jIN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.487 of 2019

M/s.A&A International Trading Private Ltd.
Rep.by its Manager and Authorized Signatory
G.P.Suresh
having its registered office at
No.6-5/140, Kaviarasu Kannadasan Nagar,
Kodungaiyur, Chennai - 600 118. .. Plaintiff

/versus/

1. Tamilnad Mercantile Bank Ltd.,
   Rep.by its Branch Manager,
   Old No.82, New No.213 and 215, Thilaga Towers
   Ground Floor, Madhavaram High Road,
   Perambur, Chennai - 600 011.

2. Tamilnad Mercantile Bank Ltd.,
   Rep.by its Branch Manager,
   Sipcot Branch,
   No.97H-30, Palayamkottai Road,
   Thoothukudi - 628 008.

3. S.M.Ram Coal Importers Private Limited,
   Rep.by its Director S.Ramar
   No.93C/6Y/B1, Palayamkottai Road,
   West Teachers Colony Junction,
   Thoothukudi - 628 008. .. Defendants

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This Civil Suit is filed under Order VII Rule 1 of Civil Procedure Code and read with Order IV Rule 1 of Original Side Rules prayed for

(a) to direct the 1st defendant bank to reverse the entire amount together with interest under the fixed deposit receipts bearing Nos.549528 dated 11.10.2017, 355824 dated 13.09.2017, 355879 dated 28.09.2017, 355877 dated 28.09.2017, 355893 dated 24.10.2017, 549543 dated 17.10.2017, 549521 dated 09.10.2017, 549560 dated 23.10.2017, 549681 dated 04.12.2017, 549683 dated 06.12.2017, 549697 dated 11.12.2017, 549746 dated 28.12.2017, 549745 dated 08.12.2017, 549744 dated 28.12.2017, 549743 dated 28.12.2017, 549741 dated 28.12.2017, 549696 dated 11.12.2017, 549700 dated 11.12.2017, 549699 dated 11.12.2017, 549740 dated 28.12.2017, 549742 dated 28.12.2017 and 0659873 dated 28.06.2018 and reversing a sum of Rs.4,88,79,282/- to the plaintiff's current account bearing A/c No.157519999999988 and consequently directing the first defendant to issue fresh fixed deposit receipts in lieu of the above mentioned closed fixed deposit receipts along with the accrued interest from the original date of deposit in the name of the plaintiff;

(b) In the alternative directing the third defendant to pay the total amount of Rs.4,88,79,282/- (Rupees Four Crores Eighty Eight Lakhs Seventy Nine Thousand Two Hundred and Eighty Two only)

(c) For costs of the suit;

For plaintiff : M/s.Ralph V.Manohar
For Defendants : Set exparte

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JUDGMENT

The suit has been filed for reverse the amount taken out from the F.D.R receipts of the plaintiff's firm of total value of Rs.4,88,79,282/- into the plaintiff's current account or to issue fresh F.D.R in lieu of the closed F.D.Rs or in alternative to pay the sum along with interest at the rate of 24% per annum.

2. The averment in the plaint is that the plaintiff is a Private Limited Company duly registration under the Company's Act. It is involved in the business of importing coal from abroad and supply to its customer in India. In the course of his business, the plaintiff has supplied coal worth Rs.4,64,61,676/- to the third defendant on various dates between September 2017 and December 2017.

3. The sale consideration payable by the third defendant by clean bills through the third defendant's banker namely the second defendant. The second defendant had enough collateral security of the third defendant and had accepted to issue the clean bills for the goods supplied by the plaintiff.

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4. As against the goods supplied under the clean bills, the plaintiff discounted the bills with his banker namely the first defendant with all relevant documents for the clean bills raised. The first defendant forwarded those documents to the second defendant for confirmation and same was confirmed and accepted.

5. Accordingly, the bills were discounted and it was further instructed by the plaintiff to the first defendant that the money credited in his current account on maturity of the clean bill shall be converted into F.Ds.

6. The case of the plaintiff is that when the clean bills were discounted and proceeds were given credited to the current account of the plaintiff and later converted into F.Ds in the name of the plaintiff, it was later informed by the first defendant Bank that the third defendant has not made repayment to the second defendant Bank towards the clean bills. Therefore, without any instructions, the fixed deposits in the name of the plaintiff were foreclosed by the first defendant and utilized it towards the amount due from the third defendant on the clean bills.

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7. The contention of the plaintiff that without the knowledge or authorization of the plaintiff, the first defendant should not have closed the Fixed Deposits and adjusted towards the money payable by the third defendant. The liability of the third defendant to clear all the clean bills raised by the plaintiff for the goods delivery to the third defendant cannot be taken back. The recovery is gross violation of the Banking Law.

8. When the plaintiff came to know about the reversal of the plaintiff's Fixed Deposit to adjust the third defendant debt, sought for clarification from the first defendant Bank, but was not properly replied. When the plaintiff has not given any instruction to the first defendant take away the money from F.D.R the unauthorized act of the first defendant requires interference.

9. The suit summons on the first defendant was served on 29.08.2019 and the second and the third defendant on 06.09.2019. Despite receipt of suit summon, the defendant has remained absent hence, they were set exparte on 01.11.2019. The learned Additional Master was directed to record the evidence. Accordingly, P.W.1 Mr.G.P.Suresh, Manager authorized signatory of the plaintiff's Company was examined as P.W.1. 32 Exhibits were marked.

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10. Exhibit P1 series are the photocopy of F.D.Rs issued by the first defendant Bank in the name of the plaintiff. Exhibits P3 to P26 are the attested photocopy of the clean bills discounted and invoice raised by the plaintiff as against the third defendant.

11. Exhibits P27 to P30 are the Statement of Accounts for the period from 01.07.2017 to 31.07.2018. The sale deed calculation sheet is marked as Ex.P31. The documents relied by the plaintiff process the fact that the discounted money of the clean bills were converted into Fixed Deposits. Exhibits P27 to P30 the Statement of Accounts indicates the reversal of Fixed Deposits.

12. In the light of absence of contra evidence, the plaintiff by preponderance probability had proved his case. Hence, he is entitled for the relief.

13. Accordingly, the Civil Suit is allowed in respect of prayer (B) as prayed for with costs.

12.12.2019

nvi

Speaking Order / Non-Speaking Order
Index : yes/no

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Dr.G.JAYACHANDRAN,J.

nvi

C.S.No.487 of 2019

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12.12.2019

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