

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.10.2019

PRONOUNCED ON : 24.10.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.508 of 2011

Dr.Murali Krishnan,
Proprietor,
Sri Anjaneya Enterprises,
No.1, 2nd Street,
Appa Rao Colony,
Tambaram Sanitorium,
Chennai - 600 047. ... Appellant/1st Defendant

Vs.

1. M/s. Glider Pharma Distributors Pvt. Ltd.
Presently known as
National Medicines Pvt. Ltd.,
Rep.by its Managing Director, Mr.Naresh Kumar,
OldNo.5, Krishna Bai Street,
T.Nagar, Chennai - 600 017. ...1st Respondent/Plaintiff

2. Srinivasan

3. Dr.M.Jamuna,

(2nd & 3rd respondents are not a
necessary party to the proceedings) ..2nd and 3rd Respondents/
2nd & 3rd Defendants

Prayer: Appeal Suit filed under Order 41 Rule 1 Section 96 of
Civil Procedure Code as against the judgment and decree dated
01.09.2009, passed by the IV Additional City Civil Court,
Chennai in O.S.No.6968 of 2005.

For Appellant : Ms.T.Jayalakshmi,
for M/s. Paul & Paul

For R1 : Mr.N.R.Anantharamakrishnan

For R2 & R3 : Given up.

JUDGMENT

Aggrieved over the judgment and decree dated 01.09.2009, passed in O.S.No.6968 of 2005, on the file of the IV Additional Judge, City Civil Court, Chennai, the first appeal has been preferred by the first defendant.

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 they are clearing and forwarding and wholesale super stockists for pharmaceutical products and the first defendant had started manufacturing pharmaceutical products by name Dr.Jamuna Neutro Slim and Dr.Jamuna Easy Slim claimed to be Ayurvedic products and the plaintiff had accepted the offer of the first defendant to be the super stockist for the abovesaid products and thereupon, an agreement had been reached between the plaintiff and the defendants with reference to the same and accordingly, the plaintiff was appointed as the super stockist by way of a letter dated 20.01.2003 and two consignments of the abovesaid products worth Rs.4,97,659.50/- were dispatched to the plaintiff and the plaintiff as the super stockist had accepted the consignment and paid the consignment amount. The plaintiff put forth the case that the defendants referred some whole sellers for the supply of the products and the materials were supplied to them. However, as the products had not been materialized and marketable, certain whole sellers, whom the plaintiff had supplied at the instructions of the defendants, had returned the stock. Further, the plaintiff also came to know that a dispute arose between the first defendant company and French Herb limited and in this connection, C.S.No. 390 of 2003 has been levied and the High Court had granted interim injunction restraining the defendants' products from being sold in the market. Therefore, as the super stockist, the plaintiffs are forced to take the materials back from the whole sellers identified by the defendants and the expiry date of the product is on 31.01.2005 and left with no other alternative, the plaintiff had sent a letter on 13.09.2003 insisting the defendants to take back the materials and pay the amount. The two letters sent by the plaintiffs, with reference to the same, had been returned as the first defendant company had shifted without intimation to the plaintiff. Thereafter, the third defendant was contacted over telephone and the third defendant assured to take back the goods and pay the amount. However, the defendants failed to keep up their promise and therefore, the plaintiff sent a legal notice on 21.01.2005 and the same was received by the defendants 2 and 3 but returned by the first defendant. Even thereafter, the defendants had failed to pay the amount claimed by the plaintiff under the notice. Hence, according to the plaintiff, it has been necessitated to lay the suit against the defendants for recovering the amount due to it

with interest.

5. The defendants 1 and 3 resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and according to them, the third defendant is not a necessary party and she is only a technical person providing the expertise in the manufacture of the products and not connected with the business of the first defendant. Furthermore, put forth the case that the plaintiff had been appointed as the super stockist by the first defendant in respect of the products manufactured by the first defendant and admitted that the letter of appointment dated 20.01.2003 had been sent to the plaintiff with reference to the same and contended that as per the terms of the appointment, the plaintiff was to distribute the products under his own network of distributors and the claim of the plaintiff that under the terms of appointment the products not sold were to be taken back by the first defendant is false and according to the defendants, no such provision is found in the said appointment letter. Further, it is put forth that the order was passed in C.S.No. 390 of 2003, wherein, the plaintiff is not a party and the interim order granted was only for a limited period till 17.01.2003 and the application has also been subsequently dismissed. The defendants disputed the case of the plaintiff that the plaintiff supplied the goods to the whole sellers identified by them. According to the defendants, the responsibility for the distribution was completely on the plaintiff. The plaintiff, after taking the delivery of the products, had not taken steps properly to distribute the same in the market and dumped the same in their godown and the defendants came to know that on account of the internal problems in the office of the plaintiff and their unwillingness to pay the usual commission to the distributors, the products could not be distributed at the plaintiff's end. There is no liability on the part of the defendants to pay any amount much less the suit amount as put forth by the plaintiff and accordingly, prayed for the dismissal of the plaintiff's suit.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for determination:

1. Whether the plaintiff is entitled to recover the suit amount as claimed in the plaint?

2. To what relief?

7. In support of the plaintiff's case, PW1 was examined, Exs.A1 to A22 were marked. On the side of the defendants, DW1 was examined. No document 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 decree the suit in favour of the

plaintiff by directing the first defendant to pay the suit amount of Rs.6,41,203.57 with interest on 4,67,804.16 at 9% interest per annum from the date of the plaint till realisation and accordingly, granted the decree in favour of the plaintiff with costs and dismissed the plaintiff's suit as against the defendants 2 and 3. Impugning the same, the first appeal has been preferred by the first defendant.

9. The following points arise for determination in the first appeal:

- (i) Whether the plaintiff is entitled to recover the suit amount from the first defendant as put forth in the plaint?
- (ii) To what relief the plaintiff is entitled to?
- (iii) To what relief the first defendant/appellant is entitled to?

Point No:1:-

10. From the materials placed on record, it is found that the parties are not in dispute that the plaintiff had been appointed as the super stockist by the first defendant qua the products manufactured by them, by way of a letter dated 20.01.2003, which letter has been marked as Ex.A4. Prior to Ex.A4, it is found that the plaintiff made a request to the first defendant for appointing it as its super stockist and the said letter has been marked as Ex.A2 and on a perusal of the Ex.A2, it is found that the plaintiff had averred and put forth that they had come to know that the first defendant is in search of stockist for Tamil Nadu and assured them that they are having their own network of distributors in Chennai covering almost all the parts of the Chennai city and accordingly, promised to offer the utmost cooperation in the business venture. Subsequent to Ex.A2, it is found that another letter had been sent by the plaintiff to the first defendant dated 17.01.2003 marked as Ex.A3, thanking the first defendant for offering the plaintiff to be the super stockist for Tamil Nadu and Pondicherry and further averred that as agreed to the terms discussed between them inter alia assured that they shall extend their support to distribute the product under their own network besides also agreeing to accept the replacement of distribution or change of the distributors in any assigned area where the first defendant may feel better and also assured that they shall make payment in advance to keep relevant and genuine amount of stocks for the month and accordingly, following the agreement entered into between the parties, it is found that by way of the letter dated 20.01.2003, marked as Ex.A4, the plaintiff has been appointed as the super stockist of the first defendant for Tamil Nadu and Pondicherry. Therefore, it is found that Ex.A4 letter of appointment forms the basis of the contract or agreement entered into between the parties with reference to the selling of the products manufactured by the first defendant by the plaintiff as the super stockist for Tamil Nadu and Pondicherry. As per

Clause 5 of the letter of appointment Ex.A4, it is found that the first defendant had agreed to dispatch the goods only against the advance payment and accordingly Clause 5 of the letter of appointment reads as "All goods will be sent to the super stockist (SS) only against advance payment". As above noted, under Ex.A3 also, the plaintiff had assured that they shall make payment in advance to get the relevant and genuine amount of stocks for the month. Therefore, as per the letter of appointment Ex.A4, it is found that though the plaintiff had been appointed as the super stockist of the first defendant, the goods would be supplied to the plaintiff only against the advance payment and not on credit basis or other terms. It is found that the plaintiff had been dispatched the goods by the first defendant through the invoices marked as Exs.A7 and A8, dated 10.02.2003 for the sums mentioned therein and it is found that the plaintiff had received the goods after making payment. With reference to the abovesaid factors, there is no dispute between the parties.

11. According to the plaintiff, the goods were supplied to the whole sellers as identified by the first defendant and further, put forth the case that the whole sellers identified by the first defendant returned the goods as the goods were found not marketable and further put forth the case that inasmuch as an interim order has been passed by the High Court, Madras, in C.S.No.390 of 2003, restraining the first defendant's products from being sold in the market, according to the plaintiff, the plaintiff was forced to take back the stock from the whole sellers and the further case has been put forth by the plaintiff that inasmuch as it had been only appointed as the super stockist and as per the letter of appointment, the super stockist will ensure the stock holding for a minimum period of 30 days, on that basis, according to the plaintiff, it is entitled to return the stocks remaining unsold to the defendants as the expiry date for the stock had expired and accordingly, put forth the case that they had sent the stock which remained unsold to the first defendant, calling upon the first defendant to pay the value of the same and according to the plaintiff, despite the various letters and legal notice, inasmuch as the defendants fail to pay the amount due to it, it has been necessitated to institute the suit against the defendants for appropriate reliefs.

12. The first defendant, in particular, resisted the plaintiff's case contending that though the plaintiff had been appointed as the super stockist, it had not promised the plaintiff that it would take back the goods remaining unsold and according to the first defendant, no such terms and conditions had been stipulated in the letter of appointment Ex.A4 and therefore, according to the first defendant, when there is no agreement or contract between the parties that the first defendant had assured to take back the stocks remaining unsold and no such terms and conditions are also incorporated in the letter of appointment Ex.A4, according to the first defendant,

the plaintiff's suit is misconceived and liable to be dismissed.

13. The plaintiff's counsel would contend that there is a normal trade practice prevailing that the goods which remained unsold with the super stockist are liable to be returned to the manufacturer and accordingly, the stock involved in the lis being the pharmaceutical products and can be marketed only before the expiry date and not beyond that, on that basis also, the plaintiff is entitled to return the stocks unsold to the first defendant, the manufacturer. The abovesaid claim of the plaintiff's counsel is repudiated by the first defendant's counsel. The plaintiff has nowhere pleaded in the plaint that such a normal trade practice had been prevailing in the market, particularly, qua the pharmaceutical products as put forth by its counsel. With reference to the same, there is also no material worth acceptance forthcoming on the part of the plaintiff. Therefore, the contention put forth by the plaintiff's counsel that a normal trade practice had been in vogue qua the pharmaceutical products for the return of the same on remaining unsold to the manufacturer cannot be accepted in the absence of any written agreement or contract between the parties with reference to the same and therefore, we will have to see whether such a normal trade practice could be inferred from the terms and conditions set out in the letter of appointment marked as Ex.A4.

14. Ex.A4 is the letter of appointment by way of which the plaintiff had been appointed as the super stockist and the terms and conditions of the letter of appointment had been stipulated therein. As abovenoted, as per Clause 5 of the same, the goods will be sent to the super stockist only against advance payments. For enabling the plaintiff to return the stocks remaining unsold to the first defendant, the plaintiff would rely upon Clause 2 of Ex.A4 and Clause 2 reads as follows:

II. Super stockist M/s. Glider Pharma Distributors Pvt Ltd will ensure stock holdings for the minimum period of 30 days.

15. The plaintiff relies upon the abovesaid clause for their contention that as the super stockist is liable to hold the goods only for a minimum period of 30 days and thereafter, entitled to return the same to the manufacturer, the first defendant. However, the abovesaid contention put forth by the plaintiff does not merit acceptance. As rightly contended by the counsel appearing for the first defendant, the above clause only reads that the plaintiff should ensure stock holding for a minimum period of 30 days and the same would only mean and denote that the plaintiff, as the super stockist, should ensure that it holds the adequate supply of the stock holding for a minimum period of 30 days for enabling it to distribute to the various distributors and accordingly, when no other interpretation could be made to the abovesaid clause and when the abovesaid clause does not in particular enable the plaintiff to return the goods unsold to the first defendant, the

manufacturer, in such view of the matter, the trial Court is found to have totally erred in interpreting Clause 2 as an enabling clause or provision for the plaintiff to return the unsold goods to the first defendant, the manufacturer. The plaintiff's counsel, during the course of arguments, would contend that though there is no specific provision in the letter of appointment, Ex.A4, enabling the plaintiff to return goods unsold to the first defendant, however would argue that as per the normal trade practice, the plaintiff is entitled to return the pharmaceutical products which are unsold in the market. However, when it is noted that when there is no proof on the part of the plaintiff that such a practice is in vogue or prevailing between the parties involved in the trade of pharmaceutical products and when no such plea has been taken by the plaintiff in the plaint and furthermore, when there is no written agreement or contract with reference to the same that the unsold stock had been assured to be taken back by the first defendant, in such view of the matter, it is found that the plaintiff cannot be allowed to read more than what had been actually put forth or recited in Ex.A4 letter of appointment and contend that the letter of appointment should be read in favour of the plaintiff as interpreted by it, so as to enable it to return the unsold goods to the first defendant, the manufacturer. When admittedly there is no agreement between the parties for enabling the plaintiff to return the unsold goods to the first defendant and Ex.A4 letter of appointment does not contain any such terms and conditions as agreed to between the parties and particularly, Clause 2 of the abovesaid letter of appointment does not enable the plaintiff to return the unsold goods but only directs that as the super stockist, the plaintiff should ensure the stock holdings for a minimum period of 30 days and furthermore, when it is found that the plaintiff has been ordained to take the delivery of the goods as the super stockist only against the advance payment and not on credit basis or other terms, in such view of the matter, when there is no contract between the parties for enabling the plaintiff to return the unsold goods, the plaintiff cannot be allowed to rely upon the Clause 2 of the letter of appointment for contending that it has the right to return the unsold goods to the first defendant. In this connection, the first defendant's counsel placed reliance upon the decision of the Delhi High Court, dated 06.08.2018, passed in RFA No.628/2018, 2018 SCC Online Del 10382 (Mukesh Sharma Vs. M/s. Faces Cosmetics (India) Pvt.Ltd. & Ors.) and contended that the Delhi High Court has rejected the contention of the normal trade practice being prevalent that the goods remaining unsold are to be taken back by the manufacturer without there being any written agreement pointing to the same and accordingly, put forth the argument that in the abovesaid case, the Delhi High Court has held that no cause of action had arisen to the dealer in returning the unsold goods and claim payment and accordingly, prayed this Court to abide by the proposition of law laid down in the abovesaid decision. In the abovesaid decision, the matter had been discussed and determined

as follows:

RFA 628/2018

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 28.3.2018 by which the trial court has dismissed the suit for recovery of monies filed by the appellant/plaintiff for a sum of Rs.4,15,755/- along with interest.

4. I need not narrate the facts in detail however, the limited facts which require attention are that the appellant/plaintiff claims to have been appointed as a dealer for the cosmetics/goods by respondent nos. 1 and 2/defendant nos. 1 and 2 under an agreement but which agreement was kept with the respondent nos. 1 and 2/defendant nos. 1 and 2 and the appellant/plaintiff does not even have copy of the same. It is further the case of the appellant/plaintiff that the goods in question were to be sold and routed to the appellant/plaintiff through the Super-Stockist of respondent nos. 1 and 2/defendant nos. 1 and 2 and who was the respondent no.3/defendant no.3 in the suit. Since the accessories division was closed down by the respondent no.3/defendant no.3, consequently the cause of action pleaded in the plaint is that unsold stocks lying with the appellant/plaintiff should be taken over either by the respondent nos. 1 and 2/defendant nos. 1 and 2 with whom the appellant/plaintiff had an agreement or the respondent no.3/defendant no.3 from whom the stocks used to be purchased by the appellant/plaintiff.

5. Trial court has found that the appellant/plaintiff has only pleaded that there was a normal trade practice that the goods which remained unsold with a distributor on closure of business or distributorship, are to be taken back by the manufacturer or supplier, however, the trial court has found this as a matter of fact that there is no such agreement proved by the appellant/plaintiff with either of the respondents/defendants that the unsold stocks lying with the appellant/plaintiff had to be taken back by either of the

respondent/defendants. I may also add that there is no written agreement filed on record by the appellant/plaintiff that the unsold stocks were to be taken back from the appellant/plaintiff by either of the respondents/defendants. Once that is so, the entire cause of action in the plaint has rightly been disbelieved by the trial court, and with which conclusion I agree because there does not arise an issue of an automatic entitlement of a purchaser of goods to return of the unsold stocks, and that return of such unsold stocks can only be on the basis of an agreement, but no such agreement has been proved by the appellant/plaintiff.

6. Dismissed.

16. In the light of the abovesaid decision rendered by the Delhi High Court, accordingly, when the same is applied to the case at hand, when it is found that the letter of appointment Ex.A4 does not stipulate any condition or clause, enabling the plaintiff, the super stockist, to return back the unsold goods to the manufacturer and when the plaintiff has been ordained to take the delivery of the goods as against the advance payment by way of the said letter of appointment and when the case of the plaintiff that there has been a normal trade practice with reference to the return of the unsold pharmaceutical products to the manufacturer is not borne out by any proof whatsoever and no such plea has been taken by the plaintiff in the plaint and also no agreement has been projected as having been entered into between the parties with reference to the same, in such view of the matter, it is found that the abovesaid decision of the Delhi High Court, squarely applies to the case at hand and accordingly, it is found that the plaintiff does not have authority to return the unsold goods to the first defendant and claim the value of the same as no such agreement or contract had been entered into between the plaintiff and the first defendant pointing to the same.

17. Furthermore, the first defendant's counsel also put forth the contention that as per the invoices under which the plaintiff had taken the delivery of the goods stipulate that the goods once sold will not be taken back or exchanged and when as per the letter of appointment, the plaintiff is necessitated to take the delivery of the goods only against advance payment, according to her, accepting the conditions incorporated in the invoices, the plaintiff having taken the delivery of the goods, according to her, on the basis of the same also, the plaintiff is not entitled to return the unsold goods. However, the plaintiff's counsel would rely upon the judgments reported in 2007 (3) ARBLR 402 Delhi (Taipack Limited And Ors. Vs. Ram Kishore Nagar Mal), 1999 (2) BomCR 734 (M/s. Divya Shivraks Impex Vs. Shantilal Jamnadas Textiles (P), 142 (2007) DLT 798

(Grammy communications Pvt Ltd. vs. B.P.L. Telecom Pvt. Ltd.) and the decision of the Apex Court dated 17.12.2008 passed in Civil appeal No.7352 of 2008 (M/s. Vijay Industries Vs. M/s. NATL Technologies Limited) for the contention that the conditions incorporated in the invoices should not be read as the contract or agreement entered into between the parties. In my considered opinion, as far as the issues involved in the matter, it is unnecessary to advert to the conditions incorporated in the invoices relied upon by the first defendant's counsel and when the parties are resting their respective cases only based upon the letter of appointment Ex.A4 as abovenoted, when Ex.A4 letter of appointment does not stipulate any condition enabling the plaintiff to return the unsold goods and the plaintiff has miserably failed to establish that such a trade practice is in vogue in the market qua the pharmaceutical products, in all, it is found that without advertng to the conditions stipulated in the invoices marked as Exs.A7 and A8, it has to be held that the letter of appointment does not enable the plaintiff to return the unsold goods and claim the value of the same as put forth by it.

18. The plaintiff would contend that the responsibility of fixing of the distributors for the products lies only upon the first defendant and according to the plaintiff, inasmuch as the first defendant has failed to fix the distributors and enable the plaintiff to supply the goods to them, accordingly contended that on that basis also, the plaintiff would be entitled to return the goods unsold to the first defendant. However, the abovesaid contention put forth by the plaintiff does not merit acceptance. As abovenoted, in Ex.A3 letter, the plaintiff had assured that they would extend their support to distribute their products under their own network besides also agreeing to accept the replacement of distribution or change of the distributors in any assigned area where the first defendant may feel better. Furthermore, the plaintiff under Ex.A2 letter also claims that they are having their own distribution network in Chennai covering almost all the parts of the Chennai city. Even in the Ex.A4 letter of appointment, the first defendant has not put forth any condition that it has the prerogative to appoint the distributors for the supply of the goods and that the plaintiff should supply the goods only to the distributors arranged by it. On the other hand, as per the Clause 6 of Ex.A4 letter, the first defendant has only expressed that it has its own reservations in restructuring the re-distribution network, if necessary and will take the responsibility of replacing the new distributors in any part of Tamil Nadu and Pondicherry to effect better sales.

19. A reading of the abovesaid clause does not disclose that the first defendant had taken up the responsibility of fixing the distributors for enabling the plaintiff to supply the goods. The plaintiff claiming to be the super stockist and accordingly claiming to have various networks for the

distribution of the products taken by it, as the super stockist, cannot be allowed to rely upon the Clause 6 of Ex.A4 letter of appointment to contend that the distributors responsibility has been taken by the first defendant. On the other hand, as rightly put forth by the first defendant's counsel, the first defendant has only reserved the condition that it would also take the steps to enable the redistributing work, if necessary, for effecting better sales. Nowhere in Clause 6, the first defendant has taken the sole responsibility of the arrangement of the distributors for the supply of the goods on the part of the plaintiff. If that be so, there is no need for the first defendant to nominate the plaintiff as the super stockist and on the other hand, the first defendant itself would have taken the role of distributing its products on its own than appointing the super stockist for the same. Therefore, the interpretation of Clause 6 by the plaintiff as well as by the Court below is found to be totally erroneous and any evidence adduced even on the side of the first defendant contrary to the abovesaid clause would not enure to the benefit of the plaintiff as no oral evidence can be adduced contrary to the terms of the written contract entered into between the parties. Therefore, the contention that the witness examined on behalf of the first defendant has admitted that the responsibility of arranging the distributors is only upon the first defendant has no relevance and acceptability, particularly, vis-a-vis, the terms and conditions set out in Ex.A4 letter of appointment as pointed out above.

20. The plaintiff's counsel would also put forth the argument that on account of the interim order passed by the High Court in C.S.No. 390 of 2003, the products could not be marketed. However, as could be seen from the orders passed by the High Court in the abovesaid Civil suit marked as Ex.A22, the order was limited only for a particular period i.e. till 17.01.2003. Furthermore, the plaintiff is not a party to the abovesaid proceedings. Be that as it may, when it is found that the plaintiff had been appointed as the super stockist only thereafter i.e., on 20.01.2003, by way of Ex.A4 letter and when there is no material put forth on the part of the plaintiff that the interim order passed by the High Court in the abovesaid Civil suit had been further extended beyond 17.01.2003, in such view of the matter, the contention that on account of the interim order passed by the High Court in the abovesaid suit, the goods were unable to be marketed and hence, the first defendant is liable to take back the same, as such, cannot be countenanced.

21. The argument has also been put forth by the plaintiff's counsel that the defendants cannot be allowed to put forth new pleas in the first appeal than what has been pleaded before the trial Court. The first defendant's counsel has not placed any new plea than what had been taken before the trial Court. When it has been clearly averred in the written statement that the

letter of appointment does not enable the plaintiff to return the unsold goods and claim the value of the same and also put forth that it is only the plaintiff who has to distribute the products under its own network of distributors and in such view of the matter, the argument advanced by the plaintiff's counsel that the first defendant's counsel is projecting new pleas than what had been taken in the written statement, as such, cannot be accepted and therefore, in this connection, the decisions relied upon by the plaintiff's counsel reported in (1966) 2 SCR 286 (Bhagwati Prasad Vs. Chandramaul), (2018) 11 SCC 652 (Shivaji Balaram Haibatti Vs. Avinash Maruthi Pawar), (1997) 4 SCC 481 (Bibi Jaibunisha Jagdish Pandit and others) and 1994 SCC Online Bom 528 (Conrad Dias of Bombay Vs. Joseph Dias of Bombay), as rightly put forth by the first defendant's counsel, has no applicability to the case at hand and it has to be held that no new plea had been taken by the first defendant in the first appeal than what had been put forth in the written statement.

22. The plaintiff has also put forth the case that for claiming the amount it had send various letters and legal notice calling upon the defendants to take back the unsold goods and pay the value of the same. However, even as per the case of the plaintiff, the notice sent to the first defendant has not been served. Be that as it may, when as above discussed, the plaintiff is not entitled to return the unsold goods and claim the value of the same and the letter of appointment Ex.A4 does not stipulate any such condition in favour of the plaintiff as above pointed out, in such view of the matter, even assuming for the sake of arguments that the letters and legal notice sent by the plaintiff had been received by the defendants, particularly, the first defendant, the failure of the first defendant in not responding to the same would not in any manner undermine the defence version or enable the plaintiff to claim the suit amount when it is found that the plaintiff has no cause of action to lay the suit against the first defendant in particular.

23. In the light of the abovesaid discussions, the trial Court is found to have misconstrued the terms and conditions set out in the letter of appointment Ex.A4 and also failed in assessing the materials placed on record in the proper perspective and resultantly, erred in holding that the plaintiff is entitled to return the unsold goods and claim the value of the same as put forth by it and in such view of the matter, the reasonings and conclusions of the trial Court are found to be totally perverse, illogical and irrational and accordingly, liable to be set aside. Resultantly, I hold that the plaintiff is not entitled to recover the suit amount from the first defendant as claimed in the plaint. Accordingly the Point No.1 is answered.

Point No:2:-

For the reasons aforesaid, the judgment and decree dated 01.09.2009, passed in O.S.No.6968 of 2005, on the file of the IV

Additional Judge, City Civil Court, Chennai are set aside and resultantly, the suit in O.S.No.6968 of 2005 is dismissed with costs. Accordingly the first appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

sli

To:

The IV Additional Judge, City Civil Court, Chennai.
Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s. Paul & Paul, Advocate SR.No.89083

+2cc to Mr.N.R.Anantharamakrishnan, Advocate SR.No.89577

A.S.No.508 of 2011

TM(CO)
GMY(15/06/2020)

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