

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.221 of 2012

M/s.PCH Marketing Private Limited,
Rep.by its Branch Manager,
A.Mayraj Ali. ... Plaintiff

Vs.

M/s.Vishvasri Mobiles,
Rep.by its Proprietor, Naveen,
Gowri Dharma Textile & Ready made,
No.104, Gandhi Road, Kanchipuram. ... Defendant

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV
Rule 1 of the High Court Original Side Rules praying for:

(a) Directing the defendant to pay to the plaintiff a sum of Rs.1,61,47,468/- (Rupees One Crore Sixty One Lakhs Forty Seven Thousand Four Hundred Sixty Eight only) due and payable by the defendant as on 10.02.2012 together with interest at the rate of 24% per annum from the date of presentation of the plaint till the date of realization;

(b) Directing the defendant to pay the costs of the suit;

(c) pass such further or other orders as this

Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr.V.Suthakar
For Defendant : Mr.V.Anand

J U D G M E N T

The suit has been filed for recovery of sum of Rs.1,61,47,468/-.

2. The case of the plaintiff is that they are authorised National Distributors for sale of SAMSUNG Cellular mobile telephone and accessories. The defendant approached the plaintiff in the year 2009 for grant of Regional Distributorship on a non exclusive basis to market, stock and for sale of SAMSUNG Cellular mobile telephone and accessories. The plaintiff executed a Regional Distributorship Agreement dated 30.01.2009 with the defendant and the defendant was appointed as the Regional Distributor for Chennai Region that consists of Triplicane, Alwarpet, Adyar, Mylapore, Mount Road, Tiruvanmiyur and Besant Nagar outlets. As per the Agreement, apart from maintaining high quality standards in marketing, the defendant had undertaken to make payments against the stocks given to them by the plaintiff by at par cheques and demand drafts.

Inspite of lifting sufficient stock of SAMSUNG mobile phones and accessories, the defendant has failed to maintain its account regularly towards stocks supplied to them. The plaintiff issued a telegraphic notice dated 10.02.2011 calling upon the defendant to clear its dues. Thereafter, the defendant paid various amounts to the plaintiff on 05.07.2011, 02.08.2011 totally amounting to Rs.5,53,466/- towards partial payment of the amounts due to the plaintiff. The defendant has to pay a sum of Rs.1,28,24,866/- and a legal notice also issued in this regard. However, the defendant failed to pay the amount. Hence the suit.

3. It is the contention of the defendant that the defendant was being only an agent responsible for delivery and the amounts collected on behalf of plaintiff. The plaintiff supplied directly and collected payment from retailers. The allegation that defendant is a distributor in the plaintiff's company is denied. The defendant firm was doing business at Kanchipuram. The office of the plaintiff's company requested the defendant to commence an agency for the plaintiff. On that basis, the defendant firm was commenced at Chennai for non-retail outlet on credit basis. Attractive incentives were shown to the defendant on paper and the defendant was

enticed into commencing the said agency. The defendant identified the retail outlets and the crux of the business agreed between the parties is that the defendant would operate as an agent taking mobiles from the plaintiff company and deliver the same to the retailers. The payments were agreed to be collected by both the plaintiff and defendant. All the payments that were collected by the defendant shall be paid to the plaintiff after deducting the commission of the defendant.

4. It is also stated by the plaintiff that the defendant issued a cheque in favour of the plaintiff dated 23.04.2011 for a sum of Rs.1,38,60,139/- as full and final settlement of the dues. However, the said cheque was dishonored.

5. It is the case of the defendant that cheques were obtained by the plaintiff as security for the amounts collected by the defendant. No amount is due to the plaintiff, all the dues were covered at the time of subsequent payments. Only because it is an agency the defendant was not allowed to operate regarding the other products of other brands of cell phones. The agreement dated 30.01.2009 is fabricated and not maintainable in law. In fact the

defendant is entitled to receive a sum of Rs.73.76 lakhs from the plaintiff. Hence he prays for dismissal of the suit.

6. This Court, vide order, dated 06.10.2016, framed the following issues:-

(i) Whether the defendant is bound by the distributorship agreement dated 30.01.2009?

(ii) Whether the plaintiff is entitled for the suit claim of Rs.1,61,47,468/- (Rupees One Crore Sixty One Lakhs Forty Seven Thousand Four Hundred and Sixty Eight Only) payable by the defendant for the accessories supplied by the plaintiff?

(iii) Whether the defendant is a distributor or agent of the plaintiff?

(iv) To what other reliefs, the plaintiff is entitled to?

7. The learned counsel appearing for the plaintiff has submitted that the plaintiff supplied mobile phones to the defendant. Further the specific allegation in the plaint is that the defendant issued a cheque for a sum of Rs.1,38,60,139/- as full and final settlement. Whereas, the defendant has taken a stand in his evidence that no cheque had been issued. Further his contention is

that he is only an agent and no document is filed.

8. The learned counsel for the defendant fairly submitted that though several invoices have been filed, the suit cannot be decreed only based on invoices Exs.P14 to P.16. Since other invoices mostly are xerox copies and the originals have not been filed and other originals filed are not raised in the name of the defendant. Whereas, it is the contention of the defendant that Exs.P3 to P12, are invoices addressed to various individuals and Ex.P42-Statement of Accounts is not admissible. In Exs.P14 to P16, the defendant has taken a specific stand that he has not received the goods and that the signature found in the invoices is not that of the defendant. The same has not been denied by the plaintiff. No questions were put to the defendant denying such evidence. Hence, it is the contention that Exs.P14 to P16, have not been proved in the manner known to law. Hence, prayed for dismissal of the suit.

Issue No.1

9. It is the case of the plaintiff that the defendant entered into a distributorship agreement for the distribution of the plaintiff's product in Samsung mobile, in respect of which, the agreement

dated 30.01.2009, came to be executed by the parties. Whereas, the case of the defendant is that he was never the distributor of the plaintiff and he is only an agent of the plaintiff. The payments that were collected by the defendant were paid by the plaintiff after deducting the commission. Ex.P2 has been filed by the plaintiff to show that there is a distributorship agreement between the parties. On careful perusal of Ex.P2, the Regional Distributorship agreement is said to have been executed by the plaintiff in favour of the defendant. The agreement has not been signed by the defendant. Therefore, when the contract is not signed by the defendant, the contention of the plaintiff that the defendant was appointed as a distributor for the sale of the plaintiff's products, cannot be countenanced. The plaintiff has to prove the agreement between the parties to show that the defendant was only doing the act of a distributor. When the agreement itself has not been established, the contention of the plaintiff that the defendant is only a distributor has not been established. Accordingly, the issue is answered against the plaintiff.

Issue Nos.3 and 4

10. In the absence of the evidence as to the distributorship agreement, this Court is not in a position to countenance, the contention of the plaintiff that the defendant is only a distributor. Whereas, it is the contention of the defendant that they are only an agent. Further it is the contention of the defendant in the written statement to the effect that they also collected payments from the third party and paid to the plaintiff. In view of the undisputed factum of such dealing with the Mobile Phones and collection of the money and payments made by him to the plaintiff, this Court has to necessarily hold that the defendant is only an agent, whereas as pleaded, whether all the payments have been made by him has to be decided in the later issue. Accordingly, these issues are answered.

Issue No.2

11. The specific case of the plaintiff is that they supplied mobile phones and the defendant as per the invoices, is liable to pay a sum of Rs.1,28,24,866/-, as per the accounts maintained by them as on December 2011. The plaintiff has filed various invoices Exs.P3 to P16 and P18 to P22. A careful perusal of the above documents Exs.P3, P4, P5 and P7, P8, 12 and P13 are only xerox

copies. No explanation whatsoever offered for non filing of original in this regard. Further, these documents particularly Exs.P3 to P.22 except Exs.P13 to P.16, the rest of the invoices namely Ex.P3 to P12 and Ex.P17 to P22 have not been raised on the defendant and it is raised on the various other third parties. Therefore, in the absence of any explanation for non production of the originals of Exs.P3, P4, P5, P7, P8, P12 and 13, the xerox copies cannot be looked into for any other purposes. Similarly, Exs.P3 to P12 and P17 to P22, have been raised against the third parties and not in respect of defendant. Therefore, when these invoices have not been raised on the defendant, the same will not clothe any liability on defendant and those invoices are not at all relevant to clothe the liability on the defendant. Now what remains is Exs.P13, 14, 15 and 16. As already discussed, Ex.P13 is only xerox copy. The plaintiff has not sought leave of this Court by offering any explanation for loss of original. In the absence of any explanation for filing the secondary evidence, the xerox copies cannot be looked into for any other purpose. Therefore, this Court rejects Ex.P13 also. Exs.P14, 15 and 16 are the only invoices now remain to be considered. Ex.P.14 dated 12.01.2011 as raised against the defendant for a sum of Rs.16,08,898/-. Similarly, Ex.P15 raised is for a sum of Rs.96,616/.

Ex.P16 is the original invoice dated 14.01.2011 raised for a sum of Rs.1,01,449/-. It is the contention of the defendant that the signature found in the invoices is not that of the defendant, the signature is forged. The contention of the defendant in the evidence that in para 12 of the plaint, the plaintiff has pleaded that the defendant is due of a sum of Rs.1,28,24,866/- and the last invoice raised was on 12.01.2011. In fact Ex.P14 and P15 are dated 12.01.2011 and Ex.P16 is dated 14.01.2011. The specific pleading that the invoices raised on 12.01.2011 in the name of the defendant, is not denied specifically in the written statement except denying the liability generally. The specific pleading recorded dated 12.01.2011 has not been denied specifically by the defendant. It is to be noted that every denial should be specific. The defendant should deal with specific allegation of the fact in the plaint as per Order 8 Rule 5 of CPC. If specific allegation of the fact in the plaint, if not denied specifically or necessarily admitted by the pleadings of the defendant, the same shall be taken to be admitted except as against a person under disability. Therefore, Ex.P14 to P16, original invoices filed have not been specifically denied in the written statement. Whereas in the evidence, it is the contention of the defendant that Exs.P14 to P16, were not signed by him. Therefore,

the same cannot be relied upon.

12. It is to be noted that Exs.P14 to P16, the issue of the invoices is not even denied in the written statement. Therefore, mere contrary statement in the chief examination will not rebut the plaintiff in any way. The entire written statement is carefully analysed. It is the contention of the defendant that he has been an active agent and payments were also collected by both the plaintiff and defendant from third parties and it is also the contention of the defendant in the written statement that all the payments which were collected by the defendant were paid to the plaintiff after deducting the commission of the defendant. When the defendant has admitted that they have also collected amount and paid to the plaintiff, it is for the defendant to establish that the amounts collected by the defendant from various third parties have been paid or amounts have been discharged. The burden lies on him to establish discharge of the amounts but no material whatsoever placed to prove the alleged payments made by the defendant. In such view of the matter, this Court is of the view that the plaintiff has not established his claim for recovery of sum of Rs.1,61,47,068/-. They proved their claim under Exs.P14 to P16

alone. Though the plaintiff has filed statement of accounts, Ex.P25, amount cannot be relied upon. There is no evidence whatsoever available who has maintained the accounts and who has taken the printout from the computer. In the absence of any connecting documents to prove the entries in Ex.P25, Ex.P25 cannot be given any credence.

13. Further, Ex.P25 is the printout taken out from the computer. Then who has taken the printout and whether, the computer was in control of the person who took the print out, there is no evidence with regard to that and there is no compliance of Section 65 B of the Indian Evidence Act. Therefore, the statement of accounts relied upon by the plaintiff cannot be looked into for any other purpose and it is an inadmissible in evidence. However, the fact remains that Exs.P14 to P16, the original invoices raised and the original invoices for the first time has been denied in the evidence. Whereas, in the written statement, there is no denial on this aspect. Hence, this Court is of the view that such a non denial, the plaintiff is certainly entitled to recovery of money covered under Exs.P14 to P16. Accordingly, the suit is decreed for a sum of Rs.18,69,063/- with interest at the rate of 10% from the date of

plaint till the date of realization. With costs.

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List of the witness examined on the side of the plaintiff:

P.W.1 – A.R.Ganesan

List of Exhibits marked on the side of the plaintiff:

Sl. No.	Exhibits	Description
1	Ex.P1	The photocopy of the Authorisation letter dated 20.12.2016.
2	Ex.P2	The original Agreement dated 30.01.2009 between plaintiff and the defendant.
3	Ex.P3	The photocopy of the invoice No.CH-SI 7 dated 06.04.2010.
4	Ex.P4	The photocopy of the Invoice No.CH-403 dated 28.04.2010.
5	Ex.P5	The photocopy of the Invoice No.CH-459 dated 30.04.2010.
6	Ex.P6	The original Invoice No.CH-601 dated 11.05.2010.
7	Ex.P7	The photocopy of the Invoice No.CH-1415 dated 29.06.2010.
8	Ex.P8	The photocopy of Invoice No.CH-1464 dated 30.06.2010.
9	Ex.P9	The original Invoice No.CH-1570 dated 13.07.2010.
10	Ex.P10	The original Invoice No.CH-2710 dated 29.09.2010.
11	Ex.P11	The original Invoice No.CH-2778 dated 30.09.2010.
12	Ex.P12	The photocopy of Invoice No.CH-2931 dated 11.10.2010.
13	Ex.P13	The photocopy of Invoice No.CH-4473 dated 30.12.2010.
14	Ex.P14	The original Invoice No.CH-4637 dated 12.01.2011 with Delivery Challan.
15	Ex.P15	The original Invoice No.CH-4656 dated 12.01.2011 with Delivery Challan.

Sl. No.	Exhibits	Description
16	Ex.P16	The original Invoice No.CH-4690 dated 14.01.2011 with Delivery Challan.
17	Ex.P17	The Telegraphic notice dated 10.02.2011.
18	Ex.P18	The original Invoice No.CH-5772 dated 31.03.2011.
19	Ex.P19	The original Invoice No.CH SI – 84 dated 14.04.2011.
20	Ex.P20	The original Invoice No.CH SI – 136 dated 16.04.2011.
21	Ex.P21	The original Invoice No.CH SI 296 dated 28.04.2011.
22	Ex.P22	The original Invoice No.CH SI 376 dated 30.04.2011.
23	Ex.P23	The copy of Legal notice dated 04.01.2012 issued by the plaintiff along with A.D. Card.
24	Ex.P24	The original reply dated 13.01.2012 issued by the defendant to the plaintiff.
25	Ex.P25	The original Statement of accounts dated 10.02.2012.

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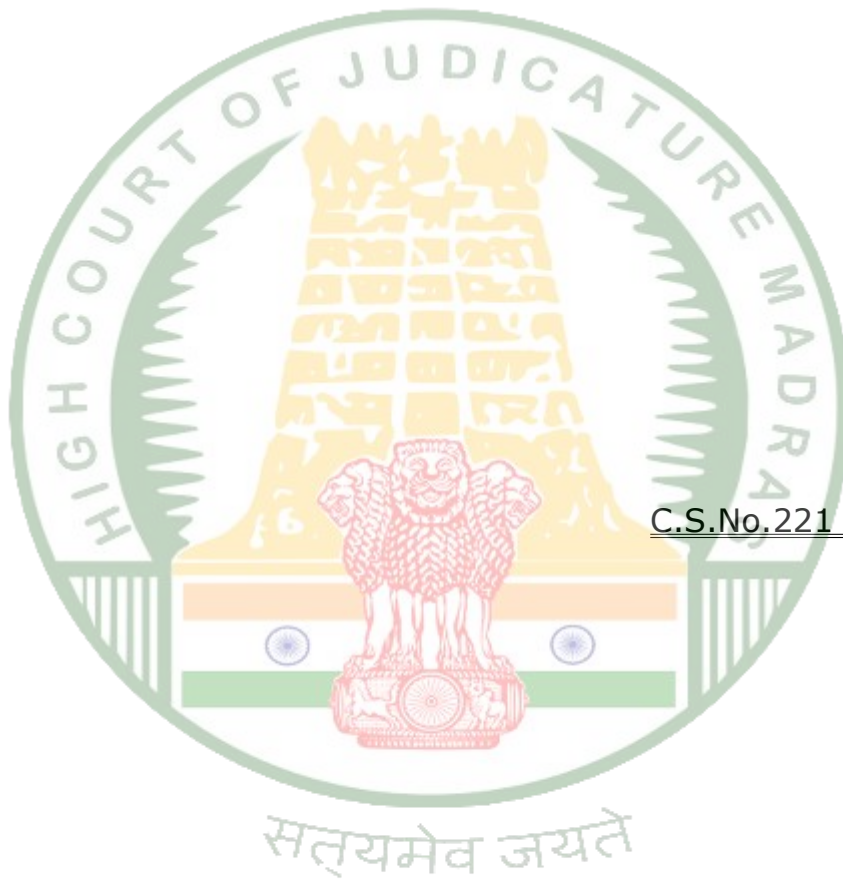
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