IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.716 of 2014
and
M.P.No.1 of 2014

1. M/s.Nitish Enterprises,
Stockist & Commission Agents,
having office at West Gate,
Vaikam - 686 141.

2. P.N.Girija
3. G.Prakash
4. G.Devanathan Kamath ..Appellants/Respondents/Defendants

(Appellants P2 to 3 are the Partners of the 1st appellant)

Vs.

Karnataka Soaps and Detergents Ltd,
having its Registered office at
Bangalore - Pune High way, Post Box No.5531,
Regional cum Branch office at
Seven Stat Building, II floor, A- 80,
2nd Avenue, Anna Nagar,
Chennai - 600 102.
Rep. by its Authorized Representative,
S.Muthaian
..Respondent/Appellant/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned II Additional City Civil Court, Chennai dated 29.08.2012 in A.S.No.179 of 2011, reversing the judgment and decree of the learned XIII Assistant City Civil Court, Chennai dated 17.08.2010 in O.S.No.3848 of 2002.

For Appellants : Mr.K.N.Natarajan
For Respondent : Mr.N.Karthikeyan

J U D G M E N T

The defendants in O.S.No.3848 of 2002 who succeeded in convincing the trial Court to dismiss the suit, upon reversal of the judgment and decree by the lower appellate Court, has come up with the second appeal.

2. The suit was laid by the plaintiff/respondent seeking recovery of sum of Rs.2,67,591.34p along with interest at 18 % p.a from the date of plaint till date of realization. The said sum of Rs.2,67,591.34p. was claimed as the balance due and payable by the defendants towards the goods sold and delivered by the plaintiff.

3. It is the case of the plaintiff that the defendants used to place orders for the goods manufactured by the plaintiff which is a Government undertaking involved in manufacturing of Soaps, detergents, cosmetics and agarbathis. As and when the goods are supplied, the defendants used to make part payment towards invoices and the same is credited to the account of the defendant as a running account was maintained. According to the plaintiff as per the accounts, a sum of Rs.2,67,591.34p was due and payable as on 04.01.2000. There were no further transactions between the plaintiff and the defendants. Since the defendant did not pay the amount due, despite demands, the plaintiff has come up with the suit.

4. The suit was resisted by the defendants contending that the City Civil Court, Chennai has no jurisdiction to entertain the suit. It was also contended that the defendants have paid the entire amount due and payable and the claim of sum of Rs.2,67,591.34ps as due from the defendants is wholly baseless. The defendants particularly claimed that the series of correspondence between the plaintiff and the defendants would show that the entire amount due has been paid without any default. The payments said to have been made on 31.08.1999 was specifically denied. It was also claimed that the suit without due authorization is not maintainable.

5. At trial, the plaintiff's authorized agent Mr.S.Muthian was examined as P.W.1 and Exs.A1 to A9 were marked on the side of the plaintiff. On the side of the defendants, Thiru N.Nithish was examined as D.W1 and Exs.B1 and B2 were marked.

6. The trial Court upon consideration of the evidence on record concluded that Ex.A6 statement of accounts cannot be relied upon being a document not certified by the Auditors by the plaintiff. It was also concluded that the plaintiff has not proved that the last payment was made on 31.08.1999 and therefore, the suit filed on 20.03.2002 is barred by limitation. The trial Court also disbelieved Ex.A6 since the same is not supported by relevant bank statements.

7. Aggrieved by the dismissal of the suit, the plaintiff preferred an appeal in A.S.No.179 of 2011.

8. Pending appeal, the plaintiff filed an application in CMP No.2338 of 2011 seeking permission to produce the bank statement as additional evidence under Order 41 Rule 27 of C.P.C., The Lower appellate Court allowed the application and received the bank statement and the same is marked as Ex.A10.

9. Upon correlating entry in the bank statement Ex.A10 and the statement of Accounts Ex.A6, the lower appellate Court concluded that the last payment was made by the defendants to the plaintiff on 17.09.1999 and therefore, the suit filed on 20.03.2002 was well within time.

10. The statement of the defendants that the entire amount due has been paid was also disbelieved . The lower appellate Court also take into the fact that Ex.A6 was not denied in the written statement. On the above conclusions, the lower appellate Court allowed the appeal and decreed the suit as prayed for. Aggrieved, the defendants have come up with the second appeal.

11. The following substantial questions of law were framed at the time of admission:

i. Whether the first appellate Court is right in arriving at a conclusion that it cannot consider the point of limitation in the absence of any pleadings by the defendant?
ii. Whether the first appellate Court can ignore statutory presumption as against the presumption on facts?
iii. Whether an uncertified book of accounts by competent authority recognized by law is valid and enforceable in court of law?
iv. Whether acknowledgment payment by the debtor is sine quo non in reckoning the period of limitation in a suit for recovery of money, in order to constitute the acknowledgment, the acknowledgment of payment must be in writing by the person making the payment. Receipts evidencing payment issued by the plaintiff would not amount to acknowledgment? Nagamani vs Shanmugam Finance 1992 (1) MLJ 603.

12. I have heard Mr.K.N.Natarajan, learned counsel appearing for the appellants and Mr.N.Karthikeyan, learned counsel appearing for respondent.

13. Mr.K.N.Natarajan, learned counsel for the appellants elaborating on the questions of law would vehemently contend that the lower appellate Court fell in error in accepting Ex.A6 and Ex.A10. According to him, the plaintiff having issued a

notice as early as on 19.04.2000 did not chose to file a suit immediately thereafter. It waited till 09.10.2001 to issue second notice and thereafter came up with the suit. The suit is based on the statement of accounts. Ex.A6 filed by the plaintiff would show that it is a running account and whenever the goods are delivered, debit entries are made and whenever the payments are received by the plaintiff from the defendants, those payments were credited to the account and corresponding credit entries were made.

14. It is not the case of the defendants that payment was made for the value of each invoice. The defendants have been making payments of lumpsum amount to the plaintiff. When the balance was struck on 04.01.2000, after crediting a sum of Rs.1,20,416.10/- towards sale promotion and distribution expenses whether there was a balance of Rs.2,67,591.34 ps due and payable by the defendants. This is the suit

amount which is sought to be recovered. The trial Court has decided that Ex.A6 is not supported neither by a certificate the Auditors of the plaintiff nor by any bank statement.

15. Before the appellate Court the plaintiff filed Civil Miscellaneous petition in CMP No.2338 of 2011 seeking to produce the additional evidence. The additional evidence produced was the bank statement of the plaintiff's branch at Kochi which shows that the last payment was received from the defendants on 17.09.1999. Therefore, the claim that the suit is barred by limitation was effectively met by the plaintiff.

16. The learned counsel appearing for the appellant would vehemently contend that ledger extract Ex.A6 alone cannot form the basis for the suit claim. The suit claim is based on Ex.A6 as well as the invoices. The defendants have not denied the fact that they had received goods from the plaintiff and that they had also made payments. Ex.A6 ledger extract maintained by the plaintiff in the usual course business and it shows that the last payment was made by cheque, which itself will show the genuineness of Ex.A6. Ex.A6 is also supported by Ex.A10 bank statement.

17. Taking into account of the fact that the defendants have failed to produce even a single receipt of payment said to have been made, I do not think that the lower appellate Court was wrong in accepting Exs.A6 and A10 to conclude that the suit was filed well within time and the defendants are liable to pay the suit amount.

18. The lower appellate Court has in the course of Judgment expressed that since the defendants had not raised the plea of

limitation, the same cannot be gone into. As rightly pointed out by the learned counsel for the appellant the said view of the lower appellate Court is incorrect under Section 3 of the Limitation Act, casts an obligation on the Court to decide the question of limitation even if it is not specifically raised. Therefore the 1st question of law is answered in favour of the appellant.

19. Therefore, it has to be decided whether the suit is actually barred by limitation or not. From Ex.A10 it is very clear that the suit is not barred by limitation. The last payment was made on 17.09.1999 therefore, the plaintiff will necessarily have three years from the said date to sue recovery. The suit itself has been filed on 20.03.2002 that is within three years from 17.09.1999. Therefore, it cannot be said that the suit is barred by limitation. Hence, the 2nd question of law is answered against the appellant.

20. Ex.A6 statement of accounts is a computer generated document. A perusal of Statement of accounts i.e. Ex.A6, it is seen that the same has been certified as a true copy by the authorised officer of the plaintiff which is the Government company. It is also stated that it is a a true extract of the ledger and the entries therein correlate with Ex.A10 Bank Statement. A ledger maintained by a company in the course of the usual business is admissible in evidence and it cannot be said that such ledgers cannot be received in evidence and cannot be considered as a proof of the claim of the plaintiff. Hence, the 3rd question of law is also answered against the appellants.

21. The 4th question of law is based on Section 19 of the Limitation Act. It is not a suit based on the acknowledgment of debt. It is based on the running account made by the appellants. As per Ex.A10 received in the appellate Court, the last payment was received on 17.09.1999. Therefore, I do not think that Section 19 of the Limitation Act cannot be applied to the case on hand. Hence, the 4th question of law is also answered against the appellants.

22. However, it is seen that the appellate Court has granted interest at 18% p.a from the date of the suit till date of realization. I do not think that the said grant of interest at 18 % from the date of suit till date of realization is justified.

24. Hence, the Judgment and Decree of the lower appellate Court is modified as follows:

The suit is decreed for a sum of Rs.2,67,591.34ps with interest at 12% p.a from the date of plaint till date of decree and 6 % thereafter till date of realization. In other respects the decree of the lower appellate court stands confirmed. With the above modification, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

vum

To

1. The II Additional City Civil Court, Chennai.

2. The XIII Assistant City Civil Court, Chennai .

+1cc to Mr.N.Karthikeyan, Advocate, S.R.No. 19401
+2cc to Mr.K.N.Natarajan, Advocate, S.R.No. 18295

S.A.No.716 of 2014 and
M.P.No.1 of 2014

VG II(CO)
GN(29/04/2021)