

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.1387 of 2008  
and  
C.M.P.No.10684 of 2018

Thirukumaran Silks,  
represented by its Proprietor,  
A.S.C.Venku Sah,  
S/o. Chandar Sah,  
No.34, South Street @ Saliar Street,  
Sheikpet, Kancheepuram Town. ... Appellant/Plaintiff

versus

Shobika,  
Represented by its Proprietors,  
1) Shoukath Ali  
2) Shameema Begum ... Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the decree and judgment dated 23.07.2007 made in A.S.No.2 of 2007 by the Principal District Judge, Chengalpattu reversing the Decree and Judgment made in favour of the appellant i.e., Plaintiff in O.S.No.159 of 2001 dated 09.01.2006 on the file of the Sub-Court, Kancheepuram.

For Appellant : Mr.D.Rajagopal

For Respondents: Mr.D.Shivakumaran [R1 & R2]

JUDGMENT

This appeal is preferred by the plaintiff. Parties are referred to by their ranks before the trial Court.

2.1 The brief facts of the case are that : The plaintiff had laid the suit for value of the goods supplied to the defendant concern. The 1<sup>st</sup> defendant, Shoukath Ali is the husband of the 2<sup>nd</sup> defendant, Shameema Begum. The case of the plaintiff is that the

plaintiff had supplied textile materials to the 1<sup>st</sup> defendant between 09.04.1996 and 16.10.1997. The plaintiff had made a claim for Rs.2,66,399.60 towards the value of the goods supplied, which the plaintiff demanded with interest at the rate of 24% p.a.

2.2 The crux of the issue is all about the invoice bearing Nos.1103 to 1105 dated 01.03.1997 and 1143 to 1159 dated 11.06.1997. Some of the textile materials supplied under these invoices were returned by the defendants and after giving credit to those returned goods, the total amount become to Rs.2,66,399.60.

2.3 The defendants opposed it on the ground that Shobika, the first defendant was a proprietary concern, that the goods were sold to certain Shoba Designer Collection, a partnership firm, and it had nothing to do with the 1<sup>st</sup> defendant. It has also taken certain ancillary contentions as well.

3. During trial, for the plaintiff, he had entered in the witness box whereas for the defendants, their Manager entered in the witness box and was examined as DW1. Before the trial Court, the plaintiff relied on Exts.A3 to A6, which are termed as packing slips under which defendants had returned the goods to the plaintiff. The trial Court relied on the testimony of DW1, who admitted certain annexures to Exts.A3 to A6 containing the invoice details. This also was reflected in Ext.A-9 day book and the ledger.

4. It may have to be stated here it has come out in evidence that there are two concerns, one a proprietary concern namely, M/s Shobika Attire, the first defendant proprietary concern, and another, a partnership firm M/s Shoba Designer Collection. And as already stated, the 2<sup>nd</sup> defendant in the suit is the proprietrix of this business concern, and the 1<sup>st</sup> defendant Soukath Ali is her husband. Turning to Shoba Designer Collection, certain Jaffer Ali and his wife Meharunnisa Begum were the partners of the firm, who in 1997 had executed a Power of Attorney in favour of the 1<sup>st</sup> defendant Soukath Ali, to run the business. In other words, the 2<sup>nd</sup> defendant literally managed the first defendant 'Shobika Attire' as well as the firm Shoba Designer Collection. It is in this background, the first appellate Court had spent some time in differentiating Shobika Attire and the firm Shoba Designer Collection and went into a meticulous analysis of the accounts produced and dismissed the suit as it found certain variance in the statement and admission by the plaintiff as PW1.

5. This appeal was admitted on the following substantial questions of law:

a) Whether the Lower Appellate Court is right in dismissing the suit on account when the Defendant whose main defence and plea of discharge has not been gone into the 'witness box' to prove the same when especially the dealings and transactions are not disputed?

b) Whether the findings of the Lower Appellate Court that the Plaintiff had admitted that no amount is due from the Defendant is perverse for the reason that there is total misreading of the evidence?

6. The learned counsel for the appellant submitted that the fact that the 1<sup>st</sup> defendant has not paid any amounts as claimed is established not only by Exts.A3 to A6 packing slips and testimony of DW1, but also in Ext.B10-insurance claim made by the 1<sup>st</sup> defendant consequent to destruction of his business in the Coimbatore Bomb Blast incident in 1998. In that insurance claim, he had made a reference to this fact. Therefore, in the context of cross-examination of PW1, when he was confronted with the questions on both Shobika Attire and Shoba Designer Collection, some strange statements were made. If under Ext.B10 insurance claim, the present claim of the defendants finds some mentioning, then unless the defendants established that they had settled the claim of the plaintiff in a manner that law recognises, then the defendants are bound to pay the plaintiff.

7. Per contra, the learned counsel for the respondents vehemently argued that an admission made by the party is conclusive, and the present admission made by him cannot be ignored. And, the plaintiff as an architect of the litigation has the initial burden which he has not discharged in the facts that he had pleaded in the plaint, and that he cannot take advantage of any lapses or weakness in the case of the defendants.

8.1 While, this Court does not dismiss the statements made by the learned counsel for the respondents on burden of proof for their merit in law, it needs to be added that every case has its own complexion, and the Court has ample power to mould the reliefs based on the facts proved on an issue as to whether the plaintiff's statement made on the facts is conclusive evidence binding on him. It is here the testimony of DW1, Exts.A3 to A6 packing slips and Ext.B10 became critical.

8.2 When the evidence of D.W.1 coupled with Ext.B-10 and Exts.A-3 to A-6 point towards the liability of the defendants, there is little on record which could tilt the probability against the inference that flow from the former. Most significantly, neither of the defendants had testified to their case, which this Court cannot ignore here.

9. This therefore, Court holds that the plaintiff is entitled to receive the principal sum of Rs.2,66,399.60 from the defendants. However, this Court has taken into account the defendants' business was torched in Coimbatore Bomb Blast, and hence it chooses to reduce the interest rate from 24% to 9%.

10. Accordingly, this appeal is partially allowed and the judgment and decree of the Principal District Judge, Chengalpattu, dated 23.07.2007, made in A.S.No.2 of 2007 is set aside, and the defendants are directed to pay a sum of Rs.2,66,399.60 with interest at the rate of 9% p.a. throughout and future interest of 6%. So far as costs is concerned, normally cause will follow the event, but since the defendants have lost their business in an unnatural event, this Court does not impose any costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

ssn

To

1. The Principal District Judge,  
Chengalpattu.

2.The Subordinate Judge,  
Kancheepuram.

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

+1cc to Mr.D.Rajagopal, Advocate SR.No.58168

+1cc to Mr.D.Shivakumaran, Advocate SR.No.57718

+1cc to Mr.B.T.Seshadri, Advocate SR.No.58460

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EV(CO)  
GMY(10/02/2020)