

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.07.2019

PRONOUNCED ON : 05.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.911 of 2009

and

M.P. No.1 2009

N. Chandrasekaran ...Appellant/Defendant

Vs.

M/s. Sethupathy Venkatachalapathiah Sons

Rep by its partner Mrs.S.V.Thulasiram

...Respondent/Plaintiff

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 27.09.2007 in O.S. No.5 of 2006 on the file of the Additional District and Sessions Court, Fast Track Court II, Ranipet.

For Appellants : Mr.R. Mubarak Basha

For Respondent : Mr. V. Raghavachari

JUDGMENT

Aggrieved over the judgment and decree dated 27.09.2007 passed in O.S. No.5 of 2006 on the file of the Additional District and Sessions Court/Fast Track Court II, Ranipet, the defendant has preferred the 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 plaintiff is a partnership firm carrying on the business of manufacturing and selling silk sarees and the defendant is carrying on silk saree business in the name and style of M/s. SVS Silks as its sole proprietor and the defendant is one of the customers of the plaintiff, used to purchase the silk sarees from the plaintiff on various dates. From 17.06.2002 to 27.07.2002, a sum of Rs.5,93,300/- is due from the defendant as reflected in the credit bills dated 17.06.2002, 24.06.2002, 05.07.2002 and 26.07.2002 and the above said supply of goods reflected in the credit bills have

also been entered into the books of accounts of the plaintiff maintained by them in the regular course of business and the defendant failed and neglected to pay the amount due inspite of repeated demands and issuance of the legal notice dated 08.04.2005 and the defendant had evaded to receive the legal notice and hence according to the plaintiff, it has been necessitated to levy the suit against the defendant for appropriate relief.

5. The defendant resisted the plaintiff's suit contending that the plaintiff has to establish that it is a partnership firm duly constituted under the Indian Partnership Act and disputed the case of the plaintiff that the defendant is carrying on the silk saree business in the name and style of M/s. SVS Silks as its sole proprietor and according to the defendant, the door number furnished in the plaint is his residential address and no business is being carried on by him in the said premises in the name and style of M/s. SVS Silks as put forth in the plaint and also denied the case of the plaintiff that the defendant is one of the customers of the plaintiff and used to purchase silk sarees on credit basis. According to the defendant, his son Manikandan is the proprietor of M/s. SVS Silks situated at No.67, Mettu Street, Kancheepuram and he has been having dealings with the plaintiff and the defendant is purely an agriculturist and the defendant is neither an employee of M/s.SVS Silks nor its agent and according to the defendant, on occasions when visiting Melakuppam village to his father-in-law's house, his son Manikandan, the proprietor of M/s. SVS Silks used to ask him to meet the plaintiff and convey his requirement of silk sarees from the plaintiff's firm. On three such occasions, as demanded by the plaintiff's firm, the defendant had signed the credit bills of the plaintiff's firm. However, no silk saree had been delivered to the defendant on such occasions and the plaintiff's firm used to deliver directly to the proprietor of M/s. SVS Silks through their men and therefore, according to the defendant, there is no relationship of creditor and debtor between the plaintiff and the defendant and the defendant cannot be held liable for the debt due to the plaintiff by M/s. SVS Silks, No.67, Mettu Street, Kancheepuram, run by the defendant's son Manikandan. Inasmuch as his son has no immovable properties, according to the defendant, the plaintiff has conveniently laid the suit against him branding him as the sole proprietor of M/s. SVS Silks and therefore, the defendant is not liable to pay the suit amount as claimed in the plaint to the plaintiff and disputed the fact that the supply of goods under the credit bills involved in the matter had been entered into the books of accounts of the plaintiff maintained in the regular course of business and also disputed the issuance of legal notice by the plaintiff and according to the defendant, he and his sisters were engaged in numerous civil disputes and accordingly he was under the impression that the impugned notice had been sent by one of his sisters and therefore, he has no knowledge about the legal notice issued by the plaintiff on 08.04.2005 and the defendant is not

liable to pay the suit amount as well as the interest claimed on the same as set out in the plaint and therefore, according to the defendant, the plaintiff has no cause of action against him and the suit is therefore liable to be dismissed.

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

- 1) Whether the relationship of creditor and debtor exists between the plaintiff and the defendant?
- 2) Whether the plaintiff has cause of action against the defendant?
- 3) Whether the plaintiff has delivered the silk sarees on credit basis to the defendant by way of the credit bills No.1378 dated 17.06.2002, 1380 dated 24.06.2002, 1381 dated 05.07.2002 and 1387 dated 26.07.2002?
- 4) Whether the plaintiff is entitled to claim the decree as prayed for in the plaint ?
- 5) To what relief the plaintiff is entitled to?

7. In support of the plaintiff's case P.W.1 was examined and Exs.A1 to A12 were marked. On the side of the defendants D.W.1 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 holding that the defendant is liable to pay the suit amount as well as the interest at the rate of 12% per annum on the principal amount from the date of institution of the suit till the date of judgment and pay the subsequent interest at the rate of 6% per annum till the date of realisation and accordingly disposed of the plaintiff's suit with costs. Aggrieved over the same, the present first appeal has been preferred by the defendant.

9. The following points arise for determination in this first appeal.

1. Whether the plaintiff is entitled to recover the suit amount from the defendant towards the supply of silk sarees on credit basis as put forth in the plaint?
2. To what relief the plaintiff is entitled to?
3. To what relief the defendant / appellant is entitled to?

10. It is not in dispute that the plaintiff is engaged in silk saree business. According to the plaintiff, the defendant is one its customers and putting forth the case that the defendant is carrying on silk saree business in the name and style of M/s. SVS Silks as its sole proprietor and placed orders with the plaintiff for the purchase of the silk sarees on various dates on credit basis in a sum of Rs.5,93,300/- as per the credit bills detailed in the plaintiff and based on the same, the goods had been supplied to the defendant and the same had also been reflected in the books of accounts maintained by the plaintiff in the regular course of business and as the defendant had failed to pay the amount due with reference to the abovesaid supply of goods despite repeated demands and also the issuance of notice, it is stated that the plaintiff had been necessitated to lay the suit against the defendant.

11. The defendant had resisted the plaintiff's suit contending that he is not the sole proprietor of M/s. SVS Silks and on the other hand, it is only his son Manikandan, who is the sole proprietor of M/s. SVS Silks and further according to the defendant, he has not purchased the silk sarees from the plaintiff on credit basis under the credit bills set out in the plaint and the plaintiff has not supplied the silk sarees to him based on the credit bills and further according to the defendant, the plaintiff cannot be allowed to mulct the defendant with the liability in paying the same due to it from M/s.SVS Silks carried on by its son and therefore, contended that there is no creditor debtor relationship between the plaintiff and the defendant and hence the suit laid by the plaintiff is liable to be dismissed.

12. As could be seen from the written pleas set out in the written statement as well as from the evidence adduced by the defendant examined as D.W1, it is found that the defendant's son is carrying on the business of silk sarees in the name and style of M/s.SVS Silks. Now according to the defendant, the abovesaid business has been carried on by his son at Door No.67, Mettu Street, Kancheepuram. The defendant has not disputed the silk saree business between the plaintiff and M/s. SVS Silks. On the other hand, according to the defendant, he is no way connected with M/s.SVS Silks and therefore, there is no need on his part to order the supply of silk sarees to M/s. SVS Silks from the plaintiff and thereby disowned the liability to pay any amount to the plaintiff by way of the credit bills set out in the plaint. But, as per the case projected by the defendant in the written statement, it is seen that he has admitted clearly that he had negotiated with the plaintiff for the supply of silk sarees on behalf of M/s. SVS Silks said to be run by his son and with reference to the same, according to the defendant, whenever he used to visit his father-in-law's place at Melakuppam village, his son used to ask him to meet the plaintiff's silk firm and convey

his requirements of silk sarees from the plaintiff's firm and thereby according to the defendant, on three such occasions, he had signed the credit bills as required and demanded by the plaintiff's firm. Therefore, it is evident that the defendant has admitted his request for the supply of silk sarees to M/s. SVS Silks by the plaintiff's firm. If really, the defendant has no connection or relationship with M/s.SVS Silks in any manner, it does not stand to reason as to how come the defendant had put his signatures in the credit bills put forth by the plaintiff. Of the 4 credit bills projected in the matter, the defendant has admitted that his signatures are available in the three credit bills marked as Exs. A1 to A3. However, according to the defendant, the fourth credit bill marked as Ex.A4 does not bear his signature. On a perusal of Exs. A1 to A4, it is found that the abovesaid credit bills have been raised in the name of M/s. SVS silks, No.67, Mettu Street, Kancheepuram. Accordingly, inasmuch as, according to the defendant it is only the defendant's son Manikandan who had been carrying on the abovesaid business as the sole proprietor and as the defendant's son had directed the defendant to convey his requirement of silk sarees from the plaintiff's firm and based on the same, the defendant had also approached the plaintiff and placed orders for the supply of silk sarees to his son's firm and on that understanding between him and his son, the defendant had also signed in the three credit bills marked as Exs. A1 to A3 and when furthermore, the defendant has also admitted in the course of evidence that he would not sign in the credit bills without the supply of the goods, in such view of the matter, the contention now put forth by the defendant that he is no way connected with M/s.SVS Silk run by his son Manikandan and not placed any orders for the supply of silk sarees from the plaintiff's firm on behalf of M/s.SVS Silks, as such, cannot be believed and accepted. Inasmuch as the defendant is the father of Manikandan, the sole proprietor of M/s. SVS Silks, accordingly also placed orders on behalf of M/s. SVS Silks with the plaintiff's firm and not only that, had also signed in the credit bills in connection with the supply of silk sarees marked as Exs. A1 to A3 in particular, if there is no relationship or connection, whatsoever, between the defendant and M/s. SVS Silks, though the defendant may not be strictly the proprietor of M/s. SVS silks, but considering the abovesaid scenario in toto, as rightly determined by the trial court and when the defendant has also admitted that he used to put his signature only on the confirmation of the supply of the goods, in all, it is found that only on the understanding between the parties with reference to their business ventures, reposing confidence on the defendant and M/s. SVS silks run by the defendant's son and accordingly the plaintiff had accepted the orders for silk sarees paced by the defendant with the plaintiff's firm on behalf of his son, in such view of the matter, it is seen that the defendant cannot be allowed to disown his liability to pay the amount due to the plaintiff by way of the supply of silk sarees under the credit bills in

question.

13. The materials placed on record go to show that the goods under Exs.A1 to A3 had been delivered and also, as abovenoted, admittedly the defendant had signed in the abovesaid credit bills for and on behalf of M/s. SVS silks. In addition to that, as rightly held by the trial court though the defendant would claim that he had not signed Ex.A4 credit bill, however, in para No.5 of the written statement, the defendant has admitted that all the credit bills projected in the plaint bear his signatures, which according to him was not in the capacity of debtor of the plaintiff's firm but on the request of the plaintiff for the business between the plaintiff and M/s. SVS silks as detailed in the earlier paragraphs. No doubt, he has also subsequently stated that he has not signed the credit bill marked as Ex.A4. Further according to the plaintiff, all the credit bills involved in the matter had been duly reflected in the books of accounts maintained by them in the regular course of business and the relevant entry in the ledger maintained by the plaintiff with reference to the same has come to be marked as Ex.A5 and when EX.A4 credit bill has also been raised only in the name of M/s.SVS Silks, run by the defendant's son and the defendant's signature though as such not found in Ex.A4, when as admitted by the defendant he used to negotiate with the plaintiff's firm on behalf of his son for the supply of silk sarees on credit basis, in toto, it is found that the silk sarees referred to in EX.A4 bill had also been supplied to M/s.SVS silks only based on the order issued by the defendant on behalf of his son and accordingly the same along with the other credit bills are found reflected in Ex.A5 and in such view of the matter, when EX.A5 entries in the books of accounts maintained by the plaintiff in the regular course of business reflected all the four bills and merely because the defendant has not signed Ex.A4 bill, that by itself, would not disown the liability of the defendant from paying the amount covered under the said credit bill. It is also to be noted that the defendant has admitted his signature in the receipt books projected by the plaintiff marked as Exs.A8 to A11 and also admitted that he and his son are living as one family at Door No.108, Kanagadurgaiamman Nagar, Peria Kancheepuram and when the defendant has admitted that he had put his signature in the credit bills concerned only after ascertaining that the goods had been supplied and when the defendant is found to be negotiating with the plaintiff's firm on behalf of his son, as admitted by him, on various occasions and accordingly the credit bills have been raised and when the credit bills involved in the matter are found to be duly reflected in the books of accounts and the defendant has not endeavoured to examine his son to establish that the goods involved in the credit bill Ex.A4 had not been supplied to M/S. SVS Silks and to cap it all, when the defendant during the course of evidence has not challenged the books of accounts projected by the plaintiff and furthermore, when the defendant has admitted

completely that the plaintiff's firm is engaged in silk business on large scale at Kancheepuram and also admitted that there is no necessity on the part of the plaintiff to cheat them and on the whole, the court below has rightly assessed and analysed the abovesaid materials placed on record and accordingly proceeded to hold that inasmuch as the defendant himself has admitted that he had been engaged in the negotiations with the plaintiff's firm qua the purchase of silk sarees on behalf of his son and accordingly the credit bills involved had been raised and admittedly the defendant's signature is available in EXs.A1 to A3 and as abovenoted as all the credit bills are found to be reflected in the books of account maintained by the plaintiff, in such view of the matter, in the nature of the preponderance of probabilities, the trial court is found to be wholly justified in holding that all the 4 credit bills involved in the matter had been raised only on the order placed by the defendant with the plaintiff's firm for the supply of the silk sarees and in such view of the matter, the defendant cannot be allowed to refute the plaintiff's case on the mere factor that his signature is not available in EX.A4 credit bill.

14. In addition to that, according to the plaintiff, the defendant has failed to pay the amount despite the repeated demands and also the issuance of notice marked as Ex.A6. It is found that the legal notice sent by the plaintiff had been refused to be received by the defendant and accordingly, the notice cover had been returned. With reference to the same, the defendant would only plead that as he had been having various disputes with his sisters and on that impression, he had refused to receive the notice issued by the plaintiff. By way of the abovesaid defence, it is seen that the defendant has admitted the knowledge of the legal notice sent by the defendant. But quite inconsistent to the abovesaid plea, during the course of evidence, the defendant would state that as he was preoccupied with the treatment of his mother in various hospitals, he had not received the notice. Therefore, as held by the trial court, the defendant, knowing fully about the legal notice, had deliberately refused to receive the same one way or the other with a view to avoid the liability of the receipt of legal notice.

15. In the light of the abovesaid factors, when the case of the plaintiff is considered and when the plaintiff has no motive to institute the false suit against the defendant as admitted by the defendant himself and the defendant is found to have negotiated with the plaintiff on behalf of his son for the supply of the silk sarees on credit basis, accordingly the credit bills involved in the matter had been raised and the same are also found reflected in the books of accounts of the plaintiff maintained in the regular course of business and P.W.1 examined on behalf of the plaintiff had adverted to about the same in detail in an acceptable and reliable manner and despite the cross examination, nothing has been culled out

from him to discredit his evidence or disbelieve the case of the plaintiff and on the other hand, when admittedly the defendant has affixed his signature in Exs.A1 to A3 credit bills and is found to be engaged in the negotiations of the purchase of silk sarees with the plaintiff's firm on behalf of his son and when the defendant has not endeavoured to examine his son to establish that the silk sarees concerned in the credit bills had not been delivered, in such view of the matter, on the whole, it is found that the trial court is justified in holding that the defendant, as a person, who had signed the credit bills in question is liable to pay the suit amount with interest as prayed for by the plaintiff and accordingly the trial court is justified in holding that the plaintiff is entitled to receive the suit amount with interest as determined by it in connection with the supply of silk sarees to the defendant as per the orders placed by him by way of the credit bills in question and accordingly point No.1 is answered in favour of the plaintiff and against the defendant.

Points No.2 and 3

For the reasons aforesaid, the judgment and decree dated 27.09.2007 passed in O.S. No.5 of 2006 on the file of the Additional District and Sessions Court/Fast Track Court II, Ranipet, are confirmed and resultantly the first appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

bga

Copy to

1. The Additional District and Sessions Court,
Fast Track Court II,
Ranipet.
2. The Section officer, V.R. Section, High Court, Madras

+1cc to Mr.R. Mubarak Basha, Advocate SR.No.66800

+1cc to Mr.V. Raghavachari, Advocate SR.No.66534

A.S.No.911 of 2009

SR(CO)

GMV (21/05/2020)

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