IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 07.11.2022

DELIVERED ON 18.11.2022

CORAM

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N.MALA

AS.No.394/2014

1.Owl International PTE Limited
No.37, Chin Bee Cresent
Jurong Town, Singapore-619903
represented by its Director
Mr.TeKokChiew

2.Super Coffee Mix Manufacturing Ltd
No.2, Senoko South Road
Super Industrial Building
Singapore 758 096.
represented by its Director,
Mr.Wong Fook Sung ... Appellants / Defendants 1 & 2

Vs.

1.Harish Nebhoria
Prop. Sun Track Enterprises
B-1/3, Dasrath Puri
New Delhi 110 045
By his Power of Attorney
Mr.Jambunathan ... R1 / Plaintiff

2.Anil Singh
Proprietor Sanil Marketing
F9 Adarshini Marketing
Adhchini
New Delhi 110 017. ... R2 / 3rd Defendant

PRAYER : Appeal suit filed under Section 96 of CPC to set aside the judgment and decree dated 16.08.2013 passed in OS.No.10028/2010 by the learned IV Additional City Civil Judge, at Chennai and allow the appeal by dismissing the suit.

For Appellants	:	Dr.Amitabha Sen
For R1	:	M/s.Anita Thomas
For R2	:	No appearance

J U D G M E N T

(1)Defendants 1 and 2 in the suit in OS.No.10028/2010 on the file of the learned IV Additional Judge, City Civil Court, Chennai, are the appellants in the above appeal.

(2)The 1st respondent, the Proprietor of Sun Track Enterprises carrying on business in New Delhi, through his Power of Attorney Agent by name J.Gopalakrishnan, filed the suit in CS.No.261/2008 on the Original Side of this Court and the suit was later transferred to the learned IV Additional Judge, City Civil Court, Chennai and renumbered as OS.No.10028/2010. The said suit is against the appellants herein as well as the 2nd respondent who was impleaded as the 3rd defendant in the suit.

(3)It is seen from the papers that the suit was originally filed before the Original Side of this Court on 20.09.2004 and subsequently renumbered before the City Civil Court on 16.08.2010.

(4)The suit is for recovery of a sum of Rs.17,65,586/- from the appellants herein and for a sum of Rs.8,78,436/- from the 2nd respondent herein who is the 3rd defendant in the suit. It is pertinent to mention that the claim against the 3rd defendant/2nd respondent herein is also covered by the claim against the defendants 1 and 2/appellants. In other words, the claim against the 3rd defendant is in respect of a portion of the claim against appellants and therefore, the Court fee was also paid only for a sum of Rs.17,65,586/-. It is to be noted that defendants 1 and 2 are Foreign Companies and the 3rd defendant is the Proprietory Concern having business at New Delhi.

(5)Brief facts that are set out in the plaint are as follows.

(6)The plaintiff is a representative of manufacturers. The 1st defendant which is a Foreign Company is engaged in the manufacture of certain instant drinks like lemon tea, coffee, cereals, cocoa drinks etc., and established its place of business in Chennai with effect from 07.02.2001. The 1st defendant, knowing that the plaintiff was a reputed manufacturers' representative, contacted the plaintiff at its Chennai office and offered wholesale dealership in India of their products made in Singapore. The plaintiff accepted the same and agreed to market the products of the 1st defendant both at Chennai and New Delhi.

(7)The products of the 1st defendant were not well accepted either in Chennai or in New Delhi and therefore, the plaintiff expressed his desire to discontinue representing the 1st defendant in the sale of its products in India from 31.03.2002. The 1st defendant accepted such termination of business relationship between the 1st defendant and the plaintiff. At the time of closing of dealership, i.e., 31.03.2002, there remained a sum of Rs.6,43,486/- and a further sum of Rs.44,214/- aggregating to a sum of Rs.6,87,700/- due by the 1st defendant to the plaintiff. The said sum of Rs.6,87,700/- is admitted by the 1st defendant in his letter dated 17.08.2002 and by another undated letter.

(8)By January 2002, the plaintiff realised the futility of marketing the 1st defendant products and as to what he should do to dispose of the stocks held by him. The 1st defendant by then, had established contract with the 3rd defendant and therefore, the 1st defendant directed the plaintiff to sell the products held by him to the 3rd defendant. The 3rd defendant was willing to take over the balance of products held by the plaintiff and therefore, on the plaintiff's invoices dated 04.02.2022 and 06.03.2022, the plaintiff sold and delivered the goods worth Rs.75,000/- and Rs.6,05,956/- respectively aggregating to a sum of Rs.6,80,956/- to the 3rd defendant. The 3rd defendant in stead of paying the amount due on the invoices to the plaintiff as per the terms of the same, sent to the plaintiff, a Statement of Account and claimed that he has paid the amount to the 1st defendant. The said payment does not absolve the 3rd defendant of his liability to the plaintiff who supplied goods to the 3rd defendant. The 1st defendant has no manner of right over the said amount and therefore, the 1st defendant is liable for the amount due for the goods supplied by the plaintiff to the 3rd defendant.

(9)The plaintiff came to know that the 1st defendant was taken over by the 2nd defendant by surfing internet. Therefore, the 2nd defendant was impleaded as a party to the suit as the assets and liabilities of the 1st defendant had been taken over by 2nd defendant. Therefore, a suit is laid against the defendants 1 and 2 on the principal amount of Rs.13,68,656/- along with interest at the rate of 12% per annum and as against the 3rd defendant for a further sum of Rs.8,78,436/- for the goods supplied to the 3rd defendant with further interest at the rate of 12% per annum amounting to Rs.6,80,956/-.

(10)The 3rd defendant remained exparte.

(11)The suit was contested by the defendants 1 and 2 by filing a written statement in detail disputing every averments and allegations made in the plaint except the relationship between the plaintiff and the 1st defendant as a dealer and manufacturer of goods. From the reading of the written statement, this Court has no hesitation to observe that the written statement is an ill-drafted one. However, every material averments in the plaint regarding the alleged liability is met and denied specifically. The written statement contains two parts. On the first part, a detailed plea is raised regarding maintainability of the suit for want of cause of action and limitation. The second part of the written statement contains parawise reply to the averments made in the plaint on the merits. It is to be pointed out that the contents of the plaint in every paragraph are denied in totality. It is also stated that the 1st defendant has discontinued its business even in the year 2003 and the present suit is liable to be dismissed as against the 1st defendant on all counts. It is also stated that the suit is filed to extract money that is payable by the 3rd defendant and therefore, the suit as such, is not maintainable against defendants 1 and 2. The alleged sale of goods by the plaintiff to the 3rd defendant is also denied referring to the reply sent by the 1st defendant to the plaintiff dated 06.11.2003 in response to the letter of the plaintiff dated 27.10.2003.

(12)As regards the acknowledgment of the alleged amount of Rs.6,43,486/- as per the Acknowledgment Letter dated 17.08.2002, and a further sum of Rs.44,214/-, the appellants have stated that the document has no relevance to the suit transaction. Therefore, defendants 1 and 2 have denied their liability and the statements of the plaintiff describing them as false and without basis.

(13)As it is pointed out, the first part of the written statement, shows that the prime defence of defendants 1 and 2 is that the suit is hopelessly barred by limitation. Strangely, the defendants have not even noticed the date of filing of suit and proceeded to build up the entire plea of limitation from the endorsement found in the summons served on defendants 1 and 2. It was further stated that defendants 1 and 2 having business in Singapore, takes every decision relating to all transactions in Singapore in the sense that the Branch office at Chennai is not authorised to represent the 1st defendant in any of the dealings.

(14)Before the Trial Court, the plaintiff who was represented by the Power Agent, examined Thiru J.R.Nebhoria, a Power Agent as PW1. On behalf of the plaintiff/1st respondent, Exs.A1 to A15 were marked. On the side of the defendants, one Mr.Jayachandra Rao has given evidence as DW1 on the basis of the Power of Attorney Letter given by defendants 1 and 2/appellants herein. Two documents were filed by defendants 1 and 2, namely, Exs.D1 and D2, both are the Power of Attorney documents.

(15)The suit was decreed by the Trial Court both for a sum of Rs.17,65,586/- as against defendants 1 and 2 and a further sum of Rs.8,78,436/- as against the 3rd defendant. The Trial Court, after framing a specific issue whether the suit is barred by limitation, held that the suit is not barred by limitation by taking into account the date of original cause of action and the actual date of filing of the suit before the Original Side of this Court. Though an issue was framed by the Court with regard to the jurisdiction of this Court to decide the suit, the Trial Court held that there was no argument on the side of defendants 1 and 2 on the issue and therefore, held that the Court has jurisdiction to decide the suit and granted decree relying upon the documents Exs.A4 to A8. Aggrieved by the judgment and decree of the Trial Court, defendants 1 and 2 have filed the above Appeal.

(16)The point to be considered is whether the appellants are liable to the suit claim arising out of the dealership agreement by which the plaintiff was selling the products manufactured and supplied by 1st defendant is plaintiff.

(17)On the basis of the documents, Exs.A4 to A7, the plaintiff has made a claim for a sum of Rs.13,68,656/- against appellants. As per the documents above referred to, the sum payable by the appellants to plaintiff was arrived at Rs.13,68,656/-. Exs.A6 and A7 are the two invoices by which the plaintiff claimed to have suppled goods to the 3rd defendant on the instructions of the 1st defendant to the value of Rs.6,80,956/-. As per the Confirmation of Balance by an undated letter under Ex.A5 and another communication dated 17.08.2002 under Ex.A6 signed by the Country Manager of the 1st defendant confirming balance of Rs.6,43,486/-, the plaintiff has claimed a sum of Rs.6,87,701/-.

(18)The learned counsel for the appellants has made his submissions not very much to the understanding of this Court. Similarly, the learned counsel appearing for the 1st respondent started arguing the case on the premise that the entire money claimed by the plaintiff was for the value of goods supplied by the plaintiff to defendants 1 and 2 / appellants. Therefore, we examined the claim on the basis of pleadings, documents and evidence by ourselves.

(19)First of all, this Court noticed that the plaintiff's claim is only on the basis of a Dealership Agreement between the plaintiff and the 1st defendant. Unfortunately, no Dealership or Agency Agreement or an Agreement is produced to understand the terms of Agreement. It is the specific case of the plaintiff that the plaintiff had agreed to market the products of the 1st defendant both at Chennai and at New Delhi and at the time of closing the Dealership on 31.03.2002, there remained a sum of Rs.6,43,486/- and a further sum of Rs.44,214/- was due by the 1st defendant to the plaintiff and that the outstanding was admitted by the 1st defendant in the letter dated 17.08.2002. The documents-Ex.A5 and A6 are the two letters by which it is alleged that the 1st defendant has acknowledged the liability. Ex.A5 is the Confirmation of Balance amount by an undated letter and it is signed by the Country Manager on behalf of the 1st defendant. The said letter indicate that the claim was on account of goods supplied by the plaintiff to the 1st defendant.

Nowhere in the plaint the plaintiff has disclosed the Agreement as one relating to supply of goods by plaintiff to the 1st defendant. Therefore, the document-Ex.A5 cannot be relied upon as a valid document to support the material facts that are set out in the plaint seeking the relief from the 1st defendant. Under Order 6 Rule 2 of CPC, every pleading shall contain a statement in a concised form of the material facts of which the party pleading, relies for his claim. In the absence of a plea that the 1st defendant is liable to make payment for the goods supplied by the plaintiff to the 1st defendant, this Court is unable to find Ex.A5 as a document supporting the plaintiff's claim.

(20)The plaintiff/1st respondent herein, before the Trial Court relied upon the document-Ex.A4 dated 17.08.2002, the communication received from the 1st defendant's office at Chennai, confirming that a sum of Rs.6,43,486/- is payable to the plaintiff as on 31.03.2002 on account of various transactions as shown in the Statement of Accounts attached. First of all, in view of the statement contained in the document-Ex.A4, another communication regarding Confirmation of Balance by an undated letter indicating that a sum of Rs.44,214/- is due from the 1st defendant to the plaintiff is contrary to the document-Ex.A4 dated 17.08.2002. As per Ex.A4, it is stated that a sum of Rs.6,43,486/- is payable to the plaintiff as on 31.03.2002 on account of various transactions as shown in the statement of account attached. However, in Ex.A5, it is stated that as per the Books of Accounts maintained by the 1st defendant, a sum of Rs.44,214/- is outstanding for goods supplied by the plaintiff to the 1st defendant. This contradiction was never explained in the course of trial.

(21)The document-Ex.A4 is dated 17.08.2002. It is only a letter regarding Confirmation of Balance. This letter has been signed by one Mr.Gopalakrishnan, as the Country Manager of the 1st defendant. This letter is given as if a sum of Rs.6,43,486/- is payable to the plaintiff as on 31.03.2002 on account of various transactions as shown in the Statement of Accounts attached. The Statement of Account attached to Ex.A4 is not filed by the plaintiff to corroborate the document-Ex.A4. When the authenticity of every document filed by plaintiff is disputed in the written statement and the plaintiff's claim is denied in toto, it is for the plaintiff to establish by sufficient evidence. In this case, the suit appears to be based on the confirmation of balance as per Accounts maintained by the plaintiff in the course of business with the 1st defendant. When the suit is not on the basis of the original cause of action and based on accounts, at least the plaintiff should have produced the accounts which were attached to the document-Ex.A4 to prove the genuineness of Ex.A4. The acknowledgment or Confirmation of Balance under Ex.A4 is specifically denied by the appellants and therefore, this Court is of the view that an adverse inference can be drawn against the plaintiff for not producing Statement of Account attached to Confirmation of Balance under Ex.A4. The document is not complete by itself. The non production of the statement of account attached with Ex.A4 is a material defect.

(22)From the judgment of the Trial Court, this Court is unable to appreciate the manner in which the Trial Court has considered the evidence. Though it is settled that no amount of evidence is admissible without a pleading, the Trial Court has proceeded to accept the claim of Rs.6,87,700/- only on the basis of Exs.A4 and A5. Admittedly, liability under Ex.A5, the undated letter is not supported by any pleading and in the absence of any pleading that some amount is due from the 1st defendant to the plaintiff for the goods supplied by the plaintiff to the 1st defendant, this Court is unable to sustain the claim under Ex.A5. As pointed out earlier, the claim on the basis of Confirmation of Balance Letter under Ex.A4 is again on the basis on an incomplete document. When the accounts of transactions is attached to Ex.A4, the document-Ex.A4 is not reliable, especially, having regard to the specific defence denying the liability on any transaction. In the absence of statement attached to Ex.A4-letter, the document is inadmissible.

(23)As pointed out earlier, the whole suit is based on the Dealership Agreement between the plaintiff and the 1st defendant. When it is admitted that the plaintiff was acting as a representative of the 1st defendant to sell or market the products manufactured by the 1st defendant in Singapore, the plaintiff is expected to file the nature of Agreement so as to make a claim against the 1st defendant in relation to the contract between the plaintiff and the 1st defendant. If the suit is based on accounts, the plaintiff has to produce the accounts. When the liability is denied, its burden lies on the plaintiff to prove the liability.

(24)The further claim of the plaintiff/1st respondent was for the goods sold and delivered to the 3rd defendant. Exs.A6 and A7 are the two invoices filed by the plaintiff to prove that some of the goods were sold by the plaintiff to the 3rd defendant. Ex.A6 is the invoice dated 04.02.2002 showing that certain goods have been sold by the plaintiff to the 3rd defendant. Ex.A7 is the Xerox Copy of an invoice dated

06.03.2002 to show that certain goods worth Rs.6,05,956/- had been sold to the 3rd defendant by the plaintiff. There is no explanation as to why the plaintiff has not filed the original invoice dated 06.03.2002. The Xerox copy of the document-Ex.A7 for a sum of Rs.6,05,956/- and the invoice under Ex.A6 dated 04.02.2002 showing supply of goods to the value of Rs.75,000/- to the 3rd defendant are only the invoices raised in the name of the 3rd defendant. It is to be seen that the two invoices under Exs.A6 and A7 indicating the supply of goods was on 04.02.2002 and 06.03.2002 respectively. However, the present claim against the 1st defendant was that the 3rd defendant had informed the plaintiff and has furnished the Statement of Account to show that the amounts were paid to the 1st defendant for the goods supplied.

(25)The document Ex.A8 is produced by the plaintiff to show that by communication dated 26.02.2003, the 3rd defendant has given particulars about the payments made to the 1st defendant. The document-Ex.A8 shows that every payment that was referred to in the document, except two payments were made long prior to the invoices. Assuming that the document-Ex.A8 is true and valid, it only indicate that a sum of Rs.1,40,000/- and a further sum of Rs.1,50,000/- was paid to the 1st defendant on 15.02.2002 and 01.03.2002 respectively.

These claims cannot be relied upon to show that the 3rd defendant has made payment to the 1st defendant for the amount due under the two invoices dated 04.02.2002 and 06.03.2002 respectively. The goods supplied under the invoice dated 04.02.2002 is only for the value of Rs.75,000/- and therefore, the payment on 15.02.2002 also cannot be taken as one in relation to the transaction as alleged by the plaintiff in the plaint.

(26)Now, let us consider the case of plaintiff in the plaint as regards the sum of Rs.6,80,956/-. It is the definite case of the plaintiff in the plaint that the plaintiff realised the futility of marketing the 1st defendant's products as to what he should do to dispose of the stocks held by him. It was further stated that the 1st defendant directed the plaintiff to sell the products held by him to the 3rd defendant. It was thereafter the plaintiff stated that he transported the goods to the 3rd defendant and is entitled to get the value of goods delivered to the 3rd defendant from defendants 1 and 2. Firstly, the plaintiff should establish that he is the owner of the goods. When the plaintiff admits that he was marketing the goods manufactured by the 1st defendant, unless the plaintiff proves that the amount for the goods supplied to the plaintiff is paid in full, this Court cannot believe the case of the plaintiff that he is entitled to the value of goods manufactured by the 1st defendant. It is in the said context, the sale of the plaintiff/1st respondent, even assuming to be true, can be treated only as the sale of goods belonged to the 1st defendant through the plaintiff. When the plaintiff acted just as a dealer of the 1st defendant, he cannot claim the value of goods from the 1st defendant unless he disclose the nature of transaction in full. In other words, the plaintiff who has not even stated as to how he became the owner of goods, cannot raise the invoices against the 3rd defendant and claim the value of goods from the 1st defendant under the pretext that the sale was on the instructions of the 1st defendant. The case of the plaintiff therefore is not supported by proper pleading. Without establishing the basis of the plaintiff's claim, the invoices cannot be relied upon by the plaintiff to lay a claim against defendants 1 and 2/appellants herein for the alleged delivery of goods by the plaintiff to the 3rd defendant. The liability on the basis of the two invoices is neither admitted nor authorised by the 1st defendant as per any of the documents produced by the plaintiff.

(27)From the facts disclosed above, this Court is unable to sustain the suit claim of the plaintiff against defendants 1 and 2 /appellants herein on the original cause of action or on the cause of action pleaded by the plaintiff in the plaint. It is surprising to note that the plaintiff/1st respondent has made a claim against defendants for a sum of Rs.17,65,586/- on the basis of Exs.A4 to A7. The total amount due even according to the plaintiff/1st respondent is a sum of Rs.17,65,586/-. Though it is stated in the plaint that the 3rd defendant also is jointly liable for a sum of Rs.8,78,436/- and it is admitted that the claim against the 3rd defendant/2nd respondent herein is out of the part of claim against defendants 1 and 2/appellants herein and no separate court fee is paid for the amount claimed from the 3rd defendant separately, the Trial Court has granted a decree as against defendants 1 and 2 for Rs.17,65,586/- with interest and a further decree is also granted against the 3rd defendant for a sum of Rs.8,78,436/- with interest. This shows the non application of mind by the Trial Court with regard to the actual claim.

(28)This Court, having regard to the findings and conclusions reached above, is unable to sustain the judgment and decree of the Trial Court insofar as defendants 1 and 2 who are appellants.

(29)Therefore, the Appeal Suit is **allowed** and the judgment and decree dated 16.08.2013 passed in OS.No.10028/2010 by the learned IV Additional City Civil Judge, at Chennai, is hereby set aside insofar as it is against the appellants and the suit in OS.No.10028/2010 stands dismissed against defendants 1 and 2. No costs.

[SSSRJ] [NMJ]
18.11.2022

AP
Internet : Yes
Index : Yes / No

To

1.The IV Additional Judge,
City Civil Court, Chennai.

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

S.S. SUNDAR, J.
and
N.MALA, J.,

AP

Judgment in AS.No.394/2014

18.11.2022