

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.04.2018

PRONOUNCED ON: 06.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.138 of 2012

M/s.Shriram Composites Private Limited
represented by its Director, T.N.Prasad
Chennai-8

Plaintiff

Vs

M/s.Angerlehner Hoch-UND
represented by its Manager
Kolkatta 700046, West Bengal

Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rules 1 and 2 of CPC, for the reliefs as stated therein.

For Plaintiff : Mr.M.Aravind Subramaniam

For Defendant : Set Exparte

JUDGEMENT

This Civil Suit is filed, seeking a Judgement and Decree against the Defendant, (i) for a sum of Rs.3,32,55,878/- as on 31st January 2012, comprising of Rs.2,43,33,569/- towards principal and Rs.89,22,309/- towards interest as on 31st January 2012 (b) for interest at 20% p.a. on Rs.2,43,33,569/- from the date of the plaint till the date of realization and (ii) for costs of the suit.

2. The case of the Plaintiff is as follows:-

a. The Plaintiff is a reputed Engineering Company engaged in the field of manufacture of specialised glass fiber reinforced plastic (GRP) pipes, fittings and pressure vessels. The Defendant was awarded a contract by Kolkata Municipal Corporation for construction work of upgradation (refurbishment and rehabilitation) of man entry sewers under Jawaharlal Nehru National Urban Renewal Mission of Government of India. The Defendant had approached the Plaintiff for supply of GRP Pipes on job work basis. A job work agreement dated 18th September 2008 was entered into between them. Subsequently, the Defendant unilaterally terminated the said agreement on 15th June 2009. Again, the Defendant approached the Plaintiff for supply of goods and accordingly, the Defendant issued purchase order, dated 21st July 2009, which was revised by purchase order dated 31st July 2009 and further amended by another purchase order dated 16th January 2010.

b. Pursuant to the said purchase orders, the Plaintiff had supplied the goods to the Defendant on running account under various invoices. Though the Plaintiff received certain payments from the Defendant at Chennai, various invoices as detailed in the Schedule have not been paid as per the agreed terms. These amounted to a sum of Rs.2,43,33,569/-. The Defendant failed to pay the amount even after a lapse of 20 months from the date of taking delivery of the goods. The Defendant instead of paying the dues has been raising untenable and frivolous issues in respect of certain other transactions of the Defendant with the Plaintiff. Hence, the Plaintiff had issued a legal notice dated 28.12.2011, calling upon the Defendant to pay and settle all the dues of the Plaintiff. However, there was no reply from the Defendant. Despite repeated

reminders and letters, the Defendant has not paid the dues of the Plaintiff. In such circumstances, this civil suit has been filed, seeking reliefs as stated above.

3. Though the Defendant was served on 06.01.2015, no written statement has been filed by the Defendants and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the Defendant was set *exparte* by order of this court dated 23.03.2018 and recording *exparte* evidence was ordered.

4. One M.Kalyanaraman, DGM (Accounts) of the Plaintiff Company has filed the proof affidavit for his chief examination and receipt of 15 documents as documentary evidence to prove the suit claim. In the Evidence, he examined himself as PW.1 and marked Exs.P1 to P15 as documentary evidence in order to prove the suit claim. Ex.P2 is the job work agreement dated 18.9.2008. Ex.P4 and Ex.P5 are the purchase order and revised purchase order issued by the Defendant. These documents establish the business transactions between the parties. Ex.P8 is the statement of accounts along with affidavit under Section 65B of the Evidence Act. Ex.P9 is the Bank statement of accounts of the Plaintiff. Ex.P14 is the copy of the Advocate notice issued by the Plaintiff. PW.1 in his proof affidavit has reiterated the averments in the plaint and claimed that the Plaintiff is entitled to the suit claim. Since it is a commercial transaction, interest has been claimed at 20% p.a.

5. This Court, by order dated, 9.6.2014, in A.No.1470 of 2012, had made the pro-order passed on 27.4.2012 absolute. The Garnishee, namely, Kolkatta Municipal Corporation, who was the 2nd Respondent in the said

application, was prohibited from disbursing an amount of Rs.2,43,33,569/- with interest. The Plaintiff is entitled for the said amount. The Garnishee is directed to release the said amount to the Plaintiff with interest. The amount has to be adjusted towards the suit claim. For the balance if any, the Plaintiff is permitted to file necessary execution petition against the Defendant.

6. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P15 adduced by PW.1, this Court is of the view that the plaintiff has proved the suit claim and hence, the Plaintiff is entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for, with costs. Time for payment is three months.

.06.2018

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiff:-
 1. P.W.1 - M.Kalyanaraman
2. List of Exhibits Marked on the side of the Plaintiff:-
 1. Ex.P1 is the original authorisation letter dated 23.3.2018.
 2. Ex.P2 is the original job work agreement dated 18.9.2008.
 3. Ex.P3 is the original letter dated 15.6.2009 issued by the Defendant by which the job work agreement dated 18.9.2008 was unilaterally terminated by the Defendant.
 4. Ex.P4 is the copy of purchase order dated 21.7.2009 issued by the Defendant to the Plaintiff.
 5. Ex.P5 is the copy of the revised purchase order dated 31.7.2009 issued by the Defendant to the Plaintiff.
 6. Ex.P6 is the computerised Company of email letter dated 5.11.2009 of the Plaintiff forwarding drawings from Chennai

in respect of the purchase order issued by the Defendant along with an affidavit under Section 65(B) of the Indian Evidence Act, 1872.

7. Ex.P7 is the copy of the amendment dated 16.1.2010 to the purchase order.
 8. Ex.P8 is the computerised copy of statement of account from 22.1.2010 to 19.2.2010 along with details of the invoices along with an affidavit under Section 65B of the Indian Evidence Act, 1872.
 9. Ex.P9 is the copies of bank statements from 1.8.2009 to 26.4.2010 of the Plaintiff.
 10. Ex.P10 is the copy of fresh certificate of incorporation dated 19.4.2010 pursuant to change of name along with an affidavit under Section 65B of the Indian Evidence Act, 1872.
 11. Ex.P11 is the copy of the letter dated 22.3.2011 by the Defendant.
 12. Ex.P12 is the copy of the letter dated 16.12.2011 by the Defendant.
 13. Ex.P13 is the copy of the letter dated 22.12.2011 of the Kolkata Municipal Corporation.
 14. Ex.P14 is the office copy of advocate notice dated 28.12.2011 issued by the Plaintiff against the Defendant.
 15. Ex.P15 is the copy of reply dated 29.12.2011 of the Plaintiff.
3. List of Witnesses Examined on the side of the defendant:-
Nil
 4. List of Exhibits Marked on the side of the defendant:-
Nil

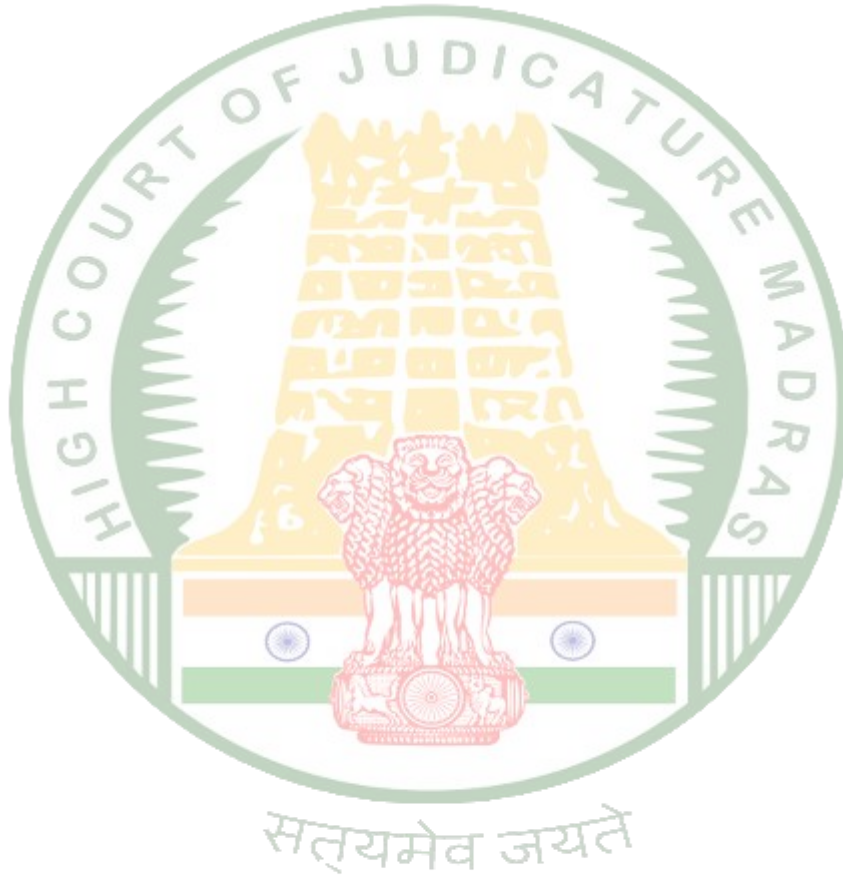
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Note to Office:-

Issue on 06.06.2018

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C.V.KARTHIKEYAN, J.

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