

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2017

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THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.S.No.129 of 2002

M/s. Tanfac Industries Ltd.,
Rep. by its Secretary
Mr.G.Balasubramaniam

.. Plaintiff

vs

1. M/s. Orichem Ltd.,
Rep. by its Managing Director
2. M/s. Siddarth Chemicals Corporation
Rep. by its Managing Partner
Mr.S.Kamalakar.

3. S.Kamalakar

4. Ajit Sivam

.. Defendants

Civil Suit filed under Order VII Rule 1 of CPC read with Order IV Rule of High Court Original Side Rules, praying for a Judgment and Decree, directing the defendants 2 to 4 to pay the plaintiff, jointly and severally a sum of Rs.42,21,098/- with subsequent interest at 24% per annum from the date of plaint on Rs.26,20,800/- and for costs.

For Plaintiff : Mr.M.C.Swamy

For Defendants : No appearance (Exparte)

J U D G M E N T

The suit has been filed for recovery of a sum of Rs.42,21,098/- with subsequent interest at the rate of 24% p.a., from the date of plaint on Rs.26,20,800/- from the defendants 2 to 4.

2. The plaint averments are as follows :

(i) The plaintiff is a joint venture company under Tamil Nadu Government undertaking, namely TIDCO and Aditya Birla Group of Companies. The plaintiff is engaged in manufacture of various industrial chemicals and also trading soda ash for the need of the Indian Chemical Industries. The first defendant is also engaged in manufacturing of various industrial chemicals. The second defendant carried on business as traders and distributors in industrial chemicals and is the authorised distributor and also the agent of the first defendant for their products at Chennai. The third and fourth defendants are the partners of the second defendant. After discussion with the plaintiff, the second defendant reached at an agreement to the effect that the plaintiff had to supply soda ash to the first defendant and the second defendant would make the payment to the plaintiff for the goods supplied to the first defendant. For that, the second defendant also agreed to clear the dues within 60 days time from the date of respective invoices and agreed to pay the over due interest if the amounts are not paid within sixty days.

(ii) The plaintiff supplied 351 M.T of Soda Ash to the first defendant between December 1998 and March 1989 under 39 invoices. The way bills were prepared by the second defendant with their margin of Rs.150 per MT in the freight charges. The second

defendant stood as a guarantor for the amount and the first defendant is the actual purchaser of the chemicals. The second defendant has not made any payment after 24.01.1999. The second defendant in their letter, dated 29.03.2000 accepting the liability sought for 4 to 5 months time for payment.

(iii) The suit filed by the second defendant against the plaintiff herein in O.S.No.8011 of 2000 on the file of the XIII Assistant City Civil Court, Chennai was dismissed. It was also observed by the above said Court that there is no bar to take any legal action both civil and criminal against the second defendant for recovery of the amount due. From the statement of accounts, a sum of Rs.27,28,000/- was due as on 21.01.1999 together with interest at 24% p.a., from 21.01.1999. Hence, the present suit has been filed.

3. The Assistant Manager of the plaintiff company has been examined as P.W.1 and Exs.P.1 to P.50 have been marked. The defendants were called absent and set exparte.

P.KALAIYARASAN, J

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4. Through the evidence of P.W.1 and the above documents, the

plaintiff has established the claim. In various letters addressed by the second defendant, he agreed to pay the sale price for the soda ash supplied to the first defendant by the plaintiff. The statement of accounts is Ex.P.49. In Ex.P.40, though the second defendant expressed its inability to pay the dues, has not disputed the claim of the plaintiff. Therefore, the plaintiff is entitled to the claim as prayed for.

In fine, this Civil Suit is decreed as prayed for with costs.

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