

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2018

PRONOUNCED ON : 22.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2103 of 2003

Jothi
carrying on business under
the name and style of
Jay Kay International, Erode ... Appellant

Vs.

Vinodini & Sons
rep.by its Partner
Nitin H.Shah
8 Sir Theagaraya Road
T Nagar, Chennai – 17. ... Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 26.06.2002 passed in A.S.No.54 of 2002 on the file of the VI Additional Judge, City Civil Court, Madras, modifying the Judgment and Decree dated 15.02.2001 passed in O.S.No.4430 of 1997 on the file of the VII Assistant Judge, City Civil Court, Madras.

For Appellant : Mrs.P.Srividya
for Mr.S.Viswanathan

For Respondent : Ms.R.V.Gayatri
for Mr.P.B.Ramanujam

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 26.06.2002 passed in A.S.No.54 of 2002 on the file of the VI Additional Judge, City Civil Court, Madras, modifying the Judgment and Decree dated 15.02.2001 passed in O.S.No.4430 of 1997 on the file of the VII Assistant Judge, City Civil Court, Madras.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money.

4. The case of the plaintiff, in brief, is that pursuant to the orders placed by the defendant at Chennai on 02.03.1994, 07.03.1994 and 07.03.1994, the plaintiff sold and delivered the goods to the defendant, on credit, under the invoices detailed in the plaint for the value of Rs.26,928.05, Rs.15,901.97 and Rs.13,862.90 respectively, totally amounting to Rs.56,692.92 and the defendant agreed and undertook to pay the value of the goods together with interest at 24% per annum as per the custom prevalent in the market and accordingly, though the defendant took delivery of the goods and acknowledged the same, failed to pay either the value of goods or interest. Later, a letter had been

received by the plaintiff from the defendant dated 10.05.1994 with a statement complaining of shortage of the goods of the value of Rs.14,026.64 for the first time in respect of all the supplies made by the plaintiff to the defendant as aforestated and the plaintiff by their telex dated 18.05.1994 denying the alleged shortage of materials, called upon the defendant to pay the value of goods together with all the accrued interest and despite the same, the defendant has failed to pay the amount as demanded and in all, the defendant is due and payable to the plaintiff in an aggregated sum of Rs.1,01,120/- and hence, the suit for the recovery of money.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts and the defendant did not come to Chennai on the dates mentioned in the plaint or placed any orders and only, it is the plaintiff's representative, who used to come to the defendant's factory at Karur to take orders and arrange to supply the materials either from Mumbai or Hyderabad. Whenever the plaintiff's representative came to Karur, the defendant used to place orders for the supply of wadding materials in one lot depending upon his foreign contract. Notwithstanding the direction of the defendant, the plaintiff used to supply only in piecemeal and thereby, the defendant had been unable to honour the foreign buyers, with whom, he had entered into contracts, with the result, the defendant had sustained loss in his

business and thus, the defendant's loss has been estimated at Rs.1,00,000/- and the defendant has also become liable to pay shipping bills in a sum of Rs.1,25,000/- and the plaintiff is liable to compensate the defendant with reference to the above sum and it is false to state that the defendant is due to the plaintiff in a sum of Rs.56,692.92 and no amount is due from the defendant to the plaintiff. It is false to state that the defendant agreed to pay the above said amount with interest at 24% per annum as per the custom prevalent in the market. The defendant has not sent any letter on 10.05.1994 and on the other hand, only sent a debit note dated 30.03.1994 debiting the plaintiff's account to the shortages for a sum of Rs.14,026.64 and the plaintiff has not denied the claim of the defendant made in his debit note of 30.03.1994. The suit is hopelessly barred by limitation. The suit has to be filed within 3 years of the respective dates of supplies. There has been no acknowledgement of liability as claimed by the plaintiff in the plaint. The shortages report of 10.05.1994 sent by the defendant's agent cannot be construed as acknowledgement of liability by the defendant and this Court has no jurisdiction to entertain the suit. No part of the cause of action arose at Chennai and on that ground also, the suit is liable to be dismissed and the plaintiff is liable to compensate the defendant for the loss sustained by the defendant and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to A19 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B3 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for with subsequent interest at 18% per annum. Aggrieved over the same, the defendant preferred the first appeal and the first appellate Court, on an appreciation of the materials placed on record, concurred with the judgement and decree of the trial Court and modified the same, as regards the subsequent interest from 18% per annum to 6% per annum and accordingly, disposed of the appeal. Aggrieved over the same, the present second appeal has been preferred by the defendant.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i) Whether the lower appellate Court erred in holding that the suit is in time on the ground that there was acknowledgement of liability in Ex.A5 overlooking the fact that the defendant

has not acknowledged liability thereunder?

(ii) Whether the plaintiff is entitled to claim interest at 18% p.a. Till the filing of suit when there is no agreement to pay interest and is only entitled to reasonable interest as per the sale of Goods Act?"

9. Materials placed on record go to disclose, particularly, the invoices and other documents placed by the plaintiff and marked as Exs.A1 to A4, that, as putforth by the plaintiff, the defendant has placed orders with the plaintiff for the supply of the goods in all aggregating to a sum of Rs.56,692.92 and the defendant has also not seriously controverted the above position. Further, it is also found that complaining of the shortage of goods supplied by the plaintiff, a letter had been received by the plaintiff from the defendant on 10.05.1994 marked as Ex.A5 as well as a debit note marked as Ex.A6, where from, it could be gathered that in respect of the goods supplied by the plaintiff to the defendant on various dates from the inception, particularly, on the dates, for which, the suit claim is covered viz., 02.03.1994 and 07.03.1994, which entries have been marked as Exs.A7 to A9 in Ex.A5, the defendant has debited a sum of Rs.14,026.64 towards the shortages in the supply of the goods by the plaintiff as per the bills enclosed with Ex.A5. Accordingly, it is found by the Courts below that the defendant has

acknowledged his liability of the receipt of the goods from the plaintiff as putforth in the plaint by way of various invoices marked as Exs.A1 to A4 but only complained of some shortages in the materials supplied and accordingly, debited the value of the shortage of the materials in a sum of Rs.14026.64 and it is thus found that as rightly determined by the Courts below, by way of the letter dated 10.05.1994 and the debit note dated 30.03.1994 marked as Exs.A5 & A6 coupled with the entries marked as Exs.A7 to A9, it is found that as per Section 18 of the Limitation Act, the defendant has indeed acknowledged his liability to the plaintiff for the value of the goods supplied by the plaintiff to the defendant by way of the invoices marked as Exs.A1 to A4.

10. The main point that has been raised by the defendant for resisting the plaintiff's claim that the suit is barred by limitation. However, when it is found from a conjoint reading of Exs.A5 to A9, the defendant having acknowledged the liability of payment to the plaintiff for the goods supplied and when it is further noted that the plaintiff has levied the suit within 3 years period of time from the date of acknowledgement of liability, I am unable to differ from the conclusions arrived at by the courts below, that the suit laid by the plaintiff is well within the time allowed by law and in such view of the matter, the contention reiterated in the second appeal again that the suit is barred by limitation as such cannot be accepted in any manner.

11. The next contention putforth in the matter by the defendant for discountenancing the plaintiff's claim is that the Civil Court at Chennai does not have jurisdiction to entertain the plaintiff's suit on the footing that the orders were taken for the goods only at the defendant's factory at Karur and as no part of the cause of action arose at Chennai, it is argued that the City Civil Court at Chennai would not have the jurisdiction to entertain the suit. However, when from the recitals found in Ex.A2 coupled with the invoices marked as Exs.A1, A3 & A4, it is found that the orders were placed only at Chennai for the supply of the goods to the defendant's factory and accordingly, the Courts below had rightly invoked Section 20(c) of the Civil Procedure Code for holding that the City Civil Court, Chennai also would have the jurisdiction to entertain the suit laid by the plaintiff as the cause of action arose also at Chennai. This determination of the Courts below as regards the jurisdiction of the Court at Chennai positively in favour of the plaintiff do not warrant any interference when the materials placed clearly point out that the orders had been placed at Chennai for the supply of the goods in question by the defendant with the plaintiff. It is thus found that the City Civil Court at Chennai is competent to entertain and try the suit laid by the plaintiff.

12. Considering the nature of the transaction entered into between the parties, being a commercial transaction, though the plaintiff has claimed interest at 24 % per annum, the first appellate Court on an appreciation of the materials placed on record found that particularly, when the plaintiff had issued a pre-suit notice marked as Ex.A10 prior to the institution of the suit calling upon the defendant to pay with interest at 24% per annum and also the fact remains that the defendant has not responded to the said notice disputing the entitlement of the interest claimed by the plaintiff and considering the commercial nature of the transaction involved between the parties, it is found that the first appellate Court has rightly adjudicated that the rate of interest determined by the trial Court is justified and also further, modified the subsequent interest at 6% per annum and accordingly, found to have disposed of the appeal. For the reasons aforesaid, in my view, I do not find any valid reason to interfere with the above said determination of the interest, to which, the plaintiff is entitled to for the amount due as fixed by the first appellate Court and in such view of the matter, the above point also as projected in the second appeal do not merit acceptance.

13. On an overall analysis of the above discussions, it is found that the suit laid by the plaintiff is within the time allowed by law, considering the acknowledgement of liability made by the defendant towards its

liability to pay the value for the goods supplied by the plaintiff and also it is found that the interest awarded by the first appellate Court modifying the judgement and decree of the trial Court is justified. The above aspects as determined by the Courts below, do not warrant any interference as such and accordingly, the substantial questions of law formulated in this second appeal are answered against the plaintiff.

Resultantly, the second appeal fails and is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
sms

22.03.2018

To

1. The VI Additional Judge, City Civil Court, Madras.
2. The VII Assistant Judge, City Civil Court, Madras.
3. The Section Officer, V.R. Section, High Court, Madras.

WEB COPY

T.RAVINDRAN, J.

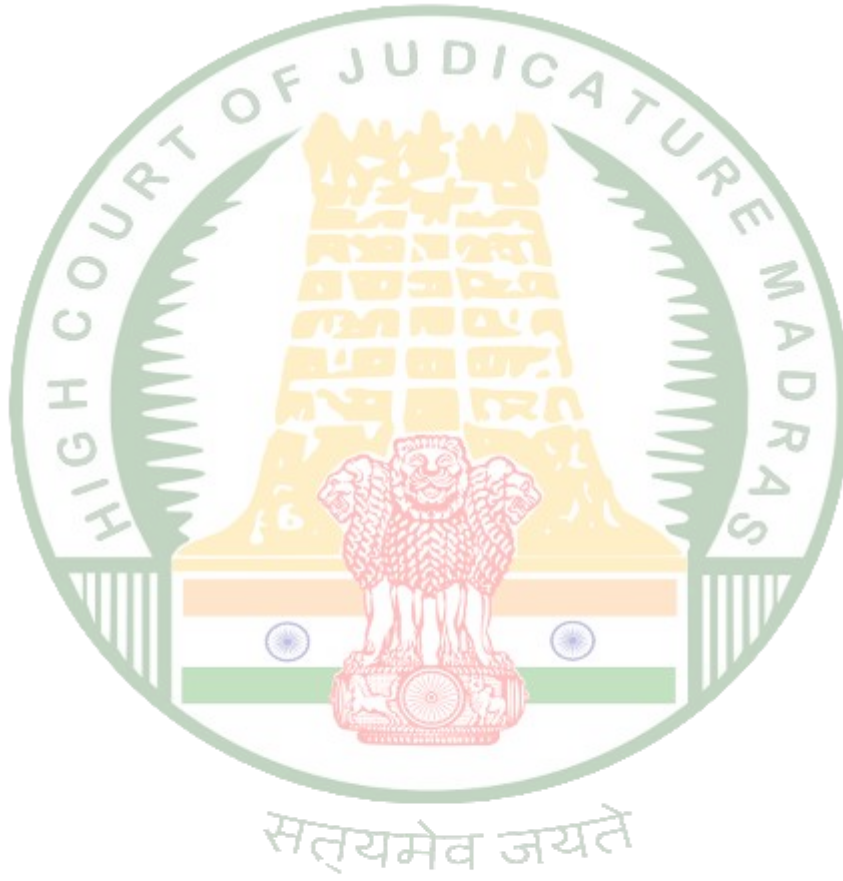
sms



**Pre-Delivery Judgment made
in S.A.No.2103 of 2003**

WEB COPY

22.03.2018



WEB COPY