

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.10.2019
PRONOUNCED ON : 06.11.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.Nos.609 & 610 of 2011
and
M.P.No.1 of 2011

A.S.No.609 of 2011

M/s. Sree Mangayarkarasi Mills Pvt. Ltd.
rep. by its Director Murugesan
Near Silaiman Pulikulam
Madurai District. ...Appellant/1st Defendant

Vs.

1. M/s. Kikani Exports Pvt. Ltd.
rep. by its Director Mr.Vrajesh L.Kikani
No.11, Ramalinga Nagar
4th Cross Street, Saibaba Colony
Coimbatore
- 2.Sri Balaji Agencies
Proprietor S.P. Sekar
No.4 Krishna Colony
Singanallur, Coimbatore ...Respondent/2nd Defendant

A.S.No.610 of 2011

M/s. Sree Mangayarkarasi Mills Pvt. Ltd.
rep. by its Director Murugesan
Near Silaiman Pulikulam
Madurai District. ...Appellant/Plaintiff

Vs.

1. M/s. Kikani Exports Pvt. Ltd.
rep. by its Director Mr.Vrajesh L.Kikani
No.11, Ramalinga Nagar
4th Cross Street, Saibaba Colony
Coimbatore. ...Respondent/Defendant

For Appellant : Mr. S.Mukunth
in both appeals for M/s. Sarvabhauman Associates

For Respondents: in S.A.No.609 of 2001
Mr.R.Parthasarathy for R1
No appearance for R2.
in S.A.No.610 of 2001
No appearance for the sole respondent.

Prayer: First Appeals filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 26.02.2010 made in O.S.Nos.972 of 2004 and 93 of 2009 on the file of Additional District Judge cum Fast Tract Court, No.1 at Coimbatore.

COMMON JUDGMENT

A.S.Nos.609 and 610 of 2011 are directed against the judgment and decree dated 26.02.2010 passed in O.S.Nos.972 of 2004 and 93 of 2009 on the file of the Additional District Judge Fast Track Court No.1, Coimbatore.

2. O.S.No.972 of 2004 has been laid for the recovery of money and O.S.No.93 of 2009 has been laid for mandatory injunction or in the alternative for paying a sum of Rs.76,401/- towards the tax amount, penal interest of Rs.38,201/- and also for damages.

3. The case of the respondent in both the suits, in brief, is that it is an exporter and commission agent engaged in the export of cotton and cotton yarns and through the second defendant placed orders on the appellant for the purchase of 100% spun cotton yarn and with reference to the same, sales confirmation was issued by the second defendant and the purchase order was issued by the respondent on the appellant. As per the same, the delivery should be made by the appellant before the prescribed time limit and the appellant was fully aware of the fact that the yarn was being purchased by the respondent for merchant export and trusting that the appellant would perform the contract as per the terms, the respondent entered into the sales contract with overseas buyers, namely, Sun Moon Trading Company, Seoul, Korea and Celtex Weaving Mills, EC, Bahrain, assuring them that the shipment would be made before 31.12.2003. However, the appellant had unilaterally and unreasonably informed that it would be able to supply the cotton only if the contract price is hiked by Rs.3.50 per Kg in respect of both the contracts and with a view to conclude the contract with the overseas buyers, the respondent agreed for the price variation and insisted the appellant to keep up the delivery schedule and

the appellant had confirmed the supplies at the revised price, however, unilaterally extended the dead line for delivery and structured it as first container would be delivered before 24.11.2013, the second container before 15.12.2003, the third container before 30.12.2003 and the fourth container before 13.01.2004. Left with no other option, the respondent accepted the unilateral revision of the delivery schedule of the appellant. However, a proforma invoice dated 19.11.2003 in respect of 18,144 kgs at the rate of Rs.131.50 per kg raised by the appellant was received by the respondent and it was stated in the abovesaid proforma invoice that the goods would be ready only on 04.12.2003 i.e. 10 days beyond the agreed date of delivery. However, the appellant had backed out of the abovesaid obligation and informed that it would be able to dispatch only 14,515 kgs and on 01.12.2003, a modified proforma invoice for the supply of 14,515 kgs of cotton yarn was raised by the appellant and based on the same, the respondent had advised their bankers to pay the appellant the sum mentioned in the invoice and further directed the appellant to deliver the yarn to their forwarding agent at Tuticorin and after the supply of the same, no further supplies were forth coming from the appellant despite the repeated reminders and vide fax message dated 08.12.2003 the appellant held out that the delivery of the second consignment would be made on 05.01.2004 only and not on 15.12.2003 expressing certain difficulties and with reference to the delivery of the third and fourth lot of cotton, the appellant had postponed the same indefinitely without even fixing the revised time frame for the delivery. Meanwhile, the respondent faced extreme pressure from the overseas buyers and had to cut a sorry figure and the overseas buyers refused to accept the cause for the delay put forth by the respondent and in the abovesaid circumstances, the respondent addressed a fax message dated 11.12.2003 to M/s. Sun Moon Trading Company asking for a further extension of time for the supply and the respondent had also informed the appellant that it intends to purchase the cotton from outside and would be debiting the loss to the account of the appellant and the same had been reiterated by the second defendant also through the fax message on 19.12.2003 to the appellant. However, the appellant remained silent and totally failed to perform the contract. While so, M/s. Sun Moon Trading company, vide letter dated 30.12.2003 informing the respondent that they would debit a sum of USD 10,000 for the non supply of two container as per the contract and following the same, raised a debit note for the aforestated sum. In respect of the contract with M/s.Celtex Weaving Mills, the respondent had to purchase 19,051.20 Kgs at the rate of Rs.142/- per kg from M/s.Sandhya Spinning mills for a total value of Rs.27,06,623/-. Thereby on account of the failure of the appellant in keeping up the delivery of the consignment as per the terms of the contract due to the breach of contract on

the part of the appellant, according to the respondent, it had, in toto, sustained a loss as detailed in the plaint in 3 items amounting to Rs.7,45,512/- and accordingly caused a legal notice on 26.03.2004 to the appellant to pay the said sum and though in the notice, the respondent had claimed a total sum of Rs.11,45,512/-, however, restricted the loss of goodwill and reputation to one lakh and the appellant caused a reply notice dated 26.04.2004 containing false allegations, hence, according to the respondent, the need for the suit for recovery of money. Furthermore, the respondent also pleaded that due to the breach of contract on the part of the appellant, the appellant is not entitled to claim the reliefs prayed for in the suit laid by it in O.S.No.93 of 2009.

4. The appellant put forth the case in both the matters contending that though they had agreed to supply the cotton yarn to the respondent as per the confirmation and purchase order, however, stated that it was not apprised by the respondent that it would be supplying the cotton yarn to the overseas buyers. The appellant further disputed the case of the respondent that it failed to keep up the delivery schedule and contended that the respondent had agreed to the revised delivery schedule put forth by the appellant and further put forth the case that for the delivery effected by the appellant, payment had been made by the respondent and admitted that no further supply had been made by the appellant, however, put forth the case that the reasons had been given for the non supply vide letter dated 07.11.2003 and contended that no document has been produced by the respondent to evidence its contract with overseas buyers excepting a few correspondences and justified the claim of the appellant in seeking enhanced price for the cotton yard due to the fluctuation in the price and disputed the claim of the respondent to an extent of Rs.7,45,512/- as detailed in the plaint and also disputed in particular that the respondent had suffered damages due to the loss of goodwill/reputation and contended that the respondent has failed to establish that the overseas buyer had raised a debit note for the non supply of yarn in USD 10,000 and further disputed the case of the respondent that it had to purchase the cotton from outside and supply the same to Celtex weaving Mills, Bahrain and contended that it has not committed any breach of contract and further put forth the case that as per the terms of the contract, the respondent is liable to sent Form-H declaration for claiming the deduction in the sales tax with reference to the supply of cotton yarn, however, the respondent had failed to supply Form-H and consequently the appellant was unable to produce the same before the assessing officer and hence contended that the respondent is liable to furnish Form-H declaration to the appellant or otherwise pay the consequential tax amount at the rate of 4% along with penal interest at the rate of 2% on the

tax amount from 20.01.2004 and also further put forth the case that on account of the failure of the respondent in non supplying Form-H, the appellant's reputation has been degraded and it is entitled to claim the damages in a sum of Rs.10,000/- and hence according to the appellant, it has been necessitated to lay the suit for appropriate reliefs against the respondent and also prayed for the dismissal of the suit laid by the respondent.

5. Both the suits abovestated had been jointly tried and common evidence had been adduced in both the matters. The evidence has come to be recorded in O.S.No.972 of 2004.

6. In support of the respondent's case P.W.1 was examined and Exs.A1 to A46 were marked. On the said of the appellant D.W.1 was examined and Exs. B1 to B12 were marked.

7. On the the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration.

O.S.No.972 of 2004

1. Whether the plaintiff is entitled to recover the suit amount from the first defendant as prayed for in the plaint?
2. Whether the defendant is committed breach of contract as alleged by the plaintiff?
3. To other relief the plaintiff is entitled to?

O.S. No.93 of 2009

1. Whether the plaintiff is entitled to the mandatory injunction as prayed for?
2. Whether the plaintiff is entitled to the alternative relief of Rs.76,401/- as claimed?
3. Whether the plaintiff is entitled to Rs.10,000/- as damages from the defendant?
4. Whether this court has jurisdiction to try this case?
5. Whether the suit is stalled by Section 10 CPC?
6. To what relief?

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 partly decree the suit in O.S.No.972 of 2004 by directing the appellant to pay a sum of Rs.2,90,512/- together with interest at the rate of 6% from the date of suit till realization and partly decreed the suit laid by the appellant in O.S.No.93 of 2009 by directing the respondent to issue form H declaration as per the provisions of the Central Sale Tax Act for the supply of goods by the appellant. Impugning the judgment and decree of the trial court in both the matters, the abovesaid appeals had been preferred by the appellant.

9. The following points arise for determination in the first appeals.

1. Whether the respondent is entitled to the amount from the appellant with interest towards the non performance of the contract as determined by the trial Court?
2. Whether the trial court is justified in partly decreeing the suit laid by the appellant by directing the respondent to issue form H declaration with reference to the supply of the goods made by the appellant as per the provisions of the Central Sales Tax Act?
3. To what relief the appellant is entitled to?
4. To what relief the respondent is entitled?

Point Nos. 1 and 2

10. From the pleas put forth by the respective parties and the materials placed on record, it is found that the contract has been entered into between the respondent and the appellant qua the supply of 100% spun cotton yarn and as per the sale confirmation issued by the second defendant to the appellant on behalf of the respondent, the purchase order was issued by the respondent to the appellant with reference to the same, marked as Exs.A1 to A4. It is found that the appellant has to supply the cotton yarn as per the price specified therein before a particular time schedule. It is further seen that consequent to the contract entered into with the appellant, as above pointed out, the respondent has also made contracts with the overseas buyers, namely, M/s. Sun Moon Trading Company, Seoul, Korea and M/s.Celtex Weaving Mills, EC, Bahrain promising them that the shipments would be made by the particular time schedule. The materials placed on record go to show that the appellant sought for the revised price for the supply of cotton yarn and the same had been agreed to by the respondent and following the same, it is further seen that the invoice had been unilaterally raised by the appellant promising to send the delivery within a time limit as determined by it and not agreed to under the original

contract and it is further seen that the abovesaid revision of delivery schedule put forth by the appellant had also been accepted by the respondent and despite the abovesaid position, it is found that the appellant had failed to keep up the delivery schedule both in terms of delivery as well with reference to the quantity of the consignment and it is found that only a portion of the goods had been supplied by the appellant, that too, beyond the revised delivery schedule as agreed to by it and on account of the failure of the appellant to deliver the cotton yarn as fixed under the contract and on the other hand, only a portion of the goods had been supplied that too beyond the time schedule and the appellant had failed to effect no further supplies as per the terms of the contract, it is found that the respondent had been unable to keep up its promise with the overseas buyers and therefore, had to face a debit note raised by the overseas buyer, namely, Sun Moon Trading Company for USD 10,000 amounting to Rs.4,55,000/- and furthermore, the respondent had also been necessitated to purchase the goods from outside and supply the same to Celtex Weaving mills, Bahrain, thereby sustained loss to an extent of Rs.1,90,512/- and on account of the breach of contract and the sorry figure which the respondent had been forced to sustain thereby the goodwill/reputation of the respondent having been affected, claiming the loss towards the same in a sum of Rs.1,00,000/- in toto, the respondent had instituted the suit against the appellant claiming a sum of Rs.7,45,512/- from the appellant.

11. As above pointed out, the contract entered into between the parties is not a issue. It is also seen that the appellant had failed to keep up the supply of the cotton yarn as agreed to under the contract. Only a portion of the cotton yarn had been supplied by the appellant, that too, beyond the revised delivery schedule. Resultantly, it is found that the respondent had been unable to honour its obligations made to the overseas buyers and therefore, it is evident that the respondent had to sustain loss due to the same.

12. The appellant had put forth the defence that it is not aware of the intending contract made by the respondent with the overseas buyers. However, as rightly found and determined by the trial court, particularly, considering the evidence of D.W.1 made during the cross examination that the appellant is fully aware of the respondent's company engaging in the export of cotton with foreigners and when the same is also gathered from the confirmation letters and the purchase orders marked as Exs.A1 to A4 and furthermore, the appellant having also claimed tax concession on account of the export made by the respondent with the overseas buyers by seeking form-H declaration from the respondent, the contention of the appellant that it is not aware

of the export transaction, which the respondent had been effecting with the overseas buyers, as such, cannot be believed and rightly rejected by the trial court.

13. The respondent has claimed amount from the appellant on three heads, i.e., a sum of Rs.1,90,512/- towards the loss on account of the purchase of the cotton yarn at higher price for the supply to Celtex Weaving Mills, Bahrain, the loss sustained by it due to the debit notice raised by Sun Moon Trading Company for the non supply of yarn for USD 10,000 amounting to Rs.4,55,000/- and a sum of Rs.1,00,000/- for the loss of good will / reputation.

14. As regards the claim of USD 10,000 equivalent to Rs.4,55,000/- on account of the debit note raised by Sun Moon Trading Company, as held by the trial court, it is found that no acceptable material has been placed by the respondent pointing to the same and in such view of the matter, in the absence of any material placed on the part of the respondent that Sun Moon Trading Company, indeed, has raised a debit note for USD 10,000 and the respondent has honoured the same, in such view of the matter, the trial court is justified in declining the abovesaid claim made by the respondent from the appellant. The respondent has not put forth any challenge to the declinement of the abovesaid relief sought for by it either by filing an independent appeal or by filing cross objection in the present appeal. As regards the claim of Rs.1,90,512/- put forth by the respondent for the supply effected to Celtex Weaving Mills Ltd., by procuring the goods from outside at higher price, considering the materials placed by the respondent particularly the invoice raised by Sandhya Spinning Mills Ltd., marked as Ex.A3 towards the supply of the goods to the respondent, in such view of the matter, when as put forth by the respondent, it had been necessitated to procure the goods from Sandhya Spinning Mills Ltd., and able to effect supply of the same to the overseas buyer, in such view of the matter and furthermore, the abovesaid developments had been necessitated on the part of the respondent due to the breach of the contract committed by the appellant, in such view of the matter, the trial court is justified in holding that the respondent is entitled to claim a sum of Rs.1,90,512/- towards the loss sustained by it on account of the purchase of the goods at higher price from outside for the supply to Celtex Weaving Mills Ltd., Bahrain.

15. The contention has been raised by the appellant's counsel that the quality of the cotton procured by the respondent from Sandhya Spinning Mills Ltd., is not of the quality as agreed to be supplied by the appellant and therefore, the question of claiming loss on the part of the respondent with reference to the same is not sustainable. As rightly put forth

by the respondent's counsel, considering the need on the part of the respondent qua the procurement of the cotton yarn from outside and accordingly it had procured the same from Sandhya Spinning Mills Ltd., under Ex.A33 invoice, when there is no material as such to hold that the quality supplied by way of Ex.A33 is of inferior quality than agreed to be supplied by the appellant or supplied by the appellant as such, in such view of the matter, the abovesaid argument does not hold good and as rightly put forth by the respondent's counsel, the abovesaid contention had been made only for defeating the claim made by the respondent towards the loss sustained by it on account of the purchase at higher price for supplying to the overseas buyers.

16. With reference to the loss sustained by the respondent under the head loss of goodwill/reputation, when it is found that the appellant has failed to keep up the contract and apparently breached the same by not supplying the agreed quantity within the time schedule and had only supplied a lesser quantity, that too, beyond the schedule and resultantly the respondent is unable to keep up his promise to his overseas buyers and thereby, as abovenoted, appears to sustain loss, in such view of the matter, the case projected by the respondent that due to the breach of the contract on the part of the appellant, it had sustained loss of goodwill/reputation, cannot be easily brushed aside and considering the nature of the business carried on by the respondent, particularly with reference to overseas buyers, in such view of the matter, in my considered opinion, the quantum claimed by the respondent at the rate of Rs.1,00,000/- under the abovesaid heading is found to be not on the higher side and therefore, it is found that the trial court is justified in granting the said relief in favour of the respondent. No interference is called for with reference to the abovesaid grant of relief in favour of the respondent by the trial court.

17.As regards the claim of mandatory injunction sought for by the appellant, it is found that the counsel for the appellant had also made an endorsement of not pressing the relief of mandatory injunction as prayed for. However, the trial court had proceeded to direct the respondent to furnish Form-H declaration as per the provisions of the Central Sales Tax with reference to the supply of goods effected by the appellant to the respondent and therefore, considering the same, the abovesaid direction of the trial court is found to be justified and needs no interference. Accordingly the point numbers 1 and 2 are answered.

Point Numbers 3 & 4

18. For the reasons aforesaid, the common judgment and decree passed in O.S.Nos.972 of 2004 and 93 of 2009 on the file

of the Additional District Judge Fast Track Court No.1, Coimbatore, are confirmed and resultantly, the first appeals are dismissed with costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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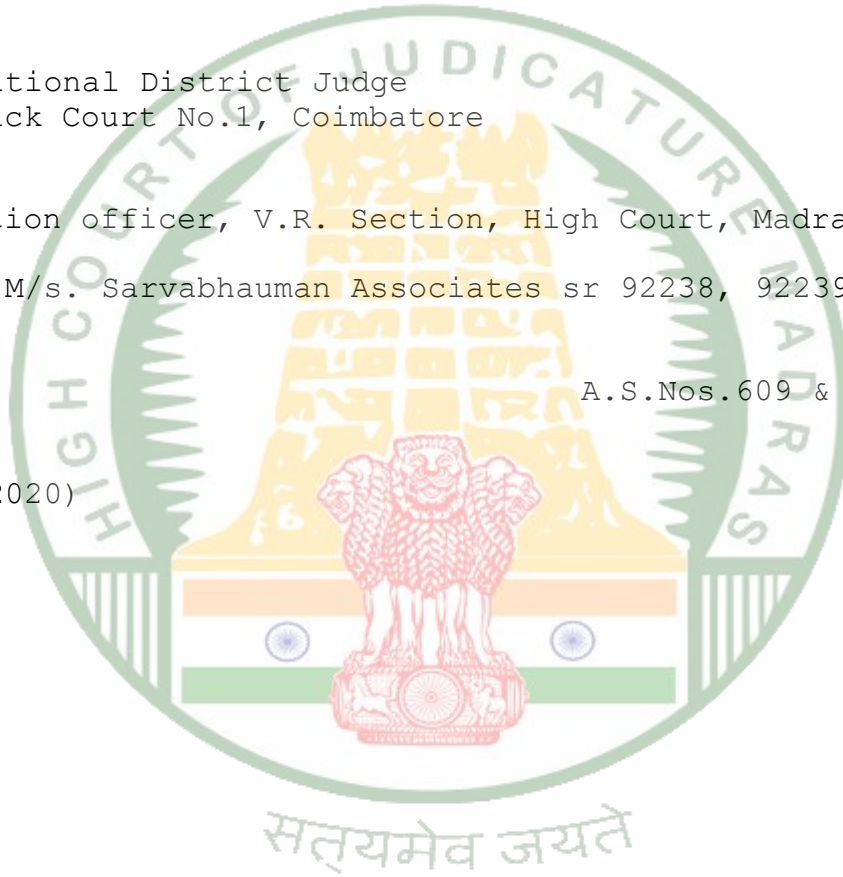
1.The Additional District Judge
Fast Track Court No.1, Coimbatore

Copy to
The Section officer, V.R. Section, High Court, Madras.

+2 CCS to M/s. Sarvabhauman Associates sr 92238, 92239.

A.S.Nos.609 & 610 of 2011

SV(CO)
SP(12/08/2020)



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