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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-06-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE M.S. RAMESH

Appeal Suit No. 661 of 2008
and
M.P. No. 1 of 2008

M/s. KICM (Madras) Limited
A company registered under
The Companies Act, 1956
having its registered office at
Kekkatty Road
Yelanhalli Post, Ketti Village
Coonoor Taluk

.. Appellant/Defendant

Versus

R. Rangasamy

.. Respondent/Plaintiff

Appeal filed under Section 96 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 20.12.2007 made in O.S. No. 4 of 2007 on the file of District Court, Ootacamund

For Appellant : Mr. R. Subramanian
For Respondent : Mr. S.K. Rakunathan

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

The appellant has come forward with this appeal against the Judgment and Decree dated 20.12.2007 passed in O.S. No. 4 of 2007 on the file of District Judge, Ootacamund. The said suit in O.S. No. 4 of 2017 was filed by the respondent herein for specific performance of the agreement dated 23.09.2005 with an alternative prayer for refund of the balance advance amount and damages of Rs.47,51,000/- with interest at the rate of 12% per annum from the date of suit till payment.

2. The case of the plaintiff/respondent herein before the trial Court is that the plaintiff/respondent is an agriculturist and he was carrying on agricultural activities on a large scale basis in The Nilgiris District. The defendant/appellant is engaged in producing mushrooms in their factory at Yellanalli.



During the course of their business, the defendant/appellant agreed to sell 9000 tons of spent compost to the plaintiff/respondent at the rate of Rs.265/- per ton and for this purpose, the defendant/appellant received a sum of Rs.20 lakhs as advance. In this connection, an agreement was entered into between the plaintiff/respondent and the defendant/appellant on 23.09.2005, pursuant to which the defendant/appellant supplied 440 tons of spent compost till October 2005. Thereafter, due to a strike resorted to by the labourers of the defendant/appellant company, they were unable to supply the quantity. After the strike was withdrawn by the labourers, the defendant/ appellant company commence production during July/August 2006. Subsequently, there was a change in the management of the defendant/appellant company and new Directors have taken over the management of the company. The new management was not inclined to honour the agreement executed by the previous management and therefore, the plaintiff/respondent filed a suit in O.S. No. 183 of 2006 on the file of the District Munsif Court, Coonoor against the defendant/ appellant management for permanent injunction restraining the management from supplying the spent compost to any third parties. Subsequently, the plaintiff/ respondent was advised to enforce the terms of the agreement dated 23.09.2005, and therefore, the plaintiff/respondent filed the instant suit in O.S. No. 4 of 2007 for specific performance of the agreement dated 23.09.2005. In the instant suit, it was contended by the plaintiff/respondent that the defendant management is selling the spent compost at the rate of Rs.600/- per ton to third parties, which the plaintiff/ respondent has agreed to purchase under the agreement dated 23.09.2005 for Rs.265/- per ton. If the plaintiff/respondent has to purchase the spent compost from the present management, they have to pay an additional sum of Rs.335/- per ton. Therefore, the plaintiff, while filing the suit, has also sought for the alternative prayer for refund of the amount proportionate to the balance quantity of spent compost to be supplied by the defendant company.

3. The suit was resisted by the defendant/appellant company contending tht they never entered into any agreement with the plaintiff/respondent herein or they received any payment. There was a change in the management of the company from 29.03.2006 and therefore, the agreement entered into with the plaintiff/ respondent with the erstwhile management of the company will not bind them. It is further contended that there is no privity of contract between the plaintiff/ respondent and the present management of the defendant company. The agreement was entered into between the plaintiff/respondent and one Ramana Epralia in his personal capacity and therefore, such agreement will not bind the present management of the defendant company. Thus, the defendant has sought for dismissal of the suit.



4. On the above contentions, the trial court framed as many as five issues. During trial, the plaintiff/respondent herein examined himself as PW1 and one C. Radhakrishnan was examined as PW2 and Exs. A1 to A-4 were marked. On behalf of the defendant/appellant herein, one C. Mahesh Kumar was examined as DW1 and another witness namely S. Karuppusamy was examined as DW2 and Exs. B1 to B7 were marked. Exs. X1 to X5 were also marked as Court documents. The trial court, upon considering the oral and documentary evidence, rejected the plea of the plaintiff/respondent herein for specific performance, however, decreed the suit for damages and directed the defendant/appellant herein to pay a sum of Rs.47,51,000/- with interest at the rate of 6% per annum from the date of plaint till payment with proportionate cost. It is as against the aforesaid Judgment and Decree of the trial court, the present Appeal suit is filed.

5. Today, when the appeal is taken up for hearing, it is represented by the counsel for both sides that the dispute between the appellant and the respondent has been amicably settled out of Court and to that effect, a Memo dated 16.06.2017 has been filed which was signed by the appellant, respondent and their respective counsel. The memo dated 16.06.2017 reads as follows:-

"The present appeal is filed against the decree and judgment in O.S. No. 4 of 2007 on the file of District Court, Nilgiris at Uthagamandalam. The Plaintiff/ respondent filed a suit for specific performance of an agreement dated 23.09.2005 (wrongly mentioned as 23.09.1995) or in the alternative damages of a sum of Rs.47,51,000/-. The trial Court rejected the relief of specific performance and granted a decree for damages,

During the pendency of the appeal, the parties agreed to settle the disputes out of Court and the matter was referred to Lok Adalat. The appellant has agreed to pay a sum of Rs.18,83,400/- with 6% interest towards the advance amount. The respondent also accepted the proposal. Accordingly, as per the directions of the Lok Adalat, a sum of Rs.1,00,000/- was paid on 09.03.2012.

The matter was referred back to this Honourable Court. Now, the parties have agreed that the appellant would pay a sum of Rs.17,83,400/- with 6% interest with a period of six months from this date and the respondent has also agreed. If the appellant fails to comply with the terms of this memo, then the Trial Court decree will stand. It is therefore prayed that this Honourable Court be pleased to record the above memo and pass a decree in terms of



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the same.

It is also prayed that this Honourable Court may be pleased to direct the Registry to return the court fees paid by the appellnt as per Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act."

6. It is evident that during the pendency of this appeal, the appellant and the respondent have settled their dispute through an out of Court settlement and the terms and condition thereof have been reduced in to writing by a Memo dated 22.06.2017. The said Memo dated 22.06.2017 entered into between the appellant and the respondent is recorded.

7. In the result, the Appeal Suit is disposed of in terms of the Memo dated 22.06.2017 entered into between the appellant and the respondent. The appellant is entitled to refund of half of the Court fee as contemplated under Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act. The Memo dated 22.06.2017 entered into between the appellant and the respondent shall form part of the records. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rsh

To

The Principal District Judge
The Nilgiris @ Ootacamund

+lcc to Mr.R.Subramanian, Advocate SR.No. 44075
+lcc to Mr.S.K.Rakunathan, Advocate SR.No. 44099

AS No. 661 of 2008

RSI (CO)
B.VC (09.08.2021)