



WEB COPY



C.S.No.194 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.04.2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.S.No.194 of 2008

M/s.Rain Industries Limited,
Rep. by its Asst. General Manager (Marketing),
Mr.S.Guruswamy,
No.144, North Usman Road,
T.Nagar, Chennai – 600 017. ... Plaintiff

Vs.

M/s.Anand Cements,
Rep. by its Proprietor,
Mr.C.Sridhar,
No.54, Karuvadaikuppam Main Road,
Vasantha Nagar, Muthialpet,
Pondicherry – 605 003. ... Defendant

Prayer: Complaint filed under Order XXXVII Rule 1 of O.S. Rules, High Court, Madras and Order VII Rule 1 R/W Order XXXIV Rule 1 of CPC, prays for a Judgment and Decree against the Defendant:

a) For a preliminary mortgage decree against the defendants directing them to pay the decretal amount of Rs.16,03,053.77 with further interest at



C.S.No.194 of 2008

24% per annum from the date of plaint on or before the date to be fixed by this Court, failing which to permit the plaintiff to bring the schedule mentioned property to sale by public auction and appropriate the sale proceeds towards the decretal amount and in the event of the such sale proceeds being insufficient to satisfy the decretal amount to pass a personal decree against the defendant in respect of the balance amount;

b) For the cost of the suit;

c) For other relief or reliefs as may be deemed fit and proper in the circumstances of the case and thus and render justice.

For Plaintiff : Mr.M.Santhanaraman

For Defendant : Set exparte

J U D G M E N T

This suit has been filed by the plaintiff for the following reliefs:

a) For a preliminary mortgage decree against the defendants directing them to pay the decretal amount of Rs.16,03,053.77 with further interest at 24% per annum from the date of plaint on or before the date to be fixed by this Court, failing which to permit the plaintiff to bring the schedule mentioned property to sale by public auction and appropriate the sale proceeds towards the decretal amount and in the event of the such sale



C.S.No.194 of 2008

proceeds being insufficient to satisfy the decretal amount to pass a personal decree against the defendant in respect of the balance amount;

- b) For the cost of the suit;
- c) For other relief or reliefs as may be deemed fit and proper in the circumstances of the case and thus and render justice.

2.The brief facts of the case, as averred by the plaintiff in the plaint are as follows:

(i)A Public Limited Company by name M/s.Priyadarshini Cements Ltd. has been taken over by them with all its assets and liabilities by amalgamation by order dated 04.08.2004 passed in C.P.Nos.35 and 36 of 2004, on the file of Hon'ble High Court, Andhra Pradesh. Accordingly, the plaintiff is entitled to recover the amount due to the said Priyadarshini Cement Ltd. in its own name.

(ii)The defendant was appointed as dealer of the said M/s.Priyadarshini Cement Ltd. presently merged with the plaintiff based on the application submitted by the defendant herein on 22.07.1999 for



C.S.No.194 of 2008

marketing the product of the plaintiff. As per the terms and conditions, the defendant had furnished bank guarantee for a sum of Rs.5 lakhs through Karur Vysya Bank, Pondicherry Branch in favour of the plaintiff towards security for due remittance of sale price besides depositing a sum of Rs.30,000/-.

(iii).Based on the orders placed by the defendant, the plaintiff used to supply cement to the defendant by raising invoice therefor. The upper credit limit granted to the defendant by the plaintiff was initially Rs.10.5 lakhs, which was subsequently reduced to 5.5 lakhs. As per the terms and conditions of the invoice, the defendant is supposed to remit the amounts of the stocks received by them forthwith receipt of the stocks and the payment received in arrears will attract interest on the amount due @ 24% per annum.

(iv)Though the defendant had been paying the amount for the stocks received by him then and there at one point of time between May and July 2002, the defendant represented to the plaintiff that he has bulk order for



C.S.No.194 of 2008

cement and requested the plaintiff to supply about 600 tons of cement valuing Rs.17,00,000/- which was supplied by the plaintiff to the defendant.

The defendant has issued 8 cheques for a total sum of Rs.17,00,000/- to the plaintiff towards the stocks lifted by him. When those cheques were presented for encashment those were returned for want of funds. When the plaintiff confronted the defendant about the return of cheques, the defendant urged the plaintiff to bear with him as he was in financial crunch and also deposited the title deeds in respect of his properties situated in R.S.No.75/1, 74/1, Cad.No.1501 part, 1501B, situated in Thottootu Kalavapet, Saram Village, Oulgaret Commune Panchayat, Pondicherry measuring about 3168 sq.ft. more fully described in the schedule hereunder with the plaintiff at Chennai under covering letter dated 28.08.2002 with intent to create mortgage thereon by way of deposit of Title Deeds to secure the amounts due by him to the plaintiff.

(v)After giving credit to the payments made by the defendant by balance amount as of 31.10.2002 was Rs.12,53,396/-. The plaintiff was therefore, constrained to invoke the bank guarantee furnished by the



C.S.No.194 of 2008

defendant for a sum of Rs.5 lakhs on 31.10.2002 and the said amount of Rs.5 lakhs was duly adjusted towards part satisfaction of the amount due by the defendant. Thus as of 31.10.2002 after giving credit to this amount of Rs.5 lakhs realized through bank guarantee, the defendant was due and liable to pay the balance amount of Rs.7,53,396/-.

(vi)The plaintiff was also constrained to adjust a sum of Rs.30,000/- being the security deposit made by the defendant with the plaintiff and the interregnum the defendant made a payment of Rs.53,280/- and both Rs.30,000/- and Rs.53,280/- were duly adjusted towards the amount due by the defendant. Accordingly, as of 20.08.2007 the defendant was due on liable to pay a sum of Rs.16,03,053.77 which amount the defendant did not pay inspite of the plaintiff repeated requests and reminders. Hence the present suit.

3.Heard the learned counsel for the plaintiff and perused the materials available on record.



C.S.No.194 of 2008

4.Though the defendant was served as early as on 03.04.2008, no written statement was filed by the defendant and hence, the defendant was set ex-parte and ex-parte evidence was ordered by this Court on 01.07.2016. PW1 viz., A.Rengarajan has filed proof affidavit in his chief examination and marked the following documents in support of the case of the plaintiff:-

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1	P1	11.08.2016	Certified copy of the Resolution
2	P2	29.09.1976	Certified copy of the Sale Deed registered as Document No.573/1976
3	P3	30.11.1978	Certified copy of the Sale Deed registered as Document No.1257/1978
4	P4	14.03.1990	Certified copy of Judgment in O.S.No.241/1983 on the file of the Principal Sub Judge at Pondicherry.
5	P5	14.10.1993	Original Partition Deed registered as Document No.2988/1993 at SRO, Ulavarkarai
6	P6	04.05.1999	Copy of Certificate of Incorporation of the plaintiff with Memorandum of Association
7	P7	04.06.2002	Duplicate copy of invoice
8	P8	05.06.2002	Duplicate copy of invoice
9	P9	05.06.2002	Duplicate copy of invoice
10	P10	05.06.2002	Duplicate copy of invoice
11	P11	05.06.2002	Duplicate copy of invoice
12	P12	05.06.2002	Duplicate copy of invoice
13	P13	06.06.2002	Duplicate copy of invoice



C.S.No.194 of 2008

S.No.	Exhibits	Date	Description
14	P14	06.06.2002	Duplicate copy of invoice
15	P15	10.06.2002	Duplicate copy of invoice
16	P16	10.06.2002	Duplicate copy of invoice
17	P17	10.06.2002	Duplicate copy of invoice
18	P18	10.06.2002	Duplicate copy of invoice
19	P19	12.06.2002	Duplicate copy of invoice
20	P20	12.06.2002	Duplicate copy of invoice
21	P21	12.06.2002	Duplicate copy of invoice
22	P22	18.07.2002	Duplicate copy of invoice
23	P23	18.07.2002	Duplicate copy of invoice
24	P24	18.07.2002	Duplicate copy of invoice
25	P25	18.07.2002	Duplicate copy of invoice
26	P26	18.07.2002	Duplicate copy of invoice
27	P27	19.07.2002	Duplicate copy of invoice
28	P28	19.07.2002	Duplicate copy of invoice
29	P29	19.07.2002	Duplicate copy of invoice
30	P30	19.07.2002	Duplicate copy of invoice
31	P31	20.07.2002	Duplicate copy of invoice
32	P32	20.07.2002	Duplicate copy of invoice
33	P33	20.07.2002	Duplicate copy of invoice
34	P34	20.07.2002	Duplicate copy of invoice
35	P35	28.08.2002	Original letter from defendant to plaintiff evidencing deposit of title deeds
36	P36	23.09.2002	Original letter from defendant to plaintiff admitting liability.
37	P37	24.10.2002	Duplicate copy of invoice
38	P38	26.10.2002	Duplicate copy of invoice
39	P39	04.08.2004	True copy of Order passed in C.P.Nos.35 and 36/2004 on the file of High Court,



C.S.No.194 of 2008

S.No.	Exhibits	Date	Description
			Andhra Pradesh
40	P40	31.07.1996	Photo copy of Encumbrance Certificate
41	P41	08.01.2007	Original Encumbrance Certificate
42	P42	20.09.2007	Original Statement of Accounts

Witness examined on the side of the plaintiff:

PW1 - Mr.A.Rengarajan

5.On the side of the defendant, neither any document was placed nor any witness was examined.

6.Considering the oral and documentary evidence, viz., Exs.P1 to 42 adduced by PW1 and in the absence of any oral or documentary evidence on the side of the defendant, this Court is of the view that the plaintiff has proved the suit claim and the suit may be decreed as prayed for. Accordingly, the suit is decreed as prayed for. No costs.

29.04.2022

Index:Yes/No
Internet:Yes/No
Speaking order / Non-speaking order
pam



WEB COPY



C.S.No.194 of 2008

V.BHAVANI SUBBAROYAN, J.

pam

C.S.No.194 of 2008

29.04.2022