



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2022

PRONOUNCED ON : 07.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.220 of 2013

Sri Gayathri Traders
represented by its Sole Proprietor
Mr.Ganesh Koteswar Rao,
having office at Door No.26-21-8,
G.T.Road, Nagrampalem
Gundur 522004,
Andhrapradesh

...Appellant/Defendant

Vs

Jalaram Timbers
A Partnership firm
Represented by its partnership
Mr. Moolshankarpatel,
Old No.96/4-A, New No.186,
G.N.T. Road, Puzhal
Chennai - 66.

...Respondent/Plaintiff

Prayer:-This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated, 22.12.2009, made in OS.No.4 of 2008, by the Principal District Judge, Tiruvallur.

For Appellant : Mr.D.Rajagopal
for Girija M. Muthumani

For Respondents: Mr.Stalin

JUDGEMENT

- 1.This Appeal Suit has been filed, by the Plaintiff, against the judgement and decree, dated, 22.12.2009, made in O.S.No.4 of 2008, by the Principal District Judge, Tiruvallur.
- 2.For the sake of convenience, the parties are referred to as per the rankings assigned before the trial court.
- 3.The case of the Plaintiff, as set out, in the plaint is that the plaintiff is a whole sale and retail merchant in Timber



WEB COPY

and allied products and he had continuous business relationship with the defendant. As per the terms, the defendant had to make payment within 30 days from the receipt of goods. While so, during the business transaction, out of Rs.10,13,292/-, a sum of Rs.4,00,000/- has been paid by the defendant. Hence, a sum of Rs.6,13,392/- is still due and liable to pay to the plaintiff. Since the defendant is non-committal on the balance amount, the plaintiff caused a legal notice dated 05.10.2007. In the reply notice dated 23.10.2007, the defendant with a view to wriggle out of his liability, has alleged that the goods are of substandard quality. If it is so, the defendant should have returned it back to the plaintiff. But the defendant chose to remain silent for nine months and now raising the false allegation. As per the terms between them, the defendant is liable to pay the said sum with interest at the rate of 18% per annum. Hence, he filed a suit. The trial court on perusing the oral and documentary evidence has allowed the suit with costs. Aggrieved against the judgment of the trial court, the appellant is before this court by way of the present appeal.

4. The case of the Defendant, as set out in the written statement filed by the defendant is as follows:

The defendant is running a teak wood business in Andhra Pradesh. All the purchases from plaintiff were good from 2005 to 2006. But the some of the goods purchased on 07.02.2007 was inferior in quality as there are full of big pin holes of entire lot. When the materials were put for process, he got only 50% of size material for 100 % under square feet. Hence both the parties came to an understanding that the plaintiff accepted to forego the amount of the transaction and the defendant has to pay Rs.5,00,000/- to the plaintiff. The defendant has to pay Rs.1,00,000/- to the plaintiff for the above purchase. The defendant advised the plaintiff not to deposit these cheques in bank because the defendant has not deposited any amount in his account. For the plaintiff's notice dated 05.10.2007, the defendant has sent a reply notice dated 23.10.2007 stating that as per the settlement amount agreed by them, the three cheques amounting to Rs1,00,000/- were in custody of the plaintiff. The defendant asked the plaintiff to return the signed cheques to him. In spite of giving 10 days time in the Advocate notice to return the signed cheques by the defendant, the plaintiff voluntarily deposited the above three cheques in the bank to create a problem. The plaintiff's scolding the defendant over telephone was recorded by his son. Since the defendant is not working anywhere in Andhra Pradesh, he is not able to pay the sum of Rs.1,00,000/- to the plaintiff.

5. On the pleadings of the parties, issues were framed by the



Trial Court as follows:

- "a) Whether the plaintiff is entitled to suit claim as prayed for? and
- b) To what relief the plaintiff is entitled to?"

WEB COPY

6. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A10 were marked and PW1 was examined. On the side of the Defendant, no exhibit was marked and DW1 was examined. The Trial Court had allowed the suit with costs. Aggrieved against the same, this Appeal Suit has been filed by the Plaintiff.
7. This Court heard the submissions of the learned counsel on either side.
8. The learned counsel for the appellant has submitted that the respondent has supplied substandard quality of woods, the same was informed to the respondent later on and both the parties entered into a compromise and agreed that if any loss would sustain in the business, it should be borne by both of them equally. Further he states that it is not correct to say that appellant has not chosen to take any steps to return the inferior quality goods. The trial court, without considering the oral and documentary evidences, has erred in passing the decree in favour of the plaintiff. Therefore, he prays to allow this appeal.
9. The learned counsel for the respondent/plaintiff has submitted that they supplied goods to the appellant/defendant and hence the appellant is liable to pay for the same. Without paying the dues, the appellant with a view to evade payment of dues, issued a legal notice on 05.10.2007. For that, the appellant has sent a reply notice. It is stated that for the past 8 years, there was a business transactions between the plaintiff and the defendant. For the first time, the goods were not received in good quality in the year 2007. The appellant has not returned the said goods but he make use of it and there was no settlement talks between them and he never stated what has happened to the defective goods. There is no proof for the defective goods supplied by the plaintiff to the defendant. Refusing to pay the amount after utilising the goods is not proper. It is just to pay the amount for the goods supplied. Considering the oral and documentary evidences, the lower court has properly decreed the suit in favour of the plaintiff and hence this appeal is liable to be dismissed.
10. The plaintiff has filed a suit for recovery of money of dues of Rs.6,13,392/- on business transaction with interest. The case of the plaintiff is that they supplied timber and allied products to the defendant and hence he is liable to pay a sum of Rs.10,13,292/-. The defendant has subsequently paid



WEB COPY

Rs.4,00,000/- For the due amount the plaintiff has issued a legal notice on 05.10.2007. The defendant has sent a reply on 23.10.2007 and admitted the transactions between them in the reply notice. The defendant in order to escape the liability has made a false allegation that the goods were substandard quality but he never returned the goods and make use of the products. There was no any compromise talk between the parties to bear the loss sustained in business transaction.

11. On perusal of the materials available on record, it is seen that the defendant sent a reply notice dated 23.10.2007 Ex.A10 in which he admitted the business transactions between them and also stated that the defendant is not able to sell the defective goods supplied by the plaintiff in the year 2007. It is stated that the goods were verified by the plaintiff and both of them agreed to enter into a compromise talk. As per the settlement talks, the defendant has to pay the amount as stated in his reply statement. In this case, the defendant never returned the defective goods. If the goods are really of inferior quality, he has to immediately inform the same to the plaintiff and return the goods to him. There is no evidence to show that he returned the defective goods to the plaintiff. The compromise talk between the parties is also not proved by the oral and documentary evidence. At the same time, plaintiff has proved his case by oral and documentary evidence. Therefore, the lower court after considering the oral and documentary evidence has come to the right conclusion and decreed the suit. In view of the above, no interference of this court is required and the appeal is liable to be dismissed.

12. In fine, this Appeal Suit is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Principal District Judge, Tiruvallur.

2. The Record Keeper,

VR Section, Madras High Court.

+lcc to M/s.Stalin, Advocate, S.R.No.32281

AS.No.220 of 2013

RR(CO)

RGA(22/06/2022)