



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.455 of 2008

Indian Oil Corporation,
Rep. By its Chief Divisional Manager,
Marketing Division,
No.739, Anna Salai,
Chennai-600 018.

... Appellant/2nd Defendant

Vs.

1.The Tamil Nadu Civil Supplies Corporation Ltd.,
Rep. By its Senior Regional Manager,
Madras Region, 7, Conron Smith Road,
Gopalapuram,
Chennai-600 086.

... 1st Respondent/Plaintiff

D.Vaidyalingam (since deceased)

2.D.V.Rajasekharan

3.D.V.Shyam Sundar

... Respondents/Defendants 3&4

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code praying to set aside the judgment and decree dated 28.09.2006 made in A.S.No.36 of 2006 on the file of 2nd Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 28.07.2005 made in O.S.No.9171 of 1995 on the file of the 1st Assistant Judge, City Civil Court, Chennai-104.

For Appellant : Mr. S.Udayakumar

For Respondents : Mr. K.Raghuraman for R1
R2 & R3 - set aside ex parte

JUDGEMENT

The second defendant is the appellant before this Court. The facts which culminated in filing of the above Second Appeal are as follows:



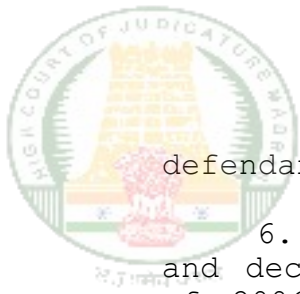
The parties are referred to in the same litigative status as before the trial Court viz., I Additional City Civil Court, Chennai in O.S.No.9171 of 1999.

2. The plaintiff had been appointed as the Dealer of the second Defendant on 09.04.1991. On the date of taking possession of the Petroleum Bunk at No.736, Poonamallee High Road, Aminjikarai, Madras-600 029, there was already stock of petrol and petroleum products to the value of Rs.54770.33. This amount was collected by the second defendant from the plaintiff. In the course of running of the business, the plaintiff had purchased a load of petroleum from the second respondent and was keeping a stock of petroleum in the bunk. All of a sudden, on 23.04.1991, one Vaidhyalingam, representing the first defendant, sole proprietary concern, trespassed into the petroleum bunk and forcibly took possession of the same along with the help of unruly elements. The plaintiff would submit that when the first defendant had taken unlawful possession, there was products to the value of a sum of Rs.142762.56 in the bunk. The plaintiff had immediately intimated the second defendant and also made several police complaints. The possession of the bunk was taken on the basis of an order passed in Tr.CMP.No.5724 of 1991 in O.S.No.6021 of 1997. Against this order, the second defendant filed SLP No.7601 of 1991 on the file of the Hon'ble Supreme Court. Though they had obtained a stay of operation of the judgment in Tr.CMP. No.5724 of 1991, however, the first defendant continued to enjoy the petrol bunk. Considering the loss that they had been put to, the plaintiff had filed a suit directing the defendants to reimburse the sum of Rs.142762.56 together with interest at 18% p.a.

3. The first defendant had passed away and his children were brought on record as defendants 3 and 4. However, the defendants 3 and 4 remained ex-exparte.

4. The second defendant had filed a written statement inter alia contending that they were not liable to reimburse the plaintiff and it was only the first defendant who had to make good the loss to the plaintiff that the suit against the second defendant was misconceived. They would further contend that they had advised the plaintiff to take appropriate steps against the deceased first defendant and had made it clear that it was their look out to collect the money from the first defendant and that they were in no way liable for the act of omission and commission by the first defendant.

5. The trial Court had framed issues and during trial, the plaintiff examined himself as PW1 and marked exhibits A1 to A10 and on the side of the second defendant, one witness was examined as DW1, who was one of the representatives of the 2nd



defendants and no documents were marked on their side.

6. The trial Court decreed the suit and the said judgment and decree was challenged by the second defendant in A.S.No.36 of 2006 on the file of the II Additional City Civil Court, Chennai. The appellate Court also confirmed the judgment and decree of the trial Court and dismissed the appeal. Challenging the same, the present Second Appeal has been filed.

7. When the appeal came up for admission, the respondent/plaintiff who was represented by counsel had agreed to argue the matter. Therefore, the second appeal was posted for arguments and ultimately it has been taken up for arguments today.

8. Mr.Udhayakumar appearing on behalf of the appellant would submit that the outlet had been handed over to the plaintiff who had thereafter purchased the products from the second defendant and it is their look out to protect the premises and having failed to do so, they cannot mulct the second defendant with their loss. Further, it is the first defendant who has to make good the loss since they have trespassed illegally and taken charge of the outlet. Therefore, the finding of the courts below that the second defendant is liable to reimburse the loss is without any basis. The said argument was stoutly refuted by the learned counsel appearing for the plaintiff who would state that the Courts below have analyzed the evidence available on record in order to decree the suit filed by the plaintiff. The learned counsel in addition to the above arguments would submit that if the court is not inclined to allow the second appeal, the interest portion may be reduced from 12% to 9%.

9. Heard the learned counsel and perused the records.

10. The petrol bunk was handed over to the plaintiff when legal proceedings were pending between the second defendant and the first defendant. Being fully aware about the same, the second defendant had inducted the plaintiff into the petrol bunk. The first defendant entered the premises only on the strength of the orders of this Court. The second defendant has received the payments for the products both from the plaintiff as well as the first defendant and the entire episode of the takeover of the bunk only on account of the dispute between the second defendant and the first defendant. The Courts below would refer to the police protection that was sought by the second respondent for the premises in question from 23.04.1991. However, despite the above, the plaintiff had been forcibly removed from the bunk and the products were taken over. Another interesting fact that has been noticed by the appellate Court is



that after the first defendant had forcibly entered the bunk, the second defendant continued to make supplies to the first defendant for a period of over a year. Therefore, the second defendant having received their money cannot deny the plaintiff of their dues. The courts below have rightly concluded that the second defendant is liable to reimburse the plaintiff. I do not find any substantial questions of law that merits interference by this Court. However, considering the request of Mr.Udayakumar, learned counsel appearing on behalf of the appellant and taking into account the fact that the second defendant is a public sector undertaking and the plaintiff is also a statutory body, the interest is reduced from 12% to 9%. Only to that extent, the Second Appeal is partly allowed and the judgment and decree in A.S.No.36 of 2006 of the II Additional City Civil Court, Chennai, is modified.

11. In the result, the Second Appeal is partly allowed. No order as to costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional Judge,
City Civil Court,
Chennai.

2.The 1st Assistant Judge,
City Civil Court,
Chennai-104.

3.The Section Officer,
V.R.Section,
High Court,
Madras.

+1cc to Mr.K.Raghuraman, Advocate Sr No.35471
+1cc to Mr.S.Udayakumar, Advocate Sr No.35691

S.A.No.455 of 2008

NMI (CO)
PR (25/10/2021)