

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 23RD DAY OF MARCH 2018

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.69 of 2018

AND

A.No. 1780 of 2018

Mr.Sivakumar
Son of Boologapandian
Proprietor
Mutharamman and Co
A proprietary concern
54, G.V.T.Complex
Varadarajapuram, Nazrethpuram,
Chennai 602103. : Plaintiff/Applicant

Vs

1. Surya Imports and Exports
A firm represented by its proprietor
Mr.N.Surya Srinivas
Son of Bhaskara Rao
Flat No.15, Rams Flats
Second Floor, New No.5, Old No.2-A
Madhavan Nair Road,
Mahalingapuram, Chennai 600 034.

2. Indus Ind Bank Limited
Represented by its Manager
3, Village Road,
Nungambakkam, Chennai 600 034.

3. Indian Bank
Represented by its Assistant Regional Manager
W-100, II Avenue,
Anna Nagar, Chennai 600 040. :Defendants/Respondents

C.S.No.69 of 2018:

Civil suit praying that this Hon'ble Court be pleased to pass a judgment and decree:

a) directing the first and second defendants to jointly and severally pay the plaintiff a sum of Rs.58,73,555/- (Rupees fifty eight lakhs seventy three

thousand five hundred and fifty five only) together with interest at 18% per annum from the date of plaint till the date of realization.

b) Direct the 2nd defendant, by way of a decree of mandatory injunction, to pay the admitted sum of Rs.1,03,78,863 together with interest at 18% per cent till the date of repayment, to the 3rd defendant under the collection bill no. 00588170C0000014 which was accepted for payment by the 2nd defendant vide is SFMS advice dated 04.07.2017.

c) to award the costs of the suit.

A.No. 1780 of 2018:

Application praying that this Hon'ble Court be pleased to pass an interim judgment and decree directing the first and respondents to pay the admitted sum of Rs.58,73,555 (Rupees fifty eight lakhs seventy three thousand five hundred and fifty five only) as per the SFMS message sent by the 2nd respondent to the 3rd respondent on 17.06.2017 together with interest at 18% per annum from the date of plaint till the date of realization.

This civil suit along with application coming on this day before this court for hearing the court made the following order:-

There is no representation on behalf of the first defendant. There representation is made on behalf of the second defendant. It is stated that they have filed vakalat, which was returned and it has been represented. The date of representation is not informed by the learned counsel.

2. This Application has been filed to pass an interim Judgement and decree against the first and second defendants to pay the admitted sum of Rs.58,73,555/- as per SFMS message sent by the second defendant to the third defendant on 17.06.2017.

3. This matter had been coming up before this Court for several hearing dates and there has been no effective representation on behalf of the first and second defendants. It had been noted by this Court that the plaintiff and the first defendant had business transactions and the first defendant had approached the plaintiff for supply of 2,58,760 kg of TMT bars. A pro-forma invoice dated 29.05.2017 had also been issued to supply the same at Rs.38.20 per kg. The total value of the consignment was at Rs.1,03,78,863/-. However, inspite of delivery, the amount was not paid. The first defendant had accepted delivery also.

4. In the meanwhile before this Court, the stand was taken that goods, which had been supplied had been returned back. This Court had directed the first defendant to produce the original freight and cargo receipts for returning back the said goods. They have not been produced till date.

5. This Court has sufficient reasons to suspect the *bona fide* of the first defendant. It is also to be noted that though notices were served to the second defendant, they did not choose to appear, rather their absence was significant and noted. Finally, when notice was directed to the Manager, he appeared in person.

6. It is seen that even today for vakalat on behalf of the second defendant had not been regularised. It is also seen that the plaintiff had drawn up a bill of exchange as required under the purchase order dated 12.06.2017 for a sum of Rs.55,71,279/-. The bill of exchange was accepted for payment by the first defendant and his banker the second defendant. The third defendant, by a collection bill, had presented the documents for collection with the second defendant. The second defendant by SFMS message dated 17.06.2017 acknowledged acceptance and unconditionally undertook to make the payment by way of the following message:-

*"payment will be effected on due date I.E 09 SEP 2017
OF OUR BILL NO . IBC0007170006482."*

7. In view of the fact that the first and second defendants have deliberately abstained from participating

Sd/ .C.V.K.J

//Certified to be a true copy//
Dated this the day of 2018

COURT OFFICER

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