



A.S.No.118 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
22~02~2022	08~04~2022

CORAM:

THE HONOURABLE MRS. **JUSTICE S. KANNAMMAL**

A.S.No.118 of 2013

Lanka Dairies (Pvt.)(Ltd.)
a Company incorporated under the laws of Srilanka
having its Registered Office at
P.O.Box.No.4, NEGOMBO Road
Welisara – regama
Srilanka.
Represented by its authorised representative and
Power of Attorney holder
Mr.E.M.Hemaratna ... Appellant/Plaintiff

Vs.

1. Maagrita Exports Limited
a Company under the Provisions of Indian Companies Act
Represented by its Chairman Mr.Paul Pandian
having its Registered Office at
New No.128 (Old No.26)
Halls Road, Kilpauk,
Chennai 600010.
2. Mr. Paul Pandian
Chairman
M/s Maagrita Exports Limited
New No.128 (Old No.26)
Halls Road, Kilpauk,
Chennai 600010.



A.S.No.118 of 2013

3. Mr.Prof. Ramachandran
Director

M/s Maagrita Exports Limited
New No.128 (Old No.26)
Halls Road, Kilpauk,
Chennai 600010.

4. Mr.Divakar R Kamath
Director
M/s Maagrita Exports Limited
New No.128 (Old No.26)
Halls Road, Kilpauk,
Chennai 600010.

5. Mr. Edward Pandian
Manager
M/s Maagrita Exports Limited
New No.128 (Old No.26)
Halls Road, Kilpauk,
Chennai 600010.

... Respondents/Defendants

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code against the Judgment and Decree of the Additional District Court No.XVIII City Civil Court, Chennai in O.S.No.7500 of 2010 dated 21.08.2012.

For Appellants : Mr.R. Srinivasan

For Respondents : Mr.R. Kumar for R1

Mr. E. JayaSankar for R2 to R4

R5 – given up



A.S.No.118 of 2013

JUDGMENT

WEB COPY A challenge has been made in this first appeal against the decree and judgment dated 21.08.2012 passed in O.S.No.7500 of 2010 on the file of the XVIII Additional Judge, Chennai, dismissing the suit filed by the appellant herein.

2. For the sake of convenience, the parties shall be referred to as per their litigative status in the suit as plaintiff and defendants as the case may be.

3. The Plaintiff has filed the suit for recovery of a sum of Rs.22,29,500/- against the first defendant company with interest and costs.

4. According to the plaintiff, during the course of their business, they have placed an order for purchase of 5400 cans of Mixed Fruit Pulp from the 1st Defendant under a Purchase Order No.LDL-219 dated 25.03.2009. Pursuant to the Purchase Order, the Plaintiff opened a Letter of Credit through M/s. Hatton National Bank plc, Welisara – Ragama, Srilanka for a sum of US\$.17,694. The documents prescribed



A.S.No.118 of 2013

under the Letter of Credit include commercial invoice submitted by the First Defendant and the proceeds were fully remitted and encashed by the 1st defendant.

5. The afore said Mixed Fruit Pulp of 5400 cans were exported by the 1st Defendant to the Plaintiff. Before delivery of the goods to the plaintiff, it was inspected by the Srilankan Custom Officers and Srilankan Health Authorities as a routine affair. Upon such examination, they have declared the goods as unfit and unsafe for human consumption as the goods were of sub-standard quality, therefore, the same were not permitted to be exported. The customs authorities informed the Plaintiff that the said consignment should either be destroyed or re-exported. When the Law Enforcing Authority had exercised their power in accordance with the law of the land, the Plaintiff was left with no other option either to re-export the goods to the 1st defendant or to destroy the goods. But the Srilankan Government refused to destroy such consignment in Srilanka on the plea that they do not have such facility and hence the only alternative left with the Plaintiff was to re-export the goods. The First Defendant has also accepted and agreed to return the amount to the plaintiff along with all expenses incurred. The 1st



A.S.No.118 of 2013

Defendant agreed for reshipment of goods and also to bear the entire expenses incurred. Keeping in mind the business relationship with the Plaintiff, the first defendant had evinced their interest to compensate 100% of the expenses incurred for reshipment of the goods by the Plaintiff. Hence the Plaintiff had raised their invoice in respect of the re-exported consignment. In order to verify the goods that were to be reshipped by the 1st defendant, the plaintiff's representative was not given an opportunity to inspect the goods.

6. It is contended that though the 1st Defendant supplied sub-standard quality goods and admitted to bear all the expenses towards reshipment of goods, on 04.08.2009 sent an email to the plaintiff, intimating that they will reimburse only the CIF Cost and the letter of Credit charges and not all the charges, which according to the plaintiff, is a clear breach of their commitment. In view of the above adverse development the plaintiff had to remain without any raw material for three months, due to which they were out of production as well as monetary loss worth about US\$ 10,000/-. Since, no payments were forthcoming from the First Defendant the Plaintiff issued a legal notice on 16.09.2009 demanding US\$ 48,288.92 under various heads. On receipt



A.S.No.118 of 2013

of the notice, the 1st Defendant sent a reply notice on 24.09.2009 and 06.10.2009 with evasive and untenable reasons. The Plaintiff also sent rejoinder to the said reply notice, on 10.11.2009 and thereafter filed the suit for a direction to the 1st Defendant company to pay a sum of Rs.22,29,500/- (equivalent to US\$.48,288,92) towards the cost of consignment of goods with costs.

7. In the written statement the first defendant company has accepted the fact that they have exported 5400 cans of mixed fruit pulp to the plaintiff and the Sri Lankan authorities have allegedly not recommended the consignment for human consumption due to dents/buckles over the containers and also on 'doubtful date of manufacture'. But the first defendant's company contended that they have produced the goods only after getting firm order from the Plaintiff and the date shown as 16.04.2009 factually denotes the manufacturing date. There was a misalignment of stamping of date of manufacture and expiry date over some of the containers. The Sri Lankan authorities without giving the first defendant an opportunity to rebut their opinion, declared that the said consignment is unfit for human consumption. This had created an unforeseen circumstance as such dents occurred to the



A.S.No.118 of 2013

containers due to pasteurization which is a common prevalent situation in the bulk pulp supply industries. The plaintiff took this opportunity to make a wide-ranging huge claim with ulterior intent and is trying to capitalize on the unfortunate incident for which the Defendants cannot be held liable.

8. It is further contended that at no point of time, the quality of supplies were checked in a laboratory in Sri Lanka. The Sri Lankan authorities did not explore beyond a rough external estimation and the Plaintiff also did not explain the business transaction in full, which culminated in the unilateral assumption of declaring that the goods were unfit for human consumption. In order to maintain good relationship with the Plaintiff and in true business spirit the first defendant company agreed to take back the alleged “sub-standard quality of the exported products” and agreed to pay the clearing and forwarding cost and Letter of Credit charges of the shipment. But the Plaintiff took undue advantage and extra mileage out of this unfortunate episode and filed the suit to furnish security for the entire claim of Rs.22,29,000/-, which is unilateral, untenable and unsustainable. This exorbitant demand by the Plaintiff includes their estimate of loss of revenue on account of this consignment



A.S.No.118 of 2013

for which no prima facie evidence has been produced. The suit has been filed by the Plaintiff without application of mind much less without any scientific examination of the goods exported. After reshipment to the Indian Shores the customs authorities, Tuticorin Port drew samples and sent them to the Central Food Technology Research Institute, Mysore and the results explicitly show that the goods are well within the safety norms/limits. Hence the rejection on account of poor quality of the goods supplied, without any valid scientific supportive evidence cannot be fastened on the defendants with any manner of liability and the liability of the defendants can only be restricted to the quality of the products only. The suit is therefore without any cause of action and the defendants 2 to 5 do not come under the jurisdiction of this court. Hence, the 1st defendant sought to dismiss the suit as it is devoid of merits.

9. Based on the pleadings the trial court framed the following issues:

1. Whether the Plaintiff's company is entitled for US\$ 48,288.92 recoverable from the 1st Defendant company?
2. Whether the good supplied were substandard goods and were



A.S.No.118 of 2013

certified at 'unfit for Human Consumption' by the Srikanthan

WEB COPY Customs Department is true?

3. Whether it is true that there was misalignment of stamping of date of manufacture and expiry over the containers as alleged by the 1st Defendant?
4. Whether it is true that the email dated 28th July 2009 clearly indemnify the defendants against the alleged poor quality of the products?
5. Whether it is true that the 1st defendant company was ready to bear the costs only in respect of the expenses of the consignment towards reshipment to Indian Port along with the cost of the goods?
6. Whether this suit against the defendants 2 to 5 is not maintainable?
7. To what other relief the Plaintiff is entitled to?

10. On the side of the plaintiff, one Mr. Hemaratna was examined as P.W.1 and Exs.A.1 to A.8 were marked. On the side of the defendants, 3rd Defendant Mr. P. Ramachandran was examined as D.W.1.

No documents was marked through him.



A.S.No.118 of 2013

WEB COPY 11. The Trial Court, after considering the oral and documentary evidence, and also considering the arguments of the both side dismissed the suit as devoid of merits. Aggrieved against the same, the present Appeal Suit has been filed by the defendants.

12. Mr. R. Sivakumar, learned counsel appearing for the Plaintiff submitted that the Defendants had admitted and agreed to make reshipment and bear the expenses towards such re-shipment. While so, the trial Judge misdirected itself in holding that there is no proof to show that the goods are unfit for human consumption. Ex.A.5 Sri Lankan Customs Goods Inspection Certificate, issued by the Sri Lankan Customs Authorities clearly shows that the goods sent by the Defendants were unfit for human consumption. The trial Court has erred in dismissing the suit for recovery of money of Rs.22,29,500/- as one without any jurisdiction. Learned counsel further submitted that the trial judge has failed to appreciate that the suit itself was filed for recovery of money on the value of the substandard goods supplied by the defendants and there cannot be any separate suit in respect of reshipment charges and hence the judgement of the learned trial judge has to be set aside.



A.S.No.118 of 2013

WEB COPY 13. Mr. R. Kumar, learned counsel for the 1st Defendant submitted that the first defendant agreed to make reshipment charges but the Plaintiff made claim on various heads like charges of L/C, import duties, demurage charges, loading unloading, finance charges, etc., which are not coming under the reshipment account. Therefore, the learned trial judge after analysing all the facts come to the conclusion that the plaintiff is not entitled for such claim and dismissed the suit and directed them to file a separate suit for the admitted reshipment charges. Hence the findings of the learned trial judge does not require any interference. The learned trial judge also held that the plaintiff's company is not entitled for the claim made and there is no proof to show that the goods in question are unfit for human consumption. The Plaintiff is also not entitled for the suit claim for want of correct calculation about the shipment much less miscalculation as per the tabulation which is not giving the clear indication of reshipment charges.

14. It is further submitted that the plaintiffs have hastily filed the suit when there was discussion among the parties for settlement of the disputes. The plaintiff has no right to file the suit based on the discussion



A.S.No.118 of 2013

for settling the matter and there is no cause of action for filing the suit. In

any event, the plaintiff has not filed the documents to show that the goods

shipped by them and detained by the Customs authorities are unfit for

human consumption by testing and analyzing those goods in an

accredited laboratory. In the absence of any proof to substantiate the

same, the entire claim made by the plaintiff is legally not sustainable. It

is further stated that the plaintiffs have not given the calculation of

conversion of the amount paid by them in Indian rupee equivalent to the

amount paid by them in US Dollars and therefore, the entire claim made

by the plaintiff is void. In this context, the learned counsel for the

defendants placed reliance on the decision in **Triveni Kodkany and**

others vs. Air India Limited and others (Civil Appeal No. 2914 of

2019 dated 03.03.2020.

15. Heard the learned counsel on both sides and perused the materials placed on record. The point arise for consideration in this appeal are

1. Whether the trial court is right in dismissing the suit filed by the plaintiff for recovery of amount? If so, whether the suit filed by the



plaintiff is required to be decreed?

WEB COPY

16. The plaintiff has instituted the suit for recovery of money. According to the plaintiff, they have raised a purchase order in favour of the 1st defendant for supply of 5,400 cans of mixed fruit pulp on 25.03.2009. Ex.A2 is the copy of the purchase order. Pursuant thereto the plaintiff also opened a letter of credit under Ex.A3, the bill of lading for the purpose of export of the goods in this case is Ex.A4. Even as admitted by the defendant the plaintiff has paid the entire amount through M/s.Hatton National Bank plc, Welisara – Ragama, Srilanka for US\$ 17,694. The amount so paid by the plaintiff has also been received and en-cashed by the defendants. In order to honor the business commitment, the 1st defendant has also admittedly made arrangement to dispatch the goods. However, when the goods reached the Sri Lankan Customs Officers and Sri Lankan Health Authorities, they have subjected those goods to a routine check up. On such examination, the Sri Lankan Customs Department have noticed that the goods supplied by the 1st defendant are unfit for human consumption. The Sri Lankan customs authorities have also concluded that the goods supplied by the 1st defendant were of substandard quality and therefore they refused



A.S.No.118 of 2013

permission to export the goods. The customs authorities gave an option to re-export the substandard quality goods. In effect, they have concluded that the goods should be re-exported. To this effect a notification dated 19.05.2009 was issued by the Foods and the Drugs Inspector, Import/Export Administration Unit, Ministry of Health, Colombo, Srilanka which reads as follows:

“Today re-inspected the all items. With Plant Manager, Lanka Dairies (PVT) LTD., Mr.E.M.Hemarathne, comments are following:

- 1. ALPONSO MANGO PULP – No Exp.Date and no Manufacture date – also damaged all the tins.*
- 2. Totapuri Mango Pulp – Exp date on the label is 16.04.09 (already expired) and damaged all the Tins.*
- 3. Papaya Pulp – Damaged all the Tins.*

Therefore not recommended for human consumption. Recommended for destroy or re-export according to the Customs Ordinance Plan.

17. Thus, it is evident that there is no fault attributable on the part of the plaintiff in any manner, for non supply of the goods by the first defendant. Even though, it was contended by the 1st defendant that what was exported by them is of superior quality and the Sri Lankan customs authorities did not give them an opportunity to subject those goods to a scientific laboratory, such a plea has got nothing to do with the



A.S.No.118 of 2013

claim of the plaintiff for refund of the amount. Admittedly, the 1st defendant has to raise such a plea only as against the customs authorities for which the plaintiff cannot be made liable. In any event, the fact remains that for the amount paid by the plaintiff and received by the 1st defendant, supply was not effected by the first defendant. For non supply of the goods, the 1st defendant is solely attributable. Whether the goods are of precise quality or substandard quality is not a matter in controversy in the present appeal. The fact remains that the 1st defendant having accepted the payment made by the plaintiff is duty bound to effect supply and for any reason if the supply could not be effected then the 1st defendant has to refund the amount. Viewed from this angle when admittedly the goods could not be supplied by the 1st defendant they have to make good the loss suffered by the plaintiff. It is in those circumstances, the suit filed by the plaintiff is very much maintainable.

18. On the other hand, the learned Trial Judge in the opinion of this Court has committed a grave error in mis-directing himself as to the claim made by the plaintiff. While dealing with the issue No.1 framed by the trial Court, the learned Trial Judge held that there is no clarity in the claim made by the plaintiff and therefore, the defendants are not required



A.S.No.118 of 2013

to make good the loss suffered by the plaintiff. This finding of the trial Judge cannot be sustained going by the facts of this case. This is more so that the first defendant has admitted to refund the claim made by the plaintiff in so far as it relates to the clearing forwarding charges, letter of credit charges towards reshipment of the consignment. Thus, it would make it very clear that the first defendant has partially admitted the claim of the plaintiff. While so, the findings recorded by the learned trial Judge as if there is no clarity in the claim made by the plaintiff cannot be countenanced.

19. Yet another submission of the counsel for the first defendant is that the suit has been hastily filed even before the defendants intended to sit in the negotiation table to amicably resolve the dispute. It is their contention that when negotiations are going on, the plaintiff has suddenly filed the suit thereby derailing the settlement process. This contention cannot be countenanced for the reason that before filing the suit, a legal notice was sent on 16.09.2009 under Ex.A11, for which an interim reply notice dated 24.09.2009 and reply notice dated 06.10.2009, under Exs. A12 and A13 were sent. Thereafter, the plaintiff sent a rejoinder on 10.11.2009 under Ex.A14 for which also a reply notice dated 03.12.2009



A.S.No.118 of 2013

was sent by the first defendant under Ex.A15. Therefore, it cannot be gainsaid that the plaintiff had, without giving adequate time for the first defendant to sit in the negotiation table, had instituted the suit. The pre-suit notices sent by the plaintiff clearly indicates that in the event of non-compliance of the demands made, the plaintiff will be constrained to institute the suit and accordingly, the suit was instituted. Therefore, this argument of the counsel for the first defendant is liable only to be rejected.

20. Yet another contention urged is that the plaintiff has not provided the conversion rate of the amount claimed by them and therefore the suit is bad. In this context, the learned counsel for the first defendant placed reliance on the decision of the Honourable Supreme Court in the case of **Triveni Kodkany and others vs. Air India Limited and others (Civil Appeal No. 2914 of 2019 dated 03.03.2020)**. The said case before the Honourable Supreme Court arise out of a case where compensation was sought for death of the deceased in an air-crash against Air India Limited. The deceased in that case was working with GTL Overseas (Middle East) FZ LLC as Regional Director and therefore, the compensation payable to him was in terms of the income of the deceased



A.S.No.118 of 2013

in (United Arab Emirates Dirham) AED. The dispute in that case was whether the compensation awarded in favour of the deceased in AED is equivalent to the conversion rate of Indian rupees prevailing on the date of death of the deceased. The ratio laid down in that case cannot be of any application to the present case. In the present case, as mentioned above, the plaintiff has clearly indicated the prevailing conversion rate in terms of Indian Rupees and valued the suit accordingly. To be precise, in the plaint, in para No.25, the amount claimed by the plaintiff in US Dollars and its equivalent money has been spelt out. Based on the same, the plaintiff had valued the suit at Rs.22,29,500/- being the conversion value prevailing at the time of instituting the suit. While so, it is futile on the part of the first defendant to contend that the conversion rate of the amount has not been clearly spelt out by the plaintiff in the plaint.

21. This is a case where the 1st defendant in paragraph No.38 of the written statement filed has clearly admitted that in the best interest of the business relationship between the plaintiff and the 1st defendant they are ready to make good the loss to some extent meaning thereby the defendants have admitted the claim made by the plaintiff, however, they did not honour their commitment and refused to make good the loss



A.S.No.118 of 2013

suffered by the plaintiff on untenable grounds. This Court also noticed that before instituting the suit, the plaintiff has sent a legal notice to the defendant under Ex.A11. For which reply under Exs.A12 and A13 were issued by the defendant. The plaintiff also sent rejoinder under Exs.A14 and A15. In fact, the plaintiff also produced a statement of account under Ex.A16 which would clearly indicate the payment made by them prior to the first defendant had taken steps to effect supply of the goods. While so, the defense raised by the defendants is not legally sustainable. The first defendant having received the entire amount towards shipment of the goods failed to effect supply of those goods to the plaintiff. In fact, the plaintiff in the plaint has clearly pleaded that on account of the non supply of the goods by the first defendant, they suffered production loss for want of raw-materials for about nearly three months. Thus, the plaintiff anticipated the goods to be supplied by the 1st defendant in the process of production undertaken by them. While so, it cannot be gainsaid that there is no cause of action for instituting the suit. The plaintiff has clearly established their case for recovery of the amount paid by them for supply of goods and the first defendant is bound to pay the amount claimed by the plaintiff. Accordingly, the point raised in this appeal is answered in favour of the plaintiff and against the defendants.



A.S.No.118 of 2013

WEB COPY 22. For all these reasons, the judgment and decree passed by the trial Court is set aside. The suit in O.S.No.7500 of 2011 filed by the plaintiff is decreed with cost throughout as prayed for. The defendant is directed to pay the amount described in the plaint to the plaintiff with interest at the rate of 12% per annum within a period of eight weeks from the date of plaint till the date of deposit.

08.04.2022

ggs/gbi

Index :Yes/No

Internet :Yes/No

To

The Judge,
Additional District Court No.XVIII City Civil Court,
Chennai.



WEB COPY



A.S.No.118 of 2013

S.KANNAMMAL. J.

ggs/gbi

Pre delivery judgment made in
A.S.No.118 of 2013

08.04.2022