IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :19.12.2016

Pronounced on : 03.01.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.756 of 2013

Nizam Coal Private Limited formerly known as
Yasin Agencies Private Limited
Rep. by its Vice President
S.Fazlur Rahman,
Flot No.G-2, Ground Floor,
J.V.L.Paradise,
New No.117, Old No.49,
New Avadi Road, Kilpauk,
Chennai - 600 010. .. Plaintiff

vs.

1. R.S.Exports,
rep. by its Managing Director,
WVN Manor,
62/138, Santhome High Road,
Triplicane, Chennai - 600 004.

2. W.V.Rajendra Prasad,
WVN Manor,
62/138, Santhome High Road,
Triplicane, Chennai - 600 004. .. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant.

a) Directing the defendants to pay to the plaintiff a sum of Rs.1,38,90,300/- (Rupees one Crore Thirty Eight Lakhs Ninety Thousand Three Hundred Only) along with interest at the rate of 24% per annum on the sum of Rs.1,36,17,942/- (Rupees One Crore Thirty Six Lakhs

Seventeen Thousand Nine Hundred and Forty Two Only) from the date of plaint till the date of realization.

(b) costs of the suit;

For plaintiffs : Mr.PL.Narayanan

For Defendant : Mr.K.Rajasekaran

J U D G M E N T

The suit is filed for recovery of a sum of Rs.1,38,90,300/- along with interest at the rate of 24% per annum on the sum of Rs.1,36,17,942/- from the date of plaint till the date of realization and for costs.

2. The brief facts of the case of the plaintiff are as follows:

The first defendant is a registered company. The plaintiff is a group of companies who are suppliers of coal. The first defendant placed a trial purchase order with the plaintiff on 07.11.2012 for a quantity of 300 MTs. The second defendant held out that he is a man of substantial means and the plaintiff could rely on the credit worthiness and extend credit facilities to the first defendant. Accordingly, the defendants have purchased coal as per their various purchase orders. However, the first defendant committed default in the month of August and sought time for payment of money and issued cheques. Subsequently, all the cheques were dishonoured. As the the purchase orders were placed on 12.12.2012, the first defendant also brought down the liability to around Rs.1,00,00,000/- on or before the end of June, 2013. Besides, they also confirmed the balance outstanding as on 31.01.2013. The defendants are due of Rs.1,36,17,942/- as on 07.12.2013. In this regard, the plaintiff also issued legal notice to the defendants. Hence, this suit has been filed for recovery of a sum of Rs.1,36,17,942/ with interest at the rate of 24%.

3. The brief averments of the written statement filed by the second defendant :

It is the case of the second defendant that he has not given any guarantee to the plaintiff. It the contention of the defendant that the alleged confirmation of balance statement of accounts is not correct. In fact, there was a variance in quality of the sample supplied and the materials supplied. In view of the quality difference, the purchaser has refused to make payment. Anticipating their payment, the defendant had issued post dated cheques for the purpose of security alone. The difference in quality was supplied with the knowledge of the plaintiff. The alleged confirmation of balance was prior to the adjustment of the debit notes. Hence, prayed for dismissal of the suit.

4. On the basis of the above pleadings, this Court framed the following issues on 12.10.2015.

1. Whether the plaintiff is entitled for the suit claim?

2. Whether the plaintiff is entitled for an interest @ 24% p.a. on the suit claim?

3. To what relief, the plaintiff is entitled to?

5. On the side of the plaintiffs, P.W.1 was examined and Exs.P1 to P26 were marked. On the side of the defendants D.W.1 was examined and no documents were marked on the side of the defendant. The details of the same are hereunder:

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	12.07.2012	Purchase Order for 300 MTs coal from 1st defendant to plaintiff
2.	P-2	13.07.2012	Purchase Order from 1st defendant to plaintiff

S.No.	Exhibits	Date	Description
3.	P-3	17.07.2012	E-mail copy of purchase order for 1500 MTs coal from 1st defendant to plaintiff
4.	P-4	06.08.2012	E-mail copy of purchase order for 2000 MTs coal from 1st defendant to plaintiff
5.	P-5	15.09.2012	E-mail copy of purchase order for 3000 MTs coal from 1st defendant to plaintiff
6.	P-6	12.12.2012	E-mail copy of purchase order for 3000 MTs coal from 1st defendant to plaintiff
7.	P-7	29.08.2012	E-mail coy of letter from 1st defendant to plaintiff
8.	P-8	01.09.2012	E-mail coy of letter from 1st defendant to plaintiff
9.	P-9	21.11.2012	E-mail copy of letter from 1st defendant to plaintiff
10	P-10	31.12.2012	E-mail copy of letter from 1st defendant to plaintiff
11	P-11	21.01.2013	E-mail copy of letter from the plaintiff to 1st defendant
12	P-12	07.03.2013	E-mail copy of letter from 1st defendant to plaintiff
13	P-13	22.03.2013	E-mail copy of letter from 1st defendant to plaintiff
14	P-14	05.04.2013	E-mail copy of letter from 1st defendant to plaintiff
15	P-15	19.06.2013	E-mail copy of letter from 1st defendant to plaintiff
16	P-16	26.06.2013	E-mail copy of letter from 1st defendant to plaintiff
17	P-17	12.07.2013	E-mail copy of letter from plaintiff to 1st defendant
18	P-18	12.07.2013	E-mail copy of letter from 1st defendant to plaintiff

S.No.	Exhibits	Date	Description
19	P-19	--	Copy of statement of post dated cheques commencing from 22.02.2013 ending with 25.06.2013
20	P-20	01.08.2013	Copy of Ledger account extract for the period from 01.06.2012 to 30.07.2013 of the plaintiff
21	P-21	01.08.2013	Office copy of statement of payments made by the 1st defendant to the plaintiff from 14.08.2012 to 30.05.2013
22	P-22	14.08.2013	Office copy of legal notice from plaintiff to the 1st defendant
23	P-23	24.08.2013	Reply notice sent by the the first defendant
24	P-24	26.08.2013	Copy of the rejoinder issued by the plaintiff to the first defendant
25	P-25	28.08.2013	Acknowledgment for receipt of rejoinder notice from the first defendant
26	P-26	30.09.2013	Copy of legal notice issued by the plaintiff to second defendant

Witnesses examined on the side of the plaintiffs:

P.W.1. - Mr.Fazlur Rahman

Witnesses examined on the side of the defendant

D.W.1 – Mr.W.V.Rajendra Prasad

6. It is the contention of the learned counsel for the plaintiff that the supply of coal by the plaintiff to the defendants is not disputed. The entire transaction is admitted. All the documents filed by the plaintiff are also admitted by the defendants. Except general denial in the written statement, there is no specific denial whatsoever has been made. The contention of the defendant that the inferior quality of coal has been supplied is without any basis. The said stand has been taken by the defendant only for the purpose of defence. The supply was effected continuously and delivery has been taken without any complaint whatsoever. Having accepted the accounts and confirmed the balance, the contention put forth by the defendants with regard to the supply of inferior quality of the coal has no basis at all. Hence, submitted that the plaintiff is entitled to a decree. Though, the plaintiff is entitled to 24% interest, the learned counsel for the plaintiff fairly submitted that awarding of interest is left to the discretion of the Court.

7. The learned counsel for the second defendant has submitted that since the plaintiff has not supplied good quality of materials, it has resulted in issuing of debit notes at the end of the purchasers. Therefore, submitted that the second defendant is no way liable to pay the

amount. If really, there was a default by the defendants, there was no necessity for the plaintiff to issue order on 18.09.2012. All these facts show that because of the debit notes issued with regard to the supply of poor quality of coal, the plaintiff is not entitled to the suit claim.

8. In the above background and in the light of the submissions, issues have to be answered.

9. Issue Nos.1 to 3 :

It is not disputed by the defendants regarding the supply of coal as stated by the plaintiff in the pleadings. The rate and quantity is also not disputed by the defendants. Ex.P.1 to Ex.P.6 purchase orders dated 12.07.2012, 13.07.2012, 17.07.2012, 06.08.2012, 15.09.2012 and 12.12.2012 clearly prove the fact that the materials have been supplied by the plaintiff to the first defendant. In Ex.P.1 dated 12.07.2012 and Ex.P.3 dated 17.07.2012, the second defendant has also signed. Ex.P.5, which is also a purchase order, has been issued by the second defendant. Ex.P.6 to 18 are the correspondences between the plaintiff and the first and second defendants. These facts have not been disputed by the defendants. In fact, these documents have not been disputed by the second defendant in his cross examination. He has categorically admitted these documents in his cross examination. Further he has also admitted that he has not done any quality check at any point of time. Therefore, now he cannot contend that poor quality of coal was supplied. In fact, he has admitted in his evidence that since they have not received the payment from their clients, he has agreed to pay the balance to plaintiff at a later point of time. Having agreed to pay the balance, now he cannot contend that poor quality of coal has been supplied to them. That stand has been taken for the first time while issuing reply notice to the plaintiff. During their business transaction, there was no whisper whatsoever with regard to the poor quality of the coal supplied.

10. As per the exhibits filed by the plaintiff, the transaction between the plaintiff and the defendants started on 12.07.2012 as could be seen from Ex.P.1. As per Ex.P.2 dated 13.07.2012, the first defendant requested the delivery of 300 MTs and Ex.P.3 is a letter through e-mail dated 17.07.2012, the defendants have requested to release the delivery order. Similarly, Ex.P.4 is another letter requesting to release of the delivery order wherein the second defendant is not a party. Ex.P.5 also is a communication sent by the first defendant requesting the plaintiff to release the delivery order. Ex.P.6 is also a similar letter addressed by the first defendant. Ex.P.7

and Ex.P.8 are correspondences from the first defendant which shows that they have requested to present the cheque at a later point of time, as their Managing Director was out of country. Ex.P.10 infact, is a communication sent by the first defendant agreeing to release Rs.25,00,000/- per week. It is also clearly stated in the letter that due to poor collections in the month of December, 2013, they are not in a position to make payment. Ex.P.11 is a communication sent by the plaintiff to the defendant informing the defendants to pay the amount otherwise the cheques issued by them will be presented for collection. The first defendant, by a letter dated 07.03.2013 has informed the plaintiff that they are discussing with the bank for enhancing their limits and also they are trying to arrange some private funds. Ex.P.13 is another letter addressed by the first defendant to the plaintiff requesting not to present the cheques until the defendants inform them to present the cheques. Ex.P.14 is a communicated dated 05.04.2013 which is the confirmation sent by the second defendant requesting the plaintiff to present the cheques. In Ex.P.15 dated 19.06.2013, the first defendant in fact agreed to settle the matter after making private finance arrangements. Similarly, a letter was also sent on 12.07.2013 under Ex.P.17 by which the first defendant has confirmed the accounts as on 31.03.2013 for a sum of Rs.1,98,93,711/- as per their books of accounts and also requested the balance confirmation as on 31.03.013 from the plaintiff. As per Ex.P.18, the plaintiff has given confirmation of balance as on 12.07.2013 as Rs.1,98,93,711/-. The numbers of the cheques issued and the balance amount payable by the defendants is also found place in the statement of accounts Ex.P.19. Ex.P.20 is also a statement of accounts maintained by the plaintiff in respect of the transaction which shows that a sum of Rs.1,36,17,942/- is due from the defendants. Ex.P.21 is the statement of accounts maintained by the plaintiff from 14.08.2012 to 30.05.2013. A legal notice was also issued by the plaintiff under Ex.P.22 dated 14.08.2014 calling upon the defendants to settle the dues to the plaintiff.

11. It is to be noted that from the inception of the contract till the issue of the legal notice on 14.08.2013, there is no complaint whatsoever with regard to the poor quality coal supplied by the plaintiff. Only in the reply notice, for the first time, the first defendant has taken a stand that subsidised quality of coal was supplied to them. This notice has been issued subsequent to the account confirmation made by the first defendant. Therefore, the contention of the defendant about the poor quality cannot

be countenanced at all. After which a rejoinder also was issued under Ex.P.24. Separate legal notice has also been issued to the second defendant in this regard.

12. The defendants, having accepted the entire transaction and after confirmation of the outstanding balance by them, now they cannot take a defence that a poor quality of the coal has been supplied to them. In his evidence, D.W.1 has not disputed the entire correspondences between them. Having admitted and after confirmation of the balance, the defendants, now cannot complain that only because of the poor quality, the payment was hold by the purchasers. Further, absolutely there is no evidence whatsoever available on the side of the defendants to show that poor quality of coal was supplied to them. Without any evidence with regard to the quality of coal supplied to them, mere pleading alone cannot prevent the plaintiff from recovering their legal dues. Having accepted the delivery then and there, supplied to the various purchasers, now they cannot take the said defence only for the sake of this suit.Therefore, their contention has not been substantiated legally. Further, having accepted the balance payable by them, the defendants are estopped from taking a contrary view. Accordingly, this Court hold that the plaintiff is entitled to the suit amount. The plaintiff is entitled to

recover a sum of Rs.1,36,17,942/- as per their accounts from the defendants. As there is no specific contract between the parties to pay a particular rate of interest, this Court taking into consideration of the commercial nature of the transaction between the parties, the plaintiff is entitled to recover a sum of Rs.1,36,17,942/- along with interest at the rate of 12% per annum from the 12.07.2013 till the date of realization and the issues are answered accordingly.

13. In the result, the suit is decreed against the defendants for a sum of Rs.1,36,17,942/- along with interest at the rate of 12% per annum from 12.07.2013 till the date of realization with costs.

sd/.N.S.K.J

03.01.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/13.04.2017 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.