IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.08.2019

PRONOUNCED ON : 08.08.2019

CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy

C.S.No. 1311 of 1994

M/s. Salem Stainless Steel Supplier Private Ltd.,
Rep. by its Director,
P.Shantilal Jain,
No.33, Lawyer Chinna Thambi Street,
Kondithope,
Chennai-79 .. Plaintiff

(The amendment carried out as per order dated 08.07.2013 in Application No.2655 of 2013 extended by order dated 16.07.2013. Amendment carried on 22.07.2013)

Vs.

M/s. Sumeet Machines Ltd.,
Rep. by its Managing director,
Mr.Ajoy Mathur .. Defendant

Prayer : Plaint under Order VII, Rule 1 C.P.C., and Order IV Rule 1 of O.S.Rules, praying to pass a decree and judgment against the Defendants:-

(i) for directing the defendant to pay to the plaintiff a sum of Rs.1,81,72,084/- together with further interest at the rate of 24% per annum on the principal sum of Rs.1,09,72,084/- from the date of plaint till the date of realisation;

(ii) directing the defendant to pay to the plaintiff the costs of this suits;

(iii) grant such further or other reliefs.

For Plaintiff : Mrs.Chitra Sampath,
Senior Counsel
for Mr.Vikram U. Jain

For Defendant : Ms.Sharanya Vaidhiyanathan
for Mr.S.Raghunathan

JUDGMENT

Heard Mrs.Chitra Sampath, learned Senior counsel appearing for plaintiff and Ms.Sharanya Vaidhiyanathan, learned counsel appearing for defendant.

2. The factual matrix of the present case is as follows:

i) The plaintiff filed the present suit for recovery of money based on 11 invoices raised against the defendant for the goods supplied.

ii) The plaintiff originally filed the suit in the name and style of "M/s.Salem Stainless Steel Suppliers", which was a registered partnership Firm. Subsequent to the filing of the suit, the plaintiff converted the said partnership firm into a Salem Stainless Steel Suppliers Private Limited. Hence, the plaintiff has filed an application to amend the cause title, and as per the order of this Court, dated 08.07.2013, in Application No.2655 of 2013, the cause title of the plaint has been amended and reflected into "M/s.Salem Stainless Steel Supplier Private Limited".

iii) The plaintiff is a dealer in stainless steel sheets, coils etc, and they are the authorized dealer of Salem Steel plant at Salem. They stock the stainless steel materials and sell the same either in retail or on whole sale basis. During the course of business, the plaintiff supplied the goods to the defendant from 14.09.1991 to 01.04.1992 by various invoices, numbering 11.

iv) The defendant-Company has received the goods covered under the aforesaid 11 invoices and also the 11 invoices raised against them for the goods supplied. The total value of the goods supplied to the defendant is Rs.1,14,72,084.00/-. The plaintiff further submits that the goods was supplied on credit basis, that is, credit for 60 days, and it was agreed that if the defendant failed to make payment in time, the defendant is liable to pay interest at the rate of 24% per annum and the said terms has also been mentioned in the invoices made against the defendant. However, the defendant paid only a sum of Rs.5,00,000/- towards partial payment in respect of an invoice bearing number 1389 dated 14.09.1991 for Rs.12,40,335/-. Apart from the said payment of Rs.5,00,000/- the defendant is liable to pay a sum of Rs.1,09,72,084/- towards balance outstanding and further sum of Rs.72,00,000/- towards interest at 24% per annum, aggregating in a sum of Rs.1,81,71,084/-.

v) Despite repeated requests and reminders were made by the plaintiff for payment of the outstanding amount, the defendant has neither replied nor paid the outstanding amount to the plaintiff. Hence, the plaintiff sent a legal notice dated 08.03.1994 and though the same was acknowledged by the defendant, the defendant failed to settle the outstanding dues and evaded to pay the same. Therefore, the plaintiff, having left with no other option, filed the present suit before this Court for recovery of money.

vi) The plaintiff also moved a Company Petition before the Bombay High Court, in C.P.No.316 of 1994, to wind-up the defendant Company and the Company Petition was rejected by order dated 22.02.1999 holding that the defendant Company deposited a sum of Rs.75,00,000/- to the credit of the Civil Suit before this Court and therefore, the plaintiff's outstanding amount is secured to the extent of Rs.75,00,000/-. Hence, the defendant Company was a solvent Company.

3. The Defendant filed written statement, wherein, it is stated as follows:-

i) The defendant carries on business of manufacturing various domestic/home appliances, such as Mixies, Food Processors, Washing Machines etc. One of the primary raw materials that the defendant requires for manufacture of their product is stainless steel sheets, which it procures from various dealers.

ii) One Mr.Shantilal Jain had informed the defendant that he was a partner of the plaintiff firm along with one other partner, being Mr.Bhamutmal Jain and M/s Sekar and Sagar is one of the Sister Companies, which was stated to be a Partnership Firm, in which, Mr.Shantilal jain, (who was a Partner of the plaintiff firm), was also a partner. In the year 1991, the plaintiff and the said M/s. Sekar and Sagar were carrying on business in the same premises namely No.8, Ekambareswarar, Agraham, Chennai 600 003.

iii) On account of the said Mr. Shantilal jain being actively involved in the business of both the Firms, namely, the then plaintiff-Firm and the sister concern, and since the said Mr. Shantilal jain had suggested the defendant to appoint M/s. Sekar and Sagar as a Distributor in Chennai for the products manufactured by the defendant, during August, 1991, the plaintiff, defendant and the said Distributor entered into an arrangement, wherein, it was agreed that the plaintiff would supply the stain steel sheets to the defendant and out of the steel sheet materials supplied by the plaintiff, the defendant would manufacture the finished products and supply such finished products to the Distributor, M/s. Sekar and Sagar, for which, the value of steel sheets supplied by the Plaintiff would be adjusted by the defendant towards the value of the finished products supplied by them (defendant) to M/s Sekar and Sagar.

iv) Such an arrangement had been put into place by the mutual agreement between the parties to the said arrangement. The suit herein has arisen from the said tripartite agreement/arrangement entered into amongst the parties, namely, between the plaintiff, the defendant and the said M/s. Sekar and Sagar, represented by its partner Mr. Shantilal Jain (who is also the partner of plaintiff-Firm, M/s. Salem Stainless Steel Suppliers), which agreement forms the principal basis of the transaction between the Plaintiff and the Defendant herein."

v) Pursuant to such an mutual agreement, defendant placed orders for the supply of stainless steel sheets under eleven (11) Invoices, the details of which, have been set out in Paragraph 2 of the Proof Affidavit of PW1, marked as Ex.P.2 series to the plaintiff, and the finished products were supplied to the said Distributor, M/s.Sekar and Sagar by the Defendant and the same had also been received by it, without any demur.

vi. Therefore, the defendant averred that, whatever the amounts due and payable to the plaintiff as per the suit claim, the defendant has already adjusted towards the supply of finished goods made to the Distributor, M/s.Sekar and Sagar by way of issuing appropriate credit to the account. Hence, the defendant contended they are not liable to pay any amount as claimed in the plaint.

4. Mrs. Chitra Sampath, learned Senior Counsel appearing for the plaintiff submitted that based on the orders placed by the defendant, the plaintiff supplied the stainless steel materials, on credit basis i.e credit for 60 days and it was also agreed that if the defendant delayed in making payment within the stipulated time, the defendant is liable to pay 24% interest per annum. These terms and conditions have been specifically incorporated in the invoice raised against the defendant for the supplies effected to the defendant.

Though in some invoices, it is stated that interest at 30% will be charged for the payment after 60 days, the plaintiff restricted its claim for interest at 24% per annum from the expiry of 60 days of supply upto the date of payment.

4.1 The learned Senior Counsel further submitted that the defendant paid a sum of Rs.3,00,000/- and Rs.2,00,000/- by way of demand draft and cheque dated 24.04.1992 to the plaintiff towards partial payment in respect of Invoice No.1389 dated 14.09.1991, for Rs.12,40,335/-,. In this regard, the plaintiff marked Ex.P.4. However, so far as the balance outstanding amount is concerned, inspite of several requests/reminders and finally, by Lawyer's notice, dated 14.02.1992 which is marked as Ex.P5, made by the plaintiff, calling upon the defendant to pay the outstanding amount, and the said notice was also acknowledged by the defendant on 08.03.1994, the defendant neither replied to the said notice, nor come forward to pay the amount.

4.2 The learned Senior Counsel contended that at the time of filing of the suit, the defendant Company are due and liable to pay a sum of Rs.1,09,72,084/- (Rs.1,14,72,084/ -Rs.5,00,000/-) towards balance outstanding in respect of supply effected by the plaintiff, as per the statement of account, for the period from 14.09.1991 to 12.09.1994 and a sum of Rs.72,00,000/- towards interest at 24% per annum as per the terms of supply, aggregating a sum of Rs.1,81,72,084/-. The learned Senior Counsel submitted that since the suit is pending for more than two decades, the plaintiff's outstanding amount is secured to an extent of Rs.75,00,000/-. The plaintiff also marked the registration of the Firm as Ex.P.6 and memorandum of Association of plaintiff's Firm as Ex.P.7.

4.3 The learned Senior Counsel also referred to the following deposition of D.W.1. during cross examination, which reads as follows:-

> "Yes, I have gone through the plaint filed by the plaintiff. It is correct to state that the plaintiff in para-3 of plaint has indicated 11 items of supply of materials to the defendant with its value. We are not disputing the same. It is correct to state that we have received all the invoices mentioned in para 3 of the plaint."

4.4 Therefore, the learned Senior Counsel submitted that the supply of stainless steel materials made by the plaintiff to the defendant is clearly established by the plaintiff and it is also accepted by the defendant that they received all the goods through 11 invoices as narrated above.

4.5 The learned Senior Counsel appearing for the plaintiff submits that the defendant marked photocopy of the documents as Exs.D1 to D10, which cannot be taken into consideration as evidence, unless and otherwise, he produce the original documents. Further, she contended that the reasons stated by the defendant in the application No.2853 of 2018 for non-production of the original document that due to the fire accident occurred in their registered office, the original documents could not retrieved appears to be not genuine and hence, the documents marked by the defendant cannot be taken into consideration as true documents. Furthermore, she contended that, even assuming such documents to be true, the defendant is not entitled to take any credit for the supply of goods made by the plaintiff to and in favour of M/s.Sekar and Sagar, for , the plaintiff has not produced any document

4.6 The learned Senior Counsel submitted that though the defendant by referring to the photocopy of the letters, dated 16.12.1991 and 19.12.1991 (marked as Exs.D1 and D.2) contended that the said letters would clearly indicate the credit given by the plaintiff to the account of M/s.Sekar and Sagar for a sum of Rs.23,20,141/- and Rs.23,99,487.50/- respectively, the learned Senior Counsel submits that even in the said credit notes issued by the plaintiff, the plaintiff had categorically made request to make necessary entries in the defendant books of accounts and also to send their stamp receipt to the M/s. Sekar and Sagar, Madras for the amount received by the plaintiff, on their behalf, however, the said credit notes had remained only on paper, it was not credited in the accounts of M/s.Sekar and Sagar. Further, she contended that the defendant also not filed any documents pertaining to the debit account for the amount credited to M/s.Sekar and Sagar.

4.7. Further, the learned Senior Counsel contended that in the letter, dated 20.02.1992, sent by the defendant to the Distributor, Mr.Shantilal Jain, M/s.Sekar and Sagar, marked as Ex.D.3, it was stated as follows:-

> " The matter regarding adjustment of approximately Rs.79 lakhs towards the supplies of stainless steel sheets for washing machines from Salem Stainless Steel Suppliers – Madras, we may advice that the amount may be cleared by our supplies of about 12000 domestic mixers per month from march 1992 onwards. For this we would have to make necessary accounting entries so that we do not have any problem in our accounts at a future date."

4.8 Therefore, it is clear that the defendant seeks time to pay off the sum of Rs.79,27,450/- by supply of 1200 domestic mixers. If the amounts as mentioned in Exs.D1. and D.2 viz., Rs.23,20,141/- and Rs.23,99,487.50/- respectively had been adjusted in the books of the defendant, then, the defendant would not have admitted the liability of Rs.79 Lakh and odd in Ex.D3. Thus, even as on 20.02.1992 the defendant failed to give any amounts in the books of defendant and credit in the account of M/s.Sekar and Sagar.

4.9 Further, the learned Senior counsel referred to the relevant portion of the letter, dated 11.09.1992 sent by the defendant to M/s.Sekar and Sagar, marked as Ex.D.6, through P.W.1. wherein, it is stated as follows:-

> "As per our discussions with Mr.Shantilal today, we are going to continue supplies of domestic mixers against full advance payment terms as before to regain the lost market. On the remaining outstanding due to Salem Stainless Steel Suppliers on account of supply of Stainless Steel, we will commence payment after December 1992."

4.10 The learned Senior Counsel after referring to the above statement contended that, even on 11.09.1992, the defendant failed to provide any debit entries in the account of plaintiff and credit entries in the account of M/s.Sekar and Sagar. Further, the learned Senior counsel contended that as on the date of 20.02.1992, the plaintiff made seven supplies worth about Rs.99,00,000/- and subsequently, the plaintiff made four more supply to the defendant. Therefore, the defendant is liable to pay Rs.1,14,72,084/- towards 11 invoices. Further, the learned Senior Counsel submitted that no credit has been provided by the defendant to and in favour of M/s.Sekar and Sagar, as stated by the plaintiff, in their letters, dated 16.12.1991 and 19.12.1991, viz., Exs.D1 and D.2. Therefore, the defendant is not entitled to take any credit towards the said two letters, which are nothing but a photo copy marked by the defendant as Exs.D1 and D2.

4.11 The learned Senior Counsel further submitted that though the main thrust of defense by the defendant is that, there was a tripartite agreement entered into amongst the plaintiff, defendant and M/s.Sekar and Sagar, and in terms of the said arrangement, the plaintiff is not entitled to claim any amount from the defendant, unless and until, the plaintiff' is neither a party nor a signatory to the agreement, the defendant cannot take shelter under the said tripartite agreement.

5. On the other hand, Ms.Sharanya Vaidhiyanathan, the learned counsel appearing for the defendant would submit that the defendant is carrying on business of manufacturing various domestic/home appliances, such as Mixies, Food Processors, Washing Machines etc and one of the primary raw materials that the defendant requires for manufacture of their product is stainless steel sheets. The learned counsel submitted that one of the sister concerns of the Plaintiff-Firm, called M/s. Sekar and Sagar, is a Partnership Firm, in which, Mr.Shantilal Jain, who was a Partner of the Plaintiff Firm, was also a partner. In 1991, the plaintiff and the said M/s. Sekar and Sagar were carrying on business in the same premises, namely No.8, Ekambareswarar Agraham, Chennai 600 003 and since Mr.Shantilal Jain was actively involved in the business of both Firms, he suggested to the defendant that the defendant should appoint M/s.Sekar and Sagar as a distributor in Chennai for the products manufactured by them (Defendant). The said Mr.Shantilal suggested that the defendant should, out of the stainless steel sheets supplied by the Plaintiff, manufacture the finished products and supply such products to M/s. Sekar and Sagar. It was agreed between the Plaintiff and the Defendant that the value of stainless steel sheets supplied by the Plaintiff should be adjusted by the defendant towards the value of the finished products supplied by the Defendant to M/s. Sekar and Sagar. This tripartite arrangement, dated 22.08.1991 (Ex.D4) was initiated by Mr.Shantilal Jain on behalf of both the

Plaintiff as well as M/s. Sekar and Sagar. The said arrangement was agreed to by the defendant and accordingly the finished products were supplied to the said M/s. Sekar and Sagar."

5.1. The learned counsel further submitted that, in pursuance of such understanding/arrangement, the defendant placed orders for the supply of Stainless steel sheets under eleven (11) Invoices, the details of which, have been set out in Paragraph 2 of the Proof Affidavit of P.W.1 and has been marked as Exhibit P2 series, and the finished products were supplied to the said Distributor, M/s.Sekar and Sagar by the defendant and the same had also been received by the Distributor without any demur. Thereafter, the defendant had attested two letters, dated 16.12.1991 and 19.12.1991, enclosing Credit Notes, in which, the plaintiff had given credit for a sum of Rs.23,20,141/- and Rs.23,99,487.50/- respectively for the supplies made to the consignee Agent M/s. Sekar and Sagar by the defendant. Both the said letters with the attached Credit Note have been marked as Exhibits D1 and D2 respectively in the course of the cross examination of PW1 on 14.03.2018.

5.2 Further, the learned counsel contended that the defendant herein vide a letter dated 20.02.1992 addressed to Mr.Shantilal Jain, recorded the arrangement arrived at between the parties, and had in fact, particularly, provided for the manner, in which, adjustment of the accounts had to be carried out. The said letter dated 20.02.1992, along with, which a consignee agreement had been enclosed, has been marked as Exhibit D.3 in the course of the cross examination of PW1 on 21.03.2018.

5.3 The learned counsel further submitted that apart from the sum of Rs.47,19,628.50/- (Rs.23,20,141/- Rs.23,99,487.50/-) given credit to as per Exhibits D1 and D2, the defendant had supplied in excess to M/s. Sekar and Sagar, finished products of the value of Rs.13,07,674.88/-, as stated by them in the Statement of Account annexed to a letter dated 13.08.1992 addressed by M/s. Sekar and Sagar for a sum of Rs.41,55,456.13/- towards non-submission of Statutory Forms for the supplies made. The said amount was only to be adjusted out of the supplies made by the Plaintiff. Contrary to the agreement between the parties, the plaintiff has fraudulently suppressed before this Court the supplies made by the defendant to M/s. Sekar and Sagar, amounting to a sum of Rs.1,67,03,659.67/- as well as the other amounts due from M/s.Sekar and Sagar to the Defendant, while filing the suit.

5.4 Therefore, the learned counsel contended that the defendant is entitled to adjust the amounts due to the plaintiff by way of the supplies of finished products to M/s.Sekar and Sagar and the plaintiff is also bound to give credit for the supply of such finished products to the M/s.Sekar and Sagar. All the relevant documents on behalf of the Plaintiff as well as M/s. Sekar and Sagar, at the time when the transaction between the parties herein had then taken place were all signed by Mr.Shantilal jain, who has the authority to represent both the firms, viz., Plaintiff as well as M/s. Sekar and Sagar. . Further, the plaintiff is estopped from pleading ignorance of such arrangement by contending that the plaintiff is not a party to the agreement and not signed the same when the plaintiff having failed to examine the said Mr.Shantilal Jain, who is also the partner of the plaintiff's Firm to prove that no such agreement was entered into.

5.5 Therefore, the learned counsel contended that as per the tripartite agreement entered into between the parties, the defendant is entitled to the claim for the supplies of goods made by them to M/s.Sekar and Sagar, which is as evident from the letter, dated 16.12.1991 for the sum of Rs.23,20,141/- as well as the letter, dated 19.12.1991 for a sum of Rs.23,99,487.50/- and accordingly, the defendant is entitled to claim indemnity from M/s.Sekar and Sagar under order VIII A, C.P.C in the event of defendant is liable to pay any amount to the plaintiff as claimed in the application No.3482 of 2000**.**

5.6 The learned counsel appearing for the defendant submitted that even the Company Petition filed by the plaintiff to declare the defendant as an insolvent was dismissed by the High Court of Bombay, as the Bombay High Court took note of the tripartite arrangement entered into between the parties (defendant, plaintiff and the Distributor). The learned counsel further contended that

6. This Court, upon perusal of the pleadings, plaint and written statement framed the following issues:-

"I. Has the Plaintiff supplied Goods to the Defendant for the value of Rs.1,14,72,084/- as claimed in Paragraph 3 of the Plaint?

II. Is the plaintiff is entitled to claim interest at 24% per annum for the supplies made by the defendant ?

III. Is the Defendant is entitled to claim credit from the plaintiff for the supply of Goods made by them to M/s. Sekar and Sagar, the Distributor, (Respondent in Application No.3482 of 2000), on 16.12.1991 for Rs.23,20,141/- and on 19.12.1991 for Rs.23,99,487.50/-, on the basis of instructions from the Plaintiff ?

IV. Is the Defendant is entitled to claim indemnity/contribution from M/s.Sekar and Sagar under VIII (a) of the Civil Procedure Code in the event of the Defendant being held liable to pay any amounts to the Plaintiffs, as claimed in Application No.3482 of 2000?

V. Is the Plaintiff entitled to claim Rs.1,81,72,084/- as claimed in the suit together with future interest at 24% per annum ?

VI. Has the Suit been properly valued for the purpose of Court Fee, by the Plaintiff ?

VII. What reliefs the parties are entitled to?"

6.1 Issue No. I and II

The plaintiff is a dealer in stainless steel sheets, coils etc, and the defendant is a manufacturer of home appliances, such as mixers, food processors, washing machines, and one of the raw materials that is required for manufacture of the home appliance products is the stainless steel sheets. Hence, the defendant approached the plaintiff for the supply of stainless material either in retail or in whole sale basis. Accordingly, the plaintiff supplied the goods through various invoices (numbering 11) to the defendant, from 14.09.1991 to 01.04.1991, the details of which, are given in the tabulated column:-

S.No	Invoice No.	Date	Amount
1.	1389	14.09.1991	Rs.12,40,335.00/-
2.	1407	17.09.1991	Rs.10,79,806.00/-
3.	1634	17.10.1991	Rs.12,32,930.00/-
4.	1638	19.10.1991	Rs.11,66,557.00/-
5.	1745	02.11.1991	Rs.8,18,244.00/-
6.	1779	09.11.1991	Rs.12,66,517.00/-
7.	1780	09.11.1991	Rs.11,23,061.00/-
8.	2847	11.03.1991	Rs.2,83,404.00/-
9.	0002	01.04.1991	Rs.11,36,970.00/-
10.	0003	01.04.1991	Rs.10,23,900.00/-
11.	0004	01.04.1991	Rs.11,00,360.00/-
		Total	**Rs.1,14,72,084.00/-**

6.2. By virtue of above 11 invoices, the plaintiff supplied the goods worth Rs.1,14,72,084/- to the defendant. In fact, the defendant deposed evidence that the materials were supplied by the plaintiff to the defendant through 11 invoices with Lorry receipts and the same have been marked as Ex.P2 series. The proof affidavit filed by D.W.1 at para No.3 states that "the defendant has placed orders for the supply of stainless steel sheets under eleven (11) invoices set out in para No.2 of the Proof Affidavit of Sripal S.Jain, P.W.1. Further, on perusal of the invoices, it was clearly mentioned that, if the invoice amount is not paid within 60 days, then 24% interest will be charged per annum. Therefore, this Court holds that the plaintiff supplied goods to the defendant to Rs.1,14,72,084/- as claimed in para 3 of the plaint and since the defendant failed to pay the amount within the stipulated period of 60 days of the receipt of goods, the plaintiff is entitled to 24% interest on the the principal sum of Rs.1,09,72,084/- from the date of plaint till the date of realisation for the supplies made.

6.3 As far as the order passed in the Company Petition No.316 of 1994, by the Bombay High Court is concerned, which has been marked as Ex.D7, the said Company Petition was dismissed for the reasons that the defendant is a solvent Company, since they have deposited a sum of Rs.75,00,000/- to the credit of the present Civil Suit before this Court, and therefore, the plaintiff's outstanding amount is secured to the extent of Rs.75,00,000/-, and not by taking into consideration of the alleged tripartite agreement/Ex.D4, dated 22.08.1991, as alleged by the defendant and the said dismissal is in no way affect the present suit to determine the issues involved herein. Therefore issues Nos.I and II are decided in favour of the plaintiff.

6.4 Issue Nos.III and IV

Even though the communications, dated 16.12.1991 and 19.12.1991 marked by the defendant as Exs.D1 and D2 are the photo copies, and on perusal of the said documents, it is seen that the defendant was directed by the plaintiff to debit to an extent of Rs.23,20,141 through Ex.D1 and Rs.23,99,487.50 through Ex.D2 and provide appropriate credit to M/s.Sekar and Sagar and that the defendant was further directed to issue the receipt to and in favour of M/s.Sekar and Sagar. Further, on perusal of Ex.D3, it is clear that, as on 20.02.1992, the defendant failed to give any debit to the accounts of the plaintiff and credit to M/s.Sekar and Sagar Even on perusal of Ex.D6 dated 17.09.1992, it is seen that the defendant admitted the fact that he would make the outstanding payment to the plaintiff after December 1992. However, the defendant has not filed any document to substantiate the proof for payment of amount to and in favour of M/s.Sekar and Sagar or any proof, providing credit to the account of M/s.Sekar and Sagar and providing debit to the plaintiff's account. The defendant has also not produced any books of account that they have been maintaining relating to the debit/credit entries made to and in favour of the plaintiffs and M/s.Sekar and Sagar, to substantiate their claim.

6.5 Thus, in the absence of producing any document in relation to debit/credit entries in books of the defendant to and in favour of plaintiff and M/s.Sekar and Sagar in connection with the letters along with the debit/credit note alleged to have been issued by the plaintiff through the Exs.D1 an D2, this Court is not in a position to accept the contention of the defendant stating that they have adjusted the amounts (as mentioned in document Exs.D1 and D2) to and in favour of M/s.Sekar and Sagar.

6.6. Further, the stand taken by the defendant that there was a tripartite agreement/Ex.D.4, dated 22.08.1991, and in terms of the said agreement, whatever the amounts due and payable to the plaintiff as per the suit claim, the defendant has already adjusted towards the supply of finished goods made to the Distributor, M/s.Sekar and Sagar by way of issuing appropriate credit to the account, hence, the defendant are not liable to pay any amount as claimed in the plaint, is liable to be rejected for the sole reason that the said agreement marked by the defendant is only photostat copy and not original one. The plaintiff is neither a party to such agreement nor a signatory to the said agreement. Further, when the existence of such agreement is disputed by the plaintiff, onus is cast upon by the defendant to prove the same by producing the original and the defendant cannot merely contend that the original documents was destroyed owing to the fire incident that took place at their registered office situated at Mumbai and replica of the same was retrieved from the documents maintained at Nasik Factory fairlure on the part of the defendant to produce the original tripartite agreement acts fatal to the defendant's case.

6.7 Though the defendant also marked Ex.D4, tripartite arrangement alleged to have been entered into amongst the plaintiff, defendant and M/s.Sekar and Sagar, the same is not signed and the plaintiff is not a party to the said agreement. The document, which is not properly attested/signed is no way helpful to prove the case of the defendant and the defendant cannot place reliance on the same. Accordingly, Issue No.III is answered against the defendant.

6.8. Insofar as the fourth Issue is concerned, in view of the finding rendered by this Court to the Issue No.III against the defendant, and when admittedly, M/s.Sekar and Sagar is not a party to this proceedings, this Court, cannot pass any orders against M/s.Sekar and Sagar to indemnify the defendant under the order VIII A C.P.C, as claimed in Application No.3482 of 2000.Therefore, issue No.IV also answered against the defendant.

6.9. Issue No.V

In view of the above finding rendered by this court with regard to Issue Nos.I to IV, (which are in favour of the plaintiff), this Court holds that the the plaintiff is entitled to a sum of Rs.1,81,72,084/- as claimed in the present suit with interest at 12% p.a. from the date of filing the suit till the date of decree.

6.10 Issue No.VI

The plaintiff paid the Court fee to a sum of Rs.1,85,246/- for the value of suit at Rs.1,14,72,084/-. Therefore, the Court fee has been paid in accordance with the Tamil Nadu Court Fee Act. Hence, this Court decide this issue in favour of the plaintiff holding that the suit has been properly valued and the Court fee is paid accordingly.

6. 11 Issue No.VII

In view of the findings rendered by this Court in favour of the plaintiff with regard to Issues I to VI, this Court is passing a judgment and decree to and in favour of the plaintiff by holding that the plaintiff is entitled to the cost of the present suit along with the suit claim of Rs.1,81,72,084/- together with interest at the rate of 12% p.a. from the date of filing the suit till the date of decree and at 9% per annum from the date of the decree till the date of realisation of the decree amount. Issue Nos.V, VI, and VII are answered accordingly.

7. In the result, this Civil Suit is decreed to the extent as indicated above with costs.

08.08.2019

rst
Index: Yes/No
Speaking Order/Non Speaking Order

Krishnan Ramasamy,J.,

rst

C.S.No. 1311 of 1994

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