

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.782 of 2010

R.Jeyakumar

... Plaintiff

Versus

1.M/s.Jupiter Aviation Pvt., Ltd.,
Rep. by its Chairman
Air Commander Mr.Chandrasekaran

2.Air Commander Mr.Chandrasekaran

3.M/s.Suresh Builders Pvt., Ltd.,
Rep. by its Managing Director
Mr.Suresh Babu

4.Suresh Babu

... Defendants

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

(a) directing the defendants 1 and 2 jointly and severally to pay to the plaintiff the said sum of Rs.28,89,600/- together with interest at the rate of 24% per annum on Rs.16,80,000/-

from the date of plaint till date of payment and by directing the defendants 1 to 4 jointly and severally to pay to the plaintiff a sum of Rs.14,62,000/- which sum is included in the aforesaid sum of Rs.28,89,600/- claimed as against the defendants 1 and 2 and

(b) directing the defendants jointly and severally to pay to the plaintiff the costs of this suit.

For Plaintiff : Mr.A.Chandra Mouleeswarran

J U D G M E N T

The suit is filed for recovery of a sum of Rs.28,89,600/- with interest at the rate of 24% per annum on Rs.16,80,000/-.

The material averments in the plaint are as follows:-

2. The plaintiff is engaged in aviation business. The 1st defendant represented by the 2nd defendant as its Chairman required the plaintiff to arrange for provision of helicopter of type BELL 206 Jet Ranger for a period of two months to be based at Jakkur Airport, Bangalore for their use and for the use of their customers. Based on the said negotiation a Wetlease Agreement was entered into on 20.01.2006 containing the terms and conditions. The said terms and conditions were forwarded to the 1st

defendant by the plaintiff and the 2nd defendant in his capacity as Chairman of the 1st defendant Company signed the same in acknowledgment of the acceptance of the terms and conditions set out in the agreement.

3. On receipt of the signed copy of the agreement sent through fax, the plaintiff has arranged for stationing a helicopter viz., BELL 206 Jet Ranger for a period of two months from 21st January 2006 to 20th March 2006. The plaintiff is entitled to a sum of Rs.16,80,000/- as per the Wetlease agreement for providing helicopter at Jakkur Airport in Bangalore. The said sum of Rs.16,80,000/- is the minimum guarantee amount, worked out to Rs.48,000/- per hour for 35 hours per month.

4. As per clause 3 of the said agreement, the defendants 1 and 2 are liable to pay a sum of Rs.16,80,000/-. It is also claimed that the 3rd defendant as end user of the helicopter had infact issued a cheque for Rs.8,40,000/- to the plaintiff which was dishonoured. Proceedings initiated by the plaintiff against the 3rd and 4th defendants before the Criminal Court ended in conviction.

5. But, however, during the pendency of the appeal, the 4th defendant died. Therefore, the proceedings had abated. Hence, the plaintiff had sent a legal notice on 21.04.2006 calling upon the defendants 1 and 2 jointly and severally pay a sum of Rs.16,80,000/- and the defendants 3 and 4 jointly and severally pay the plaintiff a sum of Rs.8,40,000/- which is included in the aforesaid sum of Rs.16,80,000/-.

6. The defendants sent replies denying their liability and denying the factum of having entered into an agreement with the plaintiff. The stand taken by them had prompted the plaintiff to come forward with the present suit.

7. Upon service the defendants remained absent and hence, they were set exparte. Exparte evidence was recorded by the learned Additional Master. Before the learned Additional Master, the plaintiff Mr.R.Jeyakumar was examined as PW1 and Exs.P1 to P14 were marked. Ex.P1 is the copy of the wetlease agreement dated 20.01.2006. It is seen from Ex.P1 that the 2nd defendant had signed the document in confirmation of the acceptance of the terms and conditions. Ex.P2 is the xerox copy of the cheque No.568519 dated 21.01.2006 issued by the 3rd defendant in favour of the plaintiff.

Ex.P3 is the return memo issued by the plaintiff's banker. Ex.P7 is the notice issued by the learned counsel for the plaintiff to the defendants 1 to 4. Ex.P8 and P9 are the replies sent by the 1st and 2nd defendants. Ex.P10 is the rejoinder issued by the learned counsel for the plaintiff to the 2nd defendant. Ex.P11 is the copy of rejoinder issued to the 1st defendant. Exs.P12 and P13 are the replies issued by the 1st and 2nd defendants to the rejoinders under Exs.P10 and P11.

8. From Ex.P1 it is seen that the 2nd defendant had signed it in confirmation of acceptance of the terms and conditions set out under the said document. As per clause 2 of the said document, the minimum guaranteed hours per month would be 35 hours at the rate of Rs.48,000/- per hour. 50% of payment of one month guaranteed hours as advance and balance 50% by the end of the 15th day of the operating month has to be paid.

9. From the evidence on record, I am of the opinion that the plaintiff has proved that the 1st defendant had accepted the agreement and availed the service of the plaintiff and the 1st defendant would be liable to pay the suit claim.

10. So far as the 2nd defendant is concerned he has only signed the instrument Ex.P1 in his capacity as Chairman of the 1st defendant Company. Therefore, he cannot be made personally liable.

11. The 3rd defendant had issued a cheque for a sum of Rs.8,50,000/-. which had, admittedly, bounced. Though the 3rd defendant has not responded to the notice, it is stated that the Managing Director of the 3rd defendant cited as 4th defendant has died. Hence, the suit abates as against the 4th defendant. The abatement caused by the death of the 4th defendant will not vitiate the claim of the plaintiff against the defendants 1 to 3. Since they are independent entities.

12. Hence, the suit is decreed as prayed for as against the defendants 1 and 3 alone. The suit against the 4th defendant is dismissed as abated. The suit against the 2nd defendant is dismissed as he cannot be personally made liable for the suit transaction, which has been entered into by the 2nd defendant on behalf of the 1st defendant Company.

13. In fine, the suit is decreed as prayed for against the defendants 1 and 3 alone. No costs.

07.02.2018

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Index : Yes/ No

Internet : Yes/ No

Speaking Order/ Non-speaking Order

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

PW1 - Mr.R.Jeyakumar

List of Exhibits marked on the side of the plaintiff:

Sl. No.	Exhibits	Description	Dated
1	Ex.P1	Fax copy of the agreement entered into between the plaintiff and the defendants 1 and 2 along with clean copy.	20.01.2006
2	Ex.P2	Xerox copy of the cheque No.568519 issued by the defendants 3 and 4 in favour of the plaintiff.	21.01.2006
3	Ex.P3	Xerox copy of Memo of Return issued by State Bank of Mysore, Bangalore.	--
4	Ex.P4	Xerox copy of the Debit Advice issued by UTI Bank Ltd.,	13.02.2006
5	Ex.P5	Office copy of the legal notice issued by the counsel for the plaintiff to the defendants 3 and 4.	11.03.2006
6	Ex.P6	Office copy of the Criminal Complaint in C.C.No.7406 of 2006 against the defendants 3	--

Sl. No.	Exhibits	Description	Dated
		and 4 by the plaintiff.	
7	Ex.P7	Office copy of the legal notice sent by the counsel for the plaintiff to the defendants 1 to 4.	21.04.2006
8	Ex.P8	Reply sent by the 2 nd defendant to the notice dated 21.04.2006.	04.05.2006
9	Ex.P9	Reply sent by the 1 st defendant to the notice dated 21.04.2006.	06.05.2006
10	Ex.P10	Office copy of the rejoinder sent by the counsel for the plaintiff to the reply dated 04.05.2006 sent by the 2 nd defendant.	12.06.2006
11	Ex.P11	Office copy of the rejoinder to the reply dated 06.02.2006 sent by the counsel for the plaintiff.	12.06.2006
12	Ex.P12	Reply sent by the counsel for the 1 st defendant to the rejoinder.	27.06.2006
13	Ex.P13	Reply sent by the counsel for the 2 nd defendant to the rejoinder.	27.06.2006
14	Ex.P14	Statement of accounts of Axis Bank Ltd., furnished on 22.12.2009 for the period from 01.01.2006 to 28.02.2006.	--

सत्यमेव जयते

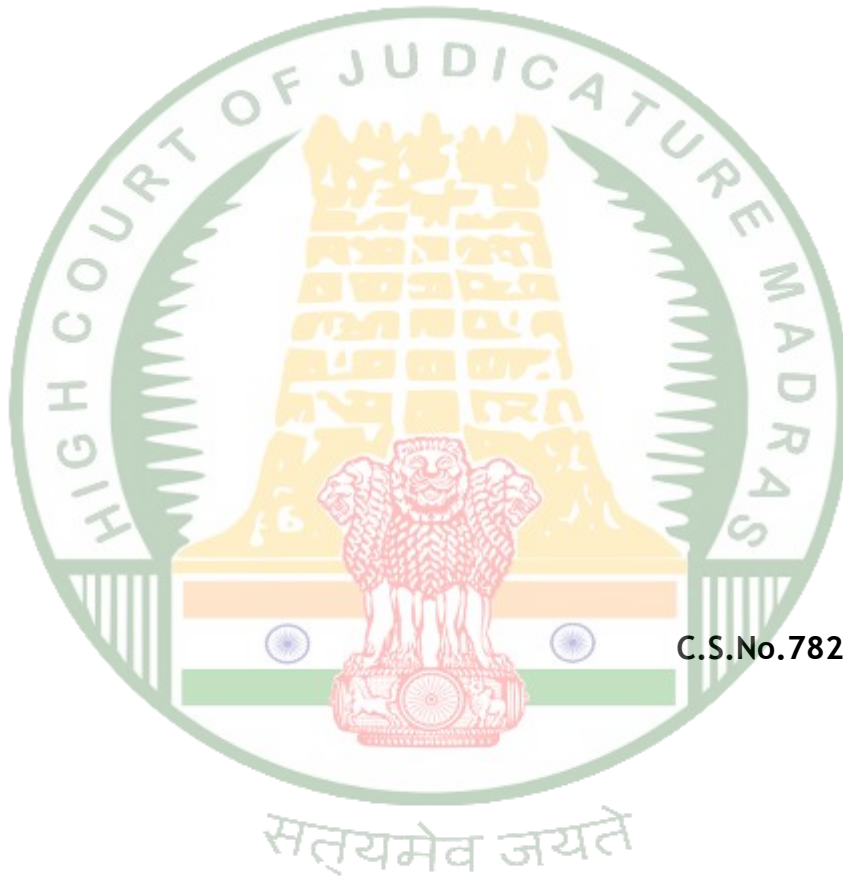
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R.SUBRAMANIAN, J.

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