

N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

A.S.No.956 of 2010

Thirumathi J. Padma
proprietor of M/s. Grassi Leathers
rep. by Power Agent
C.Solomon Jebaraj

... Appellant/Plaintiff

Vs.

1. BASF India Ltd.,
rep. by South India Sales Manager,
"Garuda Building 4th floor"
No.104 (Old No.46), Cathedral Road,
Chennai - 600 086.

2. BASF India Ltd.,
rep. by CHairman & Managing Director,
RBC Mahindra Towers 1st floor,
A- Wing, Dr. G.M.Bhosal Marg,
Worli, Mumbai - 18.

3. Rajesh Corporation,
No.27, Ground Floor,
Barnaby Road,
Kilpauk, Chennai - 600 010. ... Respondents/Defendants

Prayer:- This Appeal has been filed under Order 41 and Section 96 of CPC against the judgment and decree dated 10.02.2010 in O.S.No.1090 of 2007 on the file of the II Additional Judge, Chennai.

For Appellant : Mr. G.Prabhakar

For respondents : Mr. N.Inbarajan,
for R1

JUDGEMENT

The plaintiff is the appellant herein. The plaintiff has filed a suit for recovery of Rs.4,21,786/- with interest and also a sum of Rs.60,000/- as compensation and further sum of Rs.20,000/- for testing and consulting the leather materials, which is the subject matter in the suit.

2. The averments in the plaint reads as follows :-

The plaintiff is a dealer in leather processing. For processing the leather, a chemical has to be applied to keep it dry, so that, the leather will become tighten and thereafter, it will be used for making leather products. For several years, the plaintiff has been purchasing the required chemical from the third defendant and in all those orders, there was no defect in the chemical and there is no complaint whatsoever. On 16.02.2004, the plaintiff purchased chemicals from the third defendant, who is the dealer under the defendants 1 and 2, the manufacturers of the chemical. The plaintiff purchased 100 kg of chemical named "Amollan FBI". As usual, out of 100 kgs, they applied 90 kgs on the leather for processing. Later on, when the leather was checked, it was found that the instead of getting tightened, the leather got loosen due to the defect in the chemical applied on it and the entire leather became completely useless and caused loss to the plaintiff. Immediately, the plaintiff informed the same to the third defendant, and the technicians had tested the chemical and informed the plaintiff that the chemical was unsuitable for processing leather. Since the entire leather become waste, the plaintiff sold the leather in a throw away price and thereby incurred a huge loss. Subsequently, based on the direction of the third defendant, the plaintiff has approached the first defendant to compensate her loss and sent a letter dated 21.05.2004. Without sending any reply, they have only remitted Rs.1,50,000/- to the plaintiff to her account and the plaintiff also acknowledged the same and requested the defendants to pay the balance amount at the earliest. But, the defendants stated that there is no defect in the chemical and the damage might have been caused due to foreign materials. In the above circumstances, the plaintiff has approached one Dr.Ramkumar, a veteran in the leather field and on his advice, the plaintiff got the chemical tested at IIT lab, Chennai and after examination of the leather, the expert given an opinion that there was no external matter present in the chemical. Thereafter, the plaintiff has approached the defendants 1 and 2 with the opinion of the expert for compensation. But, the defendants insisted that there was no defect in the chemical. In the above circumstances, the plaintiff issued a legal notice

dated 15.02.2005 to all the defendants. Thereafter, the plaintiff approached the consumer forum for compensation, and her application was rejected by the forum on the ground of maintainability and the revision filed against that order before the State Consumer Dispute Redressal Commission, Chennai, was also dismissed holding that the matter requires trial before the Civil Court. In the above circumstances, the suit has been filed.

3. In the written statement filed by the first defendant, the purchase of 100 kgs of chemicals named Amollan FBI is admitted. But , it is specifically denied that the plaintiff applied 90 kgs out of 100 kgs, and the leather has been spoiled because of the chemicals supplied by the defendants. It is further stated that, the above said fact was not mentioned by the plaintiff either in any of their letters, legal notice or the complaint filed before the Consumer Forum and for the first time, the plaintiff has fraudulently and mischievously changed the facts and concocted a new story in the suit. The first defendant also denies the contention that the reaction was caused due to the defect in the chemical supplied by the defendants and also denied the allegation that, the plaintiff had sold the leathers, which is worth about Rs.7 lakhs for a throw away price and had incurred a loss, which are false and frivolous. The first defendant also denied the averments that the plaintiff approached the defendants to compensate her loss and the defendants have paid a sum of Rs.1,50,000/- to the plaintiff. According to the defendants, they have not made any payments as claimed by the plaintiff towards the loss caused to her due to the defect in the chemical manufactured by this defendant. If at all any damage to the leather material as alleged by the plaintiff was only due to mis handling by the employees of the plaintiff and not following the specifications prescribed for the use of chemical. The chemical supplied by the defendants was in a single sealed container containing 100 kgs, which was packed after complete quality checking tests at their business premises and the chemical manufactured by the first defendant has a world wide reputation with ISI standards. The first defendant has raised serious objection to the expert report and the findings of Dr.S.C.Ramkumar and contended that the same was unilateral, and the test was done by him without issuing any notice to the first defendant and therefore, it cannot be taken into consideration. The size of the Batch No.178 of Amollan FB-1 chemical was 6 tons, and the first defendant manufactured the above batch and supplied to many other customers/dealers, and they have found that the product fully meeting their specifications. That apart, the report submitted by the Dr.Ramkumar have no authenticity and the defendants rejected such reports. The solid white mass, which

amounts to hardly 300 grams could be due to foreign material or some form of contamination from outside while using the product and that could never be the reason for the quality problems that the plaintiff had in their leather.

4. The third defendant filed a separate written statement stating that, the third defendant is the agent of the defendants 1 and 2 and dealer for their products. The plaintiff never informed about the defect caused to the leather and the plaintiff has not followed the given instructions for use of the said products. The defendants 1 and 2, who are quality conscience and they do not give room for any complaints and the products manufactured by them pass through the stringent quality tests before the same is distributed for sale. The third defendant admitted that the purchase of 100 kgs of chemical by the plaintiff on 16.02.2004 and they said to have used 90 kgs to their utmost satisfaction from 16.02.2004 to 28.12.2004, for nearly, 10 months and that they did not make any complaint and there is no whisper about the quality of the product. The 10 kgs of the material, which admittedly lying with the plaintiff at their disposal, and it was under their control for over a period of time and the alleged contamination if any of the said balance products is the result of foreign particles entering the said container and contaminating the remaining product, for which, the defendants cannot be held liable. At any rate, the third defendant cannot be blamed for such defect. The first communication regarding the contamination in the remaining 10 kgs of the said product was received by the defendants, only in the first week of December 2004, i.e nearly nine and a half month, after purchase of the product and the defendant also denied the allegations about the reports of the technicians of the defendants, who have tested the products and he has further stated that absolutely there is no manufacturing defect. Out of 6 tons of total product, only 100 kgs were sold to the plaintiff and the remaining quantities were sold to various dealers all over India and absolutely there was no complaint regarding the quality and the third defendant also denied the other averments made in the plaint.

5. Considering the materials available on record, the trial Court framed the following issues ?

1. Whether the plaintiff is entitled for recovery of amount from the defendants ?

2. Whether the defendants have disproved the report submitted by the plaintiff ?

3. Whether the loss caused to the plaintiff was due to the negligence of the defendants ?

4. What other relief the plaintiff is entitled to ?

6. During trial, in order to establish the case, the plaintiff examined her husband as P.W.1 and marked Exs.A1 to A17. The Regional Manager of the first defendant was examined as D.W.1 and one of the partners of the third defendant firm was examined as DW2 and marked Exs.B1 to B5.

7. Considering both the oral and documentary evidences, the trial Court has held that the plaintiff has failed to establish that the leather has been damaged only due to the defect in the chemical supplied. The samples sent for chemical analysis were not taken in the presence of the defendants, and further, it was sent for examination only in the month of November 2004, after a long time. Since the entire test conducted on behalf of the plaintiff was done behind the back of the defendants and based on that no liability can be fixed upon the defendant, and dismissed the suit by judgment and decree dated 10.02.2010. Now, challenging the above judgment and decree, the present appeal has been filed.

8. In the appeal, the following issues are framed for consideration:-

1. Whether the appellant/plaintiff has established that the damage caused to the leather is only due to the defect in the chemicals supplied by the defendant ?

2. Whether the analysis report Ex.A8 is binding on the defendants ?

3. Whether the plaintiff has proved that the defendants has paid a sum of Rs.1,50,000/- towards the part of loss caused to the plaintiff ?

4. What other reliefs the plaintiff is entitled for ?

9. I have heard the learned counsel appearing for the appellant and respondents and perused the materials available on record carefully.

10. Issue Nos.1 and 2:

The case of the plaintiff is that the plaintiff has purchased 100 kgs chemical named "Amollan FBI", from the third defendant, who is the dealer of the defendants 1 and 2. Out of 100 kgs, the defendant had used only 90 kgs of the chemicals, and due to the defect in the chemicals purchased, the leather got spoiled. To substantiate the case of the plaintiff, the plaintiff mainly relied upon the chemical analysis report, which

is marked as Ex.A.8. The chemical analysis of the spoiled leather has been done by one Dr. Ramkumar on 15.11.2004. The chemicals were purchased by the plaintiff on 16.02.2004. It is the case of the plaintiff that, the chemical was used immediately after purchase. but there is no evidence available to show that when was the alleged damaged leather has been sent for examination . That apart, the samples, which was sent to the analysis lab was not taken in the presence of the defendants and the plaintiff themselves unilaterally taken the samples from the alleged damaged leather, and the entire exercise has been done behind the back of the defendants and without any notice to them. Moreover, the analyst who had conducted chemical analysis of the leather was not examined as a witness by the plaintiff, thereby enabling the defendants to cross-examine him. In the above circumstances, the chemical analysis, which have been conducted unilaterally by the plaintiff, cannot bind on the defendants, and based on that report, this court cannot come to a conclusion that only due to the defect in the chemical supplied by the defendant, the plaintiff's leather got damaged.

11. Except the chemical analysis report, there is no other evidence available on record to show that it is only due to the chemicals supplied by the defendants, the plaintiff's leather got damaged. That apart, so far as the quantum of loss suffered by the plaintiff, absolutely there is no evidence to show that how much leather has been damaged due to the chemicals supplied by the defendants, and what was the cost of leathers and at what rate, the leather was sold to third party. In the absence of any such evidence, this Court cannot fixed the quantum of loss and damages. Hence, I am of the considered view that the plaintiff has miserably failed to establish that the leather has been damaged due to the defect in the chemicals supplied by the defendants. Hence, these issues are held against the plaintiff.

12. Issue no.3.,

The plaintiff in his evidence has specifically admitted that he has not produced any materials to show that the defendants had paid a sum of Rs.1,50,000/- towards the loss caused to the plaintiff. In the above circumstances, this Court is of the view that the plaintiff has also failed to prove that the defendant paid the above amount for the damage caused to the plaintiff and this issue is also answered against the plaintiff.

13. Considering all those materials, the trial Court has also come to a conclusion that the plaintiff has miserably failed to establish his case and dismissed the suit, and I find no infirmity or perversity in the judgment passed by the Court below, consequently the appeal deserves to be dismissed.

14. In the result, the appeal is dismissed. and the judgment and decree of the trial court is confirmed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

mrp

To

The II Additional Judge,
City Civil Court,
Chennai.

+1cc to Mr.G.Prabhakar, Advocate SR.No.21751(04/02/2020)

A.S.No.956 of 2010

SSD(CO)
GMY(08/11/2019)