

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.318 of 2015

Mr.A.T.Maideen
Proprietor of M/s.Maideen Exports,
26, Sait Colony 1st Street,
Egmore, Chennai - 600 008. .. Plaintiff

Vs.

Mr.S.Mohan
S/o.Mr.Sadhanandhan
Proprietor of Shakthi Shipping & Logistics
237/192, 3rd Floor, Thambu Chetty Street,
Chennai - 600 001. .. Defendant

This Civil Suit is preferred, under Order VII Rule 1 C.P.C. Read with Order IV Rule 1 of Original Side Rules praying to

a) direct the defendant to pay the plaintiff a sum of Rs.2,77,47,044/- (Rupees Two Crores Seventy Seven lakhs forty seven thousand and forty four only) together with interest @ 14.5% for Rs.2,48,68,791/- (Rupees Two crores forty eight lakhs sixty eight thousand seven hundred and ninety one only) from the date of plaint till the date of realization of the suit claim amount.

b) directing the defendant to pay the cost of the suit to the plaintiff and

c) to pass such other order or orders or further relief on this Hon'ble Court may deem fit and proper in the circumstances of this case.

For Plaintiff : Mr.J.Ferozkhan

For Defendant : Set exparte

JUDGMENT

Mr.J.Ferozkhan, learned counsel on record for the plaintiff is before this Commercial Division

2. Sole defendant in the main suit, after being duly served with suit summons, was set *ex-parte*. Therefore, the suit was set down for recording *ex-parte* evidence before the learned Additional Master-II. One Mr.A.Mohamed Faizer, working as Manager with the plaintiff deposed as P.W.1 and three exhibits viz., exhibits P1 to P3 were marked on 20.02.2018.

3. It is noticed that the plaintiff is one Mr.A.T.Maideen, who is carrying on business in the name and style 'Maideen Exports' as sole Proprietor. P.W.1 is A.Mohamed Faizer. Therefore, it was pointed out that P.W.1 should be duly authorized. Today, Mr.J.Ferozkhan, learned counsel for plaintiff has placed before me a Letter of Authorization issued by Mr.A.T.Maideen, in favour of Mr. A.Mohamed Faizer, who has deposed as P.W.1. I am also informed that plaintiff Mr.A.T.Maideen is now a detenu in the Central Prison, Kadapa and therefore, the Letter of Authorization has been duly executed before the Jailor and has been duly attested. Mr.A.Mohamed Faizer, is present in Court along with his photo identity being Aadhar card. A photocopy of the photo identity card of Mr.A.Mohamed Faizer, P.W.1 and the aforesaid Letter of Authorization issued by the plaintiff Mr.A.T.Maideen are marked as Exs.P4 series.

4. Mr.A.Mohamed Faizer, confirms that he deposed before learned Additional Master-II on 20.02.2018 and his identity is confirmed by Mr.J.Ferozkhan, counsel for plaintiff.

5. I now proceed to examine the plaintiff's case.

6. The case of the plaintiff is that the defendant approached the plaintiff and offered to supply Indian Yellow Maiz. It is also the case of the plaintiff that the defendant wanted advance payments for supply of Yellow Maiz goods, which shall hereinafter be referred to as 'said goods' for the sake of brevity, convenience and clarity.

7. From the plaint averments, it unfurls that there was a running account between the plaintiff and the defendant, wherein and whereby the plaintiff was giving advance payments to the defendant on regular intervals and the defendant was also making supply of said goods on regular intervals. In other words, it was a running account. Under such circumstances, it is the case of the plaintiff that at some point of time, the defendant stopped supply of said goods as assured and a sum of over Rs.2.77 crores given as advance payment was lying with the defendant. It is also the case of the plaintiff that the aforesaid sum of over Rs.2.77 crores was arrived at after giving credit to the value of the said goods already supplied by the plaintiff.

8. It further unfurls from the plaint averments that the defendant has executed a Letter-cum-acknowledgment of liability dated 13.12.2014. This document, which is styled and captioned as Letter of receipt-cum-acknowledgment of liability, dated 13.12.2014, has been executed with revenue stamp and the same has been marked as Ex.P1

9. There is an undated Letter of Guarantee, wherein and whereby the defendant has given one immovable property in Kancheepuram District as security that has been marked as Ex.P2

10. As alluded to supra, the transaction between the plaintiff and the defendant is running accounts and therefore, a statement of accounts for the relevant period has been marked as Ex.P3.

11. As already referred to supra, the Letter of Authorisation given by the sole plaintiff Mr.A.T.Maideen, in favour of P.W.1 together with photocopy of the photo identity card of P.W.1 have been marked as Ex.P4 series, today, in this Commercial Division before me.

12. To be noted, as mentioned supra, Mr.J.Ferozkhan, learned counsel on record for plaintiff identified P.W.1.

13. I have perused the evidence of P.W.1. It is cogent. It is in tandem and in tune with the plaint averments. I have also perused the aforesaid exhibits viz., Exs.P1 to P4.

14. I find from the exhibits that the plaintiff has established the case pleaded in the plaint. In addition to it, it is also seen that the defendant has acknowledged his liability, vide Ex.P1, dated 13.12.2014. Further to be noted, all the plaint averments and exhibits remain undisputed by defendant as defendant has been set *ex-parte*.

15. In the light of the narrative supra and owing to all that have been set out supra, it is clear that the plaintiff is entitled to a decree as prayed for as the plaint paragraph is only for return of the advance payments (for which supplies were never made) which the defendant is holding. To be noted, suit claim is after giving credit to the value of the said goods which have already been supplied to the defendant by the plaintiff. Prayer paragraph in the plaint is paragraph 15 and the same reads as follows:

“15. The plaintiff, therefore, prays that this Hon'ble Court may be pleased to pass judgment and decree against the defendant:

i) direct the defendant to pay the plaintiff a sum of Rs.2,77,47,044/- (Rupees Two Crores Seventy Seven lakhs forty seven thousand and forty four only) together with interest @ 14.5% for Rs.2,48,68,791/- (Rupees Two crores forty eight lakhs

sixty eight thousand seven hundred and ninety one only) from the date of plaint till the date of realization of the suit claim amount.

ii) directing the defendant to pay the cost of the suit to the plaintiff and

iii) to pass such other order or orders or further relief on this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render Justice.”

16. From the Statement of Accounts-Ex.P3, it is seen that the outstanding balance with the defendant or in other words the amount which the defendant is liable to pay in the aforesaid transaction is Rs.2,77,47,044/- (Rupees Two Crores Seventy Seven lakhs forty seven thousand and forty four only). This sum has been claimed with interest at the rate of 14.5% from the date of plaint till the date of realisation of the suit claim. Though this appears to be a commercial transaction, exercising my powers under Section 34 of Code of Civil Procedure, 1908, I deem it appropriate to award future interest at the rate of 12% on the suit claim.

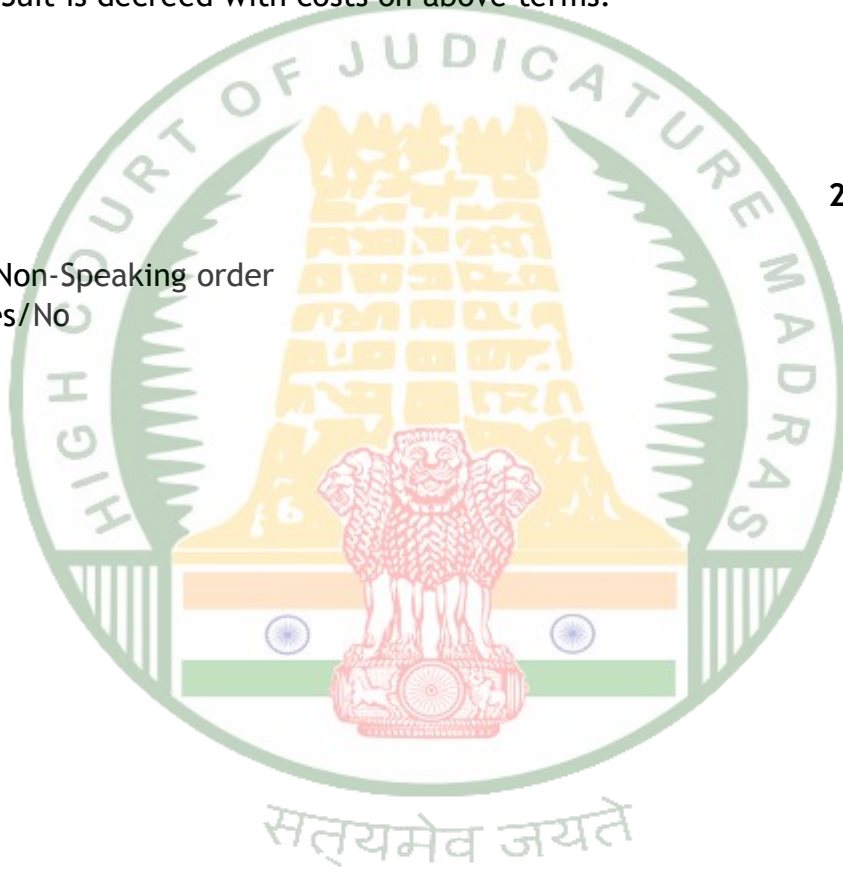
17. With regard to costs of the suit, I find that suit has been presented on 19.03.2015 and the plaintiff has been compelled to carry the suit to its logical end over a period of two years. Therefore, the plaintiff will be entitled to costs of the suit as in sub-paragraph (ii) of paragraph 15 of the plaint.

18. In the light of the suit being decreed with costs with 12% future interest, further orders as sought for in the residuary prayer contained in subparagraph (iii) of paragraph 15 is not necessary.

19. Suit is decreed with costs on above terms.

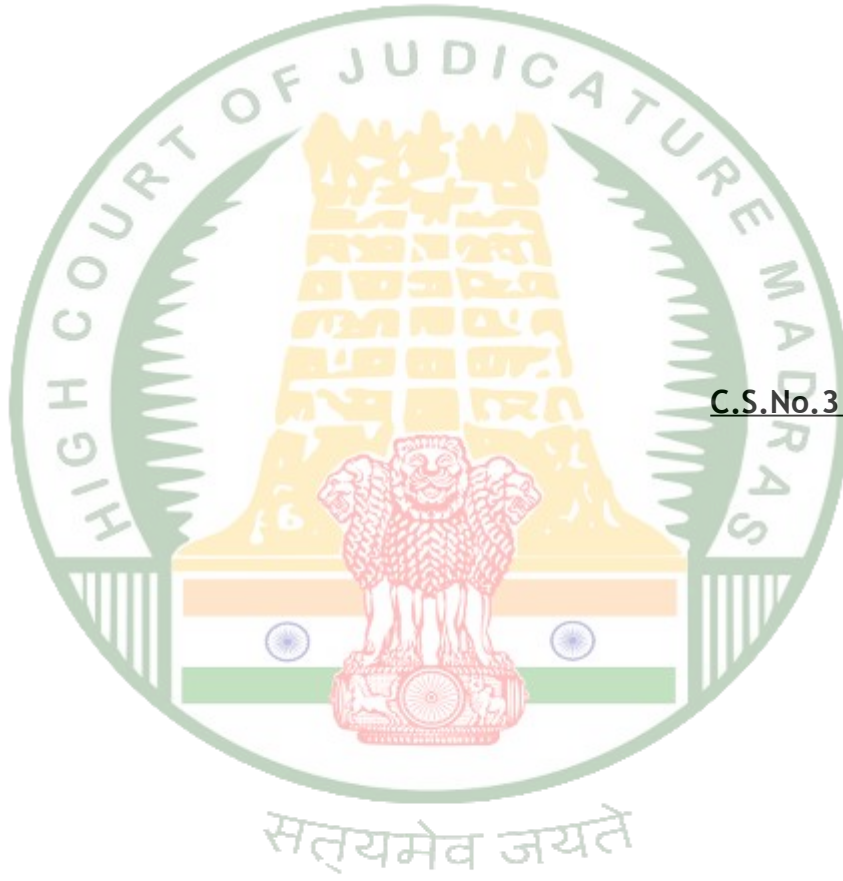
23.03.2018

Speaking/Non-Speaking order
Index : Yes/No
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M.SUNDAR, J.
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