

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.09.2021	Pronounced on : 09 .09.2021
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Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.276 of 2020

M/s.Pasha Associates,
A Partnership Firm,
Represented by its Managing Partner,
Mr.V.Syed Hateem Pasha,
Registered Office at Ward No.13,
Kadaripalaya Street,
Sidlaghatta, Chikballapur, Karnataka – 562 105.

... Plaintiff

/versus/

1. M/s.Prasad Gemplex,
Rep. by its Partner,
Mr.A.Balakrishnan,
Old No.2, New No.3,
Sarangapani Street,
T.Nagar, Chennai – 600 017.

2. Mr.A.Balakrishnan,
S/o.Anthantha Krishnan,
Old No.2, New No.3,
Sarangapani Street, T.Nagar,
Chennai – 600 017.

3. Mr.Shyam Kumar,
S/o.Ramanathan,
Partner, M/s.Prasad Gempex,
Sarangapani Street, T.Nagar,
Chennai – 600 017.

... Defendants

Prayer:- This Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of C.P.C and Section 7 of the Commercial Court, Commercial Division and Commercial Appellate Division of the High Court Act, 2016.

(a). Directing the Defendants to jointly and severally pay a sum of Rs.5,34,74,914/- as on date with interest at the rate of 18% per annum on the Principal sum of Rs.3,26,93,553/- from the date of plaint till the date of payment in full to the plaintiff.

(b). The costs.

For Plaintiff : Ms.Anbarasi Rajendran,
for M/s.AAV Partners

For Defendant : set *exparte*

JUDGMENT

The suit is filed for recovery of money. The sole plaintiff has filed the suit against three defendants, who are the partnership firm and its two partners.

2. The case of the plaintiff is that, they are engaged in business of selling shrimps for several years. The 1st defendant through 2nd and 3rd defendants approached the plaintiff and represented that they are engaged in business of

exporting various types of frozen marine products and expressed their interest in buying 1,13,463.100kgs of shrimps from the plaintiff. The plaintiff, thereafter, delivered shrimps to the processing unit at Nellore, on the representation of the defendants that they are under an agreement with M/s.Star Agro Marine Exports, Nellore, for facility of processing, packing and storing. Between April 2017 to July 2017, the plaintiff supplied shrimps for a total value of Rs.3,15,93,553/- and same was accepted by the defendants and issued acknowledgement by way of weighment slip. As against the supply of goods worth Rs.3,51,93,553/-, the 1st defendant paid Rs.10,00,000/- and Rs.15,00,000/- by way of net transfer on 31.07.2017 and 09.08.2017. Thereafter, the 1st defendant issued two cheques (i). dated 07.08.2017 bearing No.000393 for a sum of Rs.1,93,90,075/- and (ii) dated 25.09.2017 bearing No.000434 for a sum of Rs.80,00,000/- in favour of the plaintiff drawn on ICICI bank, Saligramam branch.

3. To the shock of the plaintiff, two cheques given by the defendants was returned with an endorsement as “funds insufficient” and payment stopped respectively. Thereafter, the defendants approached the plaintiff and sought for time. Therefore, the plaintiff has not taken any penal action against the defendants,

for dishonouring the cheques. However, the defendants have not paid the money in spite of exchange of legal notice. Hence, the suit is filed for recovery of money.

4. Due to National lockdown owing to the pandemic situation though the plaintiff was intend to file the suit during the month of March – 2020, they could not file the suit at that time. The plaint presented through e-filing on 13.10.2020. In any event, in view of the order passed by the Hon'ble Supreme Court in *Suo Motu* Writ Petition (Civil) No.3 of 2020, the period of limitation is extended for filing the suit. Hence, the suit is well within the time.

5. The suit summons was served on the defendants 1 and 2 on 22.10.2020 but the defendants did not enter appearance. Therefore, on 12.07.2021, the defendants were set *ex-parte*. The matter was posted before the Additional Master – IV for recording evidence.

6. One Mr.Syed Hateem Pasha, the Managing Partner of the plaintiff's Company was examined as P.W.1. The proof affidavit in lieu of Chief Examination was filed. Ex.P.1 to Ex.P.15 were marked.

7. The Learned Counsel appearing for plaintiff referring the pleadings, proof affidavit and the documents submitted that the plaintiff's Company is engaged in the business of selling shrimp. The plaintiff's Company consisting of four partners including P.W.1. The partnership deed is Ex.P.2. The copy of the agreement entered between the 1st defendant and M/s.Star Agro Marine Exports Private Limited, the processor is Ex.P.4. Based on this agreement and on instruction of the defendants shrimp were sold by the plaintiff to the defendants under the invoices marked as Ex.P.5 series. The defendants paid a sum of Rs.10,00,000/- on 31.07.2017 and Rs.15,00,000/- on 09.08.2017 and same is reflected in the account details issued by Oriental Bank of Commerce marked as Ex.P.6. The two cheques, (i). dated 07.08.2017 for a sum of Rs.1,93,90,075/- and (ii) dated 25.09.2017 for a sum of Rs.80,00,000/- drawn in favour of the plaintiff by the defendants are marked as Ex.P.7 and Ex.P.8. On the back side of the cheques, the clearance seal of the Oriental Bank of Commerce, Nellore is affixed. Ex.P.9 and Ex.P.10 are the slips issued by the Bank indicating the cheques (Ex.P.7 & Ex.P.8) returned for insufficient funds and payment stopped respectively. The letter dated 08.02.2017, from the defendant indicates that shrimp supplied by the plaintiff based on the orders placed by the defendant and calling for the statement

of account. Ex.P.12 is the statement of accounts indicating that a sum of Rs.3,51,93,553/- is due and payable as on 09.08.2017. To prove the factum of delivery of goods, the weighment slip indicating the weight and the value is filed as Ex.P.13 series. As per weighment slip which is duly acknowledged by the defendants, the total value of the goods sold is Rs.3,42,03,537.10p.

8. The Learned Counsel appearing for the plaintiff would submit that the factum of delivery of goods is admitted by the plaintiff through their letter (Ex.P.11), dated 08.02.2018. The delivery of goods also been proved through weighment slip marked as Ex.P.13 series. For the discharge of liability, the plaintiff has issued two cheques (Ex.P.7 & Ex.P.8), which was returned under the intimation slip. Therefore, the suit has to be decreed as prayed for.

9. Heard the Learned Counsel for the plaintiff and exhibits perused.

10. From the Ex.P.4, the agreement between the M/s.Star Agro Marine Exports Private Limited and the 1st defendant partnership firm indicates that there was an agreement between the 1st defendant and M/s.Star Agro Marine

Exports Private Limited, for processing shrimp. The plaintiff is not a party to this document. However, the 1st defendant through letter dated 08.02.2018 marked as Ex.P.11, admits that, shrimp were delivered to M/s.Star Agro Marine Exports Private Limited, for processing, based on the orders passed by the defendant. To prove the delivery of the goods, the weighment slip Ex.P.13 is marked. As per this weighment slip between 04.05.2017 till 02.07.2017, totally goods worth Rs.3,42,03,537.10p has been supplied. For this supply, the statement of accounts furnished by the plaintiff which is marked as Ex.P.12 indicates that, a sum of Rs.3,51,93,553/- is due and payable as on 09.08.2017. As against this liability, the defendant has issued two cheques one for a sum of Rs.1,93,90,075/- and another for a sum of Rs.80,00,000/-. However, both the cheques were bounced and not realised.

11. On cumulative assessment of these documents, it is to be concluded that the defendants are liable to pay a sum of Rs.3,51,93,553/- as on 09.08.2017. The suit for recovery of money ought to have been filed within three years period from the date due and payable. Being a mutual, open and running account, the last transaction is the payment of Rs.15,00,000/- on 09.08.2017. The

Limitation starts from the end of that financial year. The plaint has been presented on 13.10.2020. At paragraph No.18 of the plaint, the reason for the delay in filing the suit is explained and in the light of the Hon'ble Supreme Court order passed under Article 142 of the Constitution of India, the time prescribed under the Limitation Act has been extended in view of lockdown announced by this Government, soonafter the breakdown of pandemic. Therefore, the suit is deemed to have been filed within the period of Limitation.

12. As far as the claim of interest, it is to be noted that being a commercial transaction, the plaintiff is entitled for interest but not till the date of filing the suit, since there is no agreement regarding the interest between the parties. Nowhere, in their transaction, there is an indication that the plaintiff will be entitled for interest for delayed payment. Therefore, the plaintiff is entitled for the principal amount for the goods sold and delivered, till the date of filing the suit. The plaintiff will be entitled for interest at the rate of 12% from the date of filing the suit, till the date of realisation. Accordingly, the Suit is decreed as prayed for. With costs.

09.09.2021

Index : Yes/No.

Internet :Yes/No.

List of Witness examined on the side of the Plaintiff:-

Mr.Syed Hattem Pasha

List of Witness examined on the side of the Defendants:-

Nil

List of the Exhibits marked on the side of the Plaintiff:-

Sl.Nos.	Exhibits	Dated	Description of documents
1.	Ex.P.1	10.07.2019	Original Authorisation Letter.
2.	Ex.P.2	18.11.2016	Original Registered Partnership Deed of the Plaintiff
3.	Ex.P.3	03.02.2017	Original Certificate of Registration of Plaintiff.
4.	Ex.P.4	05.04.2017	Photocopy of Agreement entered between M/s.Star Agro Marine Exports Private Limited and the 1 st defendant.
5.	Ex.P.5	31.05.2017 to 30.06.2017	Original Invoices (26No's) raised by the plaintiff on the 1 st defendant.
6.	Ex.P.6	29.03.2019	Original Account Details certificate issued by Oriental Bank of commerce to the plaintiff.
7.	Ex.P.7	07.08.2017	Original Cheque issued by the 1 st defendant to the plaintiff.
8.	Ex.P.8	25.09.2017	Original Cheque issued by the 1 st defendant to the plaintiff.
9.	Ex.P.9	26.09.2017	Original Cheque return memo issued by Oriental bank of Commerce to the plaintiff.
10.	Ex.P.10	23.11.2017	Photocopy of Cheque return memo issued by Oriental Bank of Commerce to the plaintiff.
11.	Ex.P.11	08.02.2018	Original Letter issued by the 1 st defendant to the plaintiff.
12.	Ex.P.12	--	Original Ledger Account of the plaintiff.
13.	Ex.P.13	--	Original Statement of Account along with weighment slips (31Nos) given by the 1 st defendant to the plaintiff.
14	Ex.P.14	19.03.2019	Original Legal Notice issued on behalf of the plaintiff to the defendant.
15	Ex.P.15	--	Original Statement of Account of the plaintiff along with interest calculation.

Dr.G.Jayachandran,J.

bsm



Pre-delivery judgment in
C.S.No.276 of 2020

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