

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.01.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.76 of 2012

D.Mahendra Kumar Jain

.. Plaintiff

Vs.

1. R.Damodaran

2. G.Sethu Madhavan

Asst. Vice President,
JLL, P&D.S Level - 8, Tower II,
TVH Belisca Tower,
Block No.94, MRC Nagar,
Chennai - 600 028.

3. The Official Assignee,
Office of the Official Assignee,
City Civil Court Buildings,
Chennai - 600 104.

.. Defendants

(The 3rd defendant impleaded as per order dated 25.01.2019 in A.No.15/2019 and time extended as per order dated 11.12.2019)

सत्यमेव जयते

This Civil Suit is preferred, under Order VII Rule 1 CPC read with Order IV Rule 1 O.S. Rules to a) pass a judgment and decree directing the 1st defendant to pay the plaintiff a sum of Rs.1,09,95,994/- and further interest from the date of filing this suit @12% p.a. until realization; and b) pass such further or other orders as may be deem fit and proper.

For Plaintiff : Mr.E.Senthil Kumar

For Defendants : Set ex-parte (D1 & D2)
No appearance (D3)

JUDGMENT

In instant suit, contesting defendants 1 and 2 remained ex-parte. The Hon'ble Predecessor Judge had set defendants ex-parte and sent the matter to learned Additional Master - III for recording ex-parte evidence. To be noted, the Official Assignee attached to this Court has been added as third defendant vide order in A.No.15 of 2019. There is no prayer against the third defendant. The third defendant has been so added solely owing to the reason that first respondent was adjudicated as an insolvent in I.P. No.12 of 2018 owing to not satisfying an interim decree dated 20.07.2015 made by this Court in this suit vide A.No.2533 of 2012.

2. Before learned Additional Master - III, plaintiff Mr. D. Mahendra Kumar Jain was deposed as PW1 and 97 exhibits i.e., Exs.P1 to P97 had been marked.

3. When the suit was listed before this Court, learned counsel for plaintiff made a request to mark two more documents, namely, certified copies of interim decree dated 20.07.2015 and the order dated 23.07.2018 in I.P.

No.12 of 2018 adjudicating the first defendant as insolvent.

4. Exercising inherent powers of this Court, request was acceded to and plaintiff was permitted to mark the aforesaid two documents as exhibits. To be noted, both documents sought to be marked are certified copies which in any case form part of the case file and therefore, this course was adopted by this Court.

5. Plaintiff Mr. D.Mahendra Kumar Jain who deposed as PW1 before learned Additional Master-III deposed before this Court and aforesaid two certified copies were marked as Exs.P98 and P99 respectively.

6. This Court now proceeds to examine the suit claim.

7. The burden of song qua plaintiff is that the second defendant introduced first defendant to plaintiff and thereafter, the plaintiff made certain supplies to first defendant. Payments for such goods sold and supplied were not forthcoming resulting in exchange of communications and suit notice.

8. To be noted, it is the case of plaintiff that he is carrying on business

in the name and style of Sri Venkateshwara Enterprises as a proprietor in Electrical Wires and other accessories at No.56, Strotten Muthia Mudali Street, Sowcarpet, Chennai - 600 079.

9. It is also the case of the plaintiff that with regard to goods sold and supplied over a period of time, several invoices were raised and the invoices were not honoured by the first defendant.

10. Plaintiff also proceeds to say that the plaintiff enquired with second defendant and realised that second defendant has actually colluded with first defendant. It is also the further burden of song that the materials procured by first defendant from plaintiff were by stating that first defendant has got a contract from Bank of America i.e. B.A. Continum Private Limited for electrical work to be executed in 7th Floor, Acendas I.T. Park, Phase III, Taramani Road, Taramani.

11. In the course of hearing of the suit, plaintiff took out an application *inter alia* under Order XII Rule 6 of 'The Code of Civil Procedure, 1908', (hereinafter 'CPC' for the sake of brevity) with a prayer for interim decree *inter alia* on the ground that first defendant has admitted its liability in reply

notice. Accepting the case of plaintiff, this Court passed an interim decree on 20.07.2015 in A.No.2533 of 2012 which has been alluded to supra and marked today as Ex.P98. This interim decree is for a sum of Rs.70,77,066/- (Rupees Seventy Lakhs Seventy Seven Thousand and Sixty Six only).

12. It is submitted that the aforesaid interim decree has attained finality. In other words, aforesaid interim decree has been given legal quietus and has not been carried on by way of appeal by any one. Based on the aforesaid interim decree, plaintiff filed an insolvency petition under Presidency Towns Insolvency Act against first defendant *inter alia* stating that first defendant is a debtor and has committed the act of insolvency. This plea was made on the basis of aforesaid interim decree (Ex.P98) that was not satisfied. Accepting the case of plaintiff, insolvency petition was allowed vide order dated 23.07.2018 which has been marked as Ex.P99 today. This Court is informed that Ex.P99 has also attained finality and has been given legal quietus.

13. It is in the aforesaid backdrop that the instant suit is being heard out qua decree.

14. A perusal of the prayer paragraph reveals that the suit has been laid claiming Rs.1,09,95,994/- (Rupees One Crore Nine Lakhs Ninety Five Thousand Nine Hundred and Ninety Four only) with future interest at the rate of 12% per annum. Learned counsel for plaintiff, Mr.E.Senthil Kumar, points out that in the light of interim decree Ex.P98, now a decree has to be passed for the remaining suit claim which is Rs.39,18,928/- (Rupees Thirty Nine Lakhs Eighteen Thousand Nine Hundred and Twenty Eight only).

15. A perusal of the evidence of plaintiff, deposed as PW1, reveals that the evidence is cogent. To be noted, the evidence i.e., examination in chief is by way of a proof affidavit dated 17.07.2018. The deposition obviously remains uncontroverted.

16. As already alluded to supra, before learned Additional Master - III, Exs.P1 to P97 were marked.

17. Ex.P1 to P85 are various invoices. Ex.P87 is a deed of partnership qua a firm in the name of M/s. Lakshmi Electricals wherein first defendant is one of the partners. However, first defendant has been arrayed in his individual capacity and shown as proprietor of M/s.Lakshmi Electricals in the

suit. Therefore, this is only a buttressing document. Ex.P88 series are various correspondences exchanged between parties with regard to suit claim. Ex.P95 is suit notice dated 31.01.2012, which did not evoke any reply or response. Exs.P96 and 97 are also part of the correspondences between the parties.

18. As alluded to supra, Ex.P98 is the certified copy of interim decree and Ex.P99 is the certified copy of the order made by this Court in Insolvency Petition. For the sake of convenience, list of exhibits are set out and the same are as follows:

S.No.	Date	Description of Document	Nature of Documents	Exhibit Nos.
1	18/08/2011	Invoice No.A216 delivered to Assendas, Taramani Road, Chennai for Rs.99996.60	Original	1
2	19/08/2011	Invoice No.A221 delivered to Assendas Phase -3, 7 th Floor, Taramani Road, Chennai for Rs.1094621.00	Original	2
3	20/08/2011	Invoice No.A226 delivered to Taramani for Rs.121890.00	Original	3
4	20/08/2011	Invoice No.A227 delivered to for Rs.64197.00	Original	4
5	20/08/2011	Invoice No.A234 delivered to Taramani Road for Rs.6615.00	Original	5
6	25/08/2011	Invoice No.A266 for Rs.8955.00	Original	6
7	26/08/2011	Invoice No.A271 delivered to Assendas Phase -III, 7 th Floor,	Original	7

S.No.	Date	Description of Document	Nature of Documents	Exhibit Nos.
		Taramani Road, Chennai for Rs.87373.00		
8	29/08/2011	Invoice No.A285 for Rs.60843.00	Original	8
9	31/08/2011	Invoice No.A.296 delivered to Tambaram for Rs.115078.00	Original	9
10	02/09/2011	Invoice No.A.299 delivered to Chengalpet for Rs.82504.00	Original	10
11	02/09/2011	Invoice No.A.300 delivered to Taramani for Rs.292875.00	Original	11
12	02/09/2011	Invoice No.A301 delivered to Nandanam for Rs.5689.00	Original	12
13	03/09/2011	Invoice No.A302 delivered to Tambaram for Rs.131951.00	Original	13
14	03/09/2011	Invoice No.A303 delivered to Tambaram for Rs.1081.00	Original	14
15	05/09/2011	Invoice No.A309 delivered to Taramani for Rs.47958.00	Original	15
16	07/09/2011	Invoice No.A321 delivered to Nandanam for Rs.2382.00	Original	16
17	07/09/2011	Invoice No.A322 delivered to Taramani for Rs.599930.00	Original	17
18	08/09/2011	Invoice No.A327 delivered to Taramani for Rs.101480.00	Original	18
19	12/09/2011	Invoice No.A341 delivered to Taramani for Rs.159628.00	Original	19
20	12/09/2011	Invoice No.A342 delivered to Chengalpet for Rs.76131.00	Original	20
21	13/09/2011	Invoice No.A347 delivered to Asendas IT Park Taramani for Rs.151700.00	Original	21
22	13/09/2011	Invoice No.A348 delivered to	Original	22

S.No.	Date	Description of Document	Nature of Documents	Exhibit Nos.
		Asendas IT Park Taramani for Rs.994160.00		
23	14/09/2011	Invoice No.A349 delivered to Asendas IT Park Taramani for Rs.97975.00	Original	23
24	16/09/2011	Invoice No.A358 delivered to Asendas IT Park Taramani for Rs.13235.00	Original	24
25	17/09/2011	Invoice No.A360 delivered to Taramani for Rs.232033.00	Original	25
26	17/09/2011	Invoice No.A361 delivered to Tambaram for Rs.88044.00	Original	26
27	17/09/2011	Invoice No.A363 delivered to Taramani for Rs.277095.00	Original	27
28	19/09/2011	Invoice No.A364 delivered to Taramani for Rs.1213.00	Original	28
29	21/09/2011	Invoice No.A375 delivered to Taramani for Rs.65069.00	Original	29
30	22/09/2011	Invoice No.A377 delivered to Taramani for Rs.16492.00	Original	30
31	22/09/2011	Invoice No.A380 delivered to Taramani for Rs.96381.00	Original	31
32	22/09/2011	Invoice No.A381 delivered to Sharada Motor Mahindra City Chengalpet for Rs.164264.00	Original	32
33	24/09/2011	Invoice No.A382 delivered to Mount Road for Rs.80558.00	Original	33
34	24/09/2011	Invoice No.A393 delivered to C.I.T. Nagar for Rs.3989.00	Original	34
35	27/09/2011	Invoice No.A397 delivered to Taramani for Rs.14774.00	Original	35

S.No.	Date	Description of Document	Nature of Documents	Exhibit Nos.
36	27/09/2011	Invoice No.A398 delivered to Sharada Motors Maraimalai Nagar for Rs.42986.00	Original	36
37	27/09/2011	Invoice No.A401 delivered to Taramani for Rs.292060.00	Original	37
38	29/09/2011	Invoice No.A406 delivered to Taramani for Rs.125099.00	Original	38
39	30/09/2011	Invoice No.A413 delivered to Taramani for Rs.206937.00	Original	39
40	30/09/2011	Invoice No.A414 delivered to Taramani for Rs.347500.00	Original	40
41	30/09/2011	Invoice No.A415 delivered to Taramani for Rs.379816.00	Original	41
42	01/10/2011	Invoice No.A418 delivered to Maraimalai Nagar for Rs.44745.00	Original	42
43	01/10/2011	Invoice No.A420 delivered to Maraimalai Nagar for Rs.28838.00	Original	43
44	04/10/2011	Invoice No.A422 delivered to Taramani for Rs.275877.00	Original	44
45	04/10/2011	Invoice No.A426 delivered to Taramani for Rs.71295.00	Original	45
46	04/10/2011	Invoice No.A427 delivered to Taramani for Rs.166069.00	Original	46
47	05/10/2011	Invoice No.A430 delivered to Taramani for Rs.150216.00	Original	47
48	07/10/2011	Invoice No.A438 delivered to Taramani for Rs.25724.00	Original	48
49	12/10/2011	Invoice No.A446 delivered to Taramani for Rs.304247.00	Original	49
50	12/10/2011	Invoice No.A447 delivered to Taramani for Rs.90250.00	Original	50

S.No.	Date	Description of Document	Nature of Documents	Exhibit Nos.
51	12/10/2011	Invoice No.A450 delivered to Taramani for Rs.271745.00	Original	51
52	12/10/2011	Invoice No.A454 delivered to Nandanam for Rs.2197.00	Original	52
53	12/10/2011	Invoice No.A458 delivered to Taramani for Rs.923008.00	Original	53
54	14/10/2011	Invoice No.A467 delivered to Taramani for Rs.389188.00	Original	54
55	15/10/2011	Invoice No.A471 delivered to Taramani for Rs.136640.00	Original	55
56	17/10/2011	Invoice No.A478 delivered to Taramani for Rs.97769.00	Original	56
57	19/10/2011	Invoice No.A482 delivered to Taramani for Rs.59463.00	Original	57
58	19/10/2011	Invoice No.A487 delivered to Maraimalai Nagar for Rs.143651.00	Original	58
59	19/10/2011	Invoice No.A488 delivered to Maraimalai Nagar for Rs.3383.00	Original	59
60	20/10/2011	Invoice No.A497 delivered to Taramani for Rs.100430.00	Original	60
61	21/10/2011	Invoice No.A503 delivered to Taramani for Rs.319840.00	Original	61
62	21/10/2011	Invoice No.A504 delivered to Maraimalar Nagar for Rs.3921.00	Original	62
63	21/10/2011	Invoice No.A506 for Rs.5670.00	Original	63
64	21/10/2011	Invoice No.A507 delivered to Taramani for Rs.44192.00	Original	64
65	22/10/2011	Invoice No.A518 delivered to Taramani for Rs.93157.00	Original	65
66	25/10/2011	Invoice No.A523 delivered to Taramani for Rs.23612.00	Original	66

S.No.	Date	Description of Document	Nature of Documents	Exhibit Nos.
67	28/10/2011	Invoice No.A529 delivered to Taramani for Rs.110451.00	Original	67
68	29/10/2011	Invoice No. A535 delivered to Taramani for Rs.176000.00	Original	68
69	02/11/2011	Invoice No.A553 delivered to Taramani for Rs.38623.00	Original	69
70	03/11/2011	Invoice No.A560 delivered to Taramani for Rs.181504.00	Original	70
71	03/11/2011	Invoice No.A561 delivered to Taramani for Rs.159183.00	Original	71
72	04/11/2011	Invoice No.A565 delivered to Taramani for Rs.40874.00	Original	72
73	05/11/2011	Invoice No.A566 delivered to Taramani for Rs.94155.00	Original	73
74	10/11/2011	Invoice No.A589 delivered to Taramani for Rs.31935.00	Original	74
75	10/11/2011	Invoice No.A593 delivered to Taramani for Rs.83604.00	Original	75
76	10/11/2011	Invoice No.A594 delivered to Taramani for Rs.29369.00	Original	76
77	14/11/2011	Invoice No.A602 delivered to Taramani for Rs.81018.00	Original	77
78	18/11/2011	Invoice No.A623 delivered to Taramani for Rs.11065.00	Original	78
79	19/11/2011	Invoice No.A626 delivered to Taramani for Rs.4850.00	Original	79
80	25/11/2011	Invoice No.A642 delivered to Taramani for Rs.9211.00	Original	80
81	25/11/2011	Invoice No.A645 delivered to Taramani for Rs.21630.00	Original	81

S.No.	Date	Description of Document	Nature of Documents	Exhibit Nos.
82	30/11/2011	Invoice No.A653 delivered to Ascendas IT Park Taramani for Rs.437765.00	Original	82
83	30/11/2011	Invoice No.A654 delivered to Ascendas IT Park Taramani for Rs.14679.00	Original	83
84	03/12/2011	Invoice No.A659 delivered to Taramani for Rs.199237.00	Original	84
85	10/12/2011	Invoice No.A679 delivered to Ascendas IT Park Taramani for Rs.462895.00	Original	85
86		The compilation of various purchase orders in various Invoice Nos. delivered by the plaintiff from 18.08.2011 to 10.12.2011	Xerox	86
87	01.04.2009	Deed of Partnership executed between the 1st defendant and other two partners.	Xerox	87
88	11.01.2012	E-mail issued by plaintiff to the 2nd defendant and the Officer of Garnishee bank attaching the letter dated 11.01.2012 to the 1st defendant requesting to ensure payment due to the plaintiff.	Xerox	88
89	11.01.2012	Letter issued by plaintiff to the 1 st defendant demanding the outstanding sum of Rs.1,08,15,732/- within 7 days.	Xerox	89
90		Proof of acknowledgment towards service of the letter dated 11.01.2012 issued to the 1 st defendant	Xerox	90
91		Proof of acknowledgment towards	Xerox	91

S.No.	Date	Description of Document	Nature of Documents	Exhibit Nos.
		service of the letter dated 11.01.2012 issued to the 2 nd defendant		
92		Proof of acknowledgment towards service of the letter dt.11.01.2012, issued to one Mr.Rajah-Vice President of BACPL.	Xerox	92
93	19.01.2012	E-mail issued by plaintiff to 2 nd defendant and the Officer of Garnishee Bank to pay atleast 75% of the materials supplied by the plaintiff.	Xerox	93
94	28.01.2012	Letter issued by the 1 st defendant to the Garnishee requesting to forward all payments due and payable to the plaintiff.	Xerox	94
95	31.01.2012	Legal Notice sent by the counsel for plaintiff to the defendant	Xerox	95
96		Extract of SMS sent by Sethumadhanvan Ph.9884011669 to Plaintiff Ph.9444100305	Xerox	96
97	19.12.2011	Statement of accounts relating to the outstanding due to the plaintiff as against the 1 st defendant which is admitted by the 1 st defendant.	Xerox	97
98	20.07.2015	Certified copy of the interim decree in C.S.No.76 of 2012 and A.No.2533 of 2012	Certified copy	98
99	23.07.2018	Certified copy of the order passed in I.P. No.12 of 2018	Certified copy	99

19. A careful perusal of deposition of PW1, plaint averments and 99 exhibits reveal that the evidence of plaintiff is cogent. The suit claim is well

corroborated by the exhibits and the cogent evidence remains unrebutted. In other words, the suit claim has been proved. As already alluded to supra, suit claim is for a future interest at the rate of 12% per annum. Therefore, this Court has no difficulty in acceding to the request.

20. In the result, suit is decreed for a balance sum of Rs.39,18,928/- (Rupees Thirty Nine Lakhs Eighteen Thousand Nine Hundred and Twenty Eight only) with future interest at the rate of 12% per annum from the date of filing of the suit in addition to Rs.70,77,066/- (Rupees Seventy Lakhs Seventy Seven Thousand and Sixty Six only) with future interest at the rate of 12% per annum vide Ex.P98 being an interim decree made by this Court dated 20.07.2015 in A.No.2533 of 2012.

21. The suit is decreed. There shall be no order as to costs.

22.01.2020

Speaking/Non-Speaking order

Index : Yes/No

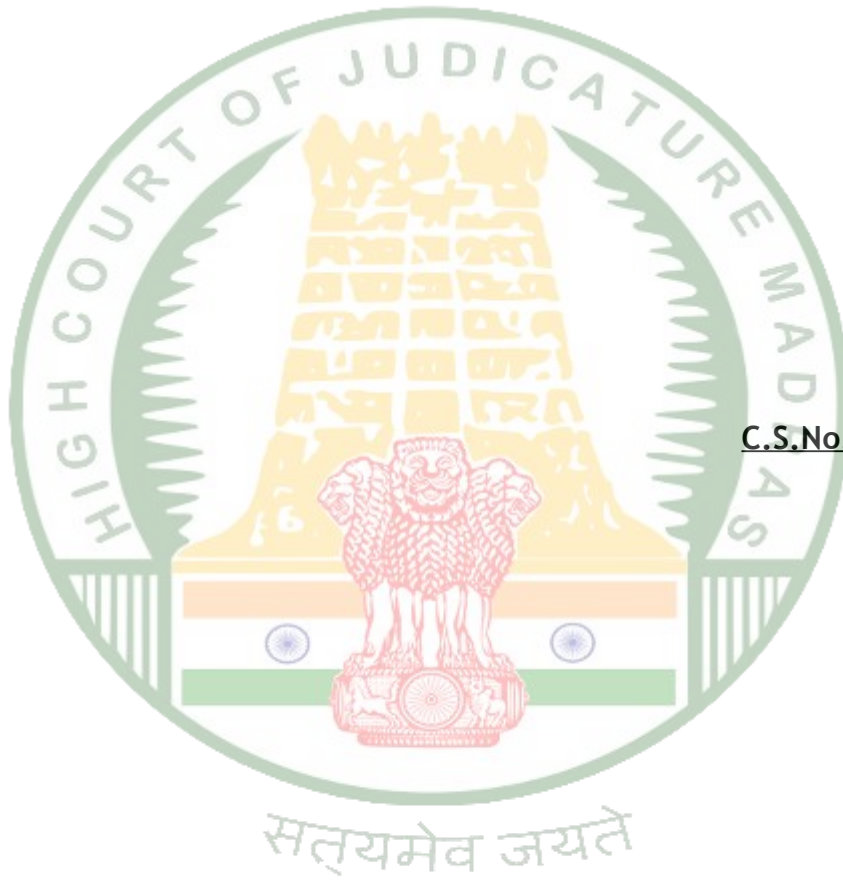
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