IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

A.S.No.779 of 2009

M/s.Maxworth Home Ltd.,
Represented by its Legal Manager,
Mr.S.Sivasailapathi,
Maxworth Nagar,
Chennai-600 117. ... Appellant/Defendant

Vs

M/s.Security Counsel,
Represented by its Proprietrix,
Mrs.R.Seetharam,
Mahalakshmi Buildings,
Old No.92, New No.98,
Mount Road, Guindy,
Chennai-600 032. ... Respondent/Plaintiff

Prayer :- First Appeal filed under Section 96 of C.P.C., against the Judgment and Decree dated 10.09.2007 passed in O.S.No.2297 of 2005, on the file of the learned VII Additional City Civil Judge, Chennai.

For Appellant : Mr.G.Sundaram

For Respondent : Mr.Ajoy Kumar Gnanam

JUDGMENT

This appeal is preferred against the exparte decree in a money suit, wherein, the plaintiff has made a claim for Rs.6,60,883.20 along with an interest component of Rs.2,59,232.65, calculated at the rate of 24% p.a. Parties will be referred to as per their ranks in the suit.

2. The brief facts which are necessary for the current purpose are : The respondent/plaintiff is a security service concern, that on 02.09.1996 it entered into a contract for providing security services (marked as Ext.A2) with the appellant/defendant, and the same was communicated to the appellant/defendant. There was a letter from respondent to appellant marked as Ext.A4 dated 18.11.1996. This was accepted

by the appellant. Thereafter, Vide letter Ext-A5, dated 15.12.1998, the appellant/defendant has communicated to the respondent/plaintiff about his financial constraints and required the plaintiff to terminate the contract, and accordingly, contract stood terminated. According to plaintiff, outstanding service charges payable as on 31.03.2002 was Rs.2,46,184.95. On 30.04.2002, it sent a letter demanding the same and Vide communication dated 29.05.2002, the same was confirmed by the appellant/defendant. However, no payments came forth and hence, the respondent/plaintiff filed the suit claiming the said amount payable with interest at 24% p.a., both totalling a sum of Rs.6,60,883.20, as on the date of filing of the suit.

3. The appellant/defendant did not choose to contest the suit, and it was set exparte, consequent to which an exparte decree came to be passed. The correctness of the decree is now under challenge in this appeal.

4. The learned counsel for the appellant made the following submissions:

- The case of the appellant is that the letter of acknowledgment dated 29.05.2002 (marked as Ext.A6 before the trial court) is fabricated, inasmuch as the person who has signed the letter of acknowledgment was not in service of the defendant's company on the date it was issued.
- The respondent did not choose to produce the book of accounts which has relevancy under Section 34 of the Evidence Act, but has produced only the firm's statement of accounts in Ex.A9. It is not a statement of accounts within the meaning of Section 4 of the Bankers Book Evidence Act, 1891 and cannot be accepted on its face value, and the plaintiff is bound to prove the correctness of the entries available therein. In particular, on 01.03.1999, a re-conciliation of accounts took place between the plaintiff and the defendant, and it is reflected in page 2 of Ext.A9. Prior to this date, the plaintiff has raised bills under No.907-908 dated 01.10.1998 for a sum of Rs.45,117/-. Even after the date of re-conciliation, Bill Nos.907-908 for a sum of Rs.44,215/- is again shown, and included in the said sum. Therefore, there is a double entry with regard to this bill, which shows the error in the statement made. If this figure goes then the corresponding entry regarding credit service charge/interest amounting to Rs.4,574/- should also have to be deleted from the claim amount.
- The primary aspect is all regarding Ext.A2, agreement, which reads that the credit service charges for bill payment would be made at 24% p.a. However, this agreement was not accepted in toto, and this is evidenced by Ext.A4 dated 18.11.1996, wherein, the respondent has indicated

some changes in the terms agreed. While it deals with the time for payment, it shows a conscious effort to add the credit service charges for the delayed payment. To sum up, the credit service charges are altered in the very contract, based on which the respondent has made his claim, and at any rate the statement of accounts as produced, is not correct even on its face and if Ext.A6 letter of acknowledgment goes, entire claim itself is barred by limitation.

- The statement of accounts was never circulated to the defendant before the suit and therefore, they admitted the liability on the head of interest.

5.1 Refuting the arguments of the learned counsel for the appellant, the learned counsel for the respondent submitted that even according to the appellant/defendant, he has not raised any objection to Ext.A9 statement as reconciled on 01.03.1999. Therefore, without any need to acknowledge the construction of Ext.A2 agreement, alongside Ext.A4 document, the credit service charges at 24% p.a. is leviable for delayed payment. Ext.A9 statement would itself indicate the proof of delay and the charges so imposed for such delayed payment. Therefore, it is not given to the defendant to contend that the contract did not provide for credit service charges or interest payable at 24% p.a. As to the total entry on the Bill Nos.907-908, the learned counsel fairly conceded that there appears to be a double entry of this item in the Bills.

5.2 Turning to the allegation that Ext.A6 letter of the defendant was a fabricated document, the learned counsel argued that the burden is caused entirely on the defendant who affirms that he has not produced any evidence on his side and has not even cross examined the plaintiff on that. He emphasis that the defendant has chosen not to appear before the Court and contested the matter he forfeit his right to dispute it.

6. The point for consideration in this case is

a) Whether Ext.A6 is genuine?
b) What is the amount payable to the plaintiff?

7. After appreciating rival contentions, this Court finds some merit on some aspects in the submissions of rival sides. Turning to the argument built around Ext.A6 letter is concerned, this Court finds considerable merits in the submission of the learned counsel for the respondent since the necessity of the counsel to defend his client is not shared by the very defence inasmuch as it has not chosen to establish what his counsel now contends. When no proof to sustain the same, this Court accepts Ext.A6 is genuine.

8. Turning to the next question as to whether there is a concluded contract on payment of interest is concerned, again this Court looks to the conduct of the parties in working the contract. Ext.A9 indicates that from 01.03.1999, and the time between two payments almost spread over three years and the number of delays in payment on each occasion, credit service charges/interest has been levied, and the defendant has accepted the same without any protest.

9. Turning to the next point inasmuch as the counsel for the respondent has conceded with the credit service charges under the Bill Nos.907-908 appears to be a duplication, this Court reduces the said sum from the total amount of Rs.4,85,124.55 by Rs.44,215/- which will now be Rs.4,40,909.55. Accordingly, interest payable also be reduced to Rs.4,574/- as on the date.

10. To conclude, this Court finds that the appellant/defendant is liable to pay a sum of Rs.4,40,909.55 to the respondent/plaintiff as on the date of the suit. So far as future interest is concerned, this Court considers 24% arising out of the contract is on a higher side and accordingly, it reduces the interest payable on the said principal sum during the period of litigation to 9%, and the future interest thereafter at 6% p.a.

11. With the above observation, this appeal suit is partly allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssn
To:
1. VII Additional City Civil Judge,
Chennai.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+2ccs to Mr.G.Sundaram, Advocate Sr.68085

A.S.No.779 of 2009

rsk[co]
srg 11/01/2019