IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2017

PRONOUNCED ON: 31.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.S.No.172 of 2002

1. K.R.Periyakaruppan
   Proprietor (deceased)
   Sri Rajakumari Traders, Urulayanpettai,
   Pondicherry – 5.
2. Karuppayee Ammal
3. Rajakumari
4. P.Karthikeyan ....Plaintiffs

(plaintiff 2 to 4 impleaded as per order
of this Court dated 19.01.2011 in
A.No.5754 of 2010 in C.S.No.172 of 2002)

Vs.

M/s.South India Corporation (Agencies) Limited
South India House,
36-40, Armenian Street,
Chennai – 600 001. ...Defendant

Prayer: Civil Suit filed under Order IV Rule 1 Original Side Rules read with Order VII Rule 1 CPC., praying for

(i) directing the defendant to pay to the plaintiff a sum of Rs.38,63,269.50 together with further interest at 12% per annum on Rs.28,40,639.50 from the date of the plaint i.e. 21.10.1998 to the date of realization.

(b) directing the defendant to pay the plaintiff the costs of the suit and

(c) passing such further or other orders.

For Plaintiffs	:	Mr.R.Arunmozhi
For Defendant	:	M/s.Rangarajan & Prabakaran

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JUDGMENT

The suit is instituted by the plaintiff against the defendant for recovery of a sum of Rs.38,63,269.50 together with further interest at 12% per annum on Rs.28,40,639.50 from the date of the plaint i.e., 21.10.1998 to the date of realisation and for costs.

2. The averments made in the plaint are as follows:-

(i) The plaintiff is engaged in the business of selling old empty liquor bottles under the name and style of Sri. Rajakumari Traders and the defendant is a company incorporated under the provisions of the Indian Companies Act 1953. The plaintiff had sold and delivered large quantities of old bottles to MAC Agro Industries Limited at its factory situated at the IMFS Unit Valudhareddy from time to time during various period from 1997 to 1999 and the supplies were made on credit basis with payment after 30 days of receipt and acceptance of the materials at the IMFS Unit. During the course of transaction, the MAC Agro Industries Limited became liable to pay to the plaintiff a sum of Rs.48,60,163.50 towards the price of old bottles supplied till 11.01.1999. Since MAC Agro Industries Limited did not pay the amount due despite several reminders, the plaintiff sent a legal notice dated 10.06.1999, calling upon them to pay the outstanding amount with interest thereon at 24% p.a. Though the said legal notice was received by MAC Agro Industries Limited on 13.06.1999, they neither replied nor repaid the amount.

(ii) It is further averred in the plaint that the plaintiff subsequently came to know that MAC Agro Industries Limited was amalgamated with the defendant with effect from 01.04.1998 by an order of this Court dated 25.06.1999. Under the scheme of amalgamation as sanctioned by this Court, all the debts and liabilities of MAC Agro Industries Limited stood transferred to and vested in the defendant. The defendant therefore became liable to pay the plaintiff a sum of Rs.48,60,163.50 with interest thereon due to the plaintiff from MAC Agro Industries Limited. Therefore, the plaintiff issued a legal notice dated 25.10.1999 to the defendant calling upon the defendant to pay the aforesaid sum of Rs.48,60,163.50 with interest thereon at 24% p.a. The defendant received the legal notice on 29.10.1999 but did not reply the said notice. Hence, the plaintiff issued another legal notice to the defendant on 30.03.2000 and the said notice was received by the defendant on 01.04.2000, but did not care to reply to the notice.

(iii) It is further stated in the plaint that the plaintiff filed Company Petition No.507 of 2000 against the defendant on 21.07.2000 for winding up of the defendant company on the grounds of inability to pay its debts. The defendant, filed counter affidavit in the said Company Petition, admitting a sum of Rs.19.71 lakhs as due and payable to the plaintiff. This Court, by an order dated 03.10.2001 directed the defendant to deposit a sum of Rs.24 lakhs to the credit of the Company Petition and the defendant deposited the said amount on 03.10.2001. Thereafter, this Court passed the final order dated 18.10.2001 directing the payment of the entire sum of Rs.24 lakhs to the plaintiff and further giving liberty to the plaintiff to institute a suit or other proceedings to recover the balance amount due from the defendant. The plaintiff obtained the payment of the aforesaid sum of Rs.24 lakhs from this Court on 13.11.2001 and appropriated the same towards amounts due to the bottles sold and delivered upto 15.10.1998 amounting to Rs.20,19,524/- and the part of the interest thereon amounting to Rs.3,80,476/-. The present suit is instituted by the plaintiff for recovery of the balance of Rs.28,40,639.50/- towards the price of old bottles and delivered to the defendant predecessor in interest between 21.10.1998 to 01.01.1999 and the details of the amounts due are given in the statement of accounts.

(iv) It is alleged that as per the terms of contract between the plaintiff and defendant, the defendant is entitled to 30 days credit period. Therefore, the time from which the period of limitation begins to run is after the expiry of the period of 30 days i.e. from 20.11.1998 onwards, hence the present suit is well within the time. The above sum of Rs.28,40,639.50 has been arrived at only after giving credit to the rejections, if any, by the defendant. The defendant has failed and neglected to pay the amount despite several reminders. The defendant had however taken a false and specious pleas that the amount has been supplied upto 30.09.1997 in his individual name on a different account. The plaintiff is also entitled to interest at 12% per annum on the amounts due under the Interest Act as well as under Sale of Goods Act from the due dates of payments. The total amount due to the plaintiff from the defendant for the supply of old bottles sold and delivered is Rs.28,40,639.50 and the plaintiff is entitled to 12% per annum from 21.10.1998 to 19.11.2001, which comes to Rs.10,22,630.00 and as such, the total amount comes to Rs.38,63,269.50. Hence, the plaintiff filed the present suit for the relief as prayed for.

3 (i) The suit was resisted by the defendant contending that they are not bound to pay the above amount to the plaintiff and there is no reminder or any documentary proof produced by the plaintiff to substantiate its claim. In any event, the legal notice dated 10.06.1999 is not binding on the defendant. It is admitted that the plaintiff had sold and delivered old empty liquor bottles during 1997-99 to MAC Agro Industries Limited, which has subsequently merged with the present defendant, however denied that MAC Agro Industries Limited is due and liable to pay a sum of Rs.48,60,163.50/- to the plaintiff towards supply of old bottles till 11.01.1999. It is further admitted that subsequent to the merger of MAC Agro Industries Limited with the defendant, all the debts and liabilities of MAC Agro Industries Limited has been transferred in the name of the defendant, but there is no admitted liability of the sum in question, when MAC Agro Industries Limited merged with the defendant. However, the defendant is not liable to pay the plaintiffs the sum of Rs.48,60,163.50 with interest due to the fact that the said claim is not supported by any valid document.

3 (ii) The disputed question of fact and the claim of the plaintiff is devoid of material particulars and hence the claim made by the plaintiff is a fictitious one. It is stated that the defendant received the legal notice and subsequent non reply shall not constitute acceptance of the liability. The defendant has voluntarily come forward to pay the admitted amount of Rs.24 lakhs in the Company Petition instituted at the bequest of the plaintiff with the defendant. Therefore, the payment made already in the Company Petition to the extent of Rs.24 lakhs is towards full and final settlement based on the accounts available with the defendant. The defendant further stated that though the Court had given liberty to the plaintiff to institute the suit for recovery of the balance amount, it shall not in any way hinder the defendant due to the fact that the claim is not supported by any documents. The claim of the plaintiff is allegedly for a period between 11.08.1998 to 11.01.1999 based on various invoices. There are no bills as such produced by the plaintiff for the claim and some of the invoices did not even bear the proof of receipt of materials by the defendant. The claim of the plaintiff is hopelessly barred by limitation due to the fact that the transaction pertain to the period between 11.08.1998 to 11.01.1999. The plaintiff did not deliberately give credit to various payments made by the defendant and claimed this fictitious amount against the defendant. The plaintiff is bound to produce all the details pertaining to

the transaction and he cannot make out a claim based on mere invoices available with them. The plaintiff is bound to substantiate its claim against the defendant. The defendant had already paid a sum of Rs.4 lakhs to the plaintiff in the Company Petition instituted by them after reconciling the accounts and no amount is due to them till date.

3 (iii) The suit is hopelessly barred by limitation. The suit is also liable to be dismissed for not obtaining the leave of this Court before filing of the suit, since both the plaintiff and the defendant's erstwhile merged entity were outside the jurisdiction of this Court. The defendant requested the plaintiff to provide a set of documents filed before this Court by its letter dated 09.12.2002 and till date, the defendant has not furnished with the copies of the same. The defendant is not bound to pay any sum to the plaintiff much less the same claimed in the plaint. Therefore, the defendant prays this Court for dismissal of the suit.

4. Based on the above pleadings and documents filed by both parties and submission made by both the Counsel, the following issues have been framed by this Court on 10.08.2007:-

"1.Whether the defendant is liable to pay the plaintiff a sum of Rs.38,63,269.50 with interest at 12% per annum ?

2. Whether the suit is barred by limitation ?

3. To what further relief are the parties entitled ?"

5. During the pendency of the Suit, the sole plaintiff died and his legal-heirs have been brought on record as plaintiffs 2 to 4. After framing of issues, during trial, on the side of the plaintiffs, the fourth plaintiff was examined as P.W.1 and 14 documents were marked as Exs.P1 to P14. On the side of the defendant, Deputy Manager of the defendant Company, viz., P.V.K.Durai Murugan was examined as D.W.1 and 8 documents were marked as Exs.D1 to D8.

6. The learned counsel for the plaintiffs would submit that the deceased first plaintiff-K.R.Periyakaruppannan was engaged in the business of selling old used empty liquor bottles between 01.04.1996 and 10.01.1998 on his own name and from 05.09.1997 to 01.01.1999, he carried on the same business as a sole proprietorship concern under the name and style of Sri Rajakumari Traders. The present suit is for recovery of the balance payments due from the defendant for the bottles sold by the first plaintiff under the name and style of Sri Rajakumari Traders. It is further contended that the supplies were made by the deceased first plaintiff on credit basis with payment after 30 days of receipt and acceptance of the materials. During the course of the transaction MAC Agro Industries Limited became liable to pay to the plaintiff a sum of Rs.48,60,163.50 towards the price of

old bottles supplied till 11.01.1999 and since the said MAC Agro Industries Limited did not pay the amounts due despite several reminders, the plaintiff issued a legal notice dated 10.06.1999, however no reply was given. Thereafter, subsequently the plaintiff came to know that MAC Agro Industries Limited was amalgamated with the defendant with effect from 01.04.1998 by an order of this Court dated 25.06.1999. Therefore, the plaintiff issued a legal notice dated 25.10.1999 to the defendant calling upon to pay the aforesaid sum of Rs.48,60,163.50 with interest thereon at 24% per annum. Though the defendant received the said notice on 29.10.1999, no reply was given. Hence, the plaintiff has issued another notice dated 30.03.2000 and in the said notice also, the defendant neither repaid the amount nor replied to the notice. Therefore, the plaintiff initiated Company Petition No.507 of 2000 against the defendant on 21.07.2000 for winding up of the defendant Company on the grounds of inability to pay its debts and in that proceedings, the defendant filed a counter affidavit by admitting a sum of Rs.19.71 Lakhs as due and payable to the plaintiff and as such, this Court by an order dated 03.10.2001 directed the defendant to pay a sum of Rs.24 Lakhs [Rs.19.71 Lakhs and interest] and insofar as the balance amount is concerned, the plaintiff was given liberty to proceed in accordance with law and as such, the plaintiff instituted the present suit.

7. The learned counsel for the plaintiff has further submitted that though during the pendency of the Civil Suit, the sole plaintiff died, and his legal-heirs were brought on record . The fourth plaintiff was examined as P.W.1 and marked Exs.P1 to P14 in support of their case and also filed statement of accounts. It is further contended that back side of the invoices, the defendant made an endorsement stating that they received the empty bottles and as per the terms of compromise, 30 days time is given for payment of the goods supplied and no payment is made as per the invoice and statement of accounts. It is further submitted that the defense raised by the defendant with regard to payment has not only been made by way of cheque and also by cash and for the said submission, no oral or documentary evidence was produced to substantiate the such contention.

8. The learned counsel for the defendant submitted that the payment already made in the Company Petition to an extent of Rs.24 Lakhs is towards full and final settlement, based on the accounts of the defendant and though the Court had given liberty to the plaintiff to institute the suit for recovery of balance amount and the plaintiff has filed the present suit, the defendant is not liable to pay any further amounts to the plaintiffs, because they have not supported their claim with any documents. It is

further submitted that the claim of the plaintiff is barred by limitation due to the fact that the transactions pertain to the period between 11.08.1998 to 11.01.1999 and the suit is also liable to be dismissed for non obtaining the leave of this Court, since both the plaintiff and the defendant's erstwhile merged entity were outside the jurisdiction of this Court.

9. Heard the arguments advanced by both sides and perused the records carefully.

10. **Issue No.1:**

The case of the plaintiffs is that the deceased first plaintiff Mr.K.R.Periyakaruppan was selling old used empty bottles in his own name between 01.04.1996 and 10.01.1998 and also carried on the same business as a sole proprietorship concern under the name and style of Sri Rajakumari Traders during 05.09.1997 to 01.01.1999. The present suit is for recovery of balance of payments due from the defendant for bottles sold and delivered by the first plaintiff under the name and style of Sri Rajakumari Traders. According to the plaintiff, there was a due from the defendant for a sum of Rs.48,60,163.50 and in the Company Petition, the defendant made a sum of Rs.20,19,524.00 and therefore, the balance claimed in the present suit is Rs.28,40,639.50. To substantiate the same, the fourth plaintiff was examined as P.W.1 and he has produced all the documents and particularly, in Ex.P5 series, in the back side of the invoices, defendant attested the receipt of goods.

11. Though the defendant admitted the liability in the Company Petition for a sum of Rs.19.71 Lakhs as due and payable to the plaintiff and the defendant paid the said sum along with interest viz., Rs.24,00,000/- on 03.10.2001, and a liberty was given to the plaintiff to withdraw Rs.24 Lakhs which shows that the defendant admitted the liability and only for the balance, liberty was given to the plaintiff for recovery of the balance amount. Even during cross-examination of P.W.1, a question was made by the defendant as per the four purchase orders Exs.P1 to P4, the amount involved is Rs.88,48,305.30. As per Ex.P14, the amount paid by the defendant is Rs.59,79,671.85. The balance amount payable by the defendant as on 05.11.1998 is Rs.28,68,633.45. Even from the suggestion made by the defendant, there was a balance and for which the plaintiff has produced statement of accounts which clearly shows that apart from that payment made to the Company Court, there was a balance and therefore, the present suit.

12. According to the defendant, they admitted Rs.19.71 Lakhs is due and liable to pay the said sum to the plaintiff and the Company Court also passed an order, by directing the defendant to pay a sum of Rs.24,00,000/- and as such, the said amount was full and final settlement. Though this Court has given liberty to plaintiff, the plaintiff has not produced any documents to show that there was a balance amount.

13. In order to prove the case of the plaintiffs, fourth plaintiff was examined as P.W.1 and he also filed proof affidavit, reiterating the averments made in the plaint and also filed documents. It is not in dispute with regard to initial transaction between the deceased first plaintiff and the MAC Agro Industries and subsequently the said Company was amalgamated with the present defendant Company. It is also not disputed that the deceased first plaintiff issued a legal notice to MAC Agro Industries Limited and since there was no reply, the plaintiff came to know that the said Company was amalgamated with the present Defendant Company and he also issued notice to the defendant and subsequently filed Company Petition in C.P.No.507 of 2000 and this Court, by an order dated 03.10.2001, directed the defendant to pay a sum of Rs.24,00,000/-, which was also withdrawn by the plaintiff. Now, the dispute is after making payment of Rs.24,00,000/-, there is any due for the plaintiff by the defendant.

14. According to the plaintiffs, the Company Court directed the defendant to deposit a sum of Rs.24,00,000/- and liberty was given to the plaintiff for institution of suit for the recovery of the balance amount and as such, the present suit is instituted for recovery of a sum of Rs.38,63,269.50 [Rs.28,40,639.50 + Rs.10,22,630 (Interest from 21.10.1998 to 19.11.2001)] together with interest at the rate of 12% per annum. For which, P.W.1, during cross-examination, he has clearly stated that total amount due from the defendant is Rs.48,60,163.50 and in the Company Court Proceedings, the defendant deposited a sum of Rs.24 Lakhs and the balance is yet to be paid by the defendant. In order to prove the same, he has filed Ex.P5 series and the statement of accounts, which prove the claim of the plaintiff. Though the defendant has stated that the payment of Rs.24,00,000/- before the Company Court is full and final statement, if that be so, the Company Court should have recorded the same and could not have granted a relief to file a suit for recovery of the balance amount. Though the defendant denied Ex.P5 series produced by the plaintiff, they have not examined any one of the Officers from the erstwhile Company. Therefore, once the defendant accepted the amalgamation, it has also accepted the assets and liability of the Company and therefore, the defendant cannot deny unless specifically state that the MAC Agro Industry is not liable to pay any amount to any of its creditors.

15. It could be seen that the deceased first plaintiff carried on business initially in his name and carried on the same business as a sole proprietorship concern under the name and style of Sri Rajakumari Traders and the suit is instituted for recovery of the balance of payments due from the defendant for the bottles sold and delivered by the first plaintiff under the name and style of Sri Rajakumari Traders. Therefore, the defendant has confused with regard to some payment made to deceased Mr.K.R.Periyakaruppan, first plaintiff, but however, there is no evidence to show that they made payment to the deceased first plaintiff or to the proprietorship concern viz., Sri Rajakumari Traders. The stand taken by the defendant with regard to apart from the cheque payment, they made payment by cash and, but to prove the such contention, neither documentary nor oral evidence was produced. Therefore, this Court based on Ex.P5-invoices and also statements of accounts, comes to the conclusion that the plaintiff is entitled to his claim and therefore, the defendant is liable to pay the plaintiff. Accordingly, the issue No.1 is answered in favour of the plaintiff and against the defendant.

16. **Issue No.2**

The learned counsel for the plaintiff would submit that the suit is instituted for recovery of balance amount towards supply of old bottles to

MAC Agro Industries Limited and the defendant has 30 days credit period to make the payment and the first invoice date is 21.10.1998 and therefore, the defendant has to make payment on 19.11.1998 and the present suit is instituted by the deceased first plaintiff on 19.11.2001 and as such, suit is filed within the time. The main contention raised by the learned counsel for the plaintiff is that within 30 days from the date of receipt of goods, the defendant has to make payment and if payment is not made, the limitation starts from that date onwards.

17. Per contra, the learned counsel for the defendant would submit that in paragraph 3 of the plaint, the plaintiff has stated that the plaintiff sold and delivered old liquor bottles from 1997 to 1999 large quantities of old bottles to MAC Agro Industries Limited and its factory situated at IMFS Unit Valudhareddy and the supplies were made on credit basis with payment after 30 days of receipt and acceptance of the materials at the IMFS Unit. Whatever the goods supplied and received on or before 21.10.1998, the claim made during that period is barred by limitation, therefore, the suit is liable to be dismissed.

18. The suit is instituted for recovery of money and as such, a suit must be filed within 3 years from the date of transaction. Though the

plaintiff has stated that during 1997 to 1999, there was a transaction and supply made on credit basis on payment after 30 days of receipt and acceptance of the materials, but the suit claim is only for the invoices from 21.10.1998 and in Ex.P5 series the first invoice is dated 21.10.1998 and the other invoices are after 21.10.1998 upto 01.01.1999. As per the admission, the defendant has to make payment after 30 days of credit period to make the payment. Therefore, for the goods supplied on 21.10.1998, the payment is to be made on 19.11.1998 and as such, the suit has to be filed on or before 19.11.2001 and in this case, the suit is filed by the plaintiff on 19.11.2001. Therefore, the suit is not barred by limitation. Accordingly, Issue No.2 is answered.

19. The next contention of the learned counsel for the defendant is that both the plaintiff and the defendant's erstwhile merged entity were outside the jurisdiction of this Court and therefore, leave to sue is necessary.

20. On a perusal of the record, the suit is not filed against the MAC Agro Industries / erstwhile company, and the said suit is filed against the the present defendant after the amalgamation. Admittedly, the registered Office of the Defendant Company is at Chennai. Therefore, the contention

of the respondent is not acceptable since the registered Company of the defendant is situated at Chennai.

21. **Issue No.3**

The defendant is liable to pay a sum of Rs.28,40,639.50 and as far as interest is concerned, since the transaction is a commercial transaction, from the date of plaint, till the date of Decree, the plaintiff is entitled to 12% interest per annum and from the date of Decree to till the date of realisation, the plaintiff is entitled to 6% interest per annum.

22. In the result, the suit is decreed as prayed for with costs.

31/08/2020

Index : Yes/No.
Internet : Yes/No.

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List of Witness examined on the side of the plaintiffs:

P.Karthikeyan : P.W.1

List of documents marked on the side of the plaintiffs:

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Purchase Order issued by MAC Agro Industries Ltd.,	17.06.1998
2.	P2	Purchase Order issued by MAC Agro Industries Ltd.,	01.09.1998
3.	P3	Purchase Order issued by MAC Agro Industries Ltd.,	09.11.1998
4.	P4	Purchase Order issued by MAC Agro Industries Ltd.,	10.11.1998
5.	P5 Series	Sales Bills No.169 to 182, 184 to 210 and 212	21.10.1998 to 01.01.1999
6.	P6	Letter from plaintiff to defendant	12.01.1999
7.	P7	Letter from plaintiff to defendant	03.02.1999
8.	P8	Scheme of amalgamation of the Defendant Company	-
9.	P9	Letter from plaintiff to defendant	23.02.1999
10.	P10	Legal notice from the plaintiff to MAC Agro Industries with AD	10.06.1999
11.	P11	Legal notice from the plaintiff to MAC Agro Industries with AD	25.10.1999
12.	P12	Legal notice from the plaintiff to MAC Agro Industries with AD	30.03.2000
13.	P13	Order of the High Court in C.P.No.507 of 2000	18.10.2001
14.	P14	Bank Statement of the plaintiff	24.10.2001

List of Witness examined on the side of the defendant:

P.V.K.Durai Murugan - DW1

List of Exhibits marked on the side of the Defendant:

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Statement of Accounts filed in C.P.No.507 of 2000	-
2.	D2	Authorization Letter	04.11.2014
3.	D3	Statement of Accounts filed in C.P.No.507 of 2000	07.09.1997 to 08.01.1999
4.	D4	Statement of Accounts filed in C.P.No.507 of 2000	24.09.1997 to 31.03.2002
5.	D5	Documents filed by the plaintiff in C.P.No.507 of 2000	03.07.2000
6.	D6	Counter statement filed by the defendant herein in C.P.No.507 of 2000	03.11.2000
7.	D7	Additional Counter statement filed by the defendant herein in C.P.No.507 of 2000	28.07.2001
8.	D8	Final order passed by this Court in C.P.No.507 of 2000	18.10.2001

31.08.2020

P. VELMURUGAN, J.

Pre Delivery Judgment in CS.No.172 of 2002

31.08.2020