IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.02.2020	Pronounced on: 27.02.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.S.No.805 of 2009

M/s.Akshaya Agro Informatics Pvt Ltd.,
No.60/3, L.D.G.Road,
Little Mount,
Chennai – 600 015. ... Plaintiff

/versus/

M/s.K.K.Rice Mill,
represented by its Proprietor,
K.Karthikeyan,
No.8/105, Aravangudiiruppu,
Nallur Post, Alankulam Taluk,
Thirunelveli District – 627 853. ...Defendant

***Prayer*:-**

Plaint filed under Order VII Rule 1 of C.P.C., read with Order IV Rule 1 of Original Side Rules.

(a). Directing the defendant to pay a sum of Rs.2,36,33,748/- together with interest @ 24% p.a to the plaintiff till payment in full is settled.

(b). Directing the defendant to pay the cost of the suit and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.G.Ramdas,
for Mr.R.Saravanakumar

For Defendant : Mr.Prakash, Senior Counsel,
for Mr.K.Sudalai Kannu

J U D G M E N T

The suit is filed for recovery of money based on the alleged goods sold and delivered. The plaintiff is the wholesale Dealer in agro products like wheat, paddy etc. Based on the orders placed by the customers, the plaintiff would procure the product and supply the same to its customers. Likewise, the defendant approached the plaintiff for supply of approximately 20813 quintals of kranthi variety of paddy. The plaintiff agreed to procure and supply the same. The dealing between the plaintiff and the defendant was facilitated by one Agent, Mr.P.R.Shanmugam. The defendant signed the order of confirmation form on 29.10.2008 wherein, the plaintiff agreed to supply approximately 20813 quintals of kranthi variety of paddy @ Rs.1,150/- per quintal. The defendant agreed to pay the freight charges of Rs.38 lakhs on or before 01.11.2008. The plaintiff made arrangement to procure kranthi variety of paddy from Madhya Pradesh as ordered by the defendant.

2.The paddy was inspected during the second week of November 2008 by the representative of the defendant - Mr.Kumaresan who was the son of Agent /Broker

P.R.Shanmugam. Thereafter, the plaintiff transported the paddy from Pipariya by goods train vide railway receipts Nos.186383 to 186386 dated 14.11.2008. The paddy reached Tirunelveli junction on 18.11.2008 and offloaded at Tirunelveli junction and transported to the defendant's Mill at Nallur on 19.11.2008 and 20.11.2008. For the said supply of 20813 quintals, the defendant is liable to pay a sum of Rs.2,00,92,980/- which he should have paid within 10 days from the date of delivery as per the order of confirmation.

3.The defendant did not pay the money as per the schedule. When the Director of the plaintiff Company went to the defendant's Mill on 10.12.2008, the defendant requested time for payment, till third week of December. A letter was also sent by the plaintiff on 22.12.2008, requesting the defendant to make payment. Inspite of repeated requests to pay the money, the defendant took time till 15.02.2009. Thereafter, refused to pay making baseless and false allegations against the plaintiff that the paddy supplied was of poor quality and P.R.Shanmugam when asked about the poor condition of the paddy, took away the entire quantity of paddy from the defendant's mill. The plaintiff immediately wrote a letter dated 27.01.2009 to P.R.Shanmugam to ascertain 'whether he has taken back the paddy supplied by the plaintiff to the defendant' P.R.Shanmugam replied on 04.02.2009 denying the allegations of the defendant. Having taken delivery of 20813 qunitals of paddy transported in 163 trucks, the defendant to evade payment has come out with false and baseless claim. In respect of which, a criminal case was filed with the Deputy Inspector General of Police Southern Region against the defendant and his wife Efci Karthikeyan. Hence, the present suit is filed for recovery of Rs.2,36,33,748/- along with interest as on 25.08.2009 and interest @ 24% per annum from the date of suit till the date of realisation.

4.The defendant has denied the allegations and averments made in the plaint. According to the defendant, the suit is liable to be dismissed since the defendant not carrying on business within the jurisdiction of this Court. No cause of action has arisen within the territorial jurisdiction of this Court. The plaintiff promised to supply kranthi variety of paddy during the second week of November 2008. However, the goods supplied was not of good quality. The plaintiff has diverted the paddy from one Singh Brothers which was not the order of the defendant. When the defendant found that the quality supplied was very poor , the defendant was not willing to take delivery of the poor quality of paddy and when the same was informed to the plaintiff. The plaintiff requested the defendant to keep the paddy for two days till he find another buyer. After two days, the defendant contacted Mr.P.RShanmugam, the Agent but there was no response. Even as per the delivery challan, only goods worth of Rs.35 lakhs was delivered and rest of the challans are not genuine. It is not true that 163 truck load of paddy was delivered at the defendant's Mill at Nallur. There was no such supply as claimed by the plaintiff and the goods delivered at the Mill of the defendant does not worth Rs.2,36,33,748/- as claimed by the plaintiff. The plaintiff never confirmed the delivery of the goods as alleged to make wrongful gain out of the transaction, the plaintiff falsely gave a complaint to the Police. Further, when notice was issued by the plaintiff, the same was suitably replied by the defendant. To defeat the defendant, the plaintiff lodged false complaint against the defendant and his wife abusing the process of criminal Court. Having failed to succeed in his pressure tactics, the present suit is filed without merit and jurisdiction. Hence, the suit is liable to be dismissed.

5.Based on the pleadings, this Court has framed the following issues:-

> "1.Whether the plaintiff is entitled to the suit claim as prayed for ?
>
> 2.Whether the defendant had paid the freight charges to the plaintiff by crediting a sum of Rs.9 lakhs ?
>
> 3.Whether the plaintiff delivered 20,813 quintals of paddy to the defendant ?
>
> 4.Whether the defendant is entitled to interest as prayed for ?

5.Whether the cause of action arose within the jurisdiction of this Court ?

6.To what other reliefs, the parties are entitled to ? ”

6.On the side of the plaintiff, one Mr.N.Krishnamurthy appeared before the Additional Master – I and filed proof affidavit in lieu of chief examination. He is shown on record as P.W.1. However, he did not turn up for cross examination when the matter was taken up for trial. Subsequently, Mr.Senthilnathan, Director of the plaintiff company presented before the Master on 14.09.2017 and filed his proof affidavit. Initially, 11 documents were marked on the side of the plaintiff. Later, additional proof affidavit was filed on 14.03.2018 by P.W.2 and through him, Exhibits P.12 to P.14 were marked.

7.On behalf of the defendant, one Mr.K.Karthikeyan was examined as D.W.1 and Mr.M.Chellappa was examined as D.W.2. Exhibits D.1 to D.4 were marked on the side of the defendant.

8.To prove his case, the learned counsel for the plaintiff would rely upon Ex.P.8 - order confirmation letter. Ex.P.8 deals with the terms of agreement, signed by the plaintiff and the defendant. In the said confirmation letter, the parties have agreed the price of paddy to be supplied and the probable date of delivery. Accordingly, the plaintiff has raised invoice Nos.295 to 298 for a total sum of Rs.2,00,92,980/- after adjusting freight charges of Rs.38 lakhs. The invoices are marked as Ex.P.7 and the letter of the plaintiff dated 28.12.2008 requesting the defendant to settle the invoice is marked as Ex.P.2. The delivery challans along with original way bill are marked as Ex.P.6. The consolidate statement of the delivery challan, number of bags weight and net weight is also annexed. Ex.P.6 series is relied by the plaintiff to show that 20812.75 quintals of paddy was delivered at the defendant's premises between 19.11.2008 and 20.11.2008. The railway receipts four in numbers is marked as Ex.P.11 which indicates paddy was transported from Piparia as per this railway receipt Nos.186983 to 186986, following freight charges have been paid:-

Sl.No.	***Bill No***	***Amount in Rs.***
1	186983	3,90,809/-
2	186984	6,83,915/-
3	186985	14,51,793/-
4	186986	14,60,954/-

9.When the defendant through his Lawyer has sent a notice dated 19.01.2009, alleging that as per the order of confirmation letter dated 09.10.2008, the defendant bona fidely and genuinely paid Rs.38 lakhs towards the freight charges however, the agent of the plaintiff reported on 24.11.2008 that paddy similar to the sample shown has arrived since the consignee's 'Singh Brothers' have not prepared to take delivery, he has brought the consignment to the defendant's mill. After consulting the plaintiff, the defendant accepted the paddy. The quality of the paddy was checked in the presence of the Agent. On checking most of the bags, they found rotten and decayed paddy. Immediately the plaintiff was asked to take back the consignment for which the plaintiff requested the defendant to retain the goods for two days till he makes alternate arrangement. However, the defendant asked the Agent to take back the goods from his rice mill since, the consignment is not suitable for human and suitable only for cattle feed.

10.Since, the defendant has made a specific averment in Ex.P.10 that the Agent of the plaintiff has taken back the goods, the plaintiff has addressed a letter dated 27.01.2009 (Ex.P.14) to P.R.Shanmugam Agent to verify that 'whether 20813 quintalls of kranthi paddy from Piparia, Madhya Pradesh to K.K.Rice Mills, during November 2008 was taken back by him' as alleged by the customer/ defendant. For which, P.R.Shanmugam has replied vide letter dated 04.02.2009, (Ex.P.9), denying the said allegation made by the defendant.

11.Contrarily, the defendant through his witness has marked the register from the Agriculture Marketing Society to show that during the relevant point of time, there was no movement of 20,000 quintal of paddy in Tirunelveli. In respect of the same, Ex.X.1, a copy of Traders Account Register Extract entered under Form No.12, in which the details of purchase of paddy have been recorded for the period of 01.11.2008 to 31.12.2009; Ex.X.2 - Daily receipt Register under Form No.18 extract for the period from 01.11.2008 to 31.12.2009; Ex.X.3 - Cash Book Register extract for the period from 01.11.2008 to 31.12.2009 and Ex.X.4 - Movement Register of Alangulam Agriculture Regulated Market Supervisor from 01.01.2008 to 31.03.2009 are relied by the defendant to indicate there was no trading of paddy by him to an extent of 20,000 quintals during the relevant point of time.

12.Further, the learned counsel would also submit that the order of confirmation Ex.P.8 was signed at Tirunelveli by the defendant on 29.10.2008. Therefore, this Court has no jurisdiction over the dispute. The delivery challans marked as Ex.P.6 does not find the endorsement by the defendant to prove the delivery of paddy in those delivery challans. Further, the records maintained by the Agriculture Market Society also prove that there was no movement of such huge quantity of paddy during the said relevant point of time. Therefore, he would contend that the suit is liable to be dismissed.

13.Issue No.5:- Whether the cause of action arose within the jurisdiction of this Court ?:-

The plaintiff would rely upon Ex.P.8, where the date and place of signing the document is shown as 29.10.2008 at Tirunelveli by the defendant whereas it is signed at Chennai by the plaintiff. The plaintiff would also rely upon the invoice marked as Ex.P.7 wherein, the parties have agreed all disputes are subject to Chennai jurisdiction. It is also contended by the learned counsel for the plaintiff that leave to sue the defendant who is carrying on business out side the jurisdiction of this Court was granted by this Court on 01.09.2009, in Application No.4287 of 2009. The defendant never sought for revocation of the leave on the ground of lack of jurisdiction. The plaintiff therefore would contend that though the question of jurisdiction has been raised in the written statement, the parties having agreed exclusive jurisdiction of Chennai at the time of agreement and same is also mentioned in the invoices, this Court has got jurisdiction to hear the suit.

14.The plaintiff company is situated within the jurisdiction of this Court, whereas, the defendant is carrying on business in Alankulam Tirunelveli District. Ex.P.8 is the document relied by both the parties, to fix the jurisdiction. Perusal of

Ex. P.8 this Court finds that the plaintiff has signed at Chennai wherein, the defendant has signed and affixed the seal. Therefore, the defendant cannot question the jurisdiction of this Court, having agreed to vest exclusive jurisdiction to the Courts in Chennai. Issue No.5 is answered accordingly.

15.Issue Nos.1,3 and 4:-

The railway receipt - Ex.P.11 and lorry receipts, delivery challan along with weighing slip marked as Ex.P.6 coupled with Ex.P.8 - order confirmation letter reveal that pursuant to the contract entered between the plaintiff and the defendant on 29.10.2008, paddy were moved from Piparia, Madhya Pradesh to Tirunelveli under four lorry receipts. A total sum of Rs.38 lakhs has been paid towards freight charges and the same is reflected in the railway receipts Ex.P.11. The delivery challan Ex.P.6 reveals that in 163 trucks paddy of total weight of around 20,000 quintals were transported to the defendant premises from Tirunelveli goods shed. In the notice sent by the defendant, which is marked as Ex.P.10, he admits that the consignments reached his mill. Therefore, the contention in the written statement and reliance of Exs.X.1 to X.4 which does not reflect these movements has no significance in view of the admission of the defendant regarding the receipt of paddy at his godown. Besides the defendant also admits that he and the plaintiff's agent checked most of the bags and found that the paddy was rotten and decayed. Having admitted the receipt of the goods at his rice mill, it is for the defendant to prove the same was handed over to the plaintiff or to the Agent of the plaintiff. In this regard, Ex. P.12 letter dated 22.12.2008 sent by the plaintiff to the defendant gain importance and significance. In this letter, the plaintiff has demanded money as per the statement of invoice amounting Rs.2,00,92,980/- after adjusting the freight amount of Rs.38 lakhs for the materials supplied on 19.11.2008. In the notice Ex.P.10 dated 19.01.2009, the defendant admits the receipt of this letter. It is to be noted that when a sum of Rs.2,00,92,980/- demanded by the plaintiff on 22.12.2008, it has taken nearly a month for the defendant to react and deny the claim. Further, in the said notice, Ex.P.10, the defendant states that he has paid Rs.38 lakhs for freight charges soon after signing the confirmation order i.e., Ex.P.8 dated 29.10.2008. However, he has not produced any document of proof for the payment of this Rs.38 lakhs towards freight charges.

16.The defendant has conveniently stated in this letter that goods were returned back to the agent on finding that the goods were of substandard quality. Whereas, in the written statement, the defendant admits that he has taken delivery of the paddy at the request of the plaintiff to keep it in his custody for two days. He kept the paddy though it was found to be poor quality and thereafter, P.R.Shanmugam took away the entire quantity of paddy. If it is so, the defendant ought to have obtained receipt or acknowledgment for the same which he has not produced. Contrarily, when he informed the plaintiff under notice Ex.P.10 that goods were returned to P.R.Shanmugam, the plaintiff has promptly enquired P.R.Shanmugam through letter and got confirmation that P.R.Shanmugam never taken back the goods supplied. Strangely, in the written statement, the defendant admits that goods worth Rs.35 lakhs were delivered to him. In this connection, copy of the invoice marked as Ex.P.7 deserves reference. The value of the paddy supplied is reflected in Invoice Nos.296, 297 and 298. The terms and conditions printed back of the invoices indicate that being agro commodities, quality is “As is where is Basis”. No quality disputes will be accepted. Total weight found in the four invoices marked as Ex.P.7, Original delivery challans along with weighment ships were marked as Ex.P.6. The rate of Rs.1148/- per quintal tallies with the rate found in the invoice. The date of invoice is 22.11.2008. The goods at Piparia, Madhya Pradesh has been loaded on 14.11.2008, transported from Tirunelveli junction to the Mill of the plaintiff on 18.11.2008. Through these exhibits, the plaintiff has cogently established the fact that pursuant to the contract – Ex.P.8, paddy was loaded at Piparia, Madhya Pradesh under Ex.P.11 delivered at the defendant Mill under Ex.P.6 and invoice for the same were raised under Ex.P.7 series.

17.When the defendant failed to pay the money, he was requested to pay money immediately vide letter dated Ex.P.12 for which the defendant has taken his own time and belatedly issued notice through his Lawyer. The contents of the notice and the written statement are contradictory. The defendant having admitted the delivery of paddy at his rice Mill, the burden lies on the defendant to prove that the goods were of substandard quality and hence he returned it to the plaintiff through its agent. In the case defendant has not produced any documents to this effect. Therefore, having proved the suit claim, the plaintiff is entitled for recovery of money to the tune of Rs.2,36,33,748/- with interest being a commercial transaction. Issue Nos.1,3 and 4 are answered accordingly.

18.Issue No.2:-

Regarding the freight charge of Rs.38 lakhs, it is the admitted case of the plaintiff that the defendant has paid Rs.38 lakhs towards the freight charges in instalments on various dates and those money were credited into the account of the plaintiff maintained at Chennai. It is the case of the plaintiff that in the plaint itself, the defendant has paid a freight charge of Rs.38 lakhs by crediting the same in the account of plaintiff in the State Bank of India, T.Nagar and City Union Bank, T.Nagar, Chennai. Receipt of these payments are also reflected in the cause of action paragraph of the plaint. Hence, Issue No.2 'Whether the defendant had paid the freight charges to the plaintiff by crediting a sum of Rs.9 lakhs ?' is not a disputed fact. Accordingly, Issue No.2 is answered in favour of the plaintiff.

19.For the said reasons, the suit is decreed with costs as prayed for by the plaintiff with interest @ 24% per annum.

27.02.2020

Index :Yes/No.
Speaking Order/Non-speaking order
jbm

List of Witness examined on the side of the Plaintiff:-

1.N.Krishnamurthy (P.W.1) (proof affidavit only filed)
2.B.Senthilnathan (P.W.2)

List of Witness examined on the side of the Defendant :-

1. K.Karthikeyan (D.W.1)

2.M.Chellappa (D.W.2)

List of the Exhibits marked on the side of the Plaintiff:-

Sl. Nos.	Exhibits	Description of documents	Dates
1.	Ex.P.1	Original resolution	03.08.2017
2.	Ex.P.2	True Office copy of the letter issued by the plaintiff for payment	22.12.2008
3.	Ex.P.3	True Office copy of the letter sent to M/s.K.K.Rice Mill, Tirunelveli	27.01.2009
4.	Ex.P.4	True Office copy of the Letter sent by the plaintiff to P.R.Shanmugam	27.01.2009
5.	Ex.P.5	Copy of Resolution of the plaintiff	
6.	Ex.P.6	163 Nos. Original delivery challans along with weighment ships	19.11.2008 & 20.11.2008
7.	Ex.P.7	Invoice copies Nos.295, 296 & 297 & 298	22.11.2008
8.	Ex.P.8	Purchase confirmation order	29.10.2008
9.	Ex.P.9	Letter received from P.R.Shanmugam	04.02.2009
10.	Ex.P.10	Lawyer's notice issued by the defendant	19.01.2009
11.	Ex.P.11	Photocopy of Railway receipts (4 Nos)	14.11.2008
12.	Ex.P.12	Certified copy of the letter issued by the plaintiff for payment	22.12.2008
13.	Ex.P.13	Certified copy of the letter sent to the defendant with POD	27.01.2009
14.	Ex.P.14	Certified copy of the letter sent by the plaintiff to P.R.Shanmugam	27.01.2009

<u>List of the Exhibits marked on the side of the Defendant:-</u>

Sl. Nos.	Exhibits	Description of documents	Dates
1.	Ex.X.1	A copy of Traders Account Register Extract entered under Form No.12, in which the details of purchase of paddy have been recorded for the period of 01.11.2008 to 31.12.2009	--
2.	Ex.X.2	Daily receipt Register under Form No.18 extract for the period from 01.11.2008 to 31.12.2009	--
3.	Ex.X.3	Cash Book Register extract for the period from 01.11.2008 to 31.12.2009	--
4.	Ex.X.4	Movement Register of Alangulam Agriculture Regulated Market Supervisor from 01.01.2008 to 31.03.2009	--

Dr.G.Jayachandran,J.

jbm

Pre-delivery judgment in
C.S.No.805 of 2009

27.02.2020