HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.125 OF 2008

JUDGMENT:

Defendant - M/s. S.G.S. Petro Organics Private Limited is the appellant in the present Appeal Suit. It suffered decree, dated 27.10.2006, in O.S. No.46 of 2001, passed by the learned I Additional Chief Judge, City Civil Court, Secunderabad, instituted by respondent - plaintiff - M/s. Balaji Pressure Vessels Limited with liability of Rs.16,44,088.14ps., with future interest at the rate of 24% per annum from the date of suit till realization on the principal amount of Rs.10,06,586.14ps., and also the costs of the suit at Rs.30,950/-. Aggrieved over the said judgment, it preferred the present C.C.C.A. under Section 96 of the Code of Civil Procedure, 1908.

2. Heard Sri C.H. Srinivasa Raju, learned counsel for the appellant on 07.02.2018, and as there was no representation, again it was listed on 14.02.2018 and on 28.02.2018, but, still, there was no representation for the respondent and, therefore, taken up for disposal of the appeal suit on merits.

3. The parties are hereinafter referred to as they were arrayed in the original suit before the trial Court.

4. Certain relevant facts necessary to adjudicate upon the controversy occurring in the present appeal suit are alone adverted to.

i) The plaintiff company is incorporated in manufacturing Liquid Petroleum Gas Cylinders of various sizes as per the customers' requirements. It was a registered company under the Indian Companies Act, 1956. The defendant is also a company styled 'M/s. S.G.S. Petro Organics Private Limited'. There used to be business transactions between both the companies. The defendant is located at Chennai.

ii) According to the plaintiff, as on 01.04.1998, the outstanding business from the defendant were to the tune of Rs.37,435.24ps. Later, the plaintiff, on the request of the defendant, supplied Gas Cylinders worth Rs.2,93,946.90ps. on 23.05.1998; Rs.2,99,000/- on 26.08.1998; Rs.2,31,515.44ps. on 03.09.1998 and, thus, became due to the tune of Rs.8,61,897.58ps. including the outstanding amount by the date of first supply.

iii) Out of the said amount, the defendant paid Rs.1,00,000/- in cash on 14.05.1998 and yet another Rs.1,00,000/- on 04.06.1998; and Rs.93,948/- on 13.08.1998, making a total of Rs.2,93,948/- and, thus, as on 13.08.1998, the outstanding amount was Rs.5,67,949.58ps.

iv) While the things stood thus, on the requests of the defendant, the plaintiff supplied 400 numbers of 12 Kgs. Gas Cylinders and 17 Kgs. Sona Gas Cylinders. The requests were made through the letters, dated 11.08.1998 and 16.10.1998. The details of the consignments received by the defendant are thus:

"1. BPVL/017/SGS/006/98-99 DT.11.9.1998 Rs. 4,62,164.56ps.
2. BPVL/018/SGS/007/98-99 DT.11.11.1998 Rs. 2,77,472.00ps.
3. BPVL/019/SGS/008/98-99 DT.11.11.1998 Rs. 2,99,000.00ps."

v) Thus, the defendant fell due a sum of Rs.16,06.586.14ps. However, he has paid Rs.2,00,000/- on 26.09.1998 through a cheque, another sum of Rs.2,00,000/- on 24.10.1998 through a cheque and yet another sum of Rs.2,00,000/- through a cheque, dated 31.10.1998 and, thus, it cleared Rs.6,00,000/- and, thus, the outstanding amount reduced to Rs.10,06.586.14ps. as on 11.11.1998.

vi) The plaintiff states that despite repeated requests made to the defendant to clear the outstanding dues even by sending a statement of accounts for confirmation, the same stood unanswered. However, the defendant has addressed a letter, dated 10.02.1999, promising to send a demand draft of Rs.3,92,000/- towards returned cheques, but did not honour its commitment. The plaintiff was, therefore, constrained to issue a legal notice, dated 16.08.2000, demanding to clear the outstanding amount with interest at 24% per annum therein, which stood unanswered. Therefore, the plaintiff laid the claim.

5. The defendant did not deny the business transactions with the plaintiff. But, however, concerning 400 Gas Cylinders supplied by the plaintiff, it completely denied. On the other hand, the

defendant claimed that it has paid Rs.6,00,000/- and, therefore, it was not liable to pay Rs.10,38,636.56ps. for supply of Cylinders. Even, denied the liability to pay any interest at all as no amount was due to the plaintiff, according to it. However, claims that the rate of interest claimed by the plaintiff is highly excessive.

i) It would state in the written statement that as per the agreement between them, the plaintiff agreed to pay 40% of the cost per cylinder to it and, therefore, claims that the plaintiff has to pay the commission to it, in regard to which, the defendant claims that it has taken steps to it. It pleads bar of limitation to institute the suit. It also pleads lack of cause of action to the suit and, therefore, sought to dismiss the suit.

6. The trial Court, on the basis of the pleadings of both parties, settled the following three issues:

"

1. Whether the defendant is liable to pay an amount of Rs.16,44,088-14 Ps. to the plaintiff.
2. Whether the defendant is liable to pay interest and whether the interest claimed is excessive.
3. To what relief? "

7. In order to substantiate its claim, on behalf of the plaintiff, its Technical Director was examined as PW.1 and exhibited Exs.A-1 to A-28. On behalf of the defendant, its Managing Director was examined himself as DW.1, but no documents were filed.

8. The trial Court has taken up issue Nos.1 and 2 for common discussion and noted that nothing is brought out in the cross-examination of PW.1 to disbelieve the claim made by the plaintiff and assigning reasons found that the evidence of DW.1 would not improve the case of the defendant, and thereby recorded a finding in favour of the plaintiff.

9. The learned counsel for the appellant - defendant would contend that;

i) suit is barred by limitation since the limitation commences from 01.04.1998, whereas the suit was instituted on 04.07.2001 and, thus, the suit was instituted beyond three years period.

ii) suit is liable to be dismissed for non-joinder of parties, for the reason that all the Directors of the defendant Company were not made as parties; and

iii) the plaintiff completely failed to establish, besides not properly mentioning in the plaint as to whether it sold or leased out the Cylinders, and whether the dues were for lease amount or for sale amount, as the statement of account does not reflect whether the transfer of cylinders was for sale or lease, and even the plaintiff has not filed any lease agreement or sale voucher for the suit amount.

10. His further submission is that the documents, Exs.A-5 and A-6, which are invoices, both dated 11.09.1998, do not contain the signature of the plaintiff and, therefore, they are not valid and the auditor of the plaintiff was not examined to establish that the statement of account contains true and correct entries. Therefore, it is the submission of the learned counsel for the appellant that the trial Court has not properly appreciated the evidence on record and, therefore, ought not to have decreed the suit.

11. In view of the submissions made by the learned counsel for the appellant, the following points emerge for determination:

(i) Whether the suit claim is barred by limitation?

(ii) Whether the suit as framed is not maintainable for non-joinder of all the Directors of the defendant's company?

(iii) Whether the plaintiff could prove the suit claim?

(iv) Whether the rate of interest claimed by the plaintiff is exorbitant?

(v) Whether the judgment and decree under challenge are unsustainable?

(vi) To what other relief, if any, to which the appellant is entitled?

POINT Nos.(i) to (iii)

12. Turning to the submissions made by the learned counsel for the defendant touching bar of limitation to lay the suit, the last transaction referred to in Ex.A-27 - statement of account, of the

defendant shows that the defendant has sent a cheque, dated 31.10.1998, for a sum of Rs.2,00,000/-. The suit was instituted on 04.07.2001. Therefore, it cannot be said that the suit claim was barred by limitation as pleaded by the defendant, nor there is any merit in the submission made by the learned counsel for the defendant. That has been precisely dealt with by the trial Court in paragraph No.15 regarding the aforesaid finding though not a distinct issue was framed there-for.

i) Adverting to the second submission that the suit is bad for non-joinder of necessary parties i.e., all the Directors of the defendant's company, the admission made by the Managing Director of the defendant's company as DW.1 would clinch the issue. His admission was to the effect that he was responsible for the day-to-day operations of the defendant's company. In fact, when such a defence is set up, it is obligatory on the part of the defendant to place before the trial Court the relevant Articles of Association and the Bye-laws, if any, as to who are an appointed or nominated to conduct day-to-day business of the defendant's company. Therefore, even that submission is without any merit.

ii) Now, turning to whether the evidence on record would prove the suit claim and whether the trial Court has properly appreciated the evidence on record in accordance with evidentiary rule in arriving at the findings tendered on issue Nos.1 and 2, Ex.A-1 is the letter, dated 11.08.1998, addressed by the defendant to the plaintiff;

Ex.A-2 is yet another letter, dated 16.10.1998; Ex.A-18 is yet another letter, dated 24.10.1998; Ex.A-19 is one more letter, dated 13.11.1998, addressed by the defendant and Ex.A-26 is also yet another letter, dated 10.02.1999 addressed by the defendant to the plaintiff would further condemn the stand taken by the defendant for the reason that even by then the supply of 400 numbers of Gas Cylinders of 12 Kgs. and 17 Kgs. through three consignments was over, as the letter - Ex.A-26 was not denied by DW.1 and, in fact, the defendant got mentioned that it would send a demand draft for Rs.3,92,690/- for the two returned cheques covered by Exs.A-18 and A-19. The very promise made under Ex.A-26 that it would arrange the payment of Rs.3,92,690/- shortly is sufficient to hold that the suit claim is proved by the plaintiff. Ex.A-19 – letter, dated 13.11.1998, shows that the defendant expressed its inability to honour the cheques. This apart, the invoices under Exs.A-4, A-5 and A-6 for Rs.4,62,164.56ps., cannot be brushed aside as they find place in Ex.A-27 – statement of account, which DW.1 did not dispute in his evidence. Like-wise, even invoices, Ex.A-13 for Rs.2,99,000/- and Ex.A-17 for Rs.2,77,472/- also do find place in Ex.A-27. The supply of 400 Gas Cylinders and receipt thereof by the defendant is amply substantiated through Ex.A-12, an outgoing gate pass reflecting that the consignments were received on 13.11.1998 by the defendant's company as the signature and rubber seal of its company is finding place on Ex.A-12.

iii) Therefore, viewed in the context of the evidence of PW.1 and the documentary evidence, Exs.A-1 to A-28, more particularly, Ex.A-27, statement of account, reflecting the due amounts and the relevant details which the defendant did not deny and even the probability that the plaintiff has accounted for six cheques paid by the defendant through three cheques each for Rs.2,00,000/- on various dates, referred to in the above, would all give rise to an inescapable inference that the entries in Ex.A-27 are true and correct and no other inference can be drawn favouring the defendant.

iv) The last probability that favours the plaintiff's claim is, the inaction on the part of the defendant company. The very fact that despite receipt of legal notice got issued by the plaintiff which stood unanswered is a circumstance that cannot be brushed aside as in case the defendant was not due any amount as contended by it, the defendant's company would have refuted or controverted each allegation in the notice, dated 16.08.2000 marked as Ex.A-28. Thus, even this probability stands adverse to the case of the defendant.

POINT No.(iv)

13. It is not in dispute that the outstanding amount, which is the suit claim, arises out of business transactions between the parties and can be viewed as commercial transactions. Therefore, awarding rate of interest at the rate of 24% per annum by the trial Court cannot be faulted.

POINT No.(v)

14. Thus, viewed in the context of admissions made by DW.1 and the evidence of PW.1 and Exs.A-1 to A-28, it is to be held that the plaintiff proved the suit claim through positive evidence and the trial Court did not deviate in appreciating the evidence on record by process of reasoning in accordance with evidentiary rule. The findings recorded by the trial Court, therefore, do not suffer from any legal infirmity warranting interference on an independent analysis of evidence on record, both, oral and documentary, let in by the plaintiff, and the evidence of DW.1 leading nowhere. On the other hand, the crucial admissions made by DW.1 in his cross-examination, substantiate the case set out by the plaintiff. Therefore, it is to be held that there is absolutely no merit in the present appeal and, therefore, the same is liable to be dismissed with costs.

POINT No.(vi)

15. In view of the foregoing discussion, the present appeal is dismissed with costs.

As a sequel thereto, miscellaneous applications, if any, pending in the present appeal, stand closed.

A. SHANKAR NARAYANA, J

March 01, 2018.
Mgr