

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.01.2017

PRONOUNCED ON: 17.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.162 of 2010

M/s.Saravana Store, represented by its
Partner T.Ellappan, Chennai-1

Plaintiff

Vs

Renganathan, Proprietor
Sendur Caterers, Chennai-31
Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of CPC.

For Plaintiff : Mr.K.Azhagu Raman

For Defendant : Ms.V.J.Latha

JUDGEMENT

This civil suit is filed by the Plaintiff to pass a judgement and decree,
against the Defendant:-

- (a) directing the Defendant to pay a sum of Rs.28,15,390/- (Rupees twenty eight lakhs fifteen thousand three hundred and ninety only) with interest at the rate of 24% per annum on Rs.28,15,390/- from the date of the plaint till the date of repayment of the said amount.
- (b) directing the Defendant to pay the costs of the suit.

2. The Plaintiff is a Partnership Firm, carrying on business as Provisions and General Merchants. The Defendant is a Caterer. The Plaintiff had supplied provisions and general items to the Defendant for running the catering business. There was a running account maintained. It is the case of the Plaintiff that the Defendant had purchased provisions and general items from the Plaintiff to supply to their Canteen at Chennai Petroleum Corporation Limited and in respect of the same, according to the bills and the general ledger, a sum of Rs.17,16,702/- is payable by the Defendant. It had been stated that the last sale was made on 31.5.2007 for Rs.4880/-. The Plaintiff had claimed a sum of Rs.17,16,702/- as on 31.5.2007 with interest at 24% p.a. from 31.5.2007 till the date of the plaint, which amounted to Rs.28,15,390/- and further interest till the date of realisation and for costs.

3. In the written statement filed by the Defendant, it had been stated that the Plaintiff does not disclose the date on which the supply commenced. It had been stated that the Defendant was clearing the bills as and when goods were supplied either by cash or by cheque and there was no running account. It had been stated that according to the statement of accounts filed in Document Nos.1 and 2, the transaction commenced from 1.4.2006 and the Plaintiff has claimed after a period of four years and has not demanded any amount. It had been stated that the Defendant had purchased provisions not only for the Canteen at Chennai Petroleum Corporation Limited, but also for other places where the Defendant was having hotel business. Since the Defendant stopped purchasing from the Plaintiff,

this false case had been filed. It had been stated that the Canteen at Chennai Petroleum Corporation Limited had been closed in May 2007 and all amounts had been paid. The Defendant denied the claim of the Plaintiff and stated that the suit must be dismissed.

4. On perusal of the pleadings of the parties and other materials on record, by order dated 22.04.2014, the following issues were framed for determination:-

1. Whether the Plaintiff is entitled to a decree for a sum of Rs.28,15,390/-?
2. Whether the statement of accounts produced by the Plaintiff is correct?
3. Whether the suit is barred by limitation?
4. Whether the Plaintiff is entitled to interest at 24% per annum?
5. Relief and cost?

5. On the side of the Plaintiff, the Partner of the Plaintiff Firm, T.Ellappan was examined as PW.1 and Ex.P1 to Ex.P6 were marked. These documents include the registration certificate of the Plaintiff Company as Ex.P1, the extract from the general ledger for the period 2006-2007 as Ex.P2, the extract from the general ledger for the period 2007-2008 as Ex.P3, the original credit bills issued by the Plaintiff to the Defendant for the period 2007-2008 as Ex.P4 (series), the notice issued to the Defendant dated 10.7.2008 as Ex.P5 and the reply issued by the Defendant as Ex.P6. On the side of the Defendant, the Manager of the Defendant Firm N.Padmaraj was examined as DW.1 and Ex.D1 to D3 were marked.

Ex.D1 is the bills with respect to sales and purchase of provisions. Ex.D2 is the authorization letter given to DW.1. Ex.D3 is the statement of accounts given by the Defendant.

6. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

7. **Issue (1):** The Plaintiff is a Partnership Firm. The plaint had been verified by one of the Partners T.Ellappan. The same Partner also gave evidence on behalf of the Plaintiff as PW.1. The registration certificate of the Plaintiff Firm had been produced as Ex.P1. Competency of the Plaintiff Firm or the competency of PW.1 to institute the suit has not been challenged by the Defendant. The Defendant is a sole proprietary concern. However, the witness, who appeared on behalf of the Defendant, was the Manager and the Sole Proprietor did not come forward to give evidence.

8. The Plaintiff is carrying on business as Provisions and General Merchants. This means that they supplied goods, which are grocery items and which are necessary for the running of any Canteen. The Defendant is a Caterer having a Canteen at Chennai Petroleum Corporation Limited. To run the said Canteen, the Defendant required provisions and grocery items. The Plaintiff, according to the plaint, had supplied continuously such items to the Defendant. The invoices for the said items had been produced in the form of extract from the general ledger for the period 2006-2007 as Ex.P2, the extract from the general ledger for the period 2007-2008 as Ex.P3 and the credit bills for the period 2007-

2008 as Ex.P4. The Defendant also admitted the purchase of provisions and grocery items from the Plaintiff. They have produced Ex.D1 (Series) which are the original bills. The above facts establish the following:-

- i. The Plaintiff is having business in the sale and supply of provisions and grocery items.
- ii. The Defendant is a Caterer, who requires the provisions and grocery items.
- iii. The Defendant had a Canteen at Chennai Petroleum Corporation Limited.
- iv. The Plaintiff had supplied the provisions and grocery items to the Defendant.

9. The suit is now based on the claim of the Plaintiff that the Defendant had failed to pay a sum of Rs.17,16,702/- with respect to the sale of provisions and grocery items to the Defendant. It has been stated that the last sale was made on 31.5.2007. It had been further stated that the Plaintiff and the Defendant had a running account and consequently, the said amount was accumulated liability of the Defendant towards the outstanding bills for the supplies already made. In this connection, the Plaintiff in the plaint had stated as follows:-

“3. The Plaintiff states that they are carrying on business as Provisions and General Merchants and the Defendant is doing business in the line of Catering and the Defendant is having running account with the Plaintiff for the purchase of Provisions and General Items for their business from the Plaintiff.”

In this connection, in the written statement, the Defendant, admitting the purchase of provisions and grocery items from the Plaintiff, had stated as follows:-

“In fact the Defendant was clearing the bill as and when it was supplied either by way of cash or cheque and had never had a

running account.”

10. The evidence on the above aspect will now has to be seen. The Plaintiff has produced Ex.P2, which is the extract from the general ledger maintained by the Plaintiff in the head of the Defendant for the period from 1.4.2006 to 31.3.2007. This had been produced as Ex.P2. A perusal of Ex.P2 reveals that the Plaintiff has given the date, the invoice/bill number, the name of the account, the amount and the balance due. This has been challenged by the learned counsel for the Defendant that the outstanding balance has also been taken into account and there is no averment in the plaint regarding the first date of sale. In this connection, the suit had been filed with respect to the outstanding for the three years prior to the institution of the suit. Consequently, Ex.P2 cannot be rejected on the face of it. As a matter of fact, the Plaintiff has also produced Ex.P3, which is the extract from the general ledger for the period 2007-2008 and the credit bills as Ex.P4. The Defendant has also produced series of bills, as Ex.D1, reflecting transaction between the Plaintiff and the Defendant. It is the stand of the Defendant that there had been periodical payments towards the outstanding and consequently, the Defendant is not liable to make any payment. It is also stated that the Defendant had settled the bills then and there.

11. With respect to the claim of the Defendant that the amounts were paid by cash, PW.1, during his cross examination, has stated,

“We used to collect payment by way of cheques from the Defendant. We are maintaining ledger for Sendur Caterers. For other Caterers they used to purchase by cash payment. I deny the suggestion that the Defendant sometimes paid by way of cheque and also some times by cash”

It is thus seen that the Plaintiff has come to the court with a specific stand that they have not accounted for each and every payment made by the Defendant. DW.1 during the cross examination has stated as follows:-

“The entire cash dealings is reflected in our annual turn over and also in the income tax returns. I have not filed the cash ledger maintained in our Chetpet Office for the approximate amount of Rs.10 lakhs monthly. For any amount above Rs.5000, I am aware that voucher shall be received. I am aware that if the amount is more than Rs.20,000/- the stamp voucher shall be obtained. I have not produced any cash voucher or stamp voucher received from the Plaintiff for the payments made to him.”

It is thus seen that the Defendant had not substantiated their claim that they have paid amounts in cash. Moreover, DW.1 further admitted as follows during the cross examination:-

“From date of starting the Sendur Caterers at Chennai Petroleum Corporation Limited, the Defendant started purchasing from the Plaintiff shop only. For the goods supplied, we used to pay part wise and not on the base of any specific bills. From 2005, it was a running account. ”

It is, therefore, evident that the Plaintiff and the Defendant had a continuous series of transactions and the Defendant paid amounts as shown in Ex.P2 and Ex.P3 in lump sum for the accumulated value of the bills. The payment for each and every bill was not paid then and there. The following questions and answers of DW.2 would further emphasise that the Defendant had not given the entire picture before this court:-

“Ex.D3 is only a few pages removed from the ledger. The remaining pages are available in the ledger. Ex.D3 is removed from one single ledger. We maintain single ledger for our suppliers. I

deny the suggestion that the pages of Ex.D3 was removed and collected from three different ledgers.

Q: I suggest to you that in Ex.D3, page 1 to 6 for the entries made in the year 2005 and page nos.1 to 6 for the entries made in 2006 and 2007 and also pages 181 to 184 in respect of the year 2007 were removed from 3 different ledgers and filed as Ex.D3 before this court.

A: Yes, it would have been taken from 3 ledgers.

I deny the suggestion that if all the three ledgers were produced before this court, it will reflect the entire transaction that is why we have suppressed the production of original ledgers before this court. I deny the suggestion that there are insertions for a dealing of Rs.11 lakhs. It is correct to state that in page 1 of Ex.D3, on 9.6.2005, eight entries were removed by whitener and re-written. In Ex.D3, page wise total, month wise total or year wise total is not carried out using ink pen. In page 4 of Ex.D3, whitener is used in 3 entries. In page no.1, entries for the year 2006, whitener is used for two entries.”

It is, therefore, seen that the Defendant had also produced documents which cannot be relied on by the court. The Defendant had admitted purchase of goods from the Plaintiff. There has been continuous transaction between the Plaintiff and the Defendant. There has been corrections in Ex.D3 produced by the Defendant. When all these aspects are taken together, I find no reason to reject the claim of the Plaintiff based on the documents produced by the Plaintiff. It is further seen that the last sale was made on 31.5.2007 for Rs.4880/-. The Plaintiff had also issued an advocate notice marked as Ex.P5. In Ex.D6, which is the reply issued on behalf of the Defendant, again, the purchase of goods has not been denied. It has been only stated that the payments had been made then and there. When the Defendant comes to court with such a specific stand, the onus is on the Defendant to prove

discharge. They have not done so and I consequently hold that issue (1) has to be answered in favour of the Plaintiff.

12. **Issue (2):-** The Defendant had challenged the statements Ex.P2 and Ex.P3 produced by the Plaintiff. It has been the contention of the Defendant that the earliest date of sale has not been given. It has been stated that the outstanding as on May 2006 has also been included in the claim made by the Plaintiff. I am unable to convince myself to accede to the stand of the Defendant. If the Defendant pleads discharge, then they should establish that they have paid the amount. It is an admitted case that the Plaintiff and the Defendant are doing business with each other. The Plaintiff has produced the extracts from the general ledger as Ex.P2 and Ex.P3. The Defendant has produced the statement of account as Ex.D3. However, it is seen that Ex.D3 contains erasures by whitener and over writings. If the Defendant has to challenge the statement of accounts produced by the Plaintiff, then they could do so only if they produce their statement of accounts which is acceptable to the court. The Defendant must come forward with best evidence. In fact, even DW.1, who is the Manager, is not actually a competent person to represent the Defendant, which is a sole proprietary firm. On all these grounds, I hold that the statement of accounts Ex.P2 and Ex.P3 which are the extracts from the general ledger and also Ex.P4 (series) which are credit bills which correspond to Ex.D1 bills produced by the Defendant, reflect liability on the part of the Defendant to the Plaintiff. The statement of accounts produced by the Plaintiff is acceptable and admissible in the court of law. This issue is answered accordingly

in favour of the Plaintiff.

13. **Issue (3):-** The Defendant has claimed that the suit is barred by the law of limitation on the ground that the earliest date of sale has not been disclosed by the Plaintiff. The Plaintiff, on the other hand, has based the claim on the basis of last date of sale, namely, 31.5.2007, which is for a sum of Rs.4880/-. They have, therefore, presented the suit on 3.2.2010, which is within the period of limitation. Consequently, I hold that the suit is not barred by law of limitation. This issue is answered in favour of the Plaintiff.

14. **Issue (4):-** The Plaintiff and the Defendant have been engaged in commercial transactions. The Plaintiff had supplied provisions to the Defendant. The Defendant had made use of such provisions to run his Canteen at Chennai Petroleum Corporation Limited, thereby making profit. By sale of food items in the Canteen, the Defendant had gained in his business. This is a result of the supply of the goods by the Plaintiff. Consequently, this being a commercial transaction, I hold that there is no reason to dis-entitle the Plaintiff from claiming interest at the rate of 24% per annum. This issue is also answered in favour of the Plaintiff.

15. In the result, this civil suit is decreed against the Defendant for a sum of Rs.28,15,390/- (Rupees twenty eight lakhs fifteen thousand three hundred and ninety only) with interest at the rate of 24% per annum from the date of the plaint till the date of decree and thereafter at 6% from the date of the decree till the date of realisation and with costs. Time for payment is three months.

17.02.2017

Index:Yes/No

Web:Yes/No

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To:

The Record Keeper, VR Section, High Court, Madras

C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.162 of 2010

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