

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2017

PRONOUNCED ON : 23.09.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Suit No.913 of 2008

M/s.Mahalakshmi Tools and
Machinery Pvt Ltd.,
Rep. by its Manager Mr.D.Kumar
having its office at No.129-B
Vanniyar Street, Padi
Chennai-600 050

..Plaintiff

Vs

1.Geep Batteries (India) Pvt.Ltd.,
Rep. by its Chairman Mr.J.T.Thanawala
Having its Regd Office at
23/24, Raj Deep Society
Opp to I.T.O.
Thane - 400 802.

2.M/s.Geep Batteries (India) Pvt Ltd.,
Rep. by its Managing Director Mr.Aziz Chhil,
Having its Office at
PLot No.66/67, Vill Juddikalan
Baddi, Solan,
Himachal Pradesh.

..Defendants

PRAYER : Civil Suit is filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 CPC praying for the following reliefs:-

(i) Directing the defendants to pay a sum of Rs.32,07,450/- to the plaintiff;

(ii) Directing the defendants to pay the interest at the rate of 24% per annum to the plaintiff on Rs.32,07,450/- from the date of the plaint i.e., till the date of realization;

(iii) Directing the defendants to pay liquidated damages for an amount of Rs.30,00,000/-;

(iv) Directing the defendants to pay the cost of the suit;

(v) and for other reliefs:

For Plaintiff : No appearance

For Defendants : Mr.G.Vasudevan

J U D G M E N T

The suit has been instituted against the defendants for recovery of a sum of Rs.32,07,450/- with interest at the rate of 24 % per annum from the date of plaint till the date of realization and for a direction to the defendants to pay a sum of Rs.30,00,000/- towards damages and for costs.

2. The plaintiff's case in brief is as follows:-

2.1 The Plaintiff is manufacturer of various type of machines, in particular, machines for making various type of batteries. The plaintiff claims to be established in the said field in reputed companies like Nippo, Eveready, Novino and they had also acclaimed the technical competence of the plaintiff.

2.1. It is averred in the plaint that the first defendant approached the plaintiff with a purchase order dated 08.05.2006 for the supply of six number of Vertical Dolly Press with Dolly carrying system and the time prescribed by the defendant for the supply of machines was September 2006. On the same day, another purchase order was placed by the first defendant for the manufacture and supply of two numbers of Auto Dolly inserting machines and one number of cooking and cooling machine, which was also scheduled to be dispatched during 3rd week of September 2006. The plaintiff accepted the above purchase order by letter dated 13.07.2006 on terms of 30% along with purchase order; 60% against the proforma invoice and the balance of 10% after commissioning.

2.2. It is further averred in the plaint that since the defendant required certain changes to be made in the machines, a meeting was convened on 18.08.2006 and it was clarified that Sterlite and Titanium components which is required for Vertical Dolly Press will not be the part of the machinery supplied and that would have to be procured on the advice of the first defendant and that first defendant should make the payment directly to the said supplier. As per the original purchase order, the plaintiff has to supply the machines at K.R.S.Road, Mettagalli P.O., Mysore, however,

subsequently, the first respondent has changed the order by directing the delivery at Plot No.66/67 Vill Juddikalan, Badi, Solan Himachal Pradesh.

2.3. It is stated in the plaint that the plaintiff has explained the delay by letter dated 21.12.2006, stating that in view of the number of changes in the design, there has been a delay in keeping up the schedule as committed. The complaint of the defendant dated 25.12.2006, with regard to non-dispatch of goods within the prescribed period was properly replied on 26.12.2006 by the plaintiff, explaining that the delivery at Himachal Pradesh, was not contemplated at the time when the purchase order was made and that because of the change of requirement by the defendant, the time schedule could not be adhered to. Subsequently, an agreement was entered between the plaintiff and the first defendant on 11.01.2007 and the delivery of the following machines was fixed on the following dates:

Sl. No.	Particulars	Delivery date
1.	Vertical Dolly Press No.2	30.01.2007
2.	Vertical Dolly Press No.3 to 6	30.04.2007
3.	Auto Dolly Inserting Machine 2 Nos.	30.04.2007
4.	Cooking Colling Machine 1 number	30.04.2007

The agreement also provided a penalty of 0.75% per week for the delayed delivery. At the same time, the defendant agreed to pay 20% advance

against the value of the machinery and 70% against the proforma invoice and 10% after successful trials.

2.4. The plaint further proceeds that Vertical Dolly Presses were supplied on 11.01.2007 and on 22.02.2007 respectively, and the value of each Vertical Dolly Press is Rs.10,40,000/-, and the machineries were dispatched to Himachal Pradesh from their Godown at West K.K.Nagar through Paras Transport, Broadway, Chennai-1. According to the plaintiff, the defendant ought to have paid 20% advance, 70% of the value of the machines to the Plaintiff, which was not done. Further, on 18.06.2007, three numbers of Vertical Dolly Press were transported to the defendant and the value of which is Rs.30,90,000/- and as per the agreement, 70% of the amount should have been paid for the supply of 3 items.

2.5. It is further averred in the plaint that with regard to delivery made on 11.1.2007 and 22.02.2007, Sterlite and Titanium components had been supplied by the said dealers directly through the defendants. With regard to other three Vertical Dolly Press supplied on 18.06.2007, the first defendant did not take any initiative and the first defendant has not paid any amount to the said suppliers to enable them to supply Sterlite and Titanium. Further, on 18.06.2007, one cooking colling machine was supplied

to the defendant. The value of the cooking and cooling machine is Rs.10,30,000/- and the defendant have not paid 70% of the cost for the said machine. The plaintiff also supplied B.C.Conveyor and one number of turn table on 18.06.2007 for a sum of Rs.1,73,040/-.

2.6 It is further alleged in the plaint that when the defendant-Company had accepted the machine supplied and using the same and the amount due to be paid by the defendant, the two Auto Dolly inserting machine even though ready, had not been delivered to the defendants because of the non-compliance of the terms. Therefore, a notice was sent to the defendant-Company on 03.12.2007 to pay the balance due of Rs.32,07,450/- within 10 days and also indicated that on payment of 70% due on auto Dolly inserting machine and Vertical Dolly Press will be sent on the receipt of 70% with the value of which come to Rs.20,18,800/-.

2.7. The first defendant sent a reply dated 28.12.2007 denying the liability. In this reply notice, the defendant had not disputed that he had taken delivery of the machine and yet raises a plea of delay which is untenable. The defendant is referring to actual date of delivery as September 2006 which is incorrect and the subsequent agreement specifies 30.04.2007 as a due date of delivery items 2, 3 and 4 referred supra.

2.8. It is stated in the plaint that because of change of the venue and change of the requirement as mentioned in their letters dated 21.12.2006 and 26.12.2006, there was a slight delay of 2 months, probably realizing this aspect, the defendant had accepted the machine and using the same. However, the defendants had not sent any reply to their letter dated 26.12.2006 wherein they have explained the reasons for the delay viz., change in the requirement and change of destination, therefore, lawyer's reply dated 20.12.2007, is misconceived. On 03.01.2008, the Plaintiff had sent a rejoinder requesting the defendant to settle the amount. The last payment made by the defendant was Rs.19,00,000/- by way of three cheques which were realized and however, the balance had not been paid, which comes to Rs.32,07,450/-. Hence, the plaintiff filed the present suit for the relief as prayed for.

3. The contentions in the written statement filed by the defendants is as follows:

3.1. It is stated by the defendants that they are residing and also carrying on their business outside of the jurisdiction of this Court at Thane in Maharashtra and Baddi in Himachal Pradesh and no part of the cause of action arose at Chennai and hence the suit is liable to be dismissed in

limine. The purchase order raised by the defendants is dated 08.05.2006 and the plaintiff ought to have delivered the same on or before September 2006 with a penalty of 1% for every weeks delay in delivery and also bonus of Rs.1,00,000/- if the delivery is effected one week before the due date. Unfortunately, the plaintiff never cared to supply the machineries and sought extension of time for one reason or the other. The defendants had also paid an advance of Rs.19,00,000/- so as to speed up the process of delivery and the plaintiff gave an ultimatum to deliver the machineries on or before 31.12.2006 with the usual condition of penalty. But inspite of the same, the plaintiff has not chosen to supply the machineries as contemplated under the purchase order, which resulted in huge financial business loss to the defendants.

3.2. It is also contended that the Sterlite and Titanium components which are required for Vertical Dolly Press are to be supplied only by the plaintiff as per the purchase order, which has not been done in the instant case. Further the allegation that the machineries are to be supplied only to Mysore office are incorrect since the plaintiff admitted delivery of the machineries to the defendants' place at Himachal Pradesh as per the purchase orders. Therefore, it is too late for the plaintiff to contend that the delay was due to change of venue for the delivery of machineries.

3.3. It is further alleged by the defendants that in view of the plaintiff's repeated requests and extension of time required for delivery of the machineries, the delivery date was rescheduled to January 2007 inspite of Vertical Dolly Press No.2, Vertical Dolly Press No.3-6 to 30.04.2007 and Auto Dolly inserting Machine 2 Numbers to 30.04.2007 and cooking cooling machine 1 Number to 30.04.2007 and there was a further condition for delay in delivery a penalty of 0.75% per week till completion will be borne by the Plaintiff. But, the plaintiff failed to keep up the delivery schedule which resulted in huge business loss to the defendant. The defendants had also paid a sum of Rs.19,00,000/- as advance by way of three cheques. But the plaintiff never gave the delivery of machineries on or before 30.04.2007 as promised and agreed by the plaintiff. Thereafter, in the month of June 2007, the plaintiff delivered only 2 machineries, out of the 4 types as per agreement dated 11.01.2007 viz., (1) Vertical Dolly Press with Dolly-3 Nos., and (2) Cooking and cooling machine 1 No. that too after a delay of 60 days than on the day as agreed by the plaintiff in the agreement dated 11.01.2007. In respect of delivery of remaining two machineries, which is key to the function of the supplied machineries, not supplied as per delivery schedule, but insisted on the payment of Rs.32,07,450/- which is not agreed as per the agreement dated 11.01.2007.

3.4. In the written statement, it is further alleged that notice of the plaintiff, dated 03.12.2007 was duly replied by the defendants on 28.12.2007 denying their liability and also the business loss occurred. The delay occurred for the supply of machineries is deliberate, wanton and without plausible reasons. The lawyers notice was also suitably replied by reply notice dated 20.12.2007. While admitting the allegations in the plaint with respect to payment of Rs.19,00,000/- by the defendants, it is contended that they are denying the suit claim because of recalcitrant attitude of the plaintiff in adhering to the delivery schedule. The allegation of the plaintiff with regard to payment of damages is also denied. The manufacture of 2 numbers of Auto dolly inserting machines and one number of Vertical Dolly Press as per the purchase order dated 08.05.2006 is denied by the defendants and the allegation that it was not delivered due to non payment of dues by the defendant is pigment of imagination.

3.5. It is also alleged that the machineries supplied by the plaintiff cannot be used as it will not constitute a single unit and the machineries cannot be put into operation and it will be of no use to the defendants. Therefore, the claim made by the plaintiff for the goods supplied, which were of no use to the defendants, is unsustainable in law. Hence, the allegation that 70% of the value of the machineries was not paid by the defendants is of no consequence.

3.6. It is further stated in the written statement that the allegation of the plaintiff that shifting of delivery from Mysore to Himachal Pradesh causes hardship to the plaintiff cannot be sustained, since the plaintiff agreed to deliver the machineries at Himachal Pradesh. The plaintiff himself admitted that he has not supplied sterlite and Titanium components contrary to the purchase order and in fact the defendants requested the plaintiff to take back the machineries supplied and also demanded for the refund of the advance amount so paid by the defendants. Still the machineries are lying idle as such delivered by the plaintiff in the defendant factory which unnecessarily occupies more space, which affect the other activities of the defendants. Hence, the defendants pray 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 27.09.2010:-

"(i) Whether this Court has got jurisdiction to decide the controversy in the suit?

(ii) Whether the suit claim is barred by limitation?

(iii) Whether the plaintiff is entitled for recovery of money of Rs.32,07,450/- along with interest at the rate of 24% per annum from the date of plaint till the date of realization?

(iv) Whether the plaintiff is entitled for liquidated damages for an amount of Rs.30,00,000/-

(v) To what other reliefs, are the parties entitled to?"

5. After framing of issues, during trial, on the side of the plaintiff, one D.Sundar, Managing Director of Company was examined as P.W.1 and 28 39 documents were marked as Exs.P1 to P28. On the side of the defendants, one Thanawala was examined as D.W.1 and 5 documents were marked as Exs.D1 to D5.

6. When the matter was called for hearing on 20.11.2016 and 19.12.2016, there was no representation on the side of the plaintiff. Hence, the matter was directed to be listed on 11.01.2017. Even on 11.01.2017, there was no representation for the plaintiff. Since evidence was completed, this Court is not inclined to dismiss the suit on the ground of default, however taken up for disposal of the suit on merits. Heard the learned counsel for defendants and perused the materials available on record.

7. Issue No.1:

The defendant Company placed an order to the plaintiff under Ex.P1, dated 08.05.2006 for supply of Vertical Dolly Press with Dolly carrying system and under Ex.P2, dated 08.05.2006, the defendant-Company has also raised Purchase Order for two numbers of Auto Dolly Inserting Machines and one number of cooking and cooling machine. Since the defendant-Company required certain changes to be made in the machines, a meeting was convened on 16.08.2006 and the minutes of the meeting was marked under Ex.P4. Admittedly, an agreement under Ex.P8 & D5 was entered into between the parties on 11.01.2007 at Anna Nagar, Chennai, by stipulating time limit for delivery of the machines. Further, the machineries were dispatched to Himachal Pradesh from the plaintiff's Godown at West K.K.Nagar through Paras Transport, Broadway, Chennai-1 on 11.01.2007 and 22.02.2007 under invoices Exs.P9 and P10. Furthermore, the Managing Director of the defendant Company, viz., Thanawala was examined as D.W.1. During cross-examination, D.W.1 admitted the execution of Ex.P8 & D5 agreement, dated 11.01.2007 at Anna Nagar, Chennai and also admitted "it is proper to file the case in Madras". During cross examination P.W.1, admitted that the defendants are having sales office at Chennai and the said fact was not disputed by the defendants, neither in the pleadings nor in

the evidence. Therefore, under the circumstances, part of cause of action arises viz., Ex.P8 and D5 agreement dated 11.01.2007 entered into between plaintiff and defendant that had taken place at Anna Nagar, Chennai, and this was also admitted by D.W.1 during cross examination, and that machineries were dispatched from the godown of the plaintiff at K.K.Nagar, therefore, this Court has jurisdiction to entertain the suit. The issue No.(1) is accordingly decided in the affirmative and in favour of the plaintiff.

8. Issue No.2:

8.1. According to the learned counsel for the defendant, the plaintiff ought to have delivered the machineries on or before September 2006, for the Exs.P1 & P2 purchase orders raised by the defendant on 08.05.2006. Since the plaintiff did not keep up the promise, a meeting was convened on 16.08.2006 and subsequently an agreement was entered into between the parties under Ex.P8 and D5 on 11.01.2007 for stipulation of time limit for delivery of machineries. As per the agreement, the plaintiff should have sent (i) Vertical Dolly Press No.2, on 30.01.2007, (ii) Vertical Dolly Press No.3-6, on 30.04.2007, (iii) Auto Dolly inserting Machine 2 Numbers on 30.04.2007; and (iv) cooking cooling machine, 1 Number on 30.04.2007. However, in the month of June 2007, the plaintiff has sent only 2 machineries out of 4 machineries, that too with a delay of 60 days.

8.2 The agreement entered between the plaintiff and the defendant was admitted by the defendants and the only dispute of the defendants is with regard to delay in supply of machineries and also two machineries were not supplied.

8.3. Admittedly, the suit is instituted for recovery of money and as such, a suit must be filed within 3 years. The first invoice No.160 (Ex.P9) is dated 11.01.2007 and the second invoice No.167 (Ex.P10) is dated 20.02.2007, the third invoice No.24 (Ex.P11) is dated 18.06.2007 and the fourth invoice No.17 (Ex.P12) is dated 18.06.2007 and on the basis of the above invoices, the plaintiff has issued Ex.P14 notice for payment of Rs.32,07,450/-, after adjusting the amount already paid by the defendant-Company on 03.12.2007, for which a reply was also sent by the defendant-Company under Ex.P15 notice dated 20.12.2007. The suit was filed in the year 2008 and as such, the suit was filed within the prescribed period of limitation. Hence, I hold on issue No.(2) that the suit is not barred by limitation.

9. Issue Nos.3:

9.1. With regard to issue No.3, the learned counsel for the defendants has raised the following contentions:-

(i) As per the purchase order, dated 08.05.2006, time limit was fixed for delivery of machineries on or before September 2006, since the same was not delivered, Ex.P8 and D5 agreement was entered into between the plaintiff and the defendants stipulating some conditions for delivery. Further, as per the said agreement also, the plaintiff was not delivered the goods and only two machineries have been delivered as against the four machineries. Since the plaintiff has violated the conditions stipulated in Ex.P8 and D5 agreement, the defendants are not liable to pay any amount to the plaintiff.

(ii) The Sterlite and Titanium components which are required for Vertical Dolly Press have to be supplied by the plaintiff as per the purchase order and further the machineries have to be supplied to the defendant's place at Himahcal Pradesh was admitted by the plaintiff and therefore, the allegation that the machineries are to be supplied only to Mysore office is fallacious. Therefore, it is too late for the plaintiff to contend that the delay was due to change of venue for the delivery of machineries.

(iii) The two machineries supplied by the defendants are of no use as they do not function on their own and the remaining machines are very much necessary to put them into use. Still the machineries are lying idle as such delivered by the plaintiff in the defendant factory which unnecessarily occupies more space, which affect the other activities of the defendants.

(iv) Originally, the defendants have planned to produce 6.30 lakhs pieces of cells/batters per day and would have earned Rs.6,30,000/- per day, which could not be executed for non-supply of machineries by plaintiff in time as well as non-supply of two machineries.

9.2. To controvert the above contentions raised by the learned counsel for the defendants, there was no representation on behalf of the plaintiff. Since the evidence of both sides was completed and the plaintiff has also filed proof affidavit in support of his case, this Court is inclined to dispose the case on merits.

9.3. In the case on hand, it is not in dispute, the defendants have raised purchase order for the supply of six number of Vertical Dolly Press with Dolly carrying system under Ex.P1, dated 08.05.2006 and under Ex.P2, dated 08.05.2006, for the supply of two numbers of Auto Dolly Inserting

machines and one number of cooking and cooling machine and the time limit was fixed for dispatch of machineries on or before September 2006. It seems that the plaintiff has sent a letter to the defendants under Ex.P5 dated 21.12.2006, requesting some time for delivery of machineries, since the defendants changed the design on several times. Under Ex.P6, the defendants gave a time for supply of machineries till 31.12.2006. In reply, the plaintiff has sent a letter under Ex.P7, dated 26.12.2006, which reads as follows:-

"I have also visited Mysore more than three times wasting my precious time and money. Subsequently, the plan has been changed, the clarity of requirement for the machines is not there. Even today we are not clear about your requirement. We have planned to deliver all the machines to your Mysore factory. As we have to deliver all the machines to your Baddi, we would like to have more perfection on all the machines since we cannot depute our men to Baddy. Kindly not we have not done anything intentionally despite our sincere efforts there are frequent changes in the design has pushed us to the corner..... "

From the above, it could be seen that at the time of raising Purchase order, the place of delivery was not mentioned, however, it has been changed from Mysore to Baddi, Himachal Pradesh. Subsequently, an agreement was reached between the plaintiff and the defendants under Ex.P8 and D5,

dated 11.01.2007, by stipulating some conditions for delivery of machineries, viz., (i) Vertical Dolly Press No.2, on 30.01.2007, (ii) Vertical Dolly Press No.3-6, on 30.04.2007, (iii) Auto Dolly inserting Machine 2 Numbers on 30.04.2007; and (iv) cooking cooling machine, 1 Number on 30.04.2007.

9.4 It is to be seen that During June 2007, the plaintiff had delivered the machineries viz., (i) Vertical Dolly Press No.3 Nos and cooking cooling machine- 1 No. under Ex.P9 to P12-invoices. It is also to be seen that the plaintiff under Ex.P14, dated 03.12.2007, requested the defendants for the payment of Rs.32,07,450/- for the machineries supplied. In the letter, it is also stated that 2 Numbers of Auto Dolly Inserting Machines and 1 No. Vertical Dolly machine with Dolly carrying system are ready as per the Purchase Order dated 08.05.2006 and it shall be dispatched on receipt of 70% of the value which is Rs.20,18,800.00 as per the agreement reached on 11.01.2007." In reply, the defendants, by Ex.P15 letter dated 20.12.2007, contending that due to delay in supply and non-delivery of two machineries, they were put to heavy loss and further the demand of Rs.32,07,450/- made by the plaintiff is not the agreed terms as per Ex.P8 and D5 agreement, dated 11.01.2007.

9.5. In the matter on hand, the defendants have admitted the execution of agreement and delivery of four machineries and the only defense taken by the defendants is that the delay in delivering the goods and non-supply of two items. According to the learned counsel for the defendants, the defendants are not liable to pay the amount, because of delay in delivering the machineries. It is to be noted that under Ex.P7, letter dated 26.12.2006, due to change of place and design, they could not deliver the machineries in time and subsequently an agreement was entered into. Originally, at the time of purchase orders raised by the defendants, the plaintiff was requested to deliver at the Mysore and subsequently it was changed to Himachal Pradesh. Further, the defendants have repeatedly changed the design, so, they could not deliver the goods in time, and it is evident from Ex.P7-letter dated 26.12.2006 and during cross-examination, D.W.1, has deposed that:

"Originally our manufacturing were located at Mysore. The Mysore Unit was functioning quite for some years at the time of placing order. I placed order to supply the equipment to our Mysore Unit. We have not made any changes with regard to supply made to the Mysore Unit. Yes, I have received the equipments Baddi in Himachal Pradesh. As I know we have given the change of venue in writing but the same is not filed before this Court."

From the above, it is clear at the time of raising purchase order, the place of delivery was fixed at Mysore Unit, subsequently it was changed to Himachal Pradesh. Therefore, the delay in delivery was not on the part of the plaintiff, because it was happened due to change of place of delivery from Mysore Unit to Himachal Pradesh.

9.6 Secondly, the next aspect with regard to delay in delivery is 'change of design'. According to the defendants, the Sterlite and Titanium components which are required for Vertical Dolly Press have to be supplied by the plaintiff as per the purchase order. During cross-examination, P.W.1 deposed that *"there was no clause earlier, it was stainless steel but customer insisted for titanium and sterlite for manufacturing of the batteries. Earlier I only procured the stainless steel material for the manufacture of the batteries but the specification of the material has been changed from stainless steel to titanium and sterlite.* Therefore, it is clear that on the request of the defendants, designs have been changed, so, it cannot be stated by the defendants that the plaintiff is responsible for the delay in delivery of machineries. Further, it is to be noted that in the meeting held on 16.08.2006 which was marked as Ex.P4, it was noted that *"Sterlite and Titanium components for vertical dolly press will be procured by M.E. and the payment will be made directly too the supplier by*

M/s.GEEP". Admittedly, in the case on hand, the defendants did not take any initiative and the defendants have not paid any amount to the said suppliers to enable them to supply Sterlite and Titanium and therefore, the delay in supplying the machineries is not due to the fault of the plaintiff, on the other hand, the delay was occurred only due to change of delivery place as well as change of design made by the defendants.

9.7 The next point of the learned counsel for the defendants is that, due to delay in delivery of machineries as well as non-supply of two machineries, huge business loss has been caused to the defendants and the two machineries supplied by the defendants are of no use as they do not function on their own and the remaining machines are very much necessary to put them into use. The said contention of the defendants is not acceptable since to substantiate the said contention neither the oral and nor documentary evidence was produced. Admittedly, as observed above, the delay in delivering the goods is not caused due to the fault of the plaintiff, as it caused only due to the change of delivery place as well as the change of design, subsequently made by the defendants.

9.8 It is also to be noted that the as per Ex.P8 and D5 agreement, it is agreed between the plaintiff and the defendants that the defendants

have to pay 20% advance against the value of the machinery and 70% against the proforma invoice and 10% after successful trials. In this case, admittedly, when the plaintiff delivered the machineries viz., (i) Vertical Dolly Press No.3 Nos and cooking cooling machine- 1 No. under Ex.P9 to P12-invoices, the defendants should have paid the amount to the plaintiff, as per the agreed terms, because the delay was not occurred on the part of the plaintiff in delivering the machineries, on the other hand, it had occurred only due to the subsequent changes in design and place of delivering the machineries made by the defendants, as observed above. Therefore, the defendants are liable to pay a sum of Rs.32,07,450/- to the plaintiff. However, 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 24% interest per annum and from the date of Decree to till the date of realisation, the plaintiff is entitled to 6% interest per annum. The issue No.(3) is accordingly decided in the affirmative and in favour of the plaintiff.

10. Issue No.4:

10.1 It is not in dispute that Ex.P8 and D5 agreement was entered into between the plaintiff and the defendants on 11.01.2007 by stipulating time limit for delivery of the machines. As per the agreement, the plaintiff

has to send (i) Vertical Dolly Press No.2, on 30.01.2007, (ii) Vertical Dolly Press No.3-6, on 30.04.2007, (iii) Auto Dolly inserting Machine 2 Numbers on 30.04.2007; and (iv) cooking cooling machine, 1 Number on 30.04.2007. However, due to the subsequent changes made by the defendants, viz., place of delivery and change of design, the plaintiff plaintiff has sent only 2 machineries out of 4 machineries during June 2007.

10.2 Subsequently, the plaintiff has issued Ex.P14 notice for payment of Rs.32,07,450/-, after adjusting the amount already paid by the defendant-Company on 03.12.2007 and in the letter it has also been stated that 2 Nos. of Auto Dolly Inserting Machines and 1 No Vertical Dolly machine with Dolly Carrying System are ready for delivery as per the Purchase Order dated 08.05.2006 and shall be dispatched only on receipt of 70% of the value which is Rs.20,18,800/- as per the agreement reached on 11.01.2007.

10.3. The defendants have not disputed the delivery of machines as well as agreement and the only defense is delay in delivering the machineries. The defense taken by the defendant is rejected by this Court, as observed above, since the delay was occurred only due to the subsequent changes made in design and delivery place.

10.4. According to the learned counsel for the defendants, due to non-delivery of machineries in time and non-supply of two machineries, the defendants have been put to heavy loss and as such, the plaintiff only has to pay damages to the defendants. Further, if the plaintiff delivered all the machineries as per agreement dated 11.01.2007 on or before 30.04.2007, the defendants would have paid the balance as per 70% as agreed of the total value of all the machineries.

10.5. It is to be noted that in Ex.P8 and D5 agreement, dated 11.01.2007, was entered into between the plaintiff and the defendants, stipulating time limit for delivery of the machines. No doubt, the plaintiff has not delivered the goods as per the agreed terms, but such delay was not occurred due to his mistake, as already observed above. At the same time, the defendants have not paid the amount after receipt of machineries, though the plaintiff has sent a notice dated 03.12.2007.

10.6 Further, the plaintiff has also manufactured the two numbers of Auto Dolly inserting machine and Vertical Dolly Press and also planned to send on the receipt of 70% with the value of which come to Rs.20,18,800/-. It is no doubt, the plaintiff has not sent the above two numbers of Auto Dolly inserting machine and Vertical Dolly Press to the defendants. The

reason for non sending the machineries by the plaintiffs, because, the defendants have not at all paid the amount for the machineries which have already been supplied.

10.7 It is to be observed that the plaintiff originally procured the stainless steel material for the manufacture of the batteries but the specification of the material has been changed from stainless steel to Titanium and Sterlite, on the request of the defendants and the manufacture of the two numbers of Auto Dolly inserting machine and Vertical Dolly Press was communicated to the defendants on 03.12.2007 under Ex.P14.

10.8. Though the defendants have stated that they have taken steps to send back machineries already supplied, but there is no materials to show that he has taken steps and they have also not examined any witnesses and documents were marked. On the other hand, it could be seen that Ex.P14, letter dated 03.12.2007, the plaintiff has stated that they have manufactured the two numbers of Auto Dolly inserting machine and Vertical Dolly Press will be sent on the receipt of 70% with the value of which come to Rs.20,18,800/-. Further, a perusal of evidence adduced by P.W.1, it could be seen that they manufactured the machineries as per the design made by

the defendants, and it cannot be sold to any one and it cannot be marketed in the different place. Therefore, under the circumstances, the defendants are liable to pay damages to the plaintiff. Accordingly, the issue No.4 is answered in favour of the plaintiff and against the defendants.

11. In the result, the suit is decreed as prayed for by the plaintiff. The defendants are liable to pay a sum of Rs.32,07,450/- to the plaintiff. However, 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 24% interest per annum and from the date of Decree to till the date of realisation, the plaintiff is entitled to 6% interest per annum and further, the defendants are liable to pay damages to the plaintiff, as claimed in the plaint.

12. In the result, the suit is decreed on the above terms with costs.

Index : Yes/No

speaking order/non speaking order

r n s

23.09.2020

WEB COPY

List of Witness examined on the side of the plaintiff

D.Sundar

PW1

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Purchase Order	08.05.2006
2.	P2	Purchase Order	08.05.2006
3.	P3	Letter from Plaintiff	13.07.2006
4.	P4	Minutes of the meeting	16.08.2006
5.	P5	Plaintiff's letter	21.12.2006
6.	P6	Letter from the defendant	25.12.2006
7.	P7	Letter from the Plaintiff	26.12.2006
8.	P8	Agreement between the Plaintiff and Defendant	11.01.2007
9.	P9	Invoice No.160	11.01.2007
10.	P10	Invoice No.167	20.02.2007
11.	P11	Invoice No.24	18.06.2007
12.	P12	Invoice No.17	18.06.2007
13.	P13	Invoice No.23	18.06.2007
14.	P14	Notice issued by Plaintiff	03.12.2007
15.	P15	Reply from the defendant	20.12.2007
16.	P16	Rejoinders by the Plaintiff	03.01.2008
17.	P17	The extract of resolution passed by the Board of Directors	12.03.2008
18.	P18	Bank Statement	-
19.	P19	The Site Plan with Katha copy	-
20.	P20	Letter from Plaintiff	26.09.2006
21.	P21	Invoice No.161	11.01.2007
22.	P22	Letter of demand	12.01.2007

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
23.	P23	Invoice No.406	23.01.2007
24.	P24	Invoice No.590	23.01.2007
25.	P25	Invoice No.167	20.02.2007
26.	P26	Letter from Plaintiff	19.09.2007
27.	P27	Minutes of Meeting	10.11.2006
28.	P28	Reply by defendant	20.12.2007

List of Witness examined on the side of the defendant

Thanawala - DW1

List of document marked on the side of the defendant

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Original Minutes of Meeting of the defendant Company	25.07.2006
2.	D2	Letter sent by the defendant to plaintiff.	20.11.2017
3.	D3	Letter intimating the delay caused by the plaintiff	25.12.2006
4.	D4	Original Minutes of the Meeting	...
5.	D5	Original Agreement	11.01.2007

23.09.2020

WEB COPY [P.V., J.]

Civil Suit No.913 of 2008

P. VELMURUGAN, J.

r n s



Pre Delivery Judgment in
CS.No.913 of 2008

WEB COPY

23.09.2020