

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, THE ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Original Side Appeal No.201 of 2016

&

Civil Suit No.292 of 2016

S.Savitha

...Appellant in OSA/
Plaintiff in CS

Vs.

M/s. Aesseal India Private Limited
No.41, J Block, II Main Road
Anna Nagar East
Chennai 600 102.

...Respondent in OSA
/ Defendant in CS

Appeal under Order VI, Rule 9 of O.S.Rules read with Clause 15 of the Letters Patent, against the order dated 08.8.2016 made in A.No.2911 of 2016 in C.S.No.292 of 2016 on the file of this Court and Suit under Order IV Rule 1 of O.S. Rules read with Order VII, Rule 1, CPC.

For Appellant in OSA/ Mrs.Chitra Sampath, S.C.
Plaintiff in CS : For Mr.C.Jagdish
For Respondent in OSA/
Defendant in CS : Mr.Arun Karthik Mohan

J U D G M E N T

(Delivered by the Hon'ble Acting Chief Justice)

The above Original Side Appeal is directed against the order dated 08.8.2016 made in A.No.2911 of 2016, rejecting the plaint in C.S.No.292 of 2016.

2. The Civil Suit has been filed for directing the defendant to pay the plaintiff a sum of Rs.42,15,017/- together with subsequent interest at 18% per annum from the date of the plaint till the date of realisation and directing the defendant to pay the plaintiff a sum of Rs.1,00,00,000/- together with subsequent interest @ 18% per annum from the date of plaint, till the date of realisation.

3. When the matters were taken up for hearing, the learned senior counsel appearing for the appellant/plaintiff and the learned counsel appearing for the respondent/defendant submitted that the parties have settled their dispute and entered into compromise and also filed a joint memo of compromise. The said joint memo of compromise dated 23.02.2017, reads as under:

"JOINT COMPROMISE MEMO FILED BY THE
APPELLANT AND THE RESPONDENT

1. The respondent has been supplying mechanical seals to the appellant since the year 2009. Certain differences/disputes arose between the appellant and the respondent (hereinafter collectively referred to as "the Parties") in the year 2014-2015, where it was the appellant's case that the mechanical seals supplied by respondent did not confirm to specifications especially in terms of sleeve thickness, and resultantly the seals failed. The appellant withheld payment of respondent's invoice amounts, and accordingly respondent was constrained to issue notice dated 21 April 2016 to the appellant for payment of outstanding amount of Rs.16,57,231.94 (Rupees Sixteen Lakhs Fifty Seven Thousand Two Hundred and Thirty One and Paise Nine four only) due and payable by the appellant against the invoices raised by the respondent;

2. The appellant herein filed C.S.No.292 of 2016 before this Hon'ble Court for recovery of a sum of Rs.42,15,017/- (Rupees Forty Two Lakhs Fifteen Thousand and Seventeen Only) along with damages for Rs.1,00,00,000/- (Rupees one crore only). Pending the suit the respondent herein filed Appln.No.2911 of 2016 to reject the plaint on the ground of want of jurisdiction and by order dated 08.8.2016 the plaint has been returned to be presented before the appropriate court. Further the respondent was directed to furnish Bank Guarantee for Rs.20,00,000/- for a period of 4 weeks and accordingly the respondent has furnished bank guarantee No.GOVBO606853 dated 7 September 2016 issued by Hong Kong Shanghai Banking Corporation Limited in favour of the Registrar General of High Court of Madras for an amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) for a period of 4 weeks;

3. Challenging the order of return of plaint passed in Appln.No.2911 of 2016 dated 8 August 2016, the captioned appeal has been filed and vide order dated 30 September, 2016, the

respondent was directed to keep the Bank Guarantee furnished by them alive till the disposal of the appeal. In compliance with the directions of the Hon'ble Madras High Court, the Bank Guarantee No.GOVBO606853 dated 7 September, 2016 was amended so as to be kept alive pending disposal of OSA 201 of 2016;

4. That after mutual amicable discussions between the Parties on various dates, including by way of mediation at the Madras High Court Mediation Centre, the Parties have voluntarily and out of their respective free will and consent mutually decided to resolve and settle all past, present and future inter se disputes/claims relating to and/or in connection with or arising out of the above referred disputes/differences and legal proceedings;

5. Accordingly the Parties have voluntarily, with free consent and without any force, pressure, coercion and/or undue influence, decided to settle all disputes/differences/claims on the following terms and conditions

a. The respondent hereby this day made the payment of INR 30,00,000/- (Rupees Thirty Lakhs Only) to the appellant in full and final settlement of the entire dispute between the Parties by way of DD no.449449 for Rs.16,00,000/- (Rupees Sixteen Lakhs Only) and DD no.449450 for Rs.14,00,000/- (Rupees Fourteen Lakhs Only), both dated 22.02.2017 and in favour of Reco Process Pumps, drawn on HSBC bank. The appellant hereby confirms and acknowledges the receipt of the same towards the full and final settlement of the entire disputes/differences/claims and legal proceedings between the Parties.

b. Upon receiving payment of the settlement amount as above and execution of this compromise memo, each of the Parties hereby agree that they shall not have any rights or claims against the other in respect of all or any of the transactions, including but not limited to supplies and services rendered by the respondent to the appellant, till date and further agree and undertake not to initiate or continue to pursue any legal proceedings, legal notices, letters or any other written or oral communication in respect thereof, including in respect of the demand of Rs.16,57,231.94 (Rupees Sixteen Lakhs

Fifty Seven Thousand Two Hundred and Thirty One and paise ninety four only) by the respondent vide their legal notice dated 21 April 2016. The Parties will not initiate or continue to pursue any action including any legal action and proceeding against the other party.

c. In consideration of the above the appellant has returned to the respondent the following 12 seals manufactured and supplied by them

	Description	Quantity
1	80 mm CSS IC	1
2	105 mm CSS IC	1
3	70 mm FICDP	2
4	65 mm FICDP	1
5	90 mm CDSA	1
6	55 mm CDPH	2
7	60 mm CDPH	2
8	70 mm CDPH	2
	Total	12

The appellant has no right and the respondent has no obligation or liability whatsoever in respect of aforementioned 12 seals and the same are the lawful property of the respondent.

d. Prior to instituting the Suit C.S.No.292 of 2016, the appellant has returned the following 6 seals manufactured by the respondent back to them.

	Description	Quantity
1	Dia 70 mm	1
2	Dia 70 mm	1
3	Dia 60	1
4	Dia 70	1
5	Dia 70	2
	Total	6

As part of the present settlement terms, the respondent shall retain the 6 Seals and the appellant agrees and acknowledges that it has no right or claim, and hereby relinquishes any rights or claims that it may have, to or in respect of the said 6 Seals, and the 6 Seals are

lawful property of the respondent.

e. The appellant further acknowledges, agrees and confirms that regarding the following 23 seals manufactured and supplied by the respondent to the appellant, no liability whatsoever, including by way of any warranty/guarantee, lies with the respondent in respect of the said 23 Seals, and the respondent is not obligated and/or liable to repair the said 23 Seals or reimburse/refund any amounts to appellant in respect of the said 23 Seals. The 23 Seals are property of appellant and all the liability in respect of the said 23 Seals lies with appellant and the respondent is hereby duly indemnified by the appellant against any claims or actions in this regard. The details of the 23 Seals which the appellant has supplied to third party clients/purchasers, namely M/s Paradeep Phosphates Limited ("PPL") and M/s Zuari Seals ("Zuari"), are as follows:

	Description & Purchaser	Quantity
1	Dia 60 to PPL	8
2	Dia 60 to PPL	3
3	Dia 60 to PPL	1
4	Dia 70 to Zuari	2
5	Dia 60 to Zuari	2
6	Dia 70 to Zuari	5
7	Dia 70 to Zuari	2
	Total	23

f. Further in consideration of the above, the appellant has no objection to the release of the bank guarantee to the respondent being bank guarantee No.GOVBO606853 issued by Hong Kong Shanghai Banking Corporation Limited in favour of the Registrar General of High Court of Madras for an amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) given in pursuance of the orders of this Hon'ble Court. The appellant hereby agrees and undertakes to provide the respondent with all reasonable and necessary assistance towards release of the Bank Guarantee.

g. The respondent hereby acknowledges and confirms receipt of the pending 'C' Forms from

the appellant in respect of supplies made by the respondent from its Pune unit to the appellant till date.

h. In view of this joint compromise entered between the Parties the respondent has no objection for the appellant to get the return of entire court fee paid by them in C.S.No.292 of 2016 and each party will bear their respective costs.

The decree may be drafted in the terms of the joint compromise memo and this joint compromise memo may also kindly be made to form part of the decree.

Dated at Chennai on this 23rd day of February 2017."

4. The above memo of compromise is taken on record. Consequently, the Original Side Appeal and the Civil Suit are disposed of in terms of the memo of compromise. The Bank Guarantee furnished by the respondent shall be released to the respondent. The entire Court fee shall be refunded to the appellant, as per the Rules. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl

To

The Sub Assistant Registrar,
Original Side,
High Court, madras.

+1cc to Mr.Ashokkumar, Advocate, S.R.No.12326
+1cc to Mr.Arun karthik mohan, Advocate, S.R.No.11975

VSN(CO)
RS(14/03/2017)

OSA No.201 of 2016 &
C.S.No.292 of 2016.