IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.10.2019

PRONOUNCED ON:25.10.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.53 of 2013

M/s. Sangeetha Traders
Represented by its Partner
Mr.Santosh Kumar Lath,
B-10/305, Mahadevan Apartments,
T.T.K.Road,
Alwarpet,
Chennai 600 018. ... Appellant/Plaintiff

Vs.

Mr.T.A.Shanmugham
Proprietor,
M/s. Sai Packaging Industries,
No.213, Sidco Industrial Estate,
Ambattur,
Chennai 600 098. ... Respondent/Defendant

Prayer: First Appeal filed under Section 96 of C.P.C., r/w Order 41 Rule 1 C.P.C., and Order IV Rule 14 & 15 of the Appellate side Rule 1956 against the judgment and Decree dated 06.03.2008 passed in O.S.No.1709 of 2007 on the file of the III Additional City Civil Judge, Chennai.

For Appellant : Mr.M.Aravind Subramanian

For Respondent : Mr.N.Chandraraj

J U D G M E N T

Aggrieved over the judgment and decree dated 06.03.2008 passed in O.S.No.1709 of 2007 on the file of the III Additional Judge, City Civil Court, Chennai, the plaintiff has preferred the First Appeal.

2. For the sake of convenience, the 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 the it has been engaged in the business of dealing in Kraft papers and the plaintiff is the agent of various Paper Mills and as the agent dealing with all the customers in Tamilnadu and the defendant had approached the plaintiff for the supply of kraft papers and accordingly the plaintiff had been supplying the goods to the defendant through the Paper Mills since 2001, the receipt of which have been acknowledged by the defendant. The total value of the goods supplied to the defendant is Rs.6,40,468/- and out of the same, a sum of Rs.75,000/- has been paid by the defendant on 01.04.2004, 24.01.2005 and 09.03.2005. After deducting the abovesaid sum, the defendant is due a sum of Rs.5,65,468/- and the plaintiff has been maintaining a running account and since the payments against the dues were effected on the abovesaid dates, the suit claim is not barred by limitation. The payment has not been effected against the supplies on the dates as mentioned in the plaint and the invoice amounts ought to have been paid on the respective due dates ie., 45 days from the date of invoice. Since the payments were not made on the due dates, the plaintiff has suffered a loss and had paid interest to the bankers. Despite several reminders and demands made by the plaintiff, the defendant failed and neglected to pay the outstanding amount of Rs.5,65,468/- and the plaintiff had issued a legal notice to the defendant through their counsel on 25.06.2004 and the same was received by the defendant. The defendant through his reply acknowledged his liability and ask for some more time and assured to pay all the dues. The defendant had acknowledged his liability by letter dated 30.01.2006 and hence the claim made by the plaintiff is will within the time. The plaintiff sent a reply dated 03.03.2006 to the defendant to pay all the outstanding dues. As there is no response to the same on the part of the defendant, according to the plaintiff, it has been necessitated to lay the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts. According to the defendant, the suit laid by the plaintiff is not maintainable, because the materials were supplied directly by the Paper Mills mentioned in para 3 and 4 of the plaint under their invoices and as such there is no contract with the plaintiff for the payment of the said invoice amounts to it directly. The plaintiff has not stated in what capacity it is entitled to file the suit and claim money from the defendant, particularly without the

principal suppliers being made as the party claimants in the proceedings. Therefore the suit laid by the plaintiff is not maintainable and barred/bad for non-joinder of necessary parties. The suit laid by the plaintiff is also barred by limitation. The supplies were made for the period up to 15.07.2002 and the suit laid by the plaintiff on 12.03.2007 is beyond the period of limitation. The alleged payments said to have been made by the defendant on 01.04.2004, 24.01.2005 and 09.03.2005 are all denied and there is no acknowledgment of debt by the defendant and hence the suit is barred by limitation. Without prejudice to the abovesaid contentions, according to the defendant, the supplies made to him by the companies were defective and not to his specification and the defendant has informed the plaintiff who was the agent of the manufactures about the defectiveness of the goods supplied and asked for the replacement. As the supply of goods was disputed, the liability to pay the entire supply of the materials does not arise. Further according to the defendant, he has made various payments to the suppliers directly and through the plaintiff which was not accounted properly. The defendant is not liable to pay the suit claim. The plaintiff should file true and proper accounts to show its entitlement to claim the suit amount. The defendant has properly replied to the plaintiff to their notice dated 25.06.2004 and the same cannot be treated as acknowledgment of liability. Further the period of limitation shall not get extended on acknowledgment of any liability. The plaintiff is also not entitled to claim interest at the rate of 24% per annum, hence according to the defendant, the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

6. On the basis of the above pleas set out by the respective parties, the following issues were framed by the trial court:

i. Whether the suit is bad for non-joinder of necessary parties?

ii. Whether the suit is barred by limitation?

iii. Whether the plaintiff is entitled to recover the sum of Rs.5,65,468/-? with interest at 24% per annum from the defendant as claimed in the plaint?

iv. To what relief the plaintiff is entitled to?

7. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A10 were marked. On the side of the defendant, D.W.1 was examined. No documentary evidence has been marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions

made, the trial court was pleased to dismiss the plaintiff's suit. Impugning the same, the present First Appeal has been preferred.

9. The following points arise for consideration in the First Appeal:

i. Whether the suit is barred by limitation?

ii. Whether the suit is bad for non-joinder of necessary parties as putforth by the defendant?

iii. Whether the plaintiff is entitled to recover the suit amount with interest from the defendant as claimed in the plaint?

iv. To what relief the plaintiff/appellant is entitled to?

v. To what relief the defendant is entitled to?

Point Nos.1 to 3:

10. It is the case of the plaintiff that it is engaged in the business of dealing in kraft papers and had been supplying the same to the defendant since 2001 and according to the plaintiff, the total value of the kraft papers supplied to the defendant is Rs.6,40,468/- and the plaintiff has putforth the case that the defendant has paid a sum of Rs.75,000/- on 01.04.2004, 24.01.2005 and 09.03.2005. After deducting the abovesaid sum of Rs.75,000/-, according to the plaintiff, the defendant still owns a sum of Rs.5,65,468/-. Inasmuch as the defendant has failed to pay the balance amount due in time, the plaintiff has suffered a loss and the defendant has failed to pay the balance amount, despite various notices issued by the plaintiff and though the defendant had acknowledged his liability to pay the amount due, still the defendant had not evinced interest to pay the amount to the plaintiff and hence according to the plaintiff, it had to lay the suit for appropriate reliefs.

11. The defendant primarily resisted the plaintiff's suit contending that no direct supply of kraft papers had been received from the plaintiff as claimed in the plaint and according to the defendant, the goods were received from the Mills concerned directly and therefore it is putforth that there is no specific contract between the plaintiff and the defendant qua the supply of kraft papers as putforth in the plaint and therefore according to the defendant the suit laid by the plaintiff is not maintainable and also bad for non-joinder of the principal suppliers namely, the various Mills which had supplied the goods to the defendant. Further according to the defendant, the last of the goods supplied was effected on 15.07.2002 and therefore it is putforth that the suit laid by the plaintiff on 12.03.2007 is hit by the Law of Limitation and denied the payments alleged to have been made by it on 01.04.2004, 24.01.2005 and 09.03.2005 and further according to

the defendant, the acknowledgment of liability said to have been made by it to the notice issued by the plaintiff would not save the limitation for the plaintiff and therefore according to the defendant, the suit laid by the plaintiff is barred by limitation. Further the plea has been putforth by the defendant that the goods supplied were defective and despite the complaints regarding the same, no replacement has been made with reference to the defective goods and hence not liable to pay the suit claim and accordingly the defendant disputed its liability to pay the suit amount to the plaintiff with interest as prayed for.

12. It is the specific case of the plaintiff that it has been engaged in the business of dealing in kraft papers and the plaintiff is the agent of various Paper Mills as described in the plaint. It is thus found that the plaintiff is found to be a dealer and supplier of the goods manufactured by various Mills mentioned in the plaint and accordingly it is putforth by the plaintiff that it has been supplying the kraft papers to the defendant since the year 2001. Though the defendant would claim that it had been receiving the kraft papers directly from the Mills concerned and not through the plaintiff, however, with reference to the abovesaid case of the defendant, there is absolutely no proof whatsoever to evidence that the defendant had been receiving the goods directly from the Mills concerned. No doubt, the invoices under which the goods had been supplied to the defendant had come to be issued by the Mills concerned. The said invoices though had not been marked in the suit, the abovesaid fact has not been controverted by the plaintiff. Still when it is found that as putforth by the plaintiff, it being the dealer and supplier of the goods manufactured by the Mills and accordingly having the direct contract with the defendant qua the supply of the same, in such view of the matter, merely because, the invoices stand in the name of the Mills concerned, the same cannot be considered as the basis that the defendant had been receiving the supply of goods directly from the Mills concerned. If that be so, the defendant should have placed acceptable and reliable materials to hold that it had been receiving the goods directly from the Mills concerned and not through the plaintiff.

13. According to the plaintiff, the total value of the goods supplied to the defendant is Rs.6,40,468/-. It is the further case of the plaintiff that out of the abovesaid sum due, the defendant has paid a sum of Rs.75,000/- on various dates ie., on 01.04.2004, 24.01.2005 and 09.03.2005. In this connection, though the defendant would dispute the abovesaid payments said to have been made on the abovesaid dates amounting to Rs.75,000/-. D.W.1 examined on behalf of the defendant during the course of cross examination has clearly admitted that

he had to verify the documents to ascertain whether he had made any payments to the plaintiff subsequent to the issuance of the legal notice and further clearly admitted that it is true to state that he had made the payment of sum of Rs.75,000/- to the plaintiff on 26.11.2004, 25.01.2005 and 09.03.2005. Therefore, if the case of the defendant that it had not been having any direct contract with the plaintiff for the supply of kraft papers, there is no need on the part of the defendant to pay the abovesaid sum of Rs.75,000/- on the various dates to the plaintiff. On the other hand, the defendant would have effected the payments directly to the Mills. As above pointed out, the defendant has failed to place any material evidencing that the supply of the goods had been received by it directly from the Mills and accordingly it is found that inasmuch as the defendant had been having the business relationship only with the plaintiff and accordingly the plaintiff being the dealer and supplier of the goods manufactured by the Mills, had been supplying the same to the defendant, acknowledging his liability, the defendant has paid a sum of Rs.75,000/- on the various dates and according to D.W.1, the abovesaid payments were made on 26.11.2004, 25.01.2005 and 09.03.2005. When it is found that the last payment had been made by the defendant on 09.03.2005, in such view of the matter, it is found that the suit laid by the plaintiff within three years from the abovesaid date is well within the limitation period. Therefore the case of the defendant that the suit laid by the plaintiff is barred by limitation, as such, cannot be accepted.

14. Furthermore, it is found that the plaintiff has issued legal notice to the defendant on 25.06.2004 directing the defendant to pay the amount due to it qua the supply of kraft papers. The abovesaid notice has been marked as Ex.A2. The defendant has acknowledged the receipt of the same. The plaintiff's counsel also sent another letter dated 19.07.2004 pointing to the error in para No.2 regarding the year of transaction between the plaintiff and the defendant as mentioned in Ex.A2. The abovesaid notice/letter has been marked as Ex.A4. The defendant has acknowledged the receipt of the same. The defendant has sent a reply to the plaintiff's counsel on 30.09.2004 marked as Ex.A6. The abovesaid reply has been sent in response to the legal notice dated 25.06.2004. By way of Ex.A6, the defendant has not disputed his liability to pay the claim made by the plaintiff by way of the legal notice. On the other hand, the defendant would only state in Ex.A6 that they had a discussion with reference to the demand made by the plaintiff and according to him, the delay in making the payment is due to the shifting of the company and the inability to concentrate on collection and accordingly the defendant had assured the plaintiff that the payment will be made from August month onwards and accordingly prayed the plaintiff to drop

further legal proceeding. Therefore, by way of Ex.A6 reply notice, it is found that as putforth by the plaintiff, the defendant has acknowledged his liability to pay the amount claimed by the plaintiff and only would state that he would make the payments from August month onwards and accordingly prayed for the dropping of any further action with reference to the claim made in the legal notice. In addition to that, the defendant has also sent a letter directly to the plaintiff on 30.01.2006 marked as Ex.A7 wherein also, the defendant has apologized to the plaintiff for the delay in paying their bills and according to the defendant, on account of their tight financial situation for various reasons particularly, on account of shifting of their Unit and the accident suffered by them in connection with the same and due to the fury of floods faced by them, they having lost their machineries and stocks amounting to Rs.20,00,000/-, they were unable to pay the amount due to the plaintiff and further would state that they are keen and likely to be associated with the plaintiff and assured that the release of the payment of bills would be maintained and only prayed for the extension of time for the payment of bills and not only that the defendant had also expressed its desire to start fresh dealings and the purchase of raw materials from the plaintiff for which the payments shall be made within 60 to 70 days and accordingly they sought for the cooperation of the plaintiff. Therefore, it is evident that by way of Ex.A7 also the defendant has acknowledged his liability to pay the amount due to the plaintiff qua the supply of kraft papers and only expressing the difficulties in making the payment in time due to various reasons as mentioned in the said notice and assured to make the payment shortly and also pleaded for further fresh business dealings with the plaintiff and assured the payment for the same also at the earliest point of time and the position being above, it is found that, by way of Ex.A7 letter also, the defendant has acknowledged his liability to pay the suit amount due to the plaintiff. Under Exs.A6 and A7, therefore as rightly putforth by the plaintiff's counsel, when there has been a clear acknowledgment of the liability on the part of the defendant and the defendant has categorically and unconditionally expressed and promised his liability to pay the outstanding amount, accordingly as putforth by the plaintiff's counsel, by way of the abovesaid acknowledgment, the plaintiff would get the extension period for claiming the suit amount under section 25 (3) of the Indian Contract Act and on that ground also, it is found that the suit laid by the plaintiff is not barred by limitation. Section 23(3) of the Indian Contract Act reads as follows:

> " 25.Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for

something done, or is a promise to pay a debt barred by limitation law. - An agreement made without consideration is void, unless -

(1).......
(2) ......
(3).it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract."

By way of the acknowledgment of the liability on the part of the defendant under Exs.A6 and A7, it is found that the defendant has promised to pay the suit amount, for which the plaintiff would have enforced the payment, in such view of the matter, it is found that such a promise would amount to a contract and accordingly it is seen that the by way of the abovesaid acknowledgments also, the suit laid by the plaintiff would not hit by the law of limitation. In the decision reported in 1997 (3) LW 855 = 1997 (2) MLJ 608 [A.C.A.Ganapathi Mudaliar and others Vs. Aruinugathammal (died) and another]

It has been held that " Under Section 25(3) of the Contract Act, even a barred debt is a good consideration. Merely because the right to enforce through a Court of law is barred, that does not follow that the debt itself has been extinguished."

15. The same has been outlined in the decision reported in 1996 (II) CTC 614 [Parry and Co.Ltd. Vs. Southern Roofings Private Limited] as follows:

" Indian Contract Act, 1872, Section 25, illustration(e) - Limitation Act, 1963 - Time barred claim - Acknowledgment of liability of debt after expiry of period of limitation - Letter promising to pay time barred debt would amount to contract - Creditor is entitled to file suit based on such letter."

16. Furthermore as above pointed out when the defendant has acknowledged his liability by making the last payment on 09.03.2005, on that score also, it is found that the

suit laid by the plaintiff in the year 2007 is not barred by limitation.

17. Furthermore, though the plaintiff is found to have laid the suit on the original business transaction which it had with the defendant, the plaintiff is also entitled to maintain the suit based on the acknowledgment of the liability on the part of the defendant under Exs.A6 and A7 by invoking Section 25 (3) of the Indian Contract Act and in this connection, the decision reported in Volume 88 LW 797 [S.S.Srinivasa Raghavan Vs. R.Jayaraman and another] would be useful to the plaintiff's case wherein, it has been held that there could be no objection for considering the claim under Section 25(3) of the Indian Contract Act even if the suit is prima facie based on the original debt itself and the position of law has been outlined in the abovesaid decision as follows:

> " The only other question that remains to be considered is whether the suit should have been filed on the promise contained in Ex.A10 as forming a fresh cause of action, or whether the suit should be based on the original debt."
>
> " Be that as it may, I am of the view that, if there is a statement of fact of the promise to pay contained in the letter, and that is shown as part of the cause of action, there could be no objection for considering the claim under S.25(3) of the Contract Act, even if the suit is prima facie based on the original debt itself."

18. I had an occasion to consider the point of limitation vis-a-vis Section 25(3) of the Indian Contract Act in the decision reported in 2019 (3) LW 572 [Sree Karthick Traders rep. by Partner S.Senkuttuvan, S/o, Soundarrajan, 14, Raja Rao Street, Tirupur Vs. M/s. Adhithya Textiles Process, Rep. by its Partner N.Balasubramanian & another]

19.In the light of the abovesaid factors, it is evident that the suit laid by the plaintiff, looked at any point of view, is not barred by time and therefore the trial court has erred in holding that the suit laid by the plaintiff is barred by limitation and the said finding of the trial court is liable to be set aside.

20.The trial court has held that the plaintiff should have impleaded the principal suppliers namely the Mills as parties to the suit proceeding and therefore the suit laid by the plaintiff is bad for non-joinder of necessary parties. As above noted, the defendant has failed to establish that it had been having the direct contract with the paper Mills qua the supply of kraft papers and on the other hand, it is the case of the plaintiff that as the supplier and dealer of the goods manufactured by the Mills, it is only the plaintiff which had been supplying the kraft papers to the defendant. As above pointed out, under Exs.A6 and A7, the defendant has not disputed the supply of kraft papers by the plaintiff. Under the abovesaid replies, the defendant has not claimed that it had been receiving the supplies directly from the Mills concerned. Furthermore, the defendant has also not placed any material to hold that the supplies were effected to him directly by the Mills and not through the plaintiff. In such view of the matter, the claim of the defendant that it had been receiving the supplies directly from the Mills, as such, cannot be countenanced and therefore, the further claim of the defendant that the Paper Mills should have been made as parties to the suit proceeding, as such, cannot be countenanced. When the contract is only between the plaintiff and the defendant qua the supply of kraft papers and the supply effected by the plaintiff having not been controverted by the defendant and the defendant having acknowledged his liability to pay the suit claim under Exs.A6 and A7 to the plaintiff and also expressed his desire to renew the business dealings with the plaintiff in future, all would go to show that the contract is effected qua the supply of kraft papers only between the plaintiff and the defendant and in such view of the matter, there is no need for the impleadment of the paper Mills as parties to the proceeding for the adjudication of the issues involved in the matter. Thus, it is found that the paper Mills are not necessary parties to the suit proceeding and therefore the non-impleadment of the Paper Mills would not in any manner affect the plaintiff's case. Therefore the plaintiff's suit is found to be not bad for non-joinder of necessary parties and the determination of the trial court that the plaintiff's suit is bad for non-joinder of necessary parties is therefore liable to be set aside.

21.Though the defendant would putforth that the goods supplied by the Paper Mills through the plaintiff were defective, however with reference to the same, absolutely there is no proof placed on the part of the defendant. The defendant has not complained about the defectiveness of the goods supplied in Exs.A6 and A7. Therefore, for the first time, the defendant has taken the abovesaid plea without any basis and accordingly unable to substantiate the same with acceptable and reliable materials.

22.On account of the failure of the defendant to make the payment to the plaintiff in time, obviously, it is found that the plaintiff had been put to loss in its business dealings and in such view of the matter, the plaintiff is found to be entitled to claim interest on the amount due to it. Though the plaintiff had claimed interest at the rate of 24%, considering the nature of the dealings between the parties, in my considered opinion, the grant of interest at 9% per annum would serve the cause of justice and accordingly it is found that the plaintiff would be entitled to claim the suit amount with interest at 9% from the date of the plaint till the date of realization.

23. In the light of the abovesaid discussions, I hold that the plaintiff's suit is not barred by limitation and I further hold that the suit laid by the plaintiff is not bad for non-joinder of necessary parties. I therefore held that the plaintiff is entitled to recover the suit amount of Rs.5,65,468/- with interest at 9% per annum from the date of the plaint till the date of the realization. Accordingly, the Point Nos.1 to 3 are answered.

Point Nos.4 and 5:

24.For the reasons aforestated, the judgment and decree dated 06.03.2008 passed in O.S.No.1709 of 2007 on the file of the III Additional Judge, City Civil Court, Chennai are setaside and resultantly the suit in O.S.No.1709 of 2007 is decreed in favour of the plaintiff by directing the defendant to pay the suit amount of Rs.5,65,468/- with interest at 9% per annum from the date of the plaint till the date of realization with costs. Accordingly, the First Appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

mfa

To

The III Additional City Civil Judge,
Chennai.

Copy to

The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.M.Aravind Subramaniam, Advocate SR.No.89532

+1cc to Mr..N.Chandraraj, Advocate SR.No.89778

A.S.No.53 of 2013

TM(CO)
GMY(18/12/2019)