



A.S.No.377 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE N.MALA

A.S.No.377 of 2014
and M.P.Nos.1, 2 & 3 of 2014

Arkay Leathers (P) Limited,
Represented by its Managing Director,
R.Kumar, S/o.Late A.Ramaswami,
Having its Registered Office at
91/4, First Floor, Anna Salai,
Nagalkeni, Chrompet, Chennai – 600 044.

...Appellant

-Vs-

1.B.Sujatha
2.R.S.Balaji

...Respondents

Prayer:- Appeal Suit filed under Section 96 C.P.C., against the judgment and decree dated 29.01.2014 made in O.S.No.9 of 2010 passed by the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District.

For Appellant : Mr.Arun Anbumani

For Respondents : Mr.T.R.Daveson



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J U D G M E N T

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[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

The plaintiff in the suit in O.S.No.9 of 2010 on the file of the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District is the appellant in the above appeal suit.

2. The appellant filed a suit in O.S.No.110 of 2008 originally before the Principal District Court, Vellore the same was later renumbered as O.S.No.9 of 2010 before the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District.

3. The suit is for recovery of a sum of Rs.38,49,558/- with future interest at 12% p.a., being the principal amount of Rs.34,08,899/- with interest and an additional claim of Rs.3,00,000/- towards damages. The appellant as the plaintiff in the suit had also prayed for a decree of permanent injunction against the defendants restraining them from dealing with the suit mentioned properties in any manner.

4. The case of the plaintiff in the plaint is as follows:

5. The plaintiff is engaged in the business of manufacture and export



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of leather and leather garments. The plaintiff has its factories in various places at Chennai and Ranipet, and the plaintiff was looking out for another suitable tannery units in and around Ranipet. Defendants 1 and 2, on coming to know about the interest of the plaintiff for a tannery unit around Ranipet, had approached the plaintiff and expressed their desire to sell their tannery along with the machineries which is located at Plot No.103, SIDCO Industrial Estate, Ranipet (shown as the suit property).

6. After negotiations, on 18.02.2008, the 1st defendant agreed to sell the suit property comprising of land and tannery unit building along with the machineries for a total sale consideration of Rs.1,38,00,000/-. A sum of Rs.1,00,000/- was paid as advance initially on 18.02.2008 and a further sum of Rs.29,00,000/- was also paid as advance on subsequent dates for the sale of entire property agreed to be sold by the 1st defendant. Further amounts were also paid at the insistence of defendants which are agreed to be part of sale consideration. As per the plaint averments, the plaintiff claimed that he had paid a sum of Rs.34,08,899/- on various dates as indicated in the tabular column below:

S.No.	Date of Payment	Amount
1.	18.02.2008	Rs.1,00,000/-



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S.No.	Date of Payment	Amount
2.	18.02.2008	Rs.16,500/-
3.	28.02.2008	Rs.10,00,000/-
4.	13.03.2008	Rs.9,00,000/-
5.	19.04.2008	Rs.15,000/-
6.	21.04.2008	Rs.15,000/-
7.	02.05.2008	Rs.2,500/-
8.	10.05.2008	Rs.5,00,000/-
9.	14.05.2008	Rs.5,00,000/-
10.	22.05.2008	Rs.96,919/-
11.	22.05.2008	Rs.30,480/-
12.	19.06.2008	Rs.2,500/-
13.	19.06.2008	Rs.15,000/-
14.	28.06.2008	RS.15,000/-
	Total	Rs.32,08,899/-

7. The parties had entered into an Agreement for Sale on 28.02.2008 and the appellant/plaintiff contends that out of the above said payments a sum of Rs.30,00,000/- was paid as advance and the remaining amount was paid as and when required by the defendants and it was agreed that such amounts are to be adjusted towards sale consideration. It is the specific case of appellant that as per clause 14 of the agreement, the 1st defendant agreed to surrender vacant possession of the suit property on or before 31.03.2008 and the plaintiff agreed to pay rent for the property till completion of sale. Even though the property



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was let out to a third party by 1st defendant, it is stated that an essential term of the agreement was to vacate the tenant and to hand over possession. Stating that the 1st defendant could not hand over possession as agreed, it is contended by the appellant that the 1st defendant who failed to perform his obligation under the agreement despite notice to refund a sum of Rs.34,08,899/- did not return the amount as agreed. Since the 2nd defendant also signed in the agreement as guarantor agreeing to repay the advance amount, the plaintiff prayed for reliefs making the defendants jointly and severally liable.

8. The suit was contested by the defendants by filing a written statement. Though a payment of a sum of Rs.30,00,000/- was admitted by the defendants towards advance, the respondents/defendants contended that the plaintiff did not come forward to pay the balance within the time stipulated in the agreement and that therefore, the defendants had terminated the contract. It was further contended that the defendants have repaid a sum of Rs.14,00,000/- to the plaintiff on 24.07.2008 and made an endorsement on the last page of the Sale Agreement. It is further contended that another sum of Rs.8,00,000/- was repaid on 06.08.2008 by the defendants and the 2nd endorsement was also made in the last page of the suit Sale Agreement. The defendants therefore pleaded that the suit for recovery of a sum of Rs.30,00,000/- is not sustainable. Though



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the defendants agreed that they have to pay the balance amount of Rs.8,00,000/- to the plaintiff after deducting a sum of Rs.22,00,000/-, the defendants took a plea that they suffered damages and therefore the said sum of Rs.8,00,000/- should be adjusted towards damages payable to the defendants on account of breach of contract. However no counter claim is made by 1st defendant.

9. The Trial Court framed the following issues:

- “(i) whether the Sale Agreement is genuine or not?*
- (ii) whether the plaintiff is entitled to get the suit amount as prayed for?*
- (iii) whether the plaintiff is entitled to permanent injunction as prayed for?*
- (iv) whether the defendants are entitled to claim the damages from the plaintiff?*
- (v) to what other relief?”*

10. The plaintiff examined himself as P.W.1 and one K.Thanikachalam as P.W.2. Plaintiff filed Exs.A1 to A26. It is to be noted that there is no dispute with regard to genuineness of the Sale Agreement and therefore the issue regarding the same is unnecessary and unwarranted. Though the defendants



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have not disputed the genuineness of the Sale Agreement dated 28.02.2008 under Ex.A3, the Trial Court has rendered a finding that the plaintiff has not proved the genuineness of the Sale Agreement by examining independent witnesses. It is seen that the findings of the Trial Court on the other issues are perverse and the Trial Court has not even understood the real dispute. The Trial Court has rendered a finding that the defendants have repaid a sum of Rs.22,00,000/- without even considering the evidence. Surprisingly, the Trial Court without even framing an issue regarding breach of contract either by the plaintiff or by the defendants came to the conclusion that the defendants are entitled to adjust a sum of Rs.8,00,000/- towards damages for breach of contract.

11. As a matter of fact, there is no evidence with regard to any damage suffered by the defendants. There is no specific finding by the Trial Court that the plaintiff has committed the breach of Agreement. With distorted facts and without framing proper issues, the Trial Court ultimately dismissed the suit. Aggrieved by the same, the above appeal is preferred by the plaintiff.

12. On the basis of the pleadings of both parties before the Trial Court, the findings of the Trial Court and the points raised by the learned counsel appearing for the appellant and the respondents before this Court the following



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points are framed for determination:

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(a) whether the Sale Agreement under Exs.A3 and A4 is valid, genuine and binding on the plaintiff and the defendants?

(b) whether the plaintiff has paid further amounts as pleaded in the plaint and entitled to recover the same?

(c) whether the defendants have repaid a sum of Rs.22,00,000/- as contended by them in the written statement?

(d) whether the plaintiff has committed breach of Agreement for Sale dated 28.02.2008 so as to enable defendants to claim damages?

(e) whether the judgment and decree of the Trial Court is liable to be set aside?

Points No.a, b and c:

13. The learned counsel appearing for the appellant submitted that the findings of the Trial Court are perverse and that the Trial Court has neither framed the issues properly nor has considered the relevant evidence in the light of specific pleadings. He submitted that the findings of the Trial Court are contrary to evidence and admitted facts.

14. The learned counsel contended that the execution of Sale



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Agreement under Ex.A3 is not disputed. It is the specific case of the learned counsel for the appellant that the last page of the Sale Agreement under Ex.A3 was misplaced by the learned counsel who was engaged by the appellant and that therefore the same was marked as Ex.A4 after it was found by his counsel at the time of marking the documents. It is his contention that the defendants' counsel was misled by the fact that Ex.A3 was filed without the last page. Therefore it is contended by the appellant's counsel that the defendants' have made an ambitious attempt to take a plea that a sum of Rs.14,00,000/- was paid to the plaintiff on 24.07.2008 and a further sum of Rs.8,00,000/- was paid on 06.08.2008 and that those payments were acknowledged by the endorsements made by the plaintiff in the last page of the Sale Agreement. It is pointed out that the plaintiff surprised the defendants by producing the last page of the Sale Agreement where there is no endorsement as pleaded by defendants.

15. It is pointed out by the learned counsel appearing for the appellant that, though the defendants have specifically stated in their written statement that a sum of Rs.22,00,000/- was paid on two occasions directly to the plaintiff as per paragraph 5 of the written statement, after finding that plaintiff was in abroad on the dates on which the defendants had allegedly made payments to the plaintiff, the defendants during the course of evidence have contended that



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the amount was paid not to the plaintiff but to the manager of the plaintiff by name Mr. Sri Ram. It is further seen that not even a single document has been produced to support the plea of the defendants in their Written Statement that they have repaid a sum of Rs.22,00,000/-. When the defendants came forward with a specific plea of repayment, the burden lies on the defendants to prove such repayment of money paid pursuant to the Sale Agreement under Ex.A3. In this case, the evidence adduced by the defendants through the oral evidence of the 2nd defendant namely, the husband of 1st defendant, is only to the effect that the amount was paid to one Mr. Sri Ram, the Manager of the plaintiff. However there is no plea regarding repayment to Mr.Sri Ram or acceptance of money by him on behalf of plaintiff. It is seen that only during Cross Examination, D.W.1 has stated that repayment was to the Manager of plaintiff. Though he reiterate that a sum of Rs.14,00,000/- and Rs.8,00,000/- was repaid and that such repayments are acknowledged in the endorsements found in the Sale Agreement, the witness did not explain how the document under Ex.A4, which is the last page of the Sale Agreement does not contain any such endorsement. The burden lies on the defendants to prove the repayment of a huge sum of Rs.22,00,000/- but the defendants have miserably failed to discharge the same.



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16. Having regard to the nature of pleadings and evidence adduced by

D.W.1 during the course of Cross Examination we accept the argument of the learned counsel appearing for the appellant that the plea in the written statement was based on the fact that the document Ex.A3 did not contain the last page and that the defendants, therefore, believing that the last page of the Sale Agreement is not available with the plaintiff has come forward with the false plea that the repayments were supported by the endorsement on the last page of the Sale Agreement under Ex.A3. When the last page was filed, as pointed out earlier the defendants have no explanation to offer. However, the contention of the learned counsel appearing for the respondents is that the burden lies on the plaintiff to prove his case. It cannot be accepted especially when defendants pleaded repayment. This Court holds that the Suit Agreement under Exs.A3 and A4 were executed by defendants and is in a genuine transaction. The plaintiff has proved further payments. Since the further amounts have been paid at the request of defendants, this Court has no difficulty to conclude that plaintiff is entitled to claim refund unless there are other circumstances due to which this Court can refuse to grant relief. The defendants failed to prove repayment of Rs.22,00,000/- as alleged in the written statement and hence points No.a, b and c are answered against the defendants.

Point No. d:-



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17. The Sale Agreement marked as Exs.A3 and A4 shows that the plaintiff/ purchaser should pay balance amount of Rs.1,08,00,000/- to the vendor within the three months from the date of Agreement subject to fulfilment of condition Nos.14 and 15. Clause 5, 14 and 15 of the Agreement read as follows:

“5. The purchaser shall pay the balance of sale consideration of Rs.1,08,00,000/- (Rupees One Crore Eight Lakhs only) to the vendor within a period of three months from the date of this agreement subject to fulfilment of the condition Nos.14 and 15.

.....

14. The vendor agrees to surrender vacant possession of the scheduled mentioned properties to the purchaser or or before 31st March 2008 and up to the date of registration of Sale Deed the purchaser will pay the monthly rent as mutually agreed and fixed between the vendor and the purchaser is free to use all the land, building, infrastructure facilities, machineries and amenities described in the schedule.

15. The vendor assures the purchaser that, name transfers pending or to be progressed before any authority in the name of the vendor should be completed before the registration of Sale Deed and the vendor will bear all expenses for the same.”



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18. In the Agreement for Sale in Ex.A3, the vendor namely the defendants have agreed that no modification or alteration will be carried out in the schedule mentioned suit properties. The plaintiff-purchaser had also agreed to pay the lease amount till the registration of the Sale Deed. Similarly the defendants have also agreed that the possession of the property will be handed over to the plaintiff on or before 31.03.2008 without any modification or alteration in the property.

19. From the reading of the entire Agreement for Sale, it is seen that the condition that the defendants will surrender vacant possession to the plaintiff on or before 31.03.2008 is an essential condition. However during the course of evidence, D.W.1 admitted that the entire premises was in the possession of a tenant one Mr. Senthil Kumar and in the course of evidence it is also admitted that the said tenant has filed a petition before the Court. However the defendants failed to disclose this fact in their written statement. D.W.1 in his evidence stated as follows:

“செந்தில்குமார் என்பவர் என்னுடைய பெயரிலும் என்
மனைவி பெயரிடும் முனச்சீப் கோர்ட்டில் ராணிப்பேட்
ஒ.எஸ்.67/2008 வழக்கு தொடர்ந்திருந்தார் என்றால் சரி அந்த



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வழக்கில் செந்தில்குமார் என்பவரை தொழிற்சாலையிலிருந்து வெளியேற்ற கூடாது என்று இடைக்கால் உத்திரவு ஐ.எ.87/2008 உத்திரவிடப்பட்டிருந்தது. செந்தில்குமார் என்பவர் சம்மந்தமாக எந்த விவரத்தையும் எங்களது பதிவுரையிலோ எனது பி.வா.மூலத்திலோ நான் சொல்லவில்லை என்றால் சரி”

20. Therefore from the pleadings and evidence, this Court has no hesitation to hold that the defendants have committed breach of Agreement under Ex.A3. In the Legal Notice in Ex.A14 dated 29.03.2008 the 1st defendant called upon the plaintiff to pay the balance of Rs.1,08,00,000/- within three days after receipt of the notice. The plaintiff was also informed that in case the plaintiff does not pay the amount, the Agreement for Sale shall stand cancelled automatically and the defendants would not be bound by the Agreement. In response to the legal notice in Ex.A14 dated 29.03.2008, the plaintiff had issued a reply dated 05.06.2008 in Ex.A16. As per the reply notice the plaintiff, not only mention the payments so far made by the plaintiff, but also contends that the defendants had agreed to hand over possession of the scheduled properties on or before 31.03.2008 and were supposed to collect rent from the plaintiff thereafter till the sale deed is executed. The reply was sent specifically pointing out that lapses on the part of defendants and that time is the essence of the



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21. By a legal notice dated 01.07.2008 under Ex.A17 the defendants put the plaintiff on notice that Agreement of Sale Deed dated 28.02.2008 stood terminated. In response to the same, the plaintiff issued a reply notice dated 08.07.2008 through a telegram under Ex.A18 calling upon the defendants to return a sum of Rs.32,08,899/- being the amount paid by plaintiff to the defendants on various dates. Thereafter the suit for recovery of money was filed by the plaintiff. From the admitted facts and sequence of events pointed out above, this Court holds that the defendants have committed breach of agreement and hence the plaintiff is entitled to get refund of the entire amount of Rs.32,08,899/- paid to defendants.

22. The Trial Court has erroneously found that the defendants are entitled to a sum of Rs.8,00,000/- towards damages even though the Trial Court had not framed any issue on breach of contract. In this case, this Court has already come to the conclusion the Agreement for Sale in Ex.A3 has been terminated as a result of non performance of the terms of the agreement by the defendants. When the fact that the defendants did not hand over possession of the suit properties as agreed upon is admitted, the inevitable corollary is that the



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plaintiff cannot be held liable for non payment of balance of sale consideration as per the Agreement for Sale under Ex.A3 and A4. When the defendants have committed breach of Agreement it is arbitrary and inequitable to hold the plaintiff liable to pay damages to the tune of Rs.8,00,000/- and to adjust the said sum with the amount the plaintiff had already paid as advance. When there is no counter claim nor plea of set of, the Trial Court without considering the admitted facts has held that the defendants are entitled to a sum of Rs.8,00,000/- towards damages from the plaintiff.

23. Though the plaintiff has paid a sum of Rs.30,00,000/- as advance under the Agreement for Sale, certain other payments were also made by the plaintiff and such payments are not in dispute. The question, whether the plaintiff is entitled to get the amount after the termination of the Agreement for Sale has to be examined in the light of the pleadings and evidence. This Court finds that as per the plaint averments, the amounts were paid at the request of the defendants. It is stated in the plaint that a sum of Rs.15,000/- was paid to M/s.Sivam Planners towards Area Mapping charges on 19.04.2008. A further sum of Rs.15,000/- was also paid to the Indian Bank Valuer on 21.04.2008. A sum of Rs.2,500/- was paid by the plaintiff towards fees payable to the Indian Bank panel advocate on 02.05.2008. It is the case of the plaintiff that these



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amounts were paid as the plaintiff approached his bankers for funding the project. These amounts were paid by the plaintiff towards processing of loan application and scrutiny of legal documents or in furtherance of the contract. Since the defendants have committed breach of contract, the plaintiff is entitled to get the money. Another sum of Rs.96,919/- was stated to have been paid by the plaintiff towards some arrears in respect of scheduled property to the Electricity Board, TANSIDCO, Ranipet SIDCO Finished Leather Effluent Treatment Company Limited on 26.05.2008 and Rs. 30,480/- to Ranipet SIDCO Entrepreneurs Association on 27.05.2008.

24. During the course of evidence, the plaintiff, who was examined as P.W.1, has specifically pleaded that these payments were made in respect of arrears that fell due by the defendants in respect of the suit property. During the cross examination of the plaintiff as P.W.1 neither the payments as borne out from records nor the evidence of P.W.1 was contradicted by any independent evidence.

25. Even in the evidence of D.W.1 the payments were not disputed but the liability of the plaintiff alone is disputed by stating that the claim of a sum of Rs.2,00,000/- towards bank loan processing charges and funding towards suit



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property is not maintainable and that the plaintiff is not entitled to the said sum.

With regard to the specific case of the plaintiff as P.W.1 regarding specific payments, there is no evidence of D.W.1 in the Chief Examination disputing the liability nor the actual payment of the plaintiff. In the said circumstance, this Court is unable to find any valid reason to reject the claim of the plaintiff with regard to these amounts claimed by the plaintiff in the plaint.

26. Having regard to the findings on the issues and the points which we have framed for consideration, this Court is of the view that the plaintiff is entitled to a sum Rs.32,08,899/-. Even though a sum of Rs.3,00,000/- is claimed by the plaintiff towards damages, this Court finds no proper evidence to substantiate the quantum of damages.

27. In the result, the appeal suit stands **allowed** and the judgment and decree dated 29.01.2014 made in O.S.No.9 of 2010 passed by the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District is hereby set aside. The plaintiff is entitled to a decree for a sum of Rs.32,08,899/- along with the interest at 12% from the date of payment till the date of plaint. The plaintiff is entitled to future interest at 6% from the date of plaint till the date of realization of the amount. No costs. Consequently, connected miscellaneous petitions are closed.



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Index : Yes/No

Speaking/Non Speaking order



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[SSSRJ] [NMJ]

19.10.2022

S.S.SUNDAR, J.,

AND

N.MALA, J.,

cda

To

- 1.The Managing Director,
Arkay Leathers (P) Limited,
R.Kumar, S/o.Late A.Ramaswami,
Having its Registered Office at
91/4, First Floor, Anna Salai,



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Nagalkeni, Chrompet, Chennai – 600 044.

2. The Section Officer, VR Records,
High Court, Chennai.

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