IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.899 of 1998

India Cements Capital Ltd.,
(Formerly Aruna Sugars Finance Ltd.,)
No.59, Sterling Road,
Nungambakkam, Chennai – 600 034.

[Amendment carried out as per the order dated 19.07.2010 in A.No.2239 of 2010]

... Plaintiff

Versus

1.Firenze Shoes (P) Ltd.,
158, Ganapathy Street,
Pallavaram, Chennai – 600 017
also at 38, Mount Road,
Guindy, Chennai – 500 032.

2.Lords Shoe Makers (P) Ltd.,
DP 34 [SP] Industrial Estate,
Guindy, Chennai – 600 032.

... Defendants

Plaint filed under Order VII Rule 1 of Civil Procedure Code read with Order IV Rule 1 of Original Side Rules praying to pass a judgment and decree against the defendants:

a) for a sum of Rs.44,27,500/- together with interest on the principal sum of Rs.25,00,000/- at 36% per annum from this date till date of realisation and

b) for costs of the suit.

For Plaintiff : Mr.M.R.Gokul Krishnan

For Defendants : Mr.Baskar

J U D G M E N T

The suit is for recovery of dues under a bill of exchange dated 05.02.1996.

The averments in the plaint are as follows:

2. The plaintiff who is a non-banking Finance Company, then known as Aruna Sugars Finance Ltd., provided financial assistance to the 1st defendant for purchase of certain goods from the 2nd defendant to the tune of Rs.22,96,944/-. The said sum of Rs.22,96,944/- was paid by the plaintiff to the 2nd defendant at the instance of the 1st defendant. As an acknowledgment of the said payment, the 1st defendant executed a bill of exchange, admitting the borrowing and accepting to pay a sum of Rs.25,00,000/- at 90 days time.

3. According to the plaintiff, there was also an agreement to pay overdue interest at 36% p.a. Since the 1st defendant did not make payment despite several oral and written demands including the letters dated 25.03.1998, 05.06.1996, 22.06.1998, 09.07.1998, 24.07.1998, 25.07.1998 and despite the notice issued through counsel on 20.10.1997, the plaintiff finally issued a notice dated 10.09.1998 calling upon the defendants to make payment of Rs.42,70,000/- representing the principal and overdue interest. The said notice which was sent through registered post by the plaintiff to the 1st defendant's Office at Guindy was returned with an endorsement "Always Door Locked" and "Refused".

4. The plaintiff states that the 1st defendant as the Acceptor of the bill, and the 2nd defendant as Drawer are jointly and severally liable for the amount due to the plaintiff. The plaintiff states that the name of the Company "Aruna Sugars Finance Ltd.," was changed into "India Cements Capital and Finance Ltd.," on 02.05.1997 and as such the plaintiff is entitled to sue for recovery of monies due under the bill dated 05.02.1996. It is seen that the name of the plaintiff was changed as India Cements Capital and Finance Ltd., after filing of the suit and hence the plaintiff

amended the plaint, by correcting the cause title, by an order dated 19.07.2010 in A.No.2239 of 2010.

5. The 1st defendant filed a written statement claiming that the suit is not maintainable. It is claimed that the 1st defendant alone has borrowed money from the plaintiff for the purpose of purchasing materials from the 2nd defendant. As the Borrower of the money, it is only the 1st defendant which is liable to return the money and the 2nd defendant, as the Drawer of the bill of exchange is not liable to make payment. It is claimed that the 1st defendant has been incurring loss due to severe recession in the Textile Industry and the net worth of the Company has been totally eroded.

6. A reference has been made to the Board of Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act and the same was registered as Case No.8 of 2000. It is also claimed that the suit cannot be proceeded with in view of the prohibition contained in Section 22 of the Sick Industrial Companies (Special Provisions) Act. On merits it is contended that the rate of interest is abnormally high and is in violation of law.

7. The 2nd defendant filed written statement contending that it is not liable for the suit claim. It is only the 1st defendant which is liable as acceptor of the bill of exchange and not the 2nd defendant, Drawer of the bill of exchange.

8. On the above rival pleadings the following issues were framed by this Court on 19.01.2006:

1.Whether the suit transaction is true and binding upon both the defendants?

2.Whether both the defendants are liable to pay the suit amount or only by the 1st defendant for the reasons stated in the written statement?

3.To what reliefs the plaintiff is entitled to?

9. At trial Mr.Venkataraman, who is the Manager Operations of the plaintiff Company was examined as PW1. He has produced Exs.P1 to P21. One Mr.Rajasekaran, S/o. SriRamulu, authorised representative of the 1st defendant Company has been examined as DW1 and he has produced Ex.D1.

10. I have heard Mr.M.R.Gokul Krishnan, learned counsel for the plaintiff and Mr.Baskar, learned counsel for M/s.Kumar and Baskar for the defendants.

Issue No.1:

11. This issue relates to the genuineness of the suit transaction. From the pleadings it could be seen that the defendants have admitted the suit transaction, they have not disputed the same. The claim now made is that the plaintiff has not produced the original of the bill of exchange dated 05.02.1996. An application was taken out by the plaintiff seeking permission to produce the xerox copy and the same was allowed by this Court subject to a rider that the objection raised by the respondents should be considered at the time of trial.

12. Considering the fact that the defendants had not denied the transaction and the only defence that is projected on behalf of the 1st defendant is that the proceedings under the Sick Industrial Companies (Special Provisions) Act are pending. I do not see any valid reason to reject the xerox copy of the bill of exchange dated 05.02.1996, on the basis of the objection that it is only the xerox copy that is sought to be produced. Hence, the documents filed by the plaintiff which are admitted by the defendants are accepted as secondary evidence of the transaction.

13. The factum of supply of goods by the 2nd defendant to the

1st defendant is not denied and the factum of the execution of bill of exchange by the 2nd defendant and its acceptance by the 1st defendant is also not denied. All that is pleaded in the written statement of the 1st defendant is that the 2nd defendant cannot be made liable. The 2nd defendant in its written statement would contend that as supplier of the goods it cannot be made liable for the non-honouring of the bill of exchange by the 1st defendant.

14. The evidence of PW1, Exs.P1 and P2 as well as the demand notice issued by the plaintiff would show that the defendants have infact executed the bill dated 05.02.1996 and have been benefited by the borrowing from the plaintiff. The fact that the 1st defendant had written the letter dated 01.09.1997, to the plaintiff thanking the plaintiff for the support extended and seeking time for payment of money due under the bill dated 05.02.1996. Hence, it is found that the plaintiff has established the suit transaction and it is entitled to recovery of monies as per Ex.P2 - the bill of exchange dated 05.02.1996. Issue No.1 is answered accordingly.

Issue No.2:

15. This issue relates to the liability of the 2nd defendant. The 2nd defendant is Drawer of the bill of exchange and it is the 1st defendant who derived the benefits of the goods supplied under the invoices for which the payment has been made by the plaintiff. The bill dated 05.02.1996 is accepted by the 1st defendant. Therefore, it is the 1st defendant who is liable for the suit claim and not the 2nd defendant. Hence, the issue is answered to the effect that the 2nd defendant is not liable to the suit claim of the plaintiff.

<u>Issue No.3:</u> ***<u>To what reliefs the plaintiff is entitled to?</u>***

16. The only question that remains to be considered is the rate of interest. The plaintiff had claimed interest at the rate of 36% p.a. Of course the plaintiff contend that there was a contract to payment of 36% overdue interest. But, the plaintiff has not produced any written contract to establish that the defendant had agreed to pay interest at 36% per annum.

17. Considering the fact that the transaction is a commercial transaction, I am of the opinion that the plaintiff would be entitled to interest at 18% p.a from 03.05.1996 i.e., the date on which the bill became due till date of realisation.

18. In fine, the suit is decreed for a sum of Rs.25,00,000/- with interest at 18% p.a from 03.05.1996 till date of realisation with proportionate cost as against the 1st defendant alone. The suit against the 2nd defendant is dismissed.

25.01.2018

dsa

Index : No

Internet : Yes

Speaking Order

List of the witnesses examined on the side of the plaintiff:

PW1 - Mr. Venkataraman

List of Exhibits marked on the side of the plaintiff:

Sl. No.	Exhibits	Description	Dated
1	Ex.P1	Xerox copy of the invoice for the supply of shoes.	27.01.1996
2	Ex.P2	Xerox copy of the Bill of exchange.	05.02.1996
3	Ex.P3	Xerox copy of certificate for change of Name.	02.05.1997
4	Ex.P4	Letter from the Managing Director, Firenze Shoes Ltd.,	01.09.1997
5	Ex.P5	Xerox copy of the Notice.	20.10.1997
6	Ex.P6	Letter from the Firenze Shoes Ltd.,	23.03.1998
7	Ex.P7	Copy of the Letter from the Manager-Corporate Finance, India Cements Capital & Finance Ltd.,	25.03.1998
8	Ex.P8	Copy of the Letter from the Manager-Corporate Finance, India Cements Capital & Finance Ltd.,	05.06.1998
9	Ex.P9	Letter from the Managing Director, Firenze Shoes Pvt. Ltd.,	20.06.1998
10	Ex.P10	Copy of the Letter from the Manager-Corporate Finance, India Cements Capita & Finance Ltd.,	26.06.1998
11	Ex.P11	Copy of the Letter from the Manager-Corporate Finance, India Cements Capita & Finance Ltd.,	09.06.1998
12	Ex.P12	Letter from the Managing Director, Firenze Shoes Pvt. Ltd.,	16.06.1998
13	Ex.P13	Copy of the Letter from the Manager-Corporate Finance, India Cements Capita &	24.07.1998

Sl. No.	Exhibits	Description	Dated
		Finance Ltd.,	
14	Ex.P14	Copy of the Letter from the Manager-Corporate Finance, India Cements Capita & Finance Ltd.,	25.07.1998
15	Ex.P15	Copy of Notice from the Manager-Legal, India Cements Capita & Finance Ltd.,	10.09.1998
16	Ex.P16	Returned covers and acknowledgment cards.	--
17	Ex.P17	Statement of Accounts.	10.11.1998
18	Ex.P18	Xerox copy of Power of Attorney.	07.06.2011
19	Ex.P19	Xerox copy of Board Resolution.	22.10.2007
20	Ex.P20	Xerox copy of Letter.	11.02.1998
21	Ex.P21	Xerox copy of BIFR Order.	02.07.2012

List of the witnesses examined on the side of the Defendants:

DW1 - Mr.Rajasekaran

List of Exhibits marked on the side of the Defendants:

Sl. No.	Exhibits	Description	Dated
1	Ex.D1	Letter of Authorisation given to DW1	18.06.2016

25.01.2018

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R.SUBRAMANIAN, J.

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