IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.121 of 2020 &
C.M.P.No.2603 of 2020

Mohamed Sheriff .. Appellant/Appellant/Defendant

Versus

Shamsudeen .. Respondent/Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree in A.S.No.84 of 2018, dated 20.08.2019, on the file of the Principal District Judge, Villupuram, confirming the Judgment and Decree dated 31.08.2016, in O.S.No.182 of 2010, on the file of I Additional Subordinate Judge, Villupuram.

For Appellant : Mr.M.V.Seshachari

For Respondent : Mr.N.Baaskaran

JUDGMENT

This appeal has been preferred assailing the Judgment and Decree made in A.S.No.84 of 2018 by the learned Principal District Judge, Villupuram, confirming the Judgment and Decree passed by the learned First Additional Sub Judge, Villupuram in O.S.No.182 of 2010. The suit in O.S.No.182 of 2010 was filed by the respondent herein for recovery of a sum of Rs.7,14,105/- with subsequent interest at the rate of 12% per annum. The defendant is the appellant herein.

2. According to the plaintiff, he is the wholesale dealer in rice and paddy. The defendant is trading in rice and paddy and the Proprietor of a Modern Rice Mill. The defendant purchased paddy from the plaintiff on 14.01.2007, 21.01.2007, 23.01.2007 and 24.01.2007 for a total sum of Rs.7,14,105/-, but failed to pay the amount. Therefore, the plaintiff issued legal notices through his Advocate on 30.06.2018 and 12.11.2018. Despite receipt of notices, the defendant neither paid the amount nor replied. Hence, the suit.

3. In the written statement, the defendant has denied the averments made in the plaint. It is stated that if a paddy merchant wants to sell paddy, necessarily, the merchant has to obtain permission from the Marketing Committee, but the plaintiff did not obtain permission. The suit has been filed on the basis of fabricated documents. It is further stated that in view of the default in payment of the loan amount to the Indian Overseas Bank, the Mill and the properties mentioned in the plaint were taken over by the Bank. After receiving the notice from the plaintiff, the defendant approached him in person and informed that the defendant has already paid the amounts due to the plaintiff and prayed for dismissal of the suit.

4. On the basis of the above pleadings, the trial Court framed necessary issues. On behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A15 were marked. On the side of the defendant, D.W.1 to D.W.3 were examined and Ex.B1 and Exs.X1 to X4 were marked.

5. The trial Court, after considering the evidence adduced by the parties, decreed the suit, directing the defendant to pay the suit claim from the date of Exs.A1 to A4-bills, till the date of Decree with 12% interest and thereafter, 6% interest till the date of realization. On appeal, the appellate Court, partly allowed the appeal and modified the interest at 12% on the principal amount from the date of suit, till the date of realization. Challenging the same, the present appeal has been filed.

6. Mr.M.V.Seshachari, learned counsel for the appellant urged that the Courts below failed to see that the plaintiff is the supplier registered with Villupuram Marketing Committee, whereas, the defendant is registered with Vikravandi Marketing Committee. The supplier, who supplies outside the limits of their marketing committee, they have to get prior permission from their Marketing Committee. But, in this case, no permission has been obtained by the respondent / plaintiff for the alleged sale of paddy under Exs.A1 to A4. It is also contended that there are variations under the ledger entries in Ex.A15, which would establish that Exs.A1 to A4 bills are not genuine bills. It is the submission of the learned counsel that interest awarded by the Courts below is on the higher side. In this regard, the learned counsel placed reliance on the decision of this Court reported in Renganathan Vs. Saravana Store [2018 CJ (Mad) 1575]

7. Per contra, Mr.N.Baaskaran, learned counsel for the respondent submitted that the points raised by the appellant have been considered by the Courts below and it has been observed that non obtaining permission from the Marketing

Committee would result in penalty. He further added that the supply of paddy to the appellant / defendant was proved through Exs.A1 to A4 and A8 to A11. The suit transaction had taken place in the year 2007, but the Mill was taken over by the Bank only in the year 2009.

8. Heard the rival submissions on either side and perused the materials available on record.

9. In the case on hand, the respondent herein filed the suit for recovery of money, contending that he is the wholesale dealer in rice and paddy and the defendant purchased paddy on credit basis, agreeing to pay same within 30 days from the date of purchase and if the amounts were not paid in time, the plaintiff is entitled for interest at the rate of 12% per annum. In order to substantiate his case, the plaintiff examined himself as P.W.1 and marked the bills Exs.A1 to A4. The defendant resisted the suit by contending that he did not purchase paddy from the plaintiff and there is no acknowledgment for the alleged supply of paddy under Exs.A1 to A4. It is also contended that admittedly, the plaintiff has not obtained permission from the Marketing Committee for the suit transaction.

10. It is seen from the records that the plaintiff has produced letters Exs.A8 to A11 for accepting delivery of goods, supplied under Exs.A1 to A4. From a perusal of Exs.A8 to A11, the Courts below found that the plaintiff has proved supply of paddy under Exs.A1 to A4. In Ex.A7 income tax return of the plaintiff, transaction took place under Exs.A1 to A4 is reflected. The plaintiff issued pre-suit notice under Ex.A5, dated 12.11.2008 and also sent a letter under Ex.A14, dated 30.10.2007, they were relieved and acknowledged under Exs.A6 and A13, but no reply was sent by the defendant.

11. It is appropriate to mention that D.W.1 has admitted in his evidence that he was having transaction with the plaintiff till 2010 and also accepted the consent letters issued under Exs.A8 to A11. Exs.X1 and X2 were rejected on the ground that there were lot of corrections in those documents. The evidence of D.W.3 was disbelieved as he deposed without physically verification of the exhibits. It was found out by the trial Court that both the plaintiff and the defendant have not disclosed the suit transaction to the Marketing Committee and the violation, if any, would attract only penalty and it cannot be concluded that the plaintiff has not supplied paddy to the defendant. Under Ex.A5, the ledger accounts of the plaintiff, the transaction under Exs.A1 to A4 found place, but according to the appellant, the bill numbers are inserted and there is a huge variation. I am unable to agree with the submission of the learned counsel for the appellant for the reason that even in the previous entry, bill numbers are not in seriatim and receipt numbers alone

vary.

12. In similar circumstances, this Court in 2018 CJ (Mad) 1575, has awarded interest at the rate of 9% per annum. It is settled law that awarding of interest is the discretion of the Court. However, considering the facts, the decision referred by the learned counsel for the appellant, the interest alone is modified from 12% interest to 9% interest, from the date of suit, till the date of realization. In all other aspects, the Judgment and Decree of the Courts below are confirmed.

13. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Villupuram.

2. The I Additional Subordinate Judge,
Villupuram.

3. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.N.Baaskaran, Advocate SR.12461
+1cc to Mr.M.U.Seshadri, Advocate SR.13433

S.A.No.121 of 2020 &
C.M.P.No.2603 of 2020

AK(CO)
CB(16/09/2020)