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S.A.(MD)Nos.868 & 869 OF 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2021

CORAM

**THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN**

S.A. (MD)Nos.868 & 869 of 2013 and

M.P. (MD)Nos.2 of 2013 & 1 of 2014

S.A. (MD)No.868 of 2013

The Madurai District Milk Producers'  
Co-operative Union, Cattle Feed Unit,  
Through the General Manager. ... Appellant/Respondent/  
Defendant

Vs.

P.Velraj,  
S/o.V.Paramasivam,  
M/s.Arun Chemicals Proprietor,  
No.46.C, C.M.R.Road, Madurai. ... Respondent/Appellant/  
Plaintiff

**Prayer:** Second appeal filed under Section 100 of C.P.C., to set aside the Decree and Judgment dated 25.07.2012 in A.S.No.4 of 2011 passed by the VI Additional District and Sessions Judge, Madurai, by allowing revised rate of interest and modifying the Decree and Judgment of the I Additional Sub Judge, Madurai, in O.S.No.114 of 2002 dated 31.08.2010 in other respects and pass such further appropriate orders as expedient to the facts and circumstances of the appeal.

S.A. (MD)No.869 of 2013

The Madurai District Milk Producers'  
Co-operative Union, Cattle Feed Unit,  
Through the General Manager. ... Appellant/Appellant/  
Defendant

Vs.

P.Velraj,  
S/o.V.Paramasivam,  
M/s.Arun Chemicals Proprietor,  
No.46.C, C.M.R.Road, Madurai. ... Respondent/Respondent/  
Plaintiff

**Prayer:** Second appeal filed under Section 100 of C.P.C., to set aside the Decree and Judgment passed by the VI Additional District and Sessions Judge, Madurai passed commonly in A.S.No.34 of 2011 dated 25.07.2012 modifying the Decree and Judgment of the I Additional Sub Judge, Madurai in O.S.No.114 of 2002 dated 31.08.2010 and pass such further appropriate orders as expedient to the facts and circumstances of the appeal.



(in both S.As.)  
For Appellant  
For Respondent

: Mr.S.Seenivasagam  
: Mr.G.Aravindhnan

\* \* \*

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

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The defendant in O.S.No.114 of 2002 on the file of the I Additional Sub Judge, Madurai, is the appellant in these two second appeals. The respondent herein Thiru.P.Velraj filed the said suit seeking recovery of a sum of Rs.2,45,997.80/- from the appellant herein with interest at 24% p.a. The suit was decreed on 31.08.2010 and the appellant herein was directed to pay a sum of Rs.1,59,892.45/- with interest at the rate of 9% p.a. with effect from 08.02.1999 till the date of filing of the suit and at the rate of 6% p.a. from the date of filing of the suit till date of realisation. The plaintiff feeling aggrieved with regard to the rate of interest awarded in his favour filed A.S.No.4 of 2011. The defendant filed A.S.No.34 of 2011 before the VI Additional District and Sessions Judge, Madurai. Both the appeals were heard together. By Judgment and Decree dated 25.07.2012, A.S. No.34 of 2011 filed by the defendant was dismissed. A.S.No.4 of 2011 filed by the plaintiff was allowed and the defendant was directed to pay interest on the principal amount of Rs.1,59,892/- at the rate of 15% from 08.02.1999 till the date of the Decree and at the rate of 6% p.a. from the date of decree till the date of realisation. Challenging these two decrees and Judgments, the aforesaid second appeals have been filed.

2. S.A.(MD)No.868 of 2013 was admitted on 09.01.2014 on the following substantial questions of law:-

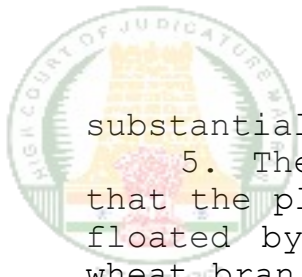
- "i) When the agreement/contract has no provision for interest, is it permissible for the Courts to direct payment of interest?
- ii) Whether the Courts below properly followed the rationale in deciding the rate of interest?"

3. S.A.(MD)No.869 of 2013 was admitted on 09.01.2014 on the following substantial questions of law:-

- "i) Whether the civil Court has jurisdiction to entertain a suit on a subject matter coming under Section 90 of the Tamil Nadu Cooperative Societies Act?
- ii) Whether the express bar of jurisdiction of the civil Court by Section 156 of the Tamil Nadu Cooperative Societies Act is applicable to the subject matter of the suit?
- iii) Whether there is a proper cause of action to institute the suit?
- iv) Whether the suit was barred by limitation?

4. Heard the learned counsel on either side on the aforesaid

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substantial questions of law framed by this Court.

5. The learned counsel appearing for the appellant submitted that the plaintiff was the successful tenderer in the tender process floated by the appellant. The appellant had undertaken to supply wheat bran, rice bran and other items of cattle feed. The appellant had also remitted earnest money deposits to the tune of Rs.75,000/- on various dates. The appellant's counsel would submit that the materials supplied by the plaintiff were substandard and not in accordance with the specifications of the tender notification. The defendant sent a sample of wheat bran supplied by the plaintiff to the Food Analysis Laboratory, King Institute, Guindy, Chennai, for analysis. According to the analyst report, the cattle feed supplied by the plaintiff was of very inferior quality. Therefore, appropriate deductions had to be made making payment to the plaintiff. The value of the materials supplied by the plaintiff was Rs.2,68,807/-. The defendant had already paid a sum of Rs.1,61,284/-. In view of the adverse report given by the analyst, 74% cut had to be effected and it came to Rs.1,98,917.81/-. Hence, the defendant had paid an excess amount. Earnest money deposit was also pending with the defendant. After making necessary book adjustments, the defendant had to make payment to the plaintiff to the tune of Rs.39,024.73/-. The learned counsel appearing for the appellant would state that by suppressing all these material facts, the suit had been filed as if the appellant had to pay a sum of Rs.1,59,892.45/- to the plaintiff.

6. The core argument of the learned counsel appearing for the appellant is that as per the terms of the tender notification, the successful tenderer should become an associate member of the appellant union. The appellant is a cooperative society. Therefore, any dispute between the management of the society and the members will have to be resolved only through arbitration as contemplated under Section 90 of the Tamil Nadu Co-operative Societies Act. Condition No.32 of the tender notification made it clear. The learned counsel would further contend that even though this point was not specifically taken in the written statement, it was projected during arguments and the trial Court had also referred to the same. In any event, this is a pure question of law, he is entitled to canvass this contention. The learned counsel would further point out that as per Section 156 of the Tamil Nadu Co-operative Societies Act, there is an express bar on jurisdiction of the civil Court. The supplies were made during 1998 but the suit was instituted only on 04.02.2002. Thus, it was patently barred by limitation. He also drew my attention to Section 3 of the Limitation Act 1963 which states that the bar of limitation will have to be borne in mind by any Court even if it is not specifically pleaded in the written statement.

7. The learned counsel appearing for the appellant submitted that the Courts below have completely misdirected themselves in law. He prays for reversal of the Judgments and Decrees passed by the



Courts below.

8. Per contra the learned counsel appearing for the respondent/plaintiff would contend that no substantial question of law really arises for consideration in these second appeals and called for dismissal of the second appeals and confirmation of the Judgment and Decree passed by the first appellate Court.

9. I carefully considered the rival contentions and the went through the evidence on record.

10. Let me take the question regarding limitation first for consideration. It is true that the supplies were made by the plaintiff/respondent in the second half of the year 1998. it is also true that the suit itself came to be instituted only on 04.02.2002. Limitation period in such cases is three years. But on 08.02.1999, a sum of Rs.1,61,284/- was paid by the appellant union. Therefore, limitation of three years would have to be calculated afresh from the said date. The payment challan has been marked as Ex.A.9. The Courts below rightly found that the period of limitation of three years will have to be calculated from 08.02.1999. The suit was obviously filed within time. I therefore answer the substantial question of law framed in this regard in favour of the respondent.

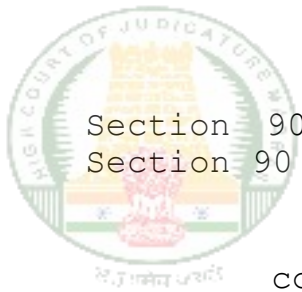
11. The other major contention advanced by the learned counsel appearing for the appellant is that the civil Court lacked the jurisdiction to even entertain the suit.

12. The tender notification has been marked as Ex.A.20. The appellant's counsel relied on condition Nos.31 and 32. They read as follows:-

"31. All the successful tenderers should become an associate member of the union by paying Rs.10/-(Rupees Ten only) as non-refundable one.

32. If the union incurs any loss due to the default of the contractor on account of poor quality raw material supply to Cattle Feed Plant then the same will be recovered from the party from any other transactions with the Union or through arbitration and supplier/tenderer will not be permitted to participate in the future tenders without the clearance from the board of our union."

13. It is true that as per the condition No.31, the successful tenderer should become an associate member of the appellant union by paying Rs.10/- as non-refundable one. The sheet anchor of the argument of the learned counsel appearing for the appellant is predicated on this. His argument is that since the respondent became a member of the appellant union during the relevant time, the dispute between the parties must be resolved only in terms of



Section 90 of the Tamil Nadu Co-operative Societies Act, 1983.  
Section 90 of the Act reads as follows:-

**" Settlement of disputes**

**90. Disputes .-** (1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub-section (3) of section 75 or the Registrar or the society or its board against a paid servant of the society) arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society, or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past, agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.

**Explanation.-** For the purposes of this section, a dispute shall include-

(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of the deceased member whether such debt or demand be admitted or not.

(ii) a claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property and

(iii) a decision by the board under sub-section (3) of section 34;

Provided that no dispute relating to, or in connection with, any election shall be referred under this sub-section till the date of the declaration of the result of such election.

(2) The Registrar may, on receipt of such reference;

(a) decide the dispute himself or transfer it for disposal to any person subordinate to and empowered by him; or

(b) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to such rules as may be prescribed, the



Registrar may withdraw any dispute referred under sub-section (1) to any person subordinate to him or transferred under clause (a) or referred under clause (b) of sub-section (2) by the Registrar or any person subordinate to him and-

(a) decide the dispute himself; or  
(b) transfer it for disposal to any person subordinate to and empowered by him; or  
(c) refer it for disposal to an arbitrator or arbitrators; or

(d) retransfer the same for disposal to the person from whom it was withdrawn; or

(e) refer it for disposal to the arbitrator or arbitrators from whom it was withdrawn.

(4) If a question arises, whether for the purposes of this section any person is or was a member of a registered society, or whether the dispute referred for decision is a dispute touching the constitution of the board, or the management or the business of the society, such question shall be decided by the Registrar.

(5) Where any dispute referred to the Registrar under sub-section (1) or withdrawn by him under sub-section (3) relates to immovable property, the Registrar or the person or the arbitrator or arbitrators to whom it is transferred, referred or retransferred under sub-section (2) or sub-section (3) may, on the application of a party to the dispute direct that any person who is interested in such property, whether such person be a member or not, be included as a party to the dispute and any decision that may be passed on the reference, by the Registrar, the person, the arbitrator or arbitrators aforesaid, as the case may be, shall be binding on the party so included, provided that he shall be liable only to the extent of such property.

(6) The Registrar may pass such interlocutory orders as he may deem fit in the interests of justice.

(7) Nothing contained in the Arbitration Act, 1940 (Central Act X of 1940) shall apply to any arbitration under this section.

(8) Nothing contained in section 34 of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall apply to any decision passed or award made under this section.

(9) (a) The period of limitation for referring a dispute under this section shall be regulated by the provisions of the Limitation Act, 1963 (Central Act 36 of 1963) as if the dispute were a suit and the Registrar a civil court,. Subject to the following modifications, namely:-

(i) when the dispute relates to a society in respect



of which a special officer has been appointed under section 88 or to a society which has been ordered to be wound up under section 137, the period of limitation shall be six years from the date of the order issued section 88 or section 137, as the case may be:

(ii) save as otherwise provided in clause (i), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (1), the period of limitation, shall be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(iii) when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election.

(b) Notwithstanding anything contained in clause (a), the Registrar may admit a dispute after the expiry of the period of limitation if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired.

14. Section 90 of the Tamil Nadu Co-operative Societies Act can be invoked only if the respondent is a member of the appellant union. Condition No.31 only states that a successful tenderer should become an associate member of the union. The membership of the plaintiff in the appellant union is a question of fact. It must be specifically pleaded and established. It cannot be raised in the abstract. The appellant union must have established by adducing evidence that the plaintiff was a member of the union during the relevant time. In the written statement, there is no pleading in this regard. No document has been marked on the side of the defendant. When there is no pleading in the written statement and when there is no evidence, I have to hold that the plaintiff was not a member of the appellant union during the relevant time.

15. I cannot also accept the construction put forth by the appellant's counsel on condition No.32. It only states that if the appellant union had suffered any loss on account of poor quality of material, it will be set off against the contractor's other bills or through arbitration. It does not anywhere state that if the tenderer has any dispute with the management, he has to invoke only arbitral remedy. On the other hand, condition No.18 of part-II of the tender notification states that the disputes must be settled within the jurisdiction of Madurai Court only. Therefore, the Courts below did have the jurisdiction to decide the dispute. Neither Section 90 nor Section 156 of the Tamil Nadu Co-operative Societies Act will come into play. This question is also answered against the appellant.



16. The appellant had specifically taken a plea that there was some serious dispute regarding the quality of the material supplied by the plaintiff. In fact the report of the analyst is adverse to the plaintiff. The defendant should at the very inception taken up the matter with the plaintiff. There is no such correspondence between the parties. Only after the plaintiff issued Ex.A.13 Notice dated 06.12.1999, the defendant replied on 08.04.2000 vide Ex.A.17. Till then, the defendant had not confronted the plaintiff. Therefore, the plea regarding adverse quality of the materials supplied by the plaintiff was rightly held as not established.

17. There cannot be any dispute on the proposition that where is liability to pay but there is delay in making the payment, even if the contract does not provide for it, payment must be paid with interest. Hence, this is also answered against the appellant. Next comes the question regarding rate of interest. The principal amount due by the defendant was Rs.1,59,892.45/-. The plaintiff also did not move the Court immediately. The defendant had made their stand abundantly clear way back in April 2000 itself. But the suit was filed only in 2002. Taking note of the conduct of the plaintiff, the trial Court rightly decreed that the plaintiff is entitled to 9% interest from 08.02.1999 till filing of the suit and interest at the rate of 6% p.a. thereafter. The appellate Court without any justification enhanced the interest rate. S.A.(MD)No.869 of 2013 is dismissed and S.A.(MD)No.868 of 2013 is partly allowed. The Judgment and Decree of the trial Court is restored. No costs.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

PMU

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

**To:**

1. The VI Additional District and Sessions Judge,  
Madurai.
2. The I Additional Sub Judge,  
Madurai.

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3. The Record Keeper, V.R.Section,  
Madurai Bench of Madras High Court, Madurai. (2C)

+1cc to Mr.G.ARAVINDHAN, ADVOCATE, SR NO.15919

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15.04.2021

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