IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.NO.593 OF 2017
AND
C.M.P.NO.20183 OF 2017

M/s.Texcel International Pvt.Ltd.,
Having Office at Plot No.2 & 3,
Sengundram Industrial Area
(Near Ford India Ltd.,)
Singaperumal Koil Post,
Chengalpattu - 603 201 .. Appellant/Defendant

vs.

M/s.Chennai Steel Tubes
Rep.by one of its Partner,
G.Bhavanishankar,
S/o.Giridhsrilal Sharma,
No.26, Gajapathi Naidu Street,
Shenoy Nagar,
Chennai - 600 030
..Respondent/Plaintiff

Having office at No.38,
Venkatamaistry Street,
IInd Floor, Chennai-600 001.

Appeal filed under Section 96 & Order 41 Rule 1 of the Civil Procedure Code, against the Decree and Judgment dated 13.03.2017 passed in O.S.No.5298 of 2014 on the file of Learned XVII Additional City Civil Court, Chennai.

For Appellant : Mr.A.R.Nixon

For Respondent : Mr.M.Vijayanand

J U D G M E N T

The appeal suit is directed against the judgment and decree dated 13.03.2017 passed in O.S.No.5298 of 2014.

2.The defendant is the appellant in the appeal suit and the respondent plaintiff instituted the suit for recovery of money.

3. The brief facts as narrated in the plaint are that the plaintiffs are suppliers / dealers / agents of Steel tubes of various manufactures and are in the business for more than a decade and the Defendant is a customer and had purchased goods on various dates vide various invoices and as on 29.08.2012, there was an outstanding of Rs.7,07,781/- (Rupees Seven lakhs Seven Thousand Seven Hundred and Eighty one only) including invoice dues and penal amount. In fact, one of the defendant's employee namely Mr.Baskaran, AGM (Administration) had negotiation with the plaintiff and requested to come forward for an amicable settlement and put-forth to pay 75% of the amount and agreed to pay Rs.5,31,000/-(Rupees Five Lakhs and thirty one thousand only) in spite of agreeing for Rs.5,31,000/-, the defendant had not cared even to settle the reduced sum of Rs.5,31,000/- in the regard several letters and e-mails were sent to the defendant and lastly, the defendant had received a reminder from the plaintiff in the month of December 2013. The plaintiff further stated that the defendant having failed to pay as per the amicable settlement, the defendant had lost the right of repaying the reduced sum of Rs.5,31,000/- and as such, the defendant is liable to pay a sum of Rs.7,07,781/- with its corresponding interest. The plaintiff submits that the plaintiff sent a statement to the defendant and the same was received on 25.09.2012 by the defendant, as on that date the due was Rs.8,07,781/- and after the plaintiff received a sum of Rs.1,00,000/- on 28.09.2012 and as of 28.02.2012, the total outstanding due is Rs.7,07,781/- that the defendant kept on neglecting the demands and did not pay the dues which they were legally liable. Therefore, a lawyer's notice was issued on 05.03.2014 to the defendant and the same was duly received by the defendant on 06.03.2014 and thereafter, no reply was given and in-fact, they called the plaintiff over telephone and agreed to pay the dues. The plaintiff states that inspite of receipt of the lawyer's notice and the defendant agreeing to pay the dues over telephone, till date the defendant had failed to make payment. The plaintiff has got no other alternative except to file this suit for recovery for the outstanding amount of Rs.7,07,781/- along with its corresponding interest till date of realization. That the total dues unpaid by the defendant is Rs.7,07,781/- as on 28.09.2012 and the interest @ 2% per month for the period from 28.09.2012 to August 2014 is Rs.3,25,565/- and the total outstanding amounts to Rs.10,33,345/- (Interest for 707781 @2% per month is Rs.14,155.62 rounded to 1155 per months) as on filing of suit. That the defendant has failed and neglected to pay the aforesaid dues to the plaintiff in spite repeated demands and notice. Hence, the suit is filed.

4. The appellant defendant disputed the contentions set out in the plaint and denied allegations in-toto.

5. The contentions of the written statement are that the defendant denied all the allegations contained in the plaint except those are specifically admitted herein and plaintiff is put to strict proof of the same alleged in the plaint. The defendant is the Chief Executive Officer of M/s.Texcel International Pvt. Ltd. He denied the averments contained in paras 3 to 10 and that there is no any due outstanding amount of Rs.7,07,781/- never received any reminder in the month of December 2013 never acknowledged any statement of accounts on 25.09.2012 and it is false, frivolous and vexatious stated in the plaint. By mere production of numerical number cannot taken into the account of principal amount and also mere production of documents cannot be considered as authentic document unless it is proved by evidence of law. The given invoices were neither delivered by the plaintiff or received by the defendant. It is made out only for the purpose of this suit. The plaintiff is not stated the dates, the number of invoices and the claiming amount categorically in the plaint. Further, the plaintiff never explained how he arrived the principal amount of Rs.7,07,781/- and interest portion. The amount claiming in the plaint is Rs.10,33,346/- and under the summon for judgment the claiming amount is Rs.62,929/-. The plaintiff is confused in claiming sum against the defendant. The defendant is claiming that suit amount without any proof. The maximum commercial transaction took place in between the plaintiff and defendant during the period 2010 only and the claiming sum is related to that effect. The plaintiff never raised any objections with regard to previous bills at any point of time, and hence it is barred by Limitation Act. The defendant never made any negotiations with the plaintiff through defendant's employee for Rs.5,31,000/- when the plaintiff is admitting for Rs.5,31,000/- as per para 3rd of plaint. Then, now the plaintiff has come forward to sue for sum of Rs.10,33,346/-. The defendant has paid full amount to the plaintiff and there is no any due amount against the plaintiff. When the principal amount is not accepted by the defendant, the claiming interest portion by the plaintiff is challengeable one and triable issue. The plaintiff has not come forward with clean hands before this Court. The interest portion in the suit is not maintainable under law and 6% of interest is applicable from the date of filing plaint till the date of realization of decree. The plaintiff has neither cause of action nor is entitled for any relief. Accordingly, the suit is to be dismissed.

6. The trial Court framed the issues;

(i) Whether the plaintiff is entitled to recover a sum of Rs.10,33,346/- with interest @ 24% p.a on Rs.7,07,781/- from the date of plaint till the date of realization?

(ii) To what relief?

7. On the plaintiff side, PW1 examined and Ex.A1 to Ex.A5 are marked. On the defendant side, no evidence let in and no document are marked.

8. Admittedly, the suit is for recovery of money for a sum of Rs.10,33,346/- with subsequent interest. The case of the plaintiff is a supplier/dealers/agents of Steel Tubes on various manufactures and he is in the business of more than a decade and the defendant is a customer and purchase of goods on various dates vide various invoices and as on 29.08.2012, there was an outstanding of Rs.7,07,781/- including the invoice and penal amount and after amicable settlement, the defendant agreed to pay Rs.5,31,000/- with this correspondent interest. But the defendant are not paid the above said amount and the plaintiff issued a lawyer's notice on 05.03.2014 and the same was received and even thereafter, the defendant had not paid the suit claim. Thus, the plaintiff filed the suit for recovery of money.

9. The defendant argued before the trial Court that the invoice produced by the plaintiff are not authenticated documents and the invoice neither delivered by the plaintiff nor received by the defendant. The maximum commercial transaction took place in between the plaintiff and the defendant during the period of 2010 and therefore, the suit is barred by limitation. Further, he argued that the purchase order dated 10.01.2012 and 24.01.2012 are paid by the defendants and accordingly, prayed for the dismissal of the suit.

10. The trial Court considered the documents as well as the evidences. On the side of the defendant, nobody was examined nor any document was filed. Therefore, the trial Court considered the documents as well as the evidence filed by the plaintiff side and made a finding that the invoices are marked as Ex.A1 series in this case through PW1, which starts from 01.04.2010 to 19.09.2012 and the lawyers notice was sent by the plaintiff counsel to the defendant on 05.03.2014, which was marked as Ex.A4. The suit was filed on 10.09.2014 within three years from the date of purchase order and invoice it has been marked as Ex.A1. Thus, the suit is not barred by limitation. Ex.A4 has been received by the defendant on 06.03.2014 and the postal acknowledgement card was marked as Ex.A5. However, the defendant had not send any reply to Ex.A4 i.e., in the lawyer's notice send by the plaintiff. The trial Court based on these evidences and documents arrived a finding that neither the defendant nor any independent witness examined on the side of the defendant to rebut the plaintiffs claim.

11. The learned counsel for the appellant mainly contended that except with reference to the two invoices, which are of the year 2012, all other invoices are old one and therefore, the trial Court ought to have dismissed the claim on the ground of limitation. Those invoices are also included in the plaint after a lapse of three years and therefore, the suit is hit by the law of limitation. In this regard, the trial Court found that the invoices are marked as Ex.A1 series in this case through PW1, which starts from 01.04.2010 to 19.09.2012 and the lawyers notice was sent by the plaintiff counsel to the defendant on 05.03.2014, which was marked as Ex.A4. The suit was filed on 10.09.2014 and therefore, it is within a period of three years from the date of purchase order and invoice, which is marked as Ex.A1.

12. Considering the fact that it is the series of invoices and the cause was continuing right from the year 2010 to 2012, the trial Court found that the suit is not barred by limitation as it is a continuing cause in view of the fact that the business was being carried out continuously by the party and various invoices are filed in Ex.A1 series.

13. The learned counsel for the appellant cited the judgment of the Hon'ble Supreme Court of India in the case of Sundaram Finance Limited Vs. Noorjahan Beevi and another, reported in 2017(1) CTC 96, wherein the limitation for instituting the suit would commence from date of breach of agreement. Therefore, relying on the said judgment, the learned counsel is of an opinion that the trial Court ought to have dismissed the suit on the ground of limitation.

14. This Court is of the considered opinion that as far as the facts and circumstances of the present case is concerned, it was a business transaction between the plaintiff and the defendant, which was established. The plaintiff and the defendant were having the continuous business transactions on various occasions and number of invoices are marked as documents as Ex.A1 series. This being the factum, this Court is of the opinion that it is a continuing cause and based on the last invoices of the year 2012, the suit was instituted on 10.09.2014 within a period of three years and therefore, the ground raised regarding the limitation deserve no merit consideration.

15. The learned counsel urged this Court by stating that the interest awarded by the trial Court is not in consonance with the settled principles as the date fixed for payment of interest i.e., 24.01.2012 is an imaginary one and the trial Court is not clear, on what basis, such a said date has been taken for ordering interest. This Court is of the considered opinion that regarding the award of interest, normally Courts

follow the date of plaint till the date of decree and thereafter also, the interest is to be awarded. This apart, the award of 24% interest is undoubtedly exorbitant. However, the transaction being a business nature, an interest is to be awarded in a reasonable manner. This being the factum, interest portion alone is to be considered with reference to the appeal suit.

16. Perusal of Ex.A1 series, the purchase order dated 10.01.2012 for a sum of Rs.65,319.66 and the purchase order dated 24.01.2012 for a sum of Rs.2,10,958.18 are paid by the defendant and seal was affixed in the bill also. Thus, Rs.65,319.66 + Rs.2,10,958.18 = 2,76,277.84 has been paid by the defendant. The above said amount was to be deducted from the Principal amount of Rs.7,07,781/- and the same comes to Rs.4,31,503.16.

17. The trial Court rightly deducted the amount already paid by the defendant to the plaintiff and accordingly, arrived a conclusion that the defendants are liable to pay a sum of Rs.4,31,503.16 to the plaintiff with subsequent interest of 24% from the date of 24.01.2012 to till the realization. Accordingly, the issue was decided in favour of the plaintiff and the decree was passed, directing the defendant to pay a sum of Rs.4,31,503.16 with subsequent interest at 24% from the date of 24.01.2012 to till the realization to the plaintiff.

18. This Court is of the considered opinion that the defendant has not examined any witness nor filed any document to establish his case. Contrarily, the plaintiff could able to establish the business transactions as well as the invoices and the bills raised and establish the case for recovery of money. The amount paid by the defendant was also deducted by the trial Court and there is no infirmity or perversity as such in respect of the findings arrived.

19. This Court is of an opinion that awarding of 24% is exorbitant and the same deserves to be reduced. Accordingly, the rate of interest of 24% per annum ordered by the trial Court is modified as 12% per annum. Accordingly, the appellant defendant is directed to pay Rs.4,31,503.16 along with the interest at the rate of 12%(twelve percent) per annum from the date of plaint till the date of decree and thereafter, 6%(six percent) per annum till the date of realisation.

20. It is brought to the notice of this Court that the appellant had deposited a sum of Rs.2,15,752/- on 12.02.2018 pursuant to the interim order passed by this Court. The respondents are permitted to withdraw the said amount with accrued interest by filing an appropriate application. The appellant is directed to pay the balance amount with interest to

the respondents within a period of four months from the date of receipt of a copy of this judgment.

21. Accordingly, the judgment and decree dated 13.03.2017 passed in O.S.No 5298 of 2014 stands modified only in respect of the rate of interest fixed by the trial Court and in all other aspects, the judgment and decree stands confirmed. Consequently, A.S.No.593 of 2017 stands allowed in part. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Kak

To

The XVII Additional Judge,
City Civil Court, Chennai.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.A.R.Nixon, Advocate, S.R.No.8885
+2cc to Mr.M.Vijayanand, Advocate, S.R.No.8867

A.S.No.593 of 2017

EV(CO)
CS/17/09/2020