- iii. The Trial Court failed to consider that the blank cheques of the 3<sup>rd</sup> defendant were in the possession of the said Jayamohan M.P., and with the collusion of the said Jayamohan M.P., the respondent / plaintiff has obtained the said cheques from the Jayamohan M.P., and utilized the same for the purpose of this case. In the absence of any proof to show that the computers have been supplied by the respondent / plaintiff to the Appellants, there cannot be decree against the appellants.

11. The plaint proceeds on the basis that at the instance of one Jayamohan, the plaintiff had supplied computers in 61 Nos., along with spare parts totally to the tune of Rs.24,87,775/- to the defendants, on 19.06.2001, in view of the fact that AICTE Council was having inspection on 20.06.2001. After repeated demands, the first defendant issued two blank cheques, but signed by him, dated 05.08.2001 and 05.09.2001, for Rs.10,00,000/- and Rs.14,87,773/- respectively to M/s.Devaraj Computers Pvt., Ltd., and when the cheque, dated 05.08.2001, was presented for encashment, it was returned with an endorsement "Insufficient Funds" and the said fact was intimated by M/s.Devaraj Computers Pvt., Ltd., to the plaintiff and in turn it was intimated to the defendants. Subsequently, the defendants returned 29 computers and the cost for the balance 32 computers was arrived at Rs.16,34,593/- and for which, the first defendant issued two Cheques, dated 11.11.2002 and 10.12.2002 for Rs.3,00,000/- and Rs.2,00,000/- respectively, drawn on Punjab National Bank and the same were encashed and the amount of Rs.5,00,000/- was credited in the plaintiff's account and the balance amount of Rs.11,34,593/- is due from the defendants. The suit was instituted after issuing pre-suit notice.

12. Per contra, the claim of the plaintiff was resisted by the defendants on various grounds inter alia contending that

there was no privity of contract, delivery receipts for the delivery of computers were not produced and they had not issued any cheque to the plaintiff and hence prayed for dismissal of the suit. The Trial Court framed five issues for consideration and by Judgment and Decree, dated 08.01.2008, decreed the suit. Aggrieved by the same, the defendants are before this Court.

13. Heard both sides and perused the materials produced.

14. The following points arise for consideration in this appeal.

- i. Whether the suit claim is barred by limitation as claimed by the appellants / defendants?
- ii. Whether the respondent / plaintiff is entitled to the relief of recovery of Rs.11,34,593/- as prayed for?
- iii. Whether the award of interest by the Trial Court is justified?
- iv. Whether the Judgment of the Trial Court is sustainable law? And
- v. To what other relief?

Point No.I:

15. It is seen from the evidence of P.W.1 and Exs.A10 and A11, which are the letter, dated 06.01.2006, sent by Vellore District Central Co-operative Bank and Passbook issued by the said Bank to the respondent / plaintiff that he had presented two cheques for the encashment of Rs.5,00,000/-. The computers were said to have been supplied by the respondent / plaintiff to the appellants / defendants on 19.06.2001, after return back of 29 computers, the cost for 32 computers was re-arrived at Rs.16,34,593/- and for the same, as a part payment, these two cheques have been issued by the defendants. Though the defendants denied the issuance of those cheques, it is seen from Exs.A10 and A11 that the cheque amount of Rs.5,00,000/- has been duly credited in the account of the plaintiff. D.W.1, in his cross-examination, has admitted that he has issued those cheques. However, he claimed that they are unfilled cheques. Under Section 20 of the Negotiable Instruments Act, if the account-holder issued blank-cheque, in other words, inchoate document, authorizing the bearer to fill-up the name as he wish, then he cannot subsequently claim that he has not issued the cheque. The issuance of cheque as admitted by D.W.1, in his cross-examination, and the encashment of the cheque amount as it could be seen from Exs.A10 and A11 would go to show that D.W.1 has made a part-payment for the supply of computers. Furthermore, D.W.1, in his cross-examination has admitted that a sum of Rs.5,00,000/- has been credited to the account of the plaintiff. However, he has not taken any legal action to substantiate his claim that he has not issued any cheque in favour of the plaintiff. Thus, on a combined reading of the

oral evidence of P.W.1 and the admission of D.W.1 in his cross-examination coupled with Exs.A10 and A11, the Trial Court has come to the conclusion that the defendants have made a part-payment of Rs.5,00,000/- towards the amount due on 10.12.2002 and the suit has been filed, on 09.12.2005, within the period of three years and the suit is not barred by limitation. Therefore, the findings of the Trial Court that the suit has been filed in time and the same is not barred by limitation are all well considered and well founded and they are only based upon the documentary evidence placed before the Trial Court and the said findings do not suffer from any infirmity or illegality and the same are hereby confirmed. Accordingly, Point No.I is answered in favour of the respondent / plaintiff.

Point No.II:

16. As stated above, initially through one Jayamohan, the plaintiff supplied computers in 61 Nos., on 19.06.2001 to the defendants in view of the fact that AICTE Council was having inspection on 20.06.2001 and for which, the appellants / defendants had initially issued two cheques and when one of those cheques was presented by M/s.Devaraj Computers, it was returned with an endorsement "Insufficient Funds". Thereafter, the defendants returned 29 computers and the cost for the remaining computers in 32 Nos., was re-arrived at Rs.16,34,593/- and for which, the defendants issued two cheques, dated 11.11.2002 and 10.12.2002, for Rs.5,00,000/- and the same was credited in the plaintiff's account and hence, there is a due of Rs.11,34,593/-. In order to substantiate the said claim, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A16.

17. It is the further case of the plaintiff that after supply of the computers, they have been serviced by the plaintiff and the service report has been marked as Ex.A12 and Exs.A13 and A14 are the letters sent by the plaintiff to the defendants and they were duly served on the defendants and the postal acknowledgment has been marked as Ex.A15. With regard to the supply of the computers and the part-payment of Rs.5,00,000/-, by way of two cheques, the plaintiff examined one Mr.Espaul as P.W.2, who is the owner of M/s.Devaraj Computers Pvt., Ltd., and he deposed evidence on the similar line of P.W.1. P.W.3 Sivakumar is the staff of P.W.1, who deposed evidence regarding service of computers supplied by them to the defendants.

18. On perusal of Exs.A1 to A4, it is seen that the cheque for Rs.10,00,000/- presented by P.W.2 was dishonoured and hence, P.W.2, who is the owner of M/s.Devaraj Computers Pvt., Ltd., issued a notice of intimation along with debit note, as it could be seen from Exs.A4 to A9, to the respondent / plaintiff. All these exhibits would go to show the supply of computers through M/s.Devaraj Computers Pvt., Ltd., and presentation of cheques

issued by the appellants / defendants for encashment. It is the further case of the plaintiff that after return back of 29 computers, for the balance of 32 computers, the cost was re-arrived at Rs.16,34,593/- and for which, as a part-payment, the defendants issued two cheques for Rs.5,00,000/- and the said amount was credited in the respondent / plaintiff's account as it could be seen from Exs.A10 and A11.

19. At this juncture, it would be more relevant to point out that the first defendant, in his written statement, has categorically denied the issuance of cheques for Rs.5,00,000/- to the plaintiff. However, in his cross-examination, he has admitted that he had issued unfilled cheques to Jayamohan. Further, he has admitted that he knew about the deposit of Rs.5,00,000/- in the plaintiff's account by the cheques issued by him and he himself has admitted that he has not taken any legal action for the said credit, which assumes more significance. The specific admission of D.W.1, in his cross-examination, as narrated above, would go to show that the first defendant is not speaking truth and all his denial in the written statement are formal in nature. Had he not issued any cheque to the tune of Rs.5,00,000/-, which was credited in the plaintiff's account under Ex.A10, by way of normal human conduct, he could have issued a legal notice to the plaintiff. Furthermore, it could be seen from Exs.A13 and A14 that the plaintiff had issued notices, dated 01.04.2004 and 20.10.2004, to the defendants asking for the amount to be paid for the supply of the computers. These two pre-suit notices were served upon the defendants as it could be seen from Ex.A15. For the reasons best known to him, the appellants / defendants had not chosen to give any reply. The non-issuance of reply notice demanding payment for the supply of computers raises a very serious doubt on the stand taken in the written statement. If no computer was supplied by the respondent / plaintiff, the appellants / defendants in normal course could have issued a reply denying the facts namely supply of computers and its cost. In such circumstances, this Court has no other option except to make adverse inference against the defendants' conduct in non-issuance of reply to the demand notices under Exs.A13 and A14.

20. Furthermore, after supply of the computers, the plaintiff had also carried out regular services, as it could be seen from Ex.A12 and coupled with the oral evidence of P.W.3, who is the staff of the plaintiff. Since the first defendant had chosen to deny the said fact also, as he did for all other averments, the plaintiff, filed Ex.A16 / Marriage Invitation of the Vice-Principal of the College, who had signed in the service report Ex.A12. This would show that the first defendant could go to any extent to deny his liability.

21. The Trial Court, on analysis of each and every aspects, has come to the conclusion that the plaintiff supplied computers

in 61 Nos., and out of which the defendants returned computers in 29 Nos., and the cost was re-arrived at Rs.16,34,593/- and for the said payment only, as a part-payment, the defendants issued cheques for Rs.5,00,000/-, which was credited in the plaintiff's account and hence the plaintiff is entitled to the relief of recovery of Rs.11,34,593/-. Those findings of the Trial Court are well considered and well founded and are hereby confirmed. Accordingly, Point No.II is answered in favour of the plaintiff.

Point No.III:

22. The Trial Court, after taking into account the provisions of Section 61(2) of the Sale of Goods Act, 1930 has held that in the absence of a contract to the contrary, the Court may award interest at such rate as it think fit on the amount of the price of the goods sold from the date of which the price was payable and accordingly, ordered 12% interest per annum on the suit amount from the date of plaint till the date of realization.

23. For the reasons stated supra, this Court has held that 61 computers were supplied on 19.06.2001 and thereafter 29 computers were returned and the cost was recalculated for the remaining 32 computers as Rs.16,34,593/- and out of which Rs.5,00,000/- had already been paid as part-payment and for the balance amount of Rs.11,34,593/-, demand notices had been issued by the plaintiff under Exs.A13 and A14 on 01.04.2004 and 20.10.2004 and the said amount was remained unpaid till the institution of the suit. Though no clause for interest was mentioned in the agreement, taking note of the factual position that the remaining amount is remained unpaid, the Trial Court has rightly awarded 12% interest per annum on the balance amount from the date of plaint till the date of its realization, which is just and reasonable and it is in accordance with the provisions of the Sale of Goods Act, 1930 and the same is confirmed. Accordingly, Point No.III is also answered in favour of the plaintiff.

24. In fine, the suit is in time. The plaintiff is entitled for the cost of 32 Computers to the tune of Rs.11,34,593/- and the award of interest by the Trial Court is in accordance with law and the same is sustainable as all the findings of the Trial Court is based upon the records placed before the Court and the findings rendered thereon are sustainable in law and the points I to V are held against the appellants / defendants and in favour of the respondent / plaintiff..

25. In the result, the appeal is dismissed and the Judgment and Decree, dated 08.01.2008, made in O.S.No.14 of 2006, by the learned Additional District Judge, Ranipet, is hereby confirmed. Considering the facts and circumstances, this Court awards a sum

of Rs.3,000/- (Rupees three thousand only) towards costs payable by the appellants / defendants to the respondent / plaintiff.

s/d-  
Assistant Registrar

//True Copy//

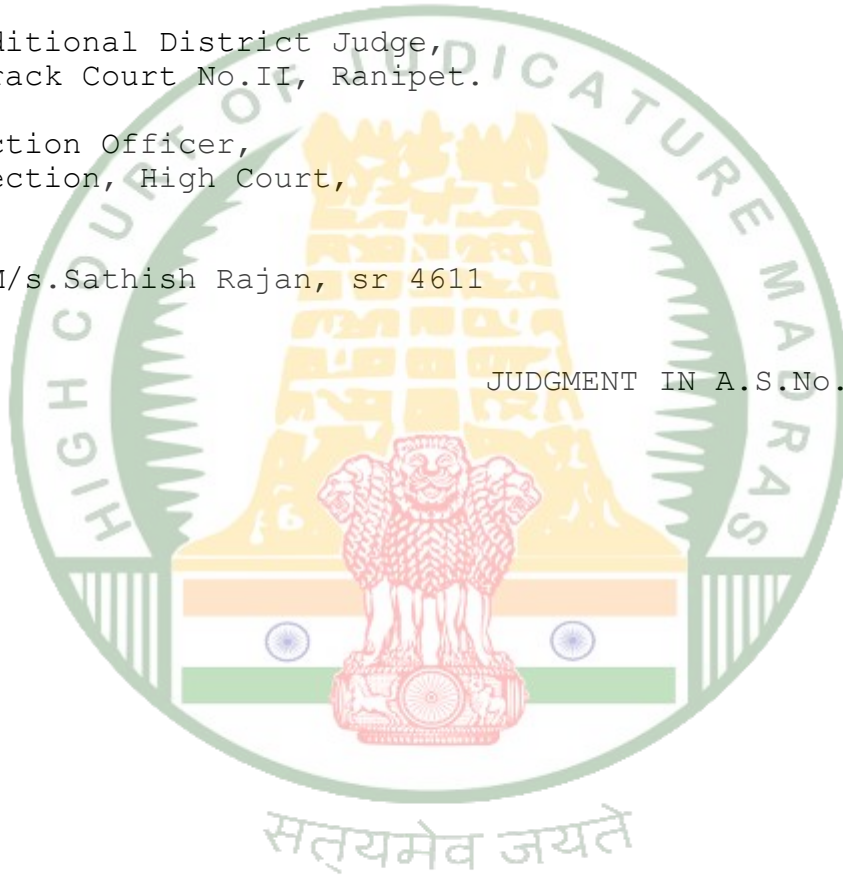
Sub-Assistant Registrar

To:

1. The Additional District Judge,  
Fast Track Court No.II, Ranipet.
2. The Section Officer,  
V.R. Section, High Court,  
Madras

+1 CC to M/s.Sathish Rajan, sr 4611

JUDGMENT IN A.S.No.799 of 2009



WEB COPY