



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 28TH DAY OF JUNE, 2021

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

C.S. No.170 of 2020

&

A. No.1576 of 2020 & A. No.1765 of 2021

M/s. P.K. Vaduvammal
A registered Partnership Firm
Rep. by its Partner Mr. P.C. Shyamsunder
New No. 97, Old No. 143A,
Rasappa Chetty Street,
Park Town, Chennai 600 003.

..Plaintiff/Applicant
(in A. Nos. 1576/2020 & 1765/2021)

Vs.

M/s. M.J.D. Construction & Engineering Contractors
Private Limited
M.J. Bhavankannummamoodu,
Palukal Post 629 170
Kanyakumari District,
Tamil Nadu - 629 170.

..Defendant/Respondent
(in A. Nos. 1576/2020 & 1765/2021)

C.S. No.170 of 2020

Civil Suit praying that this Hon'ble Court be pleased to pass a

Judgment and Decree:

A. direct the Defendant to pay to the plaintiff a sum of
Rs.2,43,00,000/- (Rupees Two Crores Forty Three Lakhs Only) together
with interest at 18% per annum on Rs.2,43,00,000/- (Rupees Two Crores

Forty Three Lakhs Only) from the date of plaint till date of realization of the



entire suit claim;

WEB COPY B. For the costs of this suit.

A. No. 1576 of 2020

Application praying that this Hon'ble Court be pleased to issue summary judgement against the Respondent and decree the present suit in terms of Memo of Compromise dated 06.01.2020 in favour of the Applicant.

A. No. 1765 of 2021

Application praying that this Hon'ble Court be pleased to pass an order payment out of a sum of Rs.93,00,000/- (Rupees Ninety Three Lakhs only) in favour of the Applicant/Plaintiff.

This Civil Suit along with these applications coming on this day before this court for hearing in the presence of Mr. S.R. Raghunathan, Advocate for the plaintiff in C.S. No.170/2020 and for the applicant in A.Nos. 1576/2020 & 1765/2021 and Mr. E. Om Prakash, Senior Counsel for Mrs. P. Meghane Nair, Advocates for the defendant in C.S. No. 170/2020 and for the respondent in A. Nos. 1576/2020 & 1765/2021 and upon reading



affidavit of P.C. Shyamsunder and certificate of funds filed in A. No. 1765/2021 and additional counter affidavit of D. Janaka Jebangelin filed in A. No. 1576/2020 and the order dated 03/09/2020 made in A. No. 1576 & 1577/2020 and this court is of the view that as against the suit claim of Rs.2,43,00,000/- the plaintiff herein has already been paid Rs.1.5crores and Rs.93,00,000/- is deposited by the garnishee and the same is in the suit account therefore, towards fully quiet and satisfaction, allowing these applications and partly allowing the suit, and it is ordered and decreed as follows:-

That the Registrar General of this court do pay a sum of Rs.93,00,000/- (Rupees Ninety Three Lakhs Only) now in court deposit standing to the credit of the suit C.S. No. 170 of 2020 to M/s. P.K. Vaduvammal, a registered partnership firm, rep. by its partner, Mr. P.C. Shyamsundar, the plaintiff herein, and issue a cheque therefor in their favour.

2. That any criminal proceedings initiated by the plaintiff as against the defendant regarding the six cheques, and the same shall be withdrawn by the plaintiff and shall not prosecute the defendant for dishonoring of those six cheques.



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3. That there shall be no order as to interest and costs of this suit.

WITNESS THE HON'BLE JUSTICE MR. SANJIB BANERJEE, THE
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 28TH
DAY OF JUNE, 2021.

Sd./-

ASSISTANT REGISTRAR (COMM. CASES)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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VF-14.07.2021

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C.S. No.170 of 2020
&
A. No.1576 of 2020
&
A. No. 1765 of 2021

DECREE :-

DATED: 28.06.2021

THE HON'BLE DR. JUSTICE
G. JAYACHANDRAN

FOR APPROVAL:14/07/2021

APPROVED ON: 20/07/2021

COPY TO:

1. The Registrar General,
High Court, Madras.

2. Accounts Section.

(Note: Registry is directed to pay
Rs.93,00,000/- to the Plaintiff in
compliance of the procedure.)



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.170 of 2020

and A.Nos. 1576 of 2020 and 1765 of 2021

M/s.P.K.Vaduvammal
A registered Partnership Firm,
Rep. by its Partner Mr.P.C.Shyamsunder,
New No.97, Old No.143A,
Rasappa Chetty Street,
Park Town, Chennai 600 003. .. Plaintiff

VS

M/s.M.J.D.Construction & Engineering Contractors
Private Limited,
M.J.Bhavankannummamoodu,
Palukal Post 629 170,
Kanyakumari District,
Tamil Nadu 629 170. ...Defendant

Prayer:Civil Suit filed under Order IV Rule I of the O.S.Rules Read with Order VII Rule I of C.P.C., 1908, praying for the following:

a) to direct the defendant to pay to the plaintiff a sum of Rs.2,43,00,000/- (Rupees Two Crores Forty Three Lakhs Only) together with interest at 18% per annum on Rs.Rs.2,43,00,000/- (Rupees Two Crores Forty Three Lakhs Only) from the date of plaint till date of realization of the entire suit claim;

b) for the cost of this suit.

For Plaintiff : Mr. S.R.Raghunathan

For Defendants : Mr.E.Om Prakash

Senior Counsel

for Mrs.P.Meghane Nair



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JUDGMENT

Heard the learned counsels for the plaintiff and the defendant.

2. The suit is filed for recovery of a sum of Rs.2,43,00,000/- together with interest at the rate of 18% per annum. The cause of action for the present suit has arisen from a compromise entered between the parties before the NCLT. From the pleadings, it appears that the plaintiff dealing in aluminium, bitumen, steel, etc., had supplied to the defendant for credit goods worth Rs.2,17,67,058/- against invoices but the defendant had failed to pay. Hence, the plaintiff has approached the NCLT under Section 8(1) of the Insolvency and Bankruptcy Code, 2016, calling upon the defendant to pay the money due towards the goods sold and delivered. In the said proceedings, the parties on 06.01.2020 had entered into compromise wherein the defendant has agreed to pay a sum of Rs.2,43,00,000/- to the plaintiff as full and final settlement towards the principal and interest for the delayed payment. To discharge the said liability, the defendant has issued six post dated cheques. Unfortunately, all those cheques were returned which has forced the plaintiff to explore the common law remedy available to him for filing suit for recovery of money along with a garnishee

application



3. The defendant after receiving the suit summon, has filed written statement wherein raised a preliminary objection regarding the maintainability of the suit referring the order of the NCLT dated 06.01.2020, wherein there is a specific observation by the NCLT that in case of difficulty in implementing the compromise order, the parties shall approach NCLT.

4. From the representation made by the counsels, this Court understand that this objection was overruled by the learned Single Judge and O.S.A is preferred before the Division Bench is pending. Be as it may, as far as the other defense taken by the defendant in the suit is that though a compromise decree was entered between the parties before the NCLT, due to covid situation, the defendant was not able to honor the cheques issued and had made all bonafide efforts to pay the plaintiff as per the terms of the compromise entered. However, a suit that too under the Commercial Courts Act is not maintainable.

5. In the garnishee application, the garnishee had deposited a sum of Rs.93,00,000/- as per the order passed by this Court in Application No.1577 of 2020. Pursuant to that, the plaintiff has taken out an application for payment out in Application No.1765 of 2021. Pending suit, the defendant



has already paid a sum of Rs.1,50,00,000/- to the plaintiff. Therefore, the learned counsel appearing for the defendant submitted that at the time of entering into compromise before the NCLT, the defendant had no opportunity to look into the accounts and in the distress situation, the defendant agreed to pay a sum of Rs.2,43,00,000/- to the plaintiff. However, now after verifying the accounts, the defendant come to know only a sum of Rs.1,53,00,000/- towards principal is payable to the plaintiff and therefore, the compromise entered between the parties before the NCLT requires a revisit.

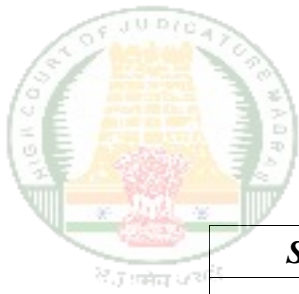
6. To counter the above submission, the learned counsel for the plaintiff submitted that it is a new argument placed by the defendant for the first time in the payment out application. Ever since the proceedings before the NCLT, the quantum of money payable to the plaintiff against the goods sold and delivered was never in dispute and on 06.01.2020, the defendant consciously agreed to pay a sum of Rs.2,17,00,000/- towards principal and Rs.25,00,000/- towards interest for a full quit and settlement. To honor the said compromise, six cheques were issued but not honored. Therefore, the present defense taken by the defendant regarding the quantum payable is only an after thought to delay the process.



7. After considering the rival submissions and perusing the records, this Court holds that the suit is very much maintainable under the Commercial Courts Act jurisdiction and the suit filed pursuant to the compromise entered between the parties before the NCLT as a common law remedy available to the plaintiff to enforce his right for recovery of money.

8. As far as the quantum which is now disputed by the defendant, this Court finds that claim of Rs.2,17,00,000/- before the NCLT is supported by invoice. The said amount for the goods sold and delivered neither at the time of claim before the NCLT nor at the time of claim under this suit, the defendant has raised any dispute over the invoice or the value of the invoice. Hence, it is too late for the defendant to say that they are not liable to pay Rs.2,17,00,000/- towards goods sold and delivered which is the principal amount as per the invoices and as claimed before the NCLT by the defendant. To be noted, even thereafter, the conduct of the defendant issuing the following six cheques indicates that there is no dispute over the money dues and they have accepted to pay Rs.2,43,00,000/- to the plaintiff in six installments.

<i>S.No.</i>	<i>Cheque No.</i>	<i>Date of Issue</i>	<i>Amount (Rs.)</i>	<i>Drawn on</i>
1	189951	31.01.2020	55,00,000/-	Union Bank of India
2	189952	29.02.2020	35,00,000/-	Union Bank of India



S.No.	Cheque No.	Date of Issue	Amount (Rs.)	Drawn on
3	189953	31.03.2020	35,00,000/-	Union Bank of India
4	189954	30.04.2020	35,00,000/-	Union Bank of India
5	189955	31.05.2020	35,00,000/-	Union Bank of India
6	189956	30.06.2020	48,00,000/-	Union Bank of India

Only after those six cheques got bounced and the realisation of money became impossible, suit has been filed. Being a commercial transaction, jurisdiction of this court to entertain the suit is well found. Pending suit, the defendant had already paid Rs.1.5 crores and as far as the balance Rs.93 lakhs towards the principal, claimed under the suit the garnishee had deposited the money in the Court on 08.01.2021, pursuant to the order passed by this Court in the garnishee application.

9. In the said circumstances, the plaintiff has filed Application No.1765 of 2021 for payment out of the said money and also Application No.1576 of 2020 for summary judgment. The pleadings as well as the documents in this case does not require any oral evidence to decide, since the liability is admitted before the competent forum viz., NCLT and also in the written statement, there is no triable issues. In the said circumstances,



admitted liability of Rs.2,43,00,000/- by way of compromise memo and by way of six cheques issued for the payment of the said amount. At the most, the dispute in the suit claim shall be only regarding liability to pay interest pending suit and if yes, the rate of interest.

10. Learned counsel appearing for the plaintiff herein submits that the plaintiff is ready to forgo the interest part in the suit in the event, the Court permits the plaintiff to withdraw Rs.93,00,000/- deposited by the garnishee and pass summary judgment to that effect.

11. This court finds that the application for summary judgment was filed on 13th March 2020 and notice was issued to the defendants long back. Matter has been kept pending for consideration all along and due to the subsequent events like deposit of payment of Rs.1.5 crores towards the suit claim and deposit of Rs.93,00,000/- by the garnishee, which satisfies the principal amount of the said claim, this Court is of the view quietus should be given to the dispute by passing summary judgment in the following terms:

a) As against the suit claim of Rs.2,43,00,000/- the plaintiff herein has already been paid Rs.1.5crores. Rs.93,00,000/- is deposited by the garnishee and the same is in the suit account. Therefore, towards full quit



and satisfaction, the plaintiff is permitted to withdraw Rs.93,00,000/-, which is in the suit account.

b) There shall be no order as to interest and suit costs or

c) Any criminal proceedings initiated by the plaintiff as against the defendant regarding the six cheques mentioned above, the same shall be withdrawn by the plaintiff and shall not prosecute the defendant for dishonoring of those six cheques.

11. Accordingly, the suit is partly allowed. No order as to costs. Application Nos.1576 of 2020 and 1765 of 2021 are allowed.

Sd./- G.J.J.,

28.06.2021

// Certified to be true copy//

Dated at Madras this day of 2021.

Court Officer(O.S.)

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