IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2017

PRONOUNCED ON : 29.10.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S.No.855 of 2006

M/s.Southern Petrochemicals Industries Corporation Ltd.,
having its Registered Office at,
No.73, Armenian Street, Chennai 600 001
and Principal office at
SPIC House No.88, Mount Road,
Guindy, Chennai 600 032.
Rep by its Authorised Signatory .. Plaintiff

.Vs.

1.M/s.Saravana Stores
rep by its proprietor T.V.A.Murugan,
son of Mr.T.V.Annamalai Pillai,
at No.37, SBO Colony,
Maharaja Nagar,
Palayamkottai,
Tirunelveli District 627 011.

2. Smt.Parvathy ..Defendants

PRAYER : Civil suit filed praying for judgment and decree against the defendant as follows:-

(a) Recovery of a sum of Rs.2,63,10,035.57/- with interest at 20% per annum on the principal sum of Rs.1,98,94,220.46/- from the date of suit till the date of realization.

b) To pay cost of the suit.

For Plaintiff	:	Mr.Rajesh for M/s.Rajesh Ramanathan Associates
For Defendants	:	Mr. Sharath Chandran for Mr.V.Raghavachari (D1) D2- set exparte on 27.07.2009

JUDGMENT

The civil suit is filed by the plaintiff M/s.Southern Petrochemicals Industries Corporation Ltd., praying for recovery of a sum of Rs.2,63,10,035.57/- with interest at 20% per annum on the principal sum of Rs.1,98,94,220.46/- from the date of suit till the date of realization.

2. The gist of the plaint filed by the plaintiff is as follows:-

(a) The plaintiff is a Company incorporated under the Companies Act 1956 and is in the business of manufacturing and marketing of Chemicals and Fertilisers. The Plaintiff is a reputed company who is in the market for over 35 years. The products of the plaintiff are sold all over India. The main operation of the Plaintiff's business is centralized in Chennai where its registered office and principal office is situated. It is further stated that during the course of its regular business the first defendant was appointed as a dealer for the location Valliyur, Tirunelveli District, Tamil Nadu for specified fertilizers or the other products marketed by the Plaintiff M/s.Southern Petrochemical Industries Corporation Limited on a non exclusive basis commencing from 02.09.1994 by virtue of dealership Agreement dated 02/09/1994,which was entered into at Chennai between the Plaintiff and the first defendant. The terms and conditions of the dealership agreement are clearly set out therein. The Plaintiff states that as per Clause 9 of the terms and conditions of the dealership agreement, the First Defendant had agreed to make payment promptly at Chennai, for each consignment of products lifted by the first defendant. The said clause 9 of the dealership agreement dated 02/09/1994, reads as follows:

> "The Dealer undertakes to make prompt payments at Madras for each consignment of product(s) lifted by him according to procedures mutually agreed between the Principal and Dealer. All payments are to be effected only by crossed Cheques/Demand Draft drawn in favour of the company cash

transaction with the company representatives/employees are not permitted. The price(s) payable by the Dealer shall be the ruling price(s) on the date of actual lifting by him or the price(s) ruling on the date of direct despatch to him. In the event of any delay in effecting such payments for goods consigned, the dealer shall in addition to any other liabilities for demurrage or wharfage or other charges, be liable to pay interest, at the rate fixed by the Principal from time to time to the Principal on the unpaid amount from the date of lifting or despatch until the date of payment."

In addition the parties have also specifically agreed under clause 16 that the jurisdiction in respect of any suit would be at Madras. The said clause 16 is extracted herein

"The Courts at Madras only shall be deemed to be courts of Jurisdiction in respect of any suits, claims, disputes etc., arising out of or relating to this agreement."

Thus the parties have conferred jurisdiction to this Hon'ble Court.

(b)The Plaintiff states that subsequent to the signing of the above mentioned agreement and more specifically in view of the Clause 9 therein, the plaintiff started supplying specified fertilizer to the first defendant, believing that the first defendant would honour his commitment and obligations as envisaged under the Dealership agreement dated 02/09/1994. Since there was a series of transaction of consignments between the Plaintiff and the first defendant and also since the volume of the turnover was huge, the first defendant folio was treated as running account and the payment were to be made as per the running invoices, which are raised on the first defendant on each consignment.

(c) The Plaintiff states that the first defendant has been highly irregular in marking the payments for the goods consigned and the first defendant has also miserably failed and neglected to discharge the duties and obligations cast upon him under the dealership agreement dated 02.09.1994. The Plaintiff had been making several demands calling upon the first defendant to repay the outstanding amounts for the goods sold and delivered. Despite several demands the Defendants are maintaining stoic silence and are not making any payment whatsoever.

(d) It is further stated that the second defendant has been highly irregular in making the payments for the goods consigned and the first defendant has also miserably failed and neglected to discharge the duties and obligations cast upon him under the Dealership Agreement dated 02.09.1994. The plaintiff had been making several demands calling upon the first defendant to repay the outstanding amounts for the goods sold and delivered. Despite several demands the defendants are maintaining stoic silence and are not making any payment whatsoever.

(e) It is further stated that the second defendant being the wife of Mr.T.V.A.Murugan, who is the proprietor of Saravana Stores the First Defendant herein, had extended surety in favour of the Plaintiff, for the monies outstanding and due payable by her husband, by a letter of surety dated 07.03.2003. The second defendant had also offered to settle the monies due and payable to the Plaintiff, by selling two of her properties, which are detailed under the letter of surety dated 07.03.2003, believing the words of the second defendant who sought for time to pay, the Plaintiff had patiently waited for a long time. The Plaintiff states that there was no payment whatsoever from the Defendants, despite several reminders.

(f) The first defendant had however admitted the liability of Rs.2,00,05.045/- and issued a letter dated 28/10/2005 agreeing to repay the money as per the schedule of payments mentioned therein and further the first defendant has also confirmed the letter of surety executed by the Second Defendant, for the monies due and payable by the First Defendant and it was further informed and confirmed by the first defendant that he would settle the dues by selling the properties of the second defendant which is detailed in the letter of surety dated 07.03.2003, executed by the Second Defendant.

(g) The Plaintiff states that whileso, as on 28.02.2006 first defendant's total principal outstanding stood at Rs.1,98,53,750.46 for the goods sold and delivered to him, in addition the defendants are also liable to pay interest on the outstanding amount as the same is a commercial transaction. The plaintiff further states that after serious persuasion first defendant had issued six cheques for a total sum of Rs.1,98,53.750/- in the following manner in partial discharge of interest and the balance principal due as on that date.

S.No.	Date	Cheque No.	Amount
1	27.03.2006	163661	40,00,000/-
2	28.03.2006	163662	40,00,000/-
3	29.03.2006	163663	40,00,000/-
4	30.03.2006	163664	30,00,000/-
5	31.03.2006	163665	30,00,000/-
6	31.03.2006	163666	18,53,750/-

All the above said cheques were drawn on Central Bank of India, Tirunelveli Junction Branch.

(h) When all the above cheques were deposited on 31.03.2006 at Indian Overseas Bank, K.Pudur Branch, Madurai, the same was returned dishonoured on 10.04.2006 with a remark on the memo as "PAYMENT STOPPED BY DRAWER". Immediately the Plaintiff has called upon the First Defendant to comply with the payment of the Cheque amount as contemplated under Section 138 of Negotiable Instrument Act by a registered notice dated 25.04.2006. Since the first defendant did not comply with the demands in the said notice the plaintiff was constrained to initiate appropriate criminal proceedings in C.C.No.817 of 2006 on the file of Judicial Magistrate Court No.VI Madurai, the said C.C.is still pending. The Plaintiff states that except the issuance of the above mentioned cheques which were returned dishonoured for the reason "payment stopped by the drawer" no other payment was ever made by the Defendants as promised. The plaintiff states that as on 31st August 2006 the defendants are liable to pay the plaintiff a sum of Rs.1,98,94,224.46 towards principal which is inclusive of Rs.40,470/- being the Bank charges, and in addition to a sum of Rs.57,50,857.60/- towards interest on the outstanding amount at the rate of 20% p.a. The Plaintiff is entitled to claim interest at 20% p.a. on the principal amount due since it is a commercial transaction and also since the plaintiff has invested huge monies in his business by raising funds through bankers, financial institution other known sources and in further the first defendant has also enjoyed the monies of the plaintiff without repaying them inspite of the fact that first defendant has already realized all the monies from the market. The defendant are making only false assurances and empty promises of early payment of the monies due payable. All the promises made and assurances given are never honoured by the Defendants.

(i) The Plaintiff states that since the first defendant was highly negligent in complying with the obligations cast upon him as he has miserably failed to pay the outstanding dues promptly as agreed in the dealership agreement and as per admittance of the liability of

Rs.2,00,05,045/- by letter dated 28.10.2005, the Plaintiff was constrained to stop supplying goods to first defendant from 02.01.2006.

(j) The Plaintiff states that since there was no positive response from the defendants in repaying the monies due payable to the plaintiff despite several reminders, the plaintiffs were constrained to issue a legal notice through their counsel dated 12.10.2006 calling up on the defendants to pay a sum of Rs.1,98,94,220.46/- towards principal, a sum of Rs.57,50,857.60/- towards interest on the outstanding amount. Thus in all the first defendant was called upon to pay a sum of Rs.2,56,45,078.06 (balance as on 31st August 2006) within 15 days from the date of receipt of this notice failing which the plaintiff will be constrained to initiate appropriate proceedings for recovery of the same at the First Defendant's cost and risk. The said notice was returned with the postal endorsement 'UNCLAIMED' The defendants have been evading the plaintiffs and are unnecessarily detaining the monies lawfully due to to the plaintiffs with the ulterior motive to unlawfully enrich themselves.

(k) The plaintiff submits that all the efforts taken by the Plaintiff to recover the money due payable by the defendant have gone futile. Despite admitting the liability by their letter dated 28/10/2005 the defendants have miserably failed and neglected to pay the monies that they are due and liable to pay the plaintiff.

(l) The Plaintiff submits that since the defendants have miserably failed and neglected to repay the monies due to them despite several earnest attempts, reminders and demand the plaintiff is left with no other option but to initiate appropriate proceedings before this Court by filing the present suit to recover the sum of Rs.2,63,10,035.57p due payable by the defendants with subsequent interest at 20% per annum on the principal sum of Rs.1,98,94,220.46p.

3.The contentions in the written statement filed by the first defendant is as follows:-

(a) The first defendant filed the written statement denying the allegations made in the plaint. It is stated that plaint is bad in both on facts and in law and for concealing the material truth from the knowledge of this Court. The defendant admits the averment partly so far as the grant of dealership agreement on 02.09.1994. The allegation that the transactions between the parties are running account and supplies were effected immaterial of the payment are all unsound and wrong. The plaintiff attempted to change the policy of supply and this was not conceded to by the defendants. Therefore the plaintiff had stopped supplying the goods with no prior intimation to the first defendant. On account of which the first defendant suffered irreparably. The first defendant had been demanding compensation for the wrong done to his legal rights. The plaintiff had been dilly dallying and had presented the blank cheques given to it by way of security at the time of dealership. In fine, the plaintiff had misused the cheques and breached the trust imposed on it. The allegation that the defendant is due and liable to pay the plaintiff is denied and further whatever purchased had been paid. The purchases were not on "running account" or credit basis. But in pursuance to the dealership agreement. As the defendant is not the consumer of goods he was unable to make outright purchases as demanded by the Plaintiff. In the meantime, the plaintiff company had also lost its credibility in the market and its business started dwindling down. In fact, after verifying the accounts of the first defendant he was shocked to find that amounts were paid in excess to the plaintiff. Demand was made by the first defendant o the plaintiff. The plaintiff instead of returning the amount had expressed its inability and in turn, had issued fixed Deposit receipts maturing on various dates. The Fixed Deposit receipts had been issued by the defendant no.1, in the name of M.Rajalakshmi, G.Shamuga Sundaram, M.Kannan , M.Parthasarathy in fixed deposit receipts as indicated in the document. As per the undertaking given in the fixed deposit receipts the amounts were not paid as well. The depositors therefore started harassing the first defendant at whose instance the amounts were paid. When this was communicated to the plaintiff, as usual it had avoided the defendant or the depositors. The plaintiff is a chronic defaulter and habitually commits breach of its promise. A bare perusal of the plaintiff's balance sheet will show that it has more creditors and all its share holders were anxiously kept waiting for returns like "elavukatha" parrot. On the facts of the case, it is pertinent to point out that every consignment received by the defendant on payment. The amounts were paid by cheques. The fact remains that the plaintiff is due and liable to pay the defendant and his men on the fixed deposits and on excess payment for the purchases made. Again, the defendant no.1 had been a dealer from the year 1984. Originally the plaintiff had permitted the first defendant to supply goods to the consumers on credit basis. The procedure was adopted till 2002. All of us sudden, the plaintiff demanded the first defendant to pay on the invoice raised before taking delivery of goods for distribution. It was not possible for the sub-agents to pay and take. On account of which, the defendant was unable to do business with the plaintiff, after 2002. There was absolutely no business between the plaintiff and the defendant . Irked by the fact that there was no business, the officers of the plaintiff has started harassing the first defendant. On their own, they dispatched certain papers which were suitably replied. The defendant is entitled to stop payment as he is under no obligation to run a charity show for the sick industry and corrupt businessmen. The plaintiff having found itself checkmated had restored to the police and made attempts to extract money which was successfully averted. The plaintiff never behaved like a decent businessmen and acted in an unscrupulous manner and caused considerable hardship to its ex dealer. The Defendant states that the plaintiff manipulated the records to make an unjust demand. At the appropriate stage the bogus claim of the plaintiff will be brought to light.

Issuance of cheques will not create a liability. Having misused the cheques the plaintiff has brought forth the present suit and sought for a parallel remedy. It is further stated that the surety has no consequence nor it is binding on the parties. The suit is devoid of any merit and hence liable to be dismissed with the costs of the Defendant.

4. Based on the pleadings and documents filed by both parties and submission made by both the Counsel the following issues have been framed by this Court on 08.03.2010 :-

i. Whether the defendants are jointly and severally liable to pay a sum of Rs.2,63,10,035.57 Ps for the goods said to have been sold and delivered by the plaintiff?

ii.Whether the suit is barred by time?

iii.Whether there was an admission of inability on the part of the first defendant?

iv.Whether the Plaintiff is entitled to interest at 20% per annum, if not, at what percentage the plaintiff would be entitled to interest?

v. Whether this Court has jurisdiction to entertain the suit? and

vi. To what relief is the plaintiff entitled?

5. After framing of issues, during trial, on the side of the plaintiff, P.W.'s1 and 2 were examined and marked Exs.P1 to P42. On the side of the defendants, DW1 was examined and marked Exs.D1 to D2.

6. Heard the rival submissions made on both sides and perused the materials available on record.

7. The case of the Plaintiff is that the Plaintiff is in business of manufacturing and marketing of chemicals and fertilisers and also in the market for over 35 years. During the course of Plaintiff's regular business, the first defendant was appointed as a non exclusive dealer for the location Valliyur, Tirunelveli District, Tamil Nadu, for the specified fertilizers or the other products marketed by the Plaintiff by virtue of a Dealership agreement dated 02/09/1994 (Exhibit P2) which was entered

into at Chennai.

8. The plaintiff supplied fertilizers to the first defendant pursuant to Dealership agreement, since there was a series of transaction of consignments and the Turnover was huge, the First Defendant folio was treated as a Running account and the payment were to be made as per the Running invoices (EXHIBIT P3).

9. The First Defendant was originally regular in making the payments, thereafter became highly irregular in his business commitments and monies were not paid on the goods consigned despite several demands made by the Plaintiff. The Second Defendant being the wife of Mr.T.V.A.Murugan, who is the proprietor of Saravana Stores, had offered to stand surety in favour of the Plaintiff, for the monies outstanding and due payable by First Defendant, by a letter of surety dated 07.03.2003 (Exhibit P4). The first defendant had admitted the liability of Rs.2,00,05,045/- and issued a letter dated 28.10.2005 (Exhibit P5) agreeing to repay the money on a revised schedule of payments.

10. The first Defendant has issued six cheques (Exhibits P6 to P11) for a total sum of Rs.1,98,53,750/-. All the cheques were returned dishonoured on 10.04.2006 with a remark on the memo as "PAYMENT STOPPED BY DRAWER". Since First Defendant did not comply with the demands made in the Legal notice dated 25/04/2006 (EXHIBIT P-12) the plaintiff was constrained to initiate appropriate criminal proceedings in C.C.No.817 of 2006 on the file of Judicial Magistrate Court No.VI Madurai, the C.C. is still pending.

11. The Plaintiff issued a legal notice through their counsel dated 12/10/2006 (Exhibit P-14) calling upon the defendants to pay a sum of Rs.2,56,45,078.06p. The defendants had miserably failed and neglected to pay the monies. Thus the plaintiff has filed the present suit.

12. The Defendants in their written statement though admitted the Execution of the Dealership agreement dated 02/09/1994 has made following defence:

i) That no monies were due and payable.

ii) Fixed Deposits were given as Security which were appropriated by plaintiff.

iii) The surety has no consequences and not binding on parties.

iv) No part of cause of action has arrive within the jurisdiction of this Court.

13. The Second Defendant who is the author of surety has not submitted herself before this Court to deny the execution of Exhibit P4. The First Defendant entered the witness box and disputed Exhibit P5 that he does not know English but however he admitted the fact that the written statement and proof affidavit filed before this Court by him are in English and it is not mentioned anywhere in written statement and the proof affidavit that he does not know English it has been recorded by Court the witness answered as above after going through the Proof Affidavit.

14. During the cross examination of PW1 it has been clearly spelt out that Exhibits P4 was handed over by Second defendant and Exhibit P5 was the hand writing of First Defendant and he had visited the office

of Plaintiff and handed over the same.

15. The Plaintiff submits that the Plaintiff has also submitted FD receipt which were set off against outstanding payments based on letter of set off an appropriation issued by the parties who has made the security deposits towards the outstanding payable by First Defendant Exhibits P17 to Exhibits P40. The Statement of Accounts filed in Exhibit P15 clearly establishes the same.

16. The defendants have not filed any documents to show that they have repaid the money to the Plaintiff, nor proved that the Plaintiff is not authorised to appropriate the Fixed Deposits.

17. The Defendant has raised a plea in his written statement that this Court has no jurisdiction to entertain the above suit, has not taken any other steps including revocation leave to sue granted by this Court.

18. The case of the Defendants is that the first defendant was a proprietor of M/s.Saravana Stores. The first defendant entered into

dealership agreement with the plaintiff on 02.09.1994. The plaintiff stopped supplying the goods abruptly without giving the first defendant any prior intimation and thus stopped the business from 2006 onwards. The first defendant at the time of entering into the agreement gave blank cheques for security. The Plaintiff misused the cheques and breached the trust imposed on it. The first defendant paid for what he had purchased from the Plaintiff and have no dues to be paid or liable to be paid to the plaintiff. It is further stated that the purchases were not in running account or credit basis but were in pursuance to the dealership agreement only. The first defendant had been regular in making the payments for the goods consigned and never failed or neglected to discharge his duties and obligations cast upon him under the Dealership agreement dated 02.09.1994. The Plaintiff did not owe any outstanding for the alleged goods sold and delivered, which is only the pure imagination of the plaintiff. Infact after verifying his account the first defendant was shocked to find that amounts were paid in excess to the plaintiff and hence demanded the plaintiff to return the excess amount paid by him. The plaintiff had expressed its inability to return his rightful money and instead issued Fixed Deposit receipts maturing on various dates. As per the undertaking given in the fixed deposits amounts were not paid. The depositors therefore started harassing the first defendant since, it was at his instance the amounts were paid. It is further stated that the plaintiff is a chronic defaulter and habitually commits breach of promise. A bare perusal of the plaintiff's balance sheet will show that it has more creditors and all its share holders were anxiously kept waiting for returns. For every consignments the first defendant received, he made payment. The amounts were paid by cheques. The fact remains that the plaintiff is due and liable to pay the first defendant and his men on the fixed deposits and excess payment for the purchases made. The second defendant had not extended any surety in favour of the plaintiff company for the alleged outstanding due and payable by the first defendant by a letter of surety dated 07.03.2003. It is further stated that the first defendant never admitted the liability of Rs.2,00,05,045/- and have not issued a letter dated 28.10.2005 agreeing to repay the money as per the schedule of payments mentioned therein. Originally the Plaintiff had permitted the first defendant to supply goods to the consumers on credit basis. This procedure was adopted till 2006. All of a sudden, the plaintiff demanded the first defendant to pay on the invoice rose before taking delivery of goods for distribution. It was not possible for the sub-agents to pay and take. On account of which, the first defendant was unable to do the business with the plaintiff, after 2006. Irked by the fact that there was no business, the officers of the plaintiff have started harassing the first defendant and they started dispatching certain papers on their own and the same were suitably replied. Since the first defendant was not succumbed to their unreasonable request, the plaintiff presented blank cheques given in the year 2004 for the purpose of surety and on coming to know of the fraud played by the plaintiff, the first defendant stopped payment. It is further stated that the first defendant is under no obligation to run a charity show for the sick industry and corrupt businessmen.

19. It is further stated that no part of cause of action had arisen in Chennai as the accounting system they follow is a regional accounting system. The plaintiff had not effected any supplies as set forth in the plaint. No documents have been produced to show the supply had been made and if so, on what date the lorry receipts and other relevant records to show the supply had not been produced, the evidence of P.W.1

will clearly prove the hollowness of the Plaintiff's claim and therefore the suit is liable to be dismissed by exemplary costs.

20. The learned counsel for the plaintiff would submit that as per Ex.P2 dated 02.09.1994, supplies were made to the first defendant and he had taken delivery of the same on the invoices being marked as Ex.P3, which clearly shows the date of supplies made to the first defendant. Since there was a outstanding, the second defendant who is the wife of the first defendant had given a surety to pay the outstanding dues to be paid by the first defendant. Ex.P4 is the letter of surety given by the second defendant. The first defendant also admitted his liability and executed a letter Ex.P5 dated 28.10.2008. The first defendant had issued six cheques for a total sum of Rs.1,98,53.750/ and when the same were presented before the bank, they were returned on varies dates which were marked as Exs.P6 to P11 and therefore he sent a legal notice dated 25.04.2006 (Ex.P12) and also subsequently filed a complaint- Ex.P13 under Section 138 of the Negotiable Instruments Act against the first defendant. Despite several reminders, the plaintiff was constrained to issue a legal notice through their counsel on 12.10.2006 (Ex.P14) and

the defendants wantonly not claimed the letters. Therefore, the notice was returned as unclaimed. Thus the Plaintiff had filed the suit for recovery of money. He would further submit that though the first defendant has admitted Ex.P2- Agreement and Ex.P5 - letter acknowledging the liability, he denied that he has not given a letter Ex.P5 to the Plaintiff and stated that first defendant knows only tamil whereas in the cross examination the first defendant admitted even the plaint and proof affidavit are in the English only and therefore the contention of the first defendant is not accepted. The Officer of the Plaintiff's company has been examined and marked all the documents stating that there was business transaction between the plaintiff and the first defendant and the first defendant was appointed as dealer and distributor to the plaintiff group and marked Ex.P3(series)-Invoices, Ex.P4-letter of surety given by the second defendant, Ex.P5-the letter given by the first defendant to the plaintiff, Ex.P6 to Ex.P11- cheques given by the first defendant. These documents clearly show that the first defendant was joined as a dealer and plaintiff supplied goods on various dates, invoices - Ex.P3 and the first defendant admitted the same under Ex.P5 and issued the cheques Exs.P6 to P11. Therefore he would submit that since the plaintiff has proved the liability of the defendants the suit has to be decreed.

21. The learned counsel for the defendants would submit that the first defendant was appointed as a dealer of the plaintiff and there was a dealership agreement between the plaintiff and the first defendant on 02.09.1994 and the first defendant denies the allegation made in the plaint that the nature of the transaction as entered into between the plaintiff and the first defendant is that of a running account or credit basis and further entire amount for the purchase had been paid by the defendant to the plaintiff. He would further submit that even without giving any prior intimation, the plaintiff stopped to supply the goods to the defendants company after 2006. The first defendant is unable to do the business with the Plaintiff. He would further contend that the suit is not maintainable, since there is no cause of action to file suit at Chennai. He placed reliance on the clause 16 of the Dealership Agreement dated 02.09.1994 (Ex.92), wherein it is stated as follows:

> *"The Courts at Madras only shall be deemed to be courts of Jurisdiction in respect of any suits, claims, disputes etc., arising out of or relating to this agreement."*

22. He would further submit that if more than one Court has jurisdiction, the parties by their consent may limit the jurisdiction to one of the two Courts. But, by an agreement the parties cannot confer jurisdiction on a Court which otherwise does not have jurisdiction to deal with the matter. In support of the said contention, has placed reliance on the Judgment of the Hon'ble Supreme Court in the case of ***New Moga Transport Co., Versus United India Insurance Co. Ltd.,*** reported in ***(2004) 4 SCC 677***. He would further submit that where the agreement between the parties is a written agreement, the parties are bound by the terms and conditions of the agreement. Once a contract is reduced to writing, by operation of Section 91 of the Evidence Act, 1872 it is not open to any of the parties to prove the terms of the contract with reference to some oral or documentary evidence to find out the intention of the parties. Under Section 92 of the Evidence Act, where the written instrument appears to contain the whole terms of the contract then the parties to the contract are not entitled to lead any oral evidence. In support of the said contention, he placed reliance on the Judgment of the Hon'ble Supreme Court in the case of ***Tamil Nadu Electricity Board and***

another Versus N.Raju Reddiar and Another reported in ***(1996) 4 SCC 551***. He would further submit that production of invoices, delivery challan and computerized statements alone is not sufficient and the entries in the account books to be proved by examination of author of those entries. Further, the witness examined has nothing to do with accounts and therefore the requirements under Section 34 not met out. In support of the same, he placed reliance on the Judgment of this Court reported in ***Madras Cements Ltd., Versus T.M.T.Kannammal Educational Trust reported in 2015 (1) MWN (Civil) 278***.

23. The learned counsel for the defendants would submit that the plaintiff has not examined author of the documents and simply they produced the documents before this Court and the witnesses who have been examined do not know the procedural knowledge of the accounts. Therefore, the plaintiff has not proved the transactions and it is further submitted that Exs.P3,P4 and P5 are not proved in the manner known to law. Therefore, it is the duty of the plaintiff to prove his case and therefore prays for dismissal of the suit.

24.Issue No.5

(i) According to the plaintiff, the Plaintiff is the Company incorporated under the Companies Act, 1956 and engaged in the business of manufacturing and marketing of Chemicals and fertilizers. The plaintiff is a reputed Company who is in market for over 35 years. The products of the plaintiff are sold all over India. The main operation of the Plaintiff's business is centralized in Chennai where its registered office and Principal office is situated. The first defendant was appointed as a dealer for the location Valliyur, Tirunelveli District for specified fertilizers or the other products marketed by the plaintiff's Company on a non exclusive basis commencing from 02.09.1994 by virtue of a dealership agreement dated 02.09.1994 which was entered into between the Plaintiff and the first defendant at Chennai. Clause 9 of the dealership agreement dated 02.09.1994 reads as follows:

> "***The Dealer undertakes to make prompt payments at Madras for each consignment of product(s) lifted by him according to procedures mutually agreed between the Principal and Dealer. All payments are to be effected only by crossed Cheques/Demand Draft drawn in favour of the company cash transaction with the company representatives/employees are not permitted. The price(s) payable by the Dealer shall be the***

> ***ruling price(s) on the date of actual lifting by him or the price(s) ruling on the date of direct despatch to him. In the event of any delay in effecting such payments for goods consigned, the dealer shall in addition to any other liabilities for demurrage or wharfage or other charges, be liable to pay interest, at the rate fixed by the Principal from time to time to the Principal on the unpaid amount from the date of lifting or despatch until the date of payment***."

In addition the parties have also specifically agreed under clause 16 that the jurisdiction in respect of any suit would be at Madras. The said clause 16 is extracted herein

> "The Courts at Madras only shall be deemed to be courts of Jurisdiction in respect of any suits, claims, disputes etc., arising out of or relating to this agreement."

(ii) Since the first defendant has not paid the money, the second defendant has given surety for the same for which the first defendant executed the letter of acknowledgment but subsequently they did not pay the amount and the first defendant issued cheques for the outstanding dues and the same were dishonoured. Therefore, the Plaintiff has called upon the first defendant to comply with the payment of the cheque amount as contemplated under Section 138 of Negotiable Instrument Act by a registered notice dated 25.04.2006. Since the first defendant did not comply, the plaintiff has given the complaint and the same is pending in C.C.No.817 of 2006 on the file of Judicial Magistrate Court IV, Madurai. Despite several reminders, since the defendants have not come forward to pay the outstanding, the Plaintiff has issued legal notice through their counsel on 12.10.2006 calling upon them to pay the outstanding amount. Since, the same was not paid the plaintiff filed the present suit. According to the defendant, the main cause of action arises at Valliyur, Tiruvallur District and not in Chennai. Mere entering of agreement at Chennai does not mean that the cause of action has arisen at Chennai and placed reliance on the Judgment of the Hon'ble Supreme Court in the case of ***New Moga Transport Co., Versus United India Insurance Co. Ltd.,*** reported in ***(2004) 4 SCC 677.*** As per the said Judgment, if more than one Courts have jurisdiction, the parties by their consent may limit the jurisdiction to one of the said Courts. But, by an agreement the parties cannot confer jurisdiction on a Court which otherwise does not have jurisdiction to deal with the matter.

(iii) Admittedly the first defendant and the plaintiff entered into agreement Ex.P2 and in clause 9 it is stated that the dealer undertakes to make prompt payment at Madras for each consginment of product (s) lifted by him according to procedures mutually agreed between the principal and the dealer. Further Ex.P2 agreement dated 02.09.1994 was entered into in Chennai between the Plaintiff and the first defendant. Therefore, since the agreement between the plaintiff and the first defendant was entered into at Chennai and the dealers undertaken to make prompt payment at Chennai and the first defendant is doing business at Valliyur, Tirunelveli District, the suit can be filed at two places as per Section 20 of the Civil Procedure Code and if that be the case the parties can also restrict their jurisdiction to any one of the places. Therefore, on reading of the Ex.P2- Agreement which was entered into between the Plaintiff and the first defendant at Chennai and clause 9 clearly shows that the first defendant undertakes to make prompt payment at Chennai for each consignment of product(s) lifted by him according to the procedures manually agreed between the Principal and the dealer. The first defendant was appointed as a non exclusive dealer for the location of Valliyur, Tirunelveli District for the specified fertilizers or the other products marketed by the Plaintiff by virtue of dealership agreement dated 02.09.1994 alone. Therefore as per clause 16 of the agreement, the Plaintiff restricted their jurisdiction to file suit at Chennai is not against in the eye of law. Even the citation referred to by the defendants itself shows if more than one Courts have jurisdiction, the parties by their consent may limit the jurisdiction to any one of the said Courts. Under these circumstances, this Court has got jurisdiction to entertain the suit and the issue no.5 is answered accordingly.

25. Issue No.2

(i) As stated earlier, the plaintiff is the Principal and the first defendant is the dealer. They entered into the dealership agreement on 02.09.1994 and they have got the business transaction even till 2006. Even the first defendant himself admitted in the written statement and also filed proof affidavit. Originally the plaintiff had permitted the first defendant to supply goods on credit basis. This procedure was adopted till 2006. The first defendant was unable to do the business for the Plaintiff after 2006. There was no business between the plaintiff and the first defendant from 2006. The first defendant also admitted that there was business transaction between them till 2006. According to the plaintiff, the first defendant had been highly irregular in making the payment for the goods supplied and the first defendant has also miserably failed to discharge the duties cast upon him in the dealership agreement dated 02.09.1994. The Plaintiff had been making several demands calling upon the defendants to pay for the goods supplied. Despite several demands, the first defendant has not come forward to pay the dues. The second defendant who is the wife of the proprietor of the first defendant had given a letter of surety dated 07.03.2003, by which the second defendant also offered to settle the monies due and payable to the plaintiff in selling two of the properties and the first defendant also believed the words of the second defendant to pay the plaintiff. After long time, the first defendant also admitted the liability of Rs.2,00,05,045/- vide letter dated 28.10.2005 which is marked as Ex.P5 and further the first defendant also confirmed the letter of surety executed by the second defendant and the suit filed in the year 2006. Therefore, this Court finds that since the dealership agreement dated 02.9.1994 is admitted and the defendant also admitted in his written statement that there was business transaction between the plaintiff and the defendants till 2006 and further after the second defendant given a letter of surety dated 07.03.2003, the first defendant has given letter of acknowledgment admitting the liability of Rs.2,00,05,045/- vide letter dated 28.10.2005 and issued various cheques in the year 2006 and when the cheques were also presented before the bank, they were returned as dishonored and therefore the plaintiff issued notice on 25.04.2006 through the counsel and given the complaint on 30.05.2006 and the criminal proceedings was pending in C.C.No.817 of 2006 before the Judicial Magistrate VI Madurai and again after sending the legal notice on 12.10.2006, the plaintiff has filed the present suit which clearly shows that the suit is well within time and not barred by limitation. Therefore, this issue is answered accordingly.

28. Issue No.3:

(i)According to the plaintiff , himself and the first defendant entered into the dealership agreement on 02.09.1994 under Ex.P2 and under Ex.P3 they made several supplies to the first defendant by way of invoice through the transactions and the first defendant also acknowledged the receipt of the goods and he has not made payment and subsequently when the same was demanded, the second defendant given a letter of surety on 07.03.2003 and the first defendant also admitted the liability of Rs.2,00,05,045/- issued a letter dated 28.10.2005 and confimred the letter of surety given on 07.03.2003. Though the first defendant admitted the dealership agreement and he was appointed as a dealer for receiving the goods, he denied the fact that he has not obtained any goods on credit basis. Whenever he received the goods or consignment he used to pay the money at the time of taking delivery. He denied Ex.P5 so called letter of admission and also letter of surety Ex.P4 dated 07.03.2003 said to have given by the second defendant. Further he denied the fact that cheques were not issued agreeing repayment of the said money and the same were issued only as a surety and therefore the defendants have not admitted the liability. The learned counsel for the defendants would submit that the first defendant does not know English to read and write. Therefore, the letter Ex.P5 is not written by the first defendant and the person who has written the letter has not been examined and his signature has not been obtained. Therefore, the plaintiff has not proved that Ex.P5 was executed only by the first defendant.

(ii) The learned counsel for the plaintiff would submit that though first defendant states that the defendants do not know to read or write in English, the written statement and proof affidavit has been typed in English only. Therefore, since because the defendants does not know English it does not mean that the first defendant do not know about the contents of the documents. Admittedly there is business transaction between the plaintiff and the first defendant and they have entered into dealership agreement on 02.09.1994 and as per the dealership agreement, the plaintiff also sent the goods under Ex-P3 invoices to prove the same. The first defendant also received the goods and sold the goods to the consumers and as per the dealership agreement, once the goods were received, the defendants have to pay the money for the goods they received without any delay. But, according to the plaintiff though the first defendant received the goods, he has not paid the money. According to the first defendant, he used to pay the money as and when he takes the delivery of the goods. Once he admits as and when he received the goods he used to make the payment, in clause 9 of Ex.P2 the dealer undertakes to make prompt payment at Madras for each consignment of product(s) lifted by him according to the procedures mutually agreed between the principal and the dealer and all the payments are to be effected only by crossed cheques/demand drafts drawn in favour of the company. In the event of any delay in effecting such payments for goods consigned, the dealer shall in addition to any other liabilities for demurrage of wharfage or other charges, be liable to pay interest, at the rate fixed by the Principal from time to time, to the Principal on the unpaid amount from the date of lifting or despatch until the date of payment. The Plaintiff has stated that as per Ex.P3, he sent goods to the first defendant and the first Defendant also taken delivery and he has not made payment and on demand, he issued cheques that were not honored. In this case, it is to be seen that once the first defendant has admitted the dealership agreement-Ex.P2 and as per Clause 9 of the said agreement, all payments has to be made by way of crossed cheques/Demand Drafts. If at all the first defendant made such payment he should have been made by way of cheques or Demand drafts as per the agreement and if at all, he paid the cheque and the cheque was honored definitely he could have marked the same or demand draft or the particulars of Demand Draft. But admittedly the defendants have not produced any such documents. Since the first defendant has not made any payment the plaintiff approached them and demanded for payment. Despite several demands the defendants are maintaining silence and not making any payment. Further, The second defendant being the wife of the proprietor of the Saravana Stores had issued a letter of surety dated 07.03.2003 in favour of the Plaintiff for the monies outstanding and due and payable by the defendants. The second defendant had also offered to settle monies due and payable to the Plaintiffs by selling two of her properties. Thereafter, despite several demands the defendants have not paid the dues. The first defendant also admitted the liability of Rs.2,00,05,045/- and issued a letter Ex.P5 dated 28.10.2005 and also confirmed the letter of surety executed by the second defendant as on 28.02.2006. The plaintiff further states that after serious persuasion first defendant had issued six cheques for a total sum of Rs.1,98,53.750/- . All the cheques were drawn in Central Bank of India, Tirunelveli Junction Branch.. When the Plaintiff deposited cheques on 31.03.2006 at Indian Overseas Bank,K.Pudur Branch, Madurai, the same were returned as dishonoured on 10.04.2000. The Plaintiff also sent notice to the first defendant but he managed not to receive the notice and the same was returned as unclaimed. The Plaintiff also filed complaint in C.C.No. 817 of 2006 on the file of Judicial

Magistrate IV,Madurai. As on 31st August 2006 the defendants are liable to pay the plaintiff a sum of Rs.1,98,94,224.46 towards principal which is inclusive of Rs.40,470/- being the Bank charges, and in addition to a sum of Rs.57,50,857.60/- towards interest on the outstanding amount at the rate of 20% p.a. Since it is commercial transaction, the Plaintiff is entitled to claim interest @ 20% per annum on the principal amount due. Though the defendants have denied their liability of payment and according to the first defendant as and when taken delivery of the goods, he used to pay the money and after paying the money he takes delivery of the goods. and there was no dues to pay the plaintiff and denied the execution of Ex.P4 and P5, he has not denied the signatures found in Ex.P4 and P5 . Though the first defendant states that he does not know English to read and write and contents in the aforesaid documents are in English and denies execution of the said documents, once they admitted their signature it is the duty of the defendants to the explain under what circumstances they put their signatures. Even during the cross examination the first defendant admitted his signature in the written statement and proof affidavit and the contents of which are in English only and further the contents of the cross examination are also typed only in English and in all, the first defendant has signed. Further, the first defendant even in the complaint before the learned Magistrate, has not sent any reply notice to the plaintiff stating that he has not issued any letter of admission i.e, Ex.P5 and the second defendant has executed Ex.P4. The second defendant has not come to Court and has not denied her signature. Though the first defendant denied Exs.P4 and P5 he has admitted signature of his wife in Exs.P4 and his signature in Ex.P5. Since the signatures of the defendants were not denied in Exs.p4 and P5, the first defendant cannot say that since he does know the English and the contents in the said documents are in English, he has not executed the documents. In Ex.P5, there are six sheets further it is written only in English in the letter head pad of the first defendant and the first defendant has signed as a proprietor in all six pages. Therefore, he has not stated under what circumstances he has signed that Ex.P5 and he has not filed any complaint and also he has not issued legal notice in this regard. Under these circumstances, once the signatures found in Ex.P5 are admitted, unless it is rebutted it is presumed to be understood the contents and signed the same. Therefore, in view of inability on the part of the first defendant to prove his defence and rebutted the presumption in accordance with law, this issue is answered accordingly in favour of the Plaintiff and as against the defendants.

29. Issue No.1

(i) Admittedly the first defendant is the agent and they admitted the dealership agreement dated 02.09.1994. The plaintiff has stated that they supplied the goods as per Ex.P3 as the first defendant has not made payment and contends that second defendant, who is the wife of the first defendant issued Ex.P4-Letter of surety dated 07.03.2003 and the first defendant also sent a letter dated 28.10.2005-Ex.P5 admitting the liability and subsequently they also issued cheques - Exs.P6 to P11 for the outstanding dues. Admittedly the first defendant has not denied the signatures found in the said documents and therefore once they admitted the signatures, the burden of proof have been shifted to the defendants and it is the duty of the defendants to rebut the same. There is no doubt that plaintiff has to prove its case independently and they cannot take advantage of loopholes left by the defendants. The defendants need not prove his defence as that of the plaintiff but however once the first defendant admitted signatures found in Exs.P5 and P11 it is the duty of the first defendant to rebut the presumptions. Once the second defendant has not come to the witness box and denied signatures in Ex.P4, the first defendant admitted the signatures and denied the content of Exs.P5 to P11 not proved the same in the manner known to law, both are jointly and severally liable to pay a sum of Rs.2,63,10,035.57 ps/-. This issue is answered accordingly.

30. Issue No.4:

(i) Though the Plaintiff has stated that they are entitled to interest @20% per annum under the agreement Ex.P2, in clause 9 it is clearly stated that all payments are to be effected only by Crossed Cheques/Demand Drafts drawn in favour of the Company and in the event of any delay in effecting such payments for goods consigned, the dealer shall in addition to any other liabilities for demurrage or wharfage or other charges, be liable to pay interest, at the rate fixed by the Principal from time to time, to the Principal on the unpaid amount from the date of lifting or despatch until the date of payment. Therefore, though the plaintiff claims 20% interest there is no specific rate of interest has been mentioned in Ex.P2 and this Court finds that there was no business transaction between the plaintiff and the defendant from

2006 and also the first defendant is a dealer and whatever the goods supplied he has to sell the same and pay the amount. Therefore, under these circumstances, this Court finds that the interest @ 12% per annum is reasonable and the Plaintiff is entitled to 12% interest per annum. This issue is answered accordingly.

(31) **Issue No.6**

(i) Though the learned counsel for the defendant submitted that the plaintiff has not proved the case by examining the author of the statement of accounts and also invoices has not been proved, since the defendant has admitted the agreement under Ex.P2 and as per clause 9 of the said agreement it is clearly stated that payment should be made by way of cross cheques or Demand drafts. When the defendants admitted the transaction and stated that whenever he received the goods and taken delivery he used to make payment but he has not produced any proof for the same. Even in the cheques Exs.P6 to P11 as well as in Exs.P4 and P5, the first defendant admitted the signatures and not denied the signatures found in the said documents. Though the plaintiff has to prove his case, as in the criminal case, he need not prove his case beyond reasonable doubt it is enough to prove by preponderance of probability. Further, The defendants admitted their signatures in Exs.P2, P4, P11 to P15 and have not rebutted their presumption in the manner known to law that they are not liable to pay the amount. Under these circumstances, this Court finds that the plaintiffs are entitled to claim a sum of Rs.2,63,10,035.57 ps entitled to interest @ 12% from the date of plaint till the date of realization.

In the result, the suit is decreed with costs as indicated above.

29.10.2020.

Index : Yes/No
Internet : Yes/No
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List of Witness examined on the side of the plaintiffs

N.Rajendiran - PW1

M.Velukarayalar - PW2

List of documents marked on the side of the plaintiffs

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Letter of authorization	21.02.2008

2.	P2	Agreement between the Plaintiff and the defendant	02.09.1994
3.	P3 (Series)	Dealer Invoices and warehouse delivery notes	-
4.	P4	Original letter of surety	07.03.2003
5.	P5	Letter from defendant to plaintiff	28.10.2005
6.	P6 (series)	Xerox copy of return cheque with cheque return memo	27.03.2006
7.	P7 (series)	Xerox copy of return cheque with cheque return memo	28.03.2006
8.	P8 (series)	Xerox copy of return cheque with return memo	29.03.2006
9.	P9 (series)	Xerox copy of return cheque with cheque return memo	30.03.2006
10.	P10 (series)	Xerox copy of return cheque with cheque return memo	31.03.2006
11.	P11 (series)	Xerox copy of return cheque with cheque return memo	31.03.2006
12.	P12	Copy of letter from plaintiff to defendant	25.04.2006
13.	P13	Copy of complaint	30.05.2006
14.	P14 (series)	Legal notice from plaintiff's counsel to defendants and two returned covers	12.10.2006
15	P15	Statement of account	----

16	P16	Original letter of authorisation	08.03.2011
17.	P17	Original deposit receipt bearing No.400768	15.07.2004
18.	P18	Original fixed deposit receipt bearing No.400830	15.07.2004
19	P19	Original fixed deposit receipt bearing No.400831	15.07.2004
20	P20	Original fixed deposit receipt bearing No.401162	25.10.2004
21	P21	Original fixed deposit receipt bearing No.401163	25.10.2004
22	P22	Original fixed deposit receipt bearing No.401221	19.11.2004
23	P23	Original fixed deposit receipt bearing No.401223	19.11.2004
24	P24	Original fixed deposit receipt bearing No.401225	19.11.2004
25	P25	Original fixed deposit receipt bearing No.401356	12.01.2005
26	P26	Original fixed deposit receipt bearing No.401357	12.01.2005
27	P27	Original fixed deposit receipt bearing No.401358	12.01.2005

28	P28	Original fixed deposit receipt bearing No.401359	12.01.2005
29	P29	Original fixed deposit receipt bearing No.640038	09.06.2003
30	P30	Original Letter of appropriation	14.08.2004
31	P31	Original Letter of appropriation	15.07.2004
32	P32	Original Letter of appropriation	14.08.2004
33	P33	Original Letter of appropriation	19.11.2004
34	P34	Original Letter of appropriation	19.11.2004
35	P35	Original Letter of appropriation	13.12.2004
36	P36	Original Letter of appropriation	13.12.2004
37	P37	Original Letter of appropriation	13.12.2004
38	P38	Original Letter of appropriation	24.02.2005
39	P39	Original Letter of appropriation	24.02.2005
40	P40	Original Letter of appropriation	24.02.2005
41	P41	Original Letter of appropriation	24.02.2005
42	P42	Original Letter of appropriation	15.07.2003

List of Witness examined on the side of the defendant

T.V.A.Murugan - DW1

List of documents marked on the side of the defendant

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	Ex.D1	Statement of account. (marked during cross examination of P.W.1 in Ex.P15 series)	.....
2.	Ex.D2	Signature of A.V.V.Gupta in the document	....

29.10.2020.
(P.V.J.)

P. VELMURUGAN, J.

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Pre Delivery Judgment in

CS.No.855 of 2006

29.10.2020.

Pre Delivery Judgment
in CS.No.855 of 2006

To
The Hon'ble Mr. Justice P.VELMURUGAN

From
A.R.Revathi
P.A.