



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 19TH DAY OF NOVEMBER 2021

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

C.S. No.625 of 2011

C.S.No.625 of 2011:-

1. M/s.MTC Business P Ltd.,
Represented by its Manager,
Mr.Chintan Dhariwal,
Registered Office at No.301-302, Vertex Vikas “A” Wing,
Andheri East, Mumbai,
Having Regional Office at
808, Poonamalli High Road,6-A, Clave Chaiteu,
Kilpauk, Chennai 600 010.
 2. M.S.Metal & Steels Pvt Ltd.,
Rep. By its Manager Mr.Bhavesh J Bafna,
808, VI “A” Clave Chateau (Nilgiris Super Market, Building),
Poonamalli High Road,Kilpauk, Chennai 600 010. ...Plaintiffs
- Vs
1. Mr.S.P.Annamalai
S/o.A.N.Subbaiyah,
106, Lloyds Road, Royapettah,
Chennai – 600 014.
 2. MAG SPOLKA Z.O.O.,
Rep by its Director Mr.Harpreeth singh Thappar,
UL, Lanow, A 25/15,
87-800, WLOCLAWEK, Poland.
 3. Union Bank of India,
Mayani Manor, Andheri Kurla Road,
Andheri East,Mumbai – 69



4. Kredyt Bank S.A.ul
Kosciuszki-3,
Wloclawek, Post,
Code – 87-800, Poland.

5. S.Shann,
Laks Singapore PTE LTD.,
No.3, Cole man street,
No.03-29-Peninsula-HEfel
Singapore 179 804.

...Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass a judgment and decree in favour of the plaintiffs against the defendants jointly and severally:-

a)for declaration declaring that the sale transaction between the plaintiffs and the second defendant through the first and fifth defendants pursuant to the Proforma Invoice-Sale Contract dated 07.05.2011 is cancelled & the second defendant is not entitle to receive the sale consideration for the delivered goods of 500MT since the commodity were not sent as mentioned in the said proforma Invoice-Sale Contract.

b)To direct the defendants jointly and severally to refund a sum 239000USD (equivalent to Rs.1,09,94,000/- (Rupees One Crore Nine Lakhs Ninety Four Thousand Only) at the existing rate of US Dollar as on the date of filling suit at Rs.46/- per USD) with interest of 24% pa from the date of filling of this suit till realization for which Letter of Credit Bearing No 3192NI000 25711 dated 16.5.2011 accepted and confirmation given by the third defendant Bank and encashed by the second defendant.

c)To recover a sum of Rs.8,31,600/- towards the local cost spent by the Plaintiffs



to handle the unworthy material of 462Mts from the first, second and fifth defendants jointly and severally.

d)for declaration declaring that the sale transaction between the plaintiffs and the second defendant through the first and fifth defendants pursuant to the Proforma Invoice-Sale Contract dated 9.6.2011 is cancelled and the second defendant is not entitled to receive the sale consideration for the undelivered goods of 1500MT since the commodity were not sent as mentioned in the said proforma Invoice-Sale Contract.

e)To grant permanent injunction restraining the third defendant Bank from giving acceptance and confirmation to the fourth defendant to honor the Letter of Credit bearing No.31920NI00030911 dated 13.8.2011 issued by the third defendant Bank and allowing the second defendant from encashing the Letter of Credit and thus render justice.

f)To grant cost of the suit.

This suit coming on this day before this court for hearing in the presence of Mr.Srinath Sridevan, Advocate for the 3rd defendant herein and the plaintiffs herein not appearing in person or by advocate and upon reading the plaint filed herein and this court having observed that the plaintiffs are not interested in prosecuting this suit, **it is ordered:-**



That the suit in C.S.No.625 of 2011, be and is hereby dismissed for default.

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WITNESS THE HON'BLE MR. JUSTICE M.DURAISWAMY, ACTING
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 19TH
DAY OF NOVEMBER 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the
Orders/Judgments.



C.S. No.625 of 2011

ORDER

DATED :19/11/2021

THE HON'BLE MR.JUSTICE
N.ANAND VENKATESH

FOR APPROVAL:22/02/2022

APPROVED ON:01/03/2022



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :19.11.2021

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

C.S.No.625 of 2011

1. M/s.MTC Business P Ltd.,
Represented by its Manager,
Mr.Chintan Dhariwal,
Registered Office at No.301-302, Vertex Vikas “A” Wing,
Andheri East, Mumbai,
Having Regional Office at
808, Poonamalli High Road,
6-A, Clave Chaiteu,Kilpauk, Chennai 600 010.

2. M.S.Metal & Steels Pvt Ltd.,
Rep. By its Manager Mr.Bhavesh J Bafna,
808, VI “A” Clave Chateau (Nilgiris Super Market, Building),
Poonamalli High Road,
Kilpauk, Chennai 600 010/

.. Plaintiffs

/versus/

1. Mr.S.P.Annamalai

2. MAG SPOLIKA Z.O.O.,
Rep by its Director Mr.Harpreeth singh Thappar,
UL, Lanow, A 25/15,
87-800, WLOCLAWEK, Poland.

3. Union Bank of India,
Mayani Manor, Andheri Kurla Road,
Andheri east, Mumbai – 69



4. Kredyt Bank S.A.ul
Kosciuszki-3,
Wloclawek, Post,
Code – 87-800, Poland.

5. S.Shann,
Laks Singapore PTE LTD.,
No.3, Cole man street,
No.03-29-Peninsula-HEfel
Singapore 179 804

..Defendants

Prayer: Civil Suit has been filed under Order IV Rule I of O.S.Rules and order VII Rule 1 of CPC praying to pass a judgment and decree for:-

(a) granting declaration that the sale transaction between the plaintiffs and the second defendant through the first and fifth defendants pursuant to the proforma invoice-sale contract dated 07.05.2011 is cancelled and the second defendant is not entitle to receive the sale consideration for the delivered goods of 500 mt since the commodity were not sent as mentioned in the said proforma invoice-sale contract.

(b) directing the defendants jointly and severally to refund a sum 239000USD (equivalent to Rs.1,09,94,000/- (Rupees One crore Nine lakhs Ninety four thousand only) at the existing rate of US dollar as on the date of filing suit at Rs.46/- per USD) with interest of 24% pa from the date of filing of this suit till realisation for which letter of credit bearing No.3192NI000 25711 dated 16.05.2011 accepted and confirmation given by the third defendant bank and encashed by the second defendant.



(c) To recover a sum of Rs.8,31,600/- towards the locs cost spent by the plaintiffs to handle the unworthy material of 462 mts from the first, second and fifth defendants jointly and severally.

(d) Declaring that the sale transaction between the plaintiffs and the second defendant through the first and fifth defendants pursuant to the proforma invoice sale contract date 09.06.2011 is cancelled and the second defendant is not entitle to receive the sale consideration or the un-delivered goods of 1500 mt since the commodity were not sent as mentioned in the said proforma invoice sale contract.

(e) Granting permanent injunction restraining the third defendant bank from giving acceptance and confirmation to the fourth defendant to honour the letter of credit bearing No.31920NI00030911 dated 13.08.2011 issued by the third defendant bank and allowing the second defendant from encashing the letter of credit and thus render justice.

(f) granting cost of the suit.

For Plaintiffs :Mr.U.Karunakaran

For Defendants : Mr.Srinath Sridevan

for D3

**J U D G M E N T**

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When the matter was taken up for hearing on 21.09.2021, the learned counsel for the plaintiffs submitted that he wants to take instructions from the plaintiffs. Thereafter, the matter was once again taken up for hearing on 05.10.2021 and the learned counsel for the plaintiffs once again took time to report as to whether the plaintiffs would be interested in prosecuting the suit. When the matter was once again called on 21.10.2021, there was no representation for the plaintiffs. Even today, there is no representation for the plaintiffs. It is clear that the plaintiffs are not interested in prosecuting this suit and accordingly, this suit is dismissed for default.

Sd./-N.A.V.J
19.11.2021

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.