

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

DATED, THE 20TH DAY OF NOVEMBER 2019

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A.NO.7732 OF 2019

IN

C.S.NO.12 OF 2017

M/s. M.M.Forgings Limited,
Represented by its General Manager
Machine Shop
Guindy House,
No.95, Anna Salai,
Chennai 600 032 ..Applicant/Plaintiff

-vs-

1.M/s. Trident Forgings Private Limited,
Represented by its Managing Director,
Mr.Annaswamy Suresh,
No.42, III Floor Jamals Sonu Terrace,
Loganathan Nagar,
109, Jawaharlal Nehru Road,
Choolaimedu, Chennai 600 094

2.M/s. Samkrish Machine Tools
Represented by Mr.Annaswamy Suresh
No.42, III Floor Jamals Sonu Terrace
Loganathan Nagar,
109, Jawaharlal Nehru Road,
Choolaimedu, Chennai 94 ..Respondents/Defendants

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This Application praying that this Honble Court be
pleased to reject the counter claim filed by the
respondents/defendants in C.S.No.12/2017.

This Application coming on this day before this court
for hearing the court made the following order:

This application has been filed by the

<https://hcservices.ecourts.gov.in/hcservices/>

applicant/plaintiff to reject the counter claim filed by the

respondents/defendants. The suit has been filed for recovery of sum of Rs.81,79,796/- by way of refund of amounts paid by the plaintiff towards fixtures and toolings under various purchase orders.

2. The learned counsel for the applicant/plaintiff submitted that the plaintiff has placed orders on the respondents/defendants for supply of machinery, fixtures and toolings under various purchase orders and respondents were to supply the fixtures and prove its efficiency as undertaken, with a particular cycle time as agreed between the parties. The purchase orders were a composite one and the respondents/defendants agreed to the same but breached the terms of contracts and in fact the goods supplied are defective in nature. Therefore, the suit has been presented on 19.12.2016.

3. Disputing the suit, a written statement was filed along with the counter claim on 18.09.2019 claiming a sum of Rs.28,15,993/- towards the cost of supply made by the respondents/defendants during the month of March 2014. It is also the case of the defendants in their pleadings to the effect that plaintiff has admitted their liability by their E-mail dated 28.12.2015. Hence, the counter claim is made.

4. The rejection of the counter claim is sought mainly on the ground that the claim is barred by law and liable to be rejected. Even assuming that the plaintiff has admitted

the liability as on 28.12.2015, the suit ought to have filed within three years. The counter claim is in the nature of the suit. Therefore, the period of three years is applicable to the counter claim also. Hence, the main contention of the learned Senior Counsel for the applicant is that the counter claim raised by the defendant is liable to be rejected and barred is under law.

5. Per contra, the learned counsel appearing for the respondents submitted that the issue of limitation is a mixed question of law and fact that cannot be decided at this stage. The period of limitation of three years will not apply to a counter claim and the same cannot be rejected at this stage. In support of his contention he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Urvashiben and Another vs. Krishnakant Manuprasad Trivedi** reported in (2019 SAR (Civil) 241).

6. It is not in dispute that the suit is filed for recovery of amount claiming that supply made by the defendants is defective in nature. The suit has been presented as early as on 19.12.2016. The written statement has been filed on 22.07.2019 raising a counter claim for a sum of Rs.28,15,993/-. It is also the contention that while the said counter claim is in the nature of the suit all the rigours for the suit will apply for the counter claim also and, therefore,

this aspect, there is no dispute at all.

7. On perusal of the entire pleadings in paras 36 and 37 of the written statement it is evident that it is a specific case of the defendant that supply was made during March, 2014 to the tune of Rs.28,15,993/-. Thereafter, there were agreements between the parties and plaintiff by his communication dated 28.12.2015 refused to pay the demand made by the defendant. Hence, according to the first defendant he is entitled to a sum of Rs.28,15,993/-. Every pleading of the defendants makes it very clear that the plaintiff in fact denied the liability on 28.12.2015. The moment the plaintiff has disputed the liability the right to sue accrues. In such view of the case, this Court is of the view that the suit or counter claim ought to have been filed within three years itself. Section 3(2) (b) of the Limitation Act makes it very clear that the counter claim shall be treated as separate suit and shall be deemed to have been initiated on the date on which the counter claim is made in Court. Section 3 of the Limitation Act further makes it clear that every suit instituted after the period of limitation is liable to be dismissed. When the plaintiff denied his entire liability as earlier on 28.12.2015, the claim ought to have filed within three years from that date.

appearing for respondents in their counter that since the Court has granted time to file written statement, the delay in filing counter claim may be condoned. It is to be noted that the Commercial Courts Act, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 has been enacted only for the speedy disposal of a dispute, which is commercial in nature. Merely because the Court has granted certain time limit for filing written statement, the same cannot be construed to mean that limitation is also extended for filing the suit. If such a contention is accepted, it will go against the intent and object of the Limitation Act.

9. Further, it is relevant to be noted that originally the suit was pending before the original side. As per Original Side Rules, from the date of summons the written statement has to be filed within 6 weeks. This Court after assuming the jurisdiction has granted time to the defendants to file the written statement. The Court has merely exercised discretion after assuming jurisdiction and the same will not amount to reviving right already extinguished by the operation of law. The Hon'ble Apex Court in the case of **B.K.Educational Services Pvt. Ltd., vs. Parag Gupta and Associates** reported in (2018 6 CTC 438) held that as follows:

"27. It is, thus, clear that since the Limitation Act is applicable to applications filed under Sections 7 & 9 of the code from the inception of the Code, Article 137 of the

Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the Application, the Application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such Application."

10. It is very clear that when the right is already accrued and lost by operation of limitation, the same cannot be revived. If counter claim is in the nature of the suit any right ought to have been enforced within three years which has not been done. The limitation in the judgment reported in 2019 SAR (Civil) 241 held that issues of limitation for filing of suit being a mixed question of facts and law is to be decided only after evidence is adduced. There is no dispute with regard to the above proposition. The above case is based on certain facts. In the case on hand the allegation of the defendants in the counter claim indicate that the right to sue accrued as early as on 28.12.2015 and therefore, the defendants ought to have laid the counter claim within the period of limitation when the suit was pending before this Court from the year 2016, which has not been done so. Hence, this Court is of the view that the counter claim filed by the defendants is barred by limitation. Accordingly, the application is allowed.

Post the matter on 12.12.2019 under the caption "for framing issues".

Sd/.N.S.K.J

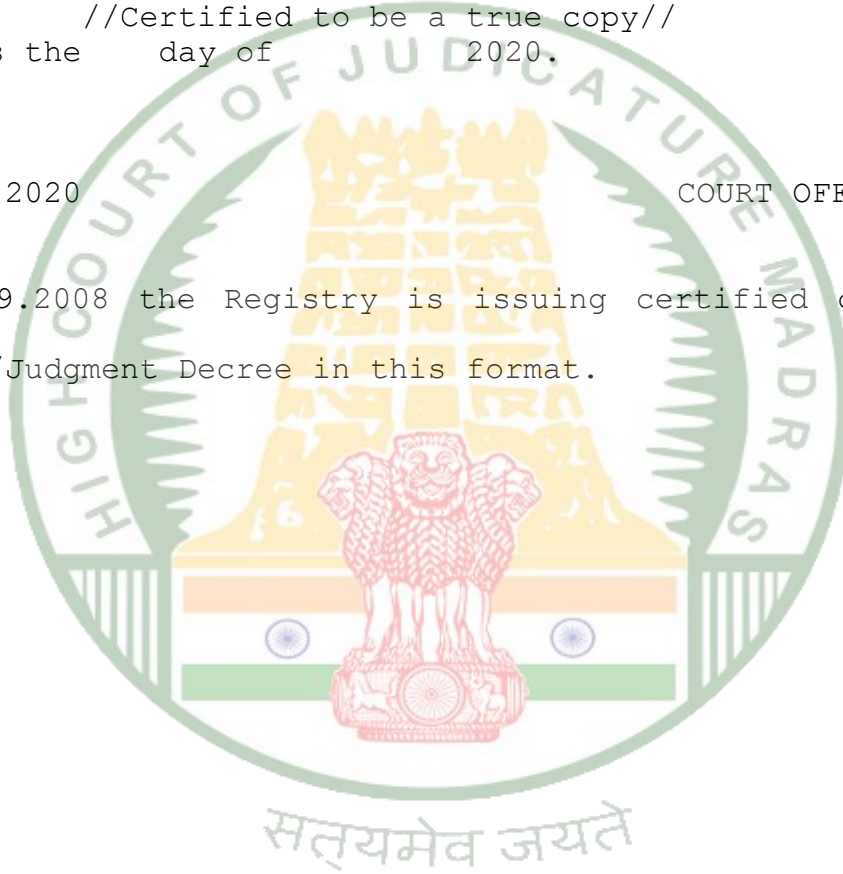
20.11.2019

//Certified to be a true copy//
Dated this the day of 2020.

R.s/28.01.2020

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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