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S.A.No.1038 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 20.12.2021

C O R A M

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

Second Appeal No.1038 of 2006
and M.P.No.1 of 2006

1.M/s.Magnum Enterprises

rep. By its

Authorised Signatory

Nishant Bandia

No.11 Camac Street

Kolkata – 700 017

rep by Power Agent Mr.R.Krishnamurthy

2.M/s.Magnum Enterprises

rep. By its Branch Manager

Murthy

No.0/1 (68)

Chevaliar Shivaji Ganesan Salai

South Boag Road, T.Nagar,

Chennai 600 017.

.. Appellants/
Defendants

Vs

1.M/s.Ployelastic Pvt Ltd.,

rep. By its Managing Director

S.Ravirajan

S/o.G.Somasundaram

..Respondents No.1
/Plaintiff.



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2.M/s.Jap Overseas
rep. By its Proprietor
Sudip Mukherjee
No.14/8a Gariahat Road
Kolkata 700 019

.. Respondent No.2/
1st defendant.

Prayer: Second Appeal is filed against the judgment and decree dated 28.03.2006 made in A.S.No.527 of 2004, on the file of the Additional District Judge, Fast Track Court-II, Chennai-1, in confirming the Judgment and Decree dated 08.04.2004 made in O.S.No.23 of 2003, on the file of XVII Assistant Judge, City Civil Court, Chennai.

For Appellants ... Mr.Udayakumar

For Respondents ... Mr.L.Rajasekar for R1

J U D G M E N T

The second appeal is preferred against the judgment and decree dated 28.03.2006, made in A.S.No.527 of 2004, on the file of the Additional District Judge, Fast Track Court-II, Chennai-1, in confirming the Judgment and Decree dated 08.04.2004 made in O.S.No.23 of 2003, on the file of XVII Assistant Judge, City Civil Court, Chennai.

2. The defendants are the appellants herein. For the sake of convenience, the parties are referred to as before the trial Court.



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3. Facts briefly narrated and necessary for the disposal of the second appeal is as follows:

The suit is for recovery of money. The plaintiffs are the private limited company manufacturing poly plastic and elastic materials. On behalf of the defendants 2 and 3, the first defendant made an order for the purchase of elastic materials worth about Rs.75,000/-. Accordingly, on 09.06.2001, the plaintiffs despatched the materials on credit basis. The defendants 2 and 3 have to repay the said amount with interest at the rate of 24% per cent on or before 15.06.2002. Even though notices and legal notice have been sent, the said amount has not been repaid. Hence, the suit.

4. It is the case of the defendants before the trial Court that, there was no memorandum of understanding between the plaintiffs and the defendants 2 and 3. It is between the first defendant and the plaintiffs and therefore, the defendants 2 and 3 are not necessary parties to the suit. The defendants denied the fact that the materials have been obtained from the plaintiffs and since they bought the materials from the first defendant, the suit is not maintainable as against them. For the purchase of materials



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from the first defendant also, the defendants 2 and 3 have repaid the amount to the first defendant and hence, the question of repayment of money with interest does not arise and prays for dismissal of the suit.

5. The trial Court framed the following substantial questions of law:

“1. Whether the plaintiffs are entitled for the relief as prayed for?

2. Whether the defendants 2 and 3 are liable to pay the suit amount?

3. To what relief the plaintiffs is entitled for?”

6. Before the trial Court, on the side of the plaintiffs, one witness by name Ravirajan was examined as P.W.1 and as many as 26 documents were exhibited as Ex.P1 to Ex.P26. On the side of the defendants, one R.K.Moorthy was examined as D.W.1 and Ex.D1 to Ex.D4 were marked as documents.

7. The trial Court, on considering the oral and documentary evidence, came to the conclusion that the defendants 2 and 3 have



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admitted that they bought the materials on the recommendation made by the first defendant from the plaintiffs and they have admitted that they have also repaid the amount to the first defendant. However, it is seen that there is no Memorandum of Understanding between the plaintiffs and the first defendant and also between the first defendant and the defendants 2 and 3. However, they admitted that they purchased the materials from the plaintiffs and they have also admitted the fact that they have not repaid the amount to the plaintiffs. Considering these facts and circumstances, the suit is decreed as prayed for and the trial Court directed the defendants to pay the suit amount of Rs.2,00,498.83/- with interest at the rate of 24% from the date of petition till the date of deposit. As against which, the defendants 2 and 3 filed the appeal.

8. The lower appellate Court framed the following substantial questions of law:

“1. Whether the respondent/plaintiff has proved their claim?

2. Whether the plea of discharge and lack of jurisdiction are proved by the 2nd and 3rd defendants/appellants?



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3.To what relief the appellants are entitled to?”

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9. On considering the oral and documentary evidence, the lower appellate Court dismissed the appeal thereby confirming the judgment and decree of the trial Court. As against the same, the defendants are before this Court with this second appeal.

10. While admitting the second appeal, this Court framed the following substantial questions of law:

“Whether the lower appellate Court is right in dismissing CMP No.655 of 2005 filed by the appellants under Order 41 Rule 27 of the Code of Civil Procedure without considering the reasons stated by the appellants for the non production of the additional evidence before the trial Court and whether the non reception of the additional evidence sought to be adduced by the appellants has affected the decision rendered by the lower appellate Court?”

11. Heard the learned counsel for the appellants and the learned counsel for the respondents.



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12. The learned counsel for the appellants raised the following grounds:

The lower appellate Court has not considered the contentions put forth by the appellants/defendants that the orders were placed at Kolkata and hence, the cause of action arose only at Kolkata and not before this Court and payments were made only to the 1st defendant, who, in turn, instructed the plaintiffs to deliver the goods at Chennai. It is, therefore, the contention of the appellants that the orders were not directly placed to the plaintiffs and it was placed only through the 1st defendant. The Courts below failed to consider that the payments were only made to the first defendant for the goods ordered and the first defendant has not made the payment to the plaintiffs for which the defendants 2 and 3/appellants herein are not at all held liable. The Courts below have not taken into consideration the jurisdiction aspect, which is erroneous and unsustainable.

12.1. The trial Court has failed to take into consideration the credit note, namely, Ex.B1 and Ex.B2 produced by the 1st defendant and also failed to consider Ex.B3, which is a payment receipt and in the judgment



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of the trial Court, there is no discussion whatsoever with regard to Exs.B1 to B3.

12.2. The contention of the learned counsel for the appellants is that the first appellate Court ought not to have dismissed the application filed under Order 41 Rule 27 of CPC.

12.3. Further more, with regard to interest portion, the trial Court ought not to have awarded interest at the rate of 24%. When the appellants are not liable to pay the suit claim, they are not entitled to pay the interest also. It is the case of the appellants that the breach of contract is by the first defendant and hence the findings rendered by the Courts below are erroneous and are liable to be set aside.

13. The learned counsel for the first respondent would submit that the findings rendered by the Courts below need not be interfered with, since there is no privity of contract between the plaintiff and the second and third defendants and the goods were supplied by the plaintiffs for the orders placed with the second respondent/first defendant at Kolkata. The



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amounts were also settled to the first defendant and there is no liability for the second and third defendants to the plaintiff. It is the further contention of the respondents that during the pendency of the first appeal, the plaintiffs filed a petition under Order 41 Rule 27 of the Code of Civil Procedure seeking permission to adduce additional evidence by way of documents. The first appellate Court had come to the right conclusion that neither the written document nor the evidence speaks about the documents and hence, the appellants/defendants cannot be permitted to adduce additional evidence and dismissed the petition as not maintainable, since the appellants do not satisfy the requirements under Order 41 Rule 27 of the Code.

14. Heard the learned counsel on either side and perused the materials available on record.

15. As far as the contention raised by the learned counsel for the appellants that the first appellate Court ought not to have dismissed the application under Order 41 Rule 27 is concerned, in order to find out the justification, the documents sought to be produced were looked into.



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Those documents are invoices of the plaintiffs issued in favour of the second and third defendants and the payment receipt between the second and third defendants is on one hand and the first defendant on the other hand.

16. Since the non production of those documents before the trial Court have not been explained by the appellants, the first appellate Court has rightly mentioned that those documents did not find a place either in the written statement or in the evidence of the defendants and therefore rightly dismissed the application. In relying upon the documents at this point of time, the primary requirement of filing an application under Order 41 Rule 27 CPC itself is not satisfied. It is nowhere stated that despite due diligence, the defendants were able to produce those documents before the trial Court. Therefore, the first appellate Court is justified in not admitting the application under Order 41 Rule 27 CPC.

17. The next issue to be decided is whether the application under Order 41 Rule 27 CPC, even if it had been allowed would have an impact upon the result of the case. The very nature of the document especially



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the receipt for payment would clearly go to show that those documents were not between the plaintiffs and defendants 2 and 3, but between the 1st defendant and the defendants 2 and 3. It is relevant to point out that the first defendant remained exparte before the trial Court and he was not examined as a witness. If the plea of discharge, as taken by the defendants 2 and 3, is by way of payment to the first defendant and not to the plaintiff, the defendants 2 and 3 are duty bound to explain how the plea of discharge as against the first defendant would be an answer to the claim of the plaintiffs. Considering all those aspects, the first appellate Court has rightly confirmed the judgment of the trial Court and has dismissed the appeal. Hence, this Court finds no merit in the grounds of appeal and the appeal is liable to be dismissed.

18. In the result, the second appeal stands dismissed. However, there is no order as to costs. Consequently connected Miscellaneous Petition is closed.

15.12.2021

Index : Yes/No
Internet : Yes
RR



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J.NISHA BANU, J.

RR

To

1. The Additional District Judge, Fast Track Court-II, Chennai-1
2. The XVII Asst Judge, City Civil Court, Chennai.
3. V.R. Section, High Court, Madras.

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