IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2018

Date of Decision : 01.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.611 of 2000
and
A.Nos.585 and 586 of 2001

Tamil Nadu Newsprint and Papers Ltd.,
rep by its Senior Officer (Marketing)
S.Anbusamy,
No.39, Mount Road,
Guindy,
Chennai-600 032. .. Plaintiff

Vs.

1.Sulabh Trading Company Pvt. Ltd.,
118, Broadway, I Floor,
Chennai-600 108.

2.Harinivas Chowdhury,
Director,
Sulabh Trading Company Pvt. Ltd.,
118, Broadway, I Floor,
Chennai-600 108.

3.Krishnanivas Chowdhury,
Director,
Sulabh Trading Company Pvt. Ltd.,
118, Broadway, I Floor,
Chennai-600 108. .. Defendants

This Civil Suit is preferred, under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of CPC seeking a judgment and decree against the defendant for a sum of Rs.3,62,42,686/- and interest at the rate of 36% p.a on Rs.1,93,68,196/- from the date of the suit till the date of realization in full and costs of the suit.

For Plaintiff : Mr.K.Balamurali
for M/s.Shivakumar and Suresh

For Defendants : Set exparte

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JUDGMENT

Plaintiff is a public limited company. First defendant is a private limited company. Defendant Nos.2 and 3 are Directors in the first defendant company.

2 It is the case of plaintiff that it is engaged in the business of manufacture and sale of newsprint, writing / printing paper and other allied products.

3 Plaintiff has averred that it had appointed first defendant Company as its indentor in the year 1997 for Tamil Nadu region and the monthly quota was 150 metric tonnes of printing and writing papers. It is the specific case of the plaintiff that first defendant was so appointed as indentor of plaintiff company vide letter dated 09.04.1997. To be noted, monthly quota being 150 metric tonnes, the annual quota is 1800 metric tonnes. Also to be noted, it is plaintiff's case that it so appointed the first defendant company as its indentor after its earlier indentor one Eagle Papers (which was plaintiff company's indentor from 1985) decided to stop further business in 1997.

4 It is averred by plaintiff that transactions between plaintiff company and first defendant company was on running account basis, that plaintiff has been effecting supplies as per the indents placed by first defendant company. It is also averred that as per the terms of supply, after receipt of the materials and within the period of expiry of the credit period, first defendant company ought to have made payment to plaintiff.

5 It is the specific case of the plaintiff that despite receipt of supplies, first defendant had committed default in making payment of outstanding dues. It has also been averred by plaintiff that it issued several letters to defendants and defendants replied vide several letters acknowledging their liability. It is also submitted that defendants made part payment, but did not clear the outstanding. It has also been averred that cheques issued towards discharge of liability were dishonoured and criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881 had been filed. On the above basis, the instant suit has been filed claiming a sum of Rs.3,62,42,686/- together with interest at the rate of 36% per annum on Rs.1,93,68,196/- being principal amount from the date of suit till the date of realization. There is also a prayer for costs and a residuary prayer.

6 After being duly served, defendants remained ex parte.

7 The suit was set down for recording ex parte evidence before learned Additional Master-II. One Mr.L.Sezhian working as Manager (Legal) with plaintiff company and authorised signatory of plaintiff company was examined as P.W.1. The Board resolution and the Power of Attorney dated 28.7.2014 authorising P.W.1 to depose on behalf of plaintiff's company was

marked as Ex.P.1. Eagle Papers, having been Indentor of plaintiff's company and first defendant being appointed as Indentor thereafter in 1997 are evidenced from Exs.P.2, P.4 and P.5. To be noted, Ex.P.5 is the letter dated 9.4.1997 (referred to supra) in and by which first defendant company was appointed as Indentor on the terms and conditions stipulated therein.

8 Vide letter dated 08.12.1998, first defendant had acknowledged its liabiity in a sum of Rs.55.76 lakhs on account of transaction through Eagle Papers and a further sum of Rs.200 lakhs in respect of transactions directly. Under cover of this letter dated 08.12.1998 (Ex.P.17), cheques were sent towards discharge of liabilities. Those cheques were dishonoured and criminal cases bearing C.C.Nos.6397, 6398 and 7327 of 1999 were initiated before IX Metropolitan Magistrate Court, Saidapet. With regard to exchange of letters between plaintiff and first defendant, details as set out in the written submissions dated 13.02.2018 filed by the plaintiff are as follows :

> “12.The plaintiff had issued various letters to the defendants on 24.08.1998 (P13), 10.09.1998 (P16), 22.06.1999 (P-18), 05.07.1999 (P-19), 20.07.1999 (P21), 15.09.1999 (P23), and other dates calling upon the defendants to make payment.
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> 13.In response the first defendant had issued letters dated 30.06.1998 (P6), 05.07.1998 (P7), 18.07.1998 (P8), 20.07.1998 (P9), 29.07.1998 (P10), 31.07.1998 (P12), 01.09.1998 (P14), 03.09.1998 (P16), 08.12.1998 (P17), 09.07.1999 (P20) and 07.09.1999 (P22) acknowledged its liability and made part payments but did not clear its outstandings.”

9 Exhibits and details pertaining to those exhibits from which the claim of plaintiff stood substantiated can be given in the form of enumeration as set out in the written submissions filed by the plaintiff dated 13.02.2018 and the same is as follows :

P-2 – Letter from the previous Indentor Eagle Papers informing that the first defendant will be doing the business independently from 1.4.1997 and they will be responsible for all collection of all outstandings due from Eagle Papers for the transaction made till 31st March 1997.

P-3 – Letter (Original) from the first defendant asking plaintiff to appoint them as an indentor.

P-4 – Letter (copy) from the previous Indentor Eagle Papers requesting the Plaintiff to appoint the first defendant as an Indentor.

P-5 – Appointment letter (Original) from the Plaintiff appointing the first defendant as an Indentor with terms and conditions.

P-6 – 30.06.1998 letter from the first defendant enclosing cheques regarding Payment of Old dues.

P-7 – 05.07.98 Payment by the first defendant towards Old dues.

P-8, 9,10,11,12,14 & 15 – letters from the first defendant enclosing cheques received from customers requesting to present the cheques on the due dates.

P-17 – 08.12.98- (Original) – Confirmation of balance by the first defendant to the Plaintiff with regard to Old dues and present dues.

P-20 -09.07.99-(Original)- Confirmation of pending dues to the Plaintiff by the first defendant.

P-21 – 20.07.99 – Letter from the Plaintiff to the first defendant giving proposals to settle Payment of Outstanding.

P-22 – Reply (Original) Letter from the first defendant to the letter dated 20.07.99 accepting Proposal-1.

P-24 - Legal notice from the Plaintiff's Counsel to the defendant demanding the outstanding amount due to the supplies made with regard to old and present dues.

P-25 – Statement of Account filed to substantiate the claim made by the Plaintiff till the filing of the suit."

10 Deposition of P.W.1 is in tandem with pleadings in the complaint and the exhibits enumerated supra buttress the pleadings in the plaint.

11 However, two aspects are of importance.

12 As mentioned supra, while defendant No.1 is a private limited company, defendant Nos.2 and 3 are individuals, who are Directors in the first defendant company. The transaction is only between plaintiff company and first defendant company. Under such circumstances, a question arises as to how the suit claim can be made against defendant Nos.2 and 3. To this, it is submitted by Mr.K.Balamurali of M/s.Shivakuar and Suresh (Law firm) that first defendant is a closely held company and that defendant Nos.1 and 2 hold majority of shares in the first defendant company. It is also his further submission that defendant Nos.2 and 3 are in-charge of and responsible for day-to-day affairs of first defendant company. It is his further submission that defendant Nos.2 and 3 interacted with the plaintiff on behalf of first defendant company. Though there is no specific pleadings in this regard, it is seen that most of the exhibits, particularly, Exs.P.3, P.8, P.9, P.10, P.11, P.12, P.14, P.15, P.17, P.20 and P.22 have all been signed either by second defendant or third defendant on behalf of first defendant. As these exhibits and these submissions have not been refuted and as the plaint prayer is not being

resisted, I am inclined to accept the aforesaid submissions made by learned counsel for plaintiff, in the light of the aforementioned exhibits, which have been signed either by second defendant or third defendant.

13 This takes us to the suit prayer. Suit prayer is contained in paragraph 12 of the plaint which reads as follows :

> “12.The plaintiff therefore prays
>
> a.for a Judgment and decree against the defendant for a sum of Rs.3,62,42,686/-
>
> b.interest at the rate of 36% p.a. On Rs.1,93,68,196/- the date of suit till the date of realisation in full
>
> c.costs of this suit and
>
> d.pass such further or other order/s as this Hon'ble court may deem fit in the circumstances of this case and thus render justice.”

14 From the correspondence exchanged between plaintiff company and defendants which have been marked as exhibits and which have been alluded to supra, it emerges and stands established that contractual rate of interest between plaintiff and defendants has been 36% per annum. Therefore, there is no difficulty in decreeing sub paragraph (a), i.e., paragraph 12(a) of the plaint prayer. However, with regard to sub paragraph (b) of paragraph 12 of plaint prayer, I am not inclined to award future interest on the principal sum of Rs.1,93,68,196/- from the date of the suit till date of realization in full. Applying Section 34 of Code of Civil Procedure, 1908 and exercising my power thereunder, I award interest at the rate of 12% per

annum on Rs.1,93,68,196/- from the date of suit till date of realization in full.

15 Considering that this suit is of the year 2000 (it was filed on 13.6.2000 to be precise) and considering the fact that plaintiff has been forced to carry this suit for over 1 ½ decades (more than 17 years), I am inclined to award costs of the suit as prayed for in sub paragraph (c) of paragraph 12 of plaint.

16 In this view of the matter, no further or other orders are required as prayed for pursuant to the residuary prayer being paragraph 12(d) of plaint.

17 For the purpose of abundant clarity, it is summarised and set out that the suit is decreed against defendants for a sum of Rs.3,62,42,686/- together with interest at the rate of 12% per annum on Rs.1,93,68,196/- from the date of suit till the date of realization in full with costs.

18 The suit is decreed with costs on the above terms. Consequently, connected applications are closed.

01.03.2018

Index : Yes/No
vvk

M.SUNDAR, J.

vvk

judgment in
C.S.No.611 of 2000

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