

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.No.13 of 2000

Union Motors Services Limited,
NP-32 and 46, Thiru-vi-ka Industrial Estate,
Ekkaduthangal, Chennai – 600 097. ... Plaintiff

Versus

Dev Fasteners Limited,
42, Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004. ... Defendant

This Civil Suit is filed under Order VII Rule 1 of Civil Procedure Code, 1908 r/w Order IV Rule 1 of the O.S.Rules, for a judgment and decree, as against the defendant for

(i) directing the defendant to pay the plaintiff a sum of Rs.2,16,53,155.60/- (Rupees Two Crores Sixteen Lakhs Fifty Three Thousand One Hundred Fifty Five and Sixty Paise only), together with interest at the rate of 24% per annum on Rs.1,17,34,869.59 (Rupees One Crore Seventeen Lakhs Thirty Four Thousand Eight Hundred and Sixty Nine and Fifty Nine Paise only) from the date of this suit till the date of payment.

(ii) directing the defendant to pay the costs of this Suit

For Plaintiff : Mrs. J.Madhuri
for Official Liquidator
For Defendant : Set ex parte
vide order dated 27.03.2018

JUDGMENT

The suit has been filed for recovery of money for a sum of Rs.2,16,53,155.60/-. The plaintiff is a Company incorporated under the Companies Act, 1956. The plaintiff / Company was carrying on the business as Distributors and Service Agents of Maruti Vehicles and also Distributors of automobile spare parts and have established a wide network of sale offices and depots in the Country. On the other hand, the defendant inter alia carries on business as manufactures of high tensile fasteners and hexagonal bolts.

2. Mrs. J.Madhuri, learned counsel appearing for Official Liquidator on behalf of the plaintiff company would submit that by virtue of the order of this Court dated 21.09.2004, in C.P.No.174 of 2001, the Official Liquidator attached to the Madras High Court was appointed as Liquidator of the plaintiff / Company with direction to take charge of all the properties and assets of the said company.

2.1 The learned counsel for the plaintiff submitted that as per the records available in the office of the Official Liquidator, the present Civil Suit in C.S.No.13 of 2000 has been filed for recovery of money.

2.2 The learned counsel for the plaintiff submitted that during the course of plaintiff's business, the defendant appointed the plaintiff, to act as its distributors vide its letter of appointment dated 22.05.1995. The said letter of appointment has been marked as Ex.P1. According to the plaintiff's counsel, as per the terms and conditions of the said letter of appointment the plaintiff was an authorised distributor of the defendant / Company initially for a period of one year.

2.3 Subsequently, the plaintiff and the defendant entered into an agreement dated 15.05.1996, wherein, the plaintiff was appointed as a distributor for the said products manufactured by the defendant. The said agreement has been marked as Ex.P2.

2.4 The learned counsel for the plaintiff submitted that in terms of the agreement / Ex.P2, the plaintiff paid a security deposit for a sum of Rs.1,00,00,000/- to the defendant. She further submitted that the security

deposit was interest free during the tenure of the agreement and was to be returned by the defendant to the plaintiff not later than 15 months from the date of the said agreement. By referring to the relevant clause, the counsel submitted that after the expiry of 15 months time the defendant has to pay interest at 24% per annum. However, the counsel for the plaintiff / company submitted that the plaintiff has also effected payments for the said products within the period as stipulated in clause 5 of the agreement by raising debit notes marked as Ex.P3 series. According to the counsel for plaintiff the total amount in terms of Ex.P3, is a sum of Rs. 17,34,869.59/-.

2.5 The learned counsel for the plaintiff submitted that in view of the default committed by the defendant and due to the defendant raising several false, fraudulent and vexatious claims, the plaintiff was constrained to instruct its counsel to issue a legal notice to the defendant terminating the said agreement. The said legal notice was issued on 05.12.1996, which has been marked as Ex.P4 terminating the said agreement and calling upon the defendant to return the said deposit of Rs.1,00,00,000/- together with interest at 24% per annum from the date of receipt of notice till the date of payment. Despite the receipt of the legal notice, the defendant though replied to the said notice on

18.12.1996, failed to return the deposit amount. The said notice has been marked as Ex.P5. The statement of account showing amount receivable from defendant is also marked as Ex.P6.

2.6. The learned counsel appearing for the Official Liquidator submitted that based on the legal notice dated 05.12.1996, the defendant is liable to pay 24% interest on the deposit of a sum of Rs.1,00,00,000/-. However, she has also claimed a sum of Rs.17,34,869.59/- on the debit note raised by the plaintiff along with interest at the rate of 24%, amounting a sum of Rs.14,49,244.91/-. However, the counsel has not mentioned in the debit note about the contract for the payment of interest. Therefore, the plaintiff submitted that they have filed the suit for recovery of money a sum of Rs.2,16,53,155.60/- with 24% interest per annum at Rs.1,17,34,859.59/- from the date of filing the suit till the date of payment.

3. Heard the learned counsel for the Official Liquidator on behalf of the plaintiff and perused the averments made in the plaint and in the proof affidavit filed by P.W.1 and also gone through the Exs.P1 to P6. In spite of summon served on the sole defendant, none appeared when the matter was listed on 27.03.2019. Therefore, the sole defendant was set *ex parte* by this Court vide

order dated 27.03.2019, and the matter was directed to be listed before the learned Additional Master – I, for recording ex parte evidence. On the side of the plaintiff, one N.S.Aswin, Junior Technical Assistant in the Office of the Official Liquidator has been examined as P.W.1, and 6 documents were marked viz., Exs.P1 to P6.

4. On the perusal of the Ex.P1 to P6, this Court finds that the plaintiff paid a sum of Rs.1,00,00,000/- as security deposit to the defendant. Clause 6 of Ex.P2 / agreement with defendant reads as follows:

“UMS shall pay an amount of the Rs.100 lakhs as security deposit to Dev on signing of this agreement. The security deposit shall be interest free and shall be refunded by Dev in part or full at a date not later than 15 months from the date of this agreement.”

4.1 A perusal of above clause, clearly shows that the security deposit is interest free and the same shall be refunded either in full or in part not later than 15 months, which means, it should be interest free deposit and the same shall be refunded within 15 months. Though they have stated not later than 15 months and the same shall be refunded either in part or in full, therefore, this Court is of the view that the refund of the security deposit is interest free.

5. On the other hand, the counsel for the plaintiff submitted that it is interest free for the first 15 months and thereafter defendant is liable to pay interest from the date of legal notice dated 05.12.1996. But as per Ex.P2, there is no clause for the interest. Further, the counsel has not mentioned in the debit note about the contract for the payment of interest. As per Clause 6 liberty is given to the defendant to refund the interest free deposit either in part or in full not later than 15 months. In such case, the defendant can refund either in part or in full not later than 15 months as interest free deposit. In such of the view, the interest claimed by the plaintiff is not based on any agreement between the parties and only deposit is liable to refunded in terms of Clauses 6 of the Ex.P2 / agreement.

6. However, the learned counsel for the plaintiff further submitted that transaction is going on from the year 1996 and after that the defendant has not returned the deposit and atleast the said amount is liable to be returned subsequent to the business transaction come to an end. This Court finds the contention of the counsel appearing for the plaintiff to be reasonable. According to the plaintiff's counsel the defendant is liable to pay interest atleast the normal interest at the rate of 9% from the date of termination to till date. As far as debit note raised by the plaintiff is concerned for a sum of

Rs.17,34,869.59 in terms of Ex.P3, this Court is of the view that the plaintiff is entitled for a said claim, however, no amount of interest shall be paid, as demanded by the plaintiff. In view of the nature of transaction entered into between the parties this Court is inclined to impose atleast 9% interest on the debit note raised by the plaintiff by virtue of Ex.P3. Accordingly, this Court directs the defendant to pay interest at 9% on the debit note raised by the plaintiff vide Ex.P3 for a sum of Rs.17,34,869.59/- from the date of termination of the contract that is 05.12.1996 to till the date of this decree. Accordingly, this Court passes the following the judgment and decree:-

- i) Directing the defendant to return Rupees One Crore along with simple interest at 9% p.a. from 05.12.1996, till the date of realisation of the amount.
- ii) Directing the defendant to pay a sum of Rs.17,34,870/- along with interest at 9% p.a. from 05.12.1996, till the date of realisation of the amount.
- iii) Directing the defendant to pay the cost of the suit.

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7. In the result, this suit is decreed as indicated above.

08.08.2019

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Index : Yes/No

KRISHNAN RAMASAMY, J.,
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