

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY
APPEAL SUIT NO.329 OF 2016

JUDGMENT:

The unsuccessful defendant has filed this appeal assailing the judgment and decree dated 09.09.2015 in O.S.No.531 of 2010, on the file of the VIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar.

2. The plaintiff has filed original suit in O.S.No.531 of 2010 for recovery of Rs.11,90,000/- with future interest at 24% per annum on the principal amount of Rs.10,45,795.43 paise from the date of filing of the suit till the date of realization. The trial Court, after full length of trial, has decreed the suit as prayed for. Feeling aggrieved by the said judgment and decree dated 09.09.2015 in O.S.No.531 of 2010, the defendant has filed this appeal on the following grounds:

(a) The judgment and decree in O.S.No.531 of 2010 is bad in law.

(b) The trial Court has failed to consider the fact that the material supplied by the plaintiff was not in accordance with the specifications. As a matter of fact, the

defendant has suffered heavy loss due to return of the material from the market, which was got destroyed. The trial Court failed to appreciate this aspect and also ignored the crucial aspect with regard to quality of material, which requires to be used by the defendant for packing edible articles and decreed the suit and hence, the judgment and decree impugned is liable to be set aside.

(c) The trial Court has no jurisdiction to entertain the suit but the trial Court has ignored that aspect.

(d) There is arbitration clause. The trial Court has ignored that aspect also.

Accordingly, the appellant / defendant prayed to set aside the judgment and decree in O.S.No.531 of 2010.

3. Heard learned counsel for the appellant and respondent. The submissions made on either side have received due consideration of this Court.

4. For the sake of convenience, the parties hereinafter referred to as plaintiff and defendant, as they were arrayed in the original suit.

5. In the light of the rival contentions, evidence available on record and the findings recorded by the trial Court, the following points arose for consideration :

- (i) Whether the defendant has raised any objection as to the supply of material by the plaintiff without considering the specifications, as per the understanding ?
- (ii) Whether the trial Court has jurisdiction to entertain the suit in view of jurisdiction clause and arbitration clause in the invoices and purchase orders ?
- (iii) Whether the judgment and decree of the trial Court is sustainable?

6. Since all the point Nos.(i) to (iii) are interlinked, to avoid repetition and for the sake of convenience, they are answered together as under :

Point Nos.(i) to (iii):

7. The plaintiff has filed the original suit alleging that the plaintiff is a registered company, represented by its Director, having its registered office at Kattedan, Hyderabad and dealing in the business of manufacturing Laminated Roto Gravure Sheets, laminated sheets/rolls and supplying the same to various customers. In the course of business the plaintiff supplied the material worth Rs.15,40,392.97 paise to the defendant on various dates

and out of the said amount, the defendant has paid only Rs.4,94,597.54 paise, leaving a balance of Rs.10,45,795.45 paise. The plaintiff demanded for repayment of the said amount but the defendant failed to repay the same. The plaintiff has claimed interest at 24% per annum on the principal amount of Rs.10,45,795.43 paise along with legal notice charges for issuing Ex.A19 – legal notice dated 10.03.2010. Altogether the plaintiff claimed an amount of Rs.11,90,000/-.

8. The defendant has filed written statement denying the suit claim alleging that the trial Court has no jurisdiction and it is the Courts at Cochin of Kerala State, having territorial jurisdiction as the defendant is residing and carrying out business at Cochin. The defendant further averred that they have placed purchase order No.5433/94/09 dated 02.05.2009 with the plaintiff for supply of goods and the purchase order contains several terms and specifications with regard to quality of goods, inspection and examination and unless test certificates are given to the defendant by the plaintiff, the material is not useful. It is further averred in the written statement that

there is no clause for payment of interest and prayed for dismissal of the suit.

9. Based on the pleadings, the trial Court has framed the following the following issues:

1. Whether the plaintiff is entitled for recovery of suit amount of Rs.11,90,00/- with interest from the defendant?
2. To what relief ?

10. On behalf of plaintiff, PW1 is examined, Exs.A1 to A24 documents were marked and thereafter, on behalf of the defendant, DW1 is examined, Exs.B1 to B3 documents were marked. Having heard on both sides and on appreciation of oral and documentary evidence, the trial Court has answered both the issues in favour of plaintiff holding that the plaintiff is entitled for recovery of suit claim of Rs.11,90,000/- with future interest at 24% per annum on the principal amount of Rs.10,45,795.43 paise from the date of suit till the date of realization.

11. This appeal suit is preferred against the said findings, recorded by the trial Court. Now let us examine the oral and documentary evidence, adduced by both the parties before the trial Court.

12. PW1 is the Manager of plaintiff, he has filed his evidence affidavit in lieu of chief-examination reiterating the plaint averments. In his evidence in chief-examination, Exs.A1 to A24 documents are marked. In the cross-examination, PW1 has stated that the material was supplied as per the purchase orders as reflected in the invoices. He admitted that purchase orders are not filed before the Court and the terms and conditions are mentioned in the invoices and the invoices filed in the Court are not signed by the defendant. PW1 denied the suggestion that as per the terms and conditions of the purchase order, the trial Court has no jurisdiction to entertain the suit as the defendant is doing business at Cochin. PW1 has explained that normally the test certificate will be sent along with invoice and in this case also test certificates were sent to the defendant. However, he has not filed any proof to show that test certificates were dispatched to the defendant.

13. On behalf of the defendant, their Deputy Manager is examined as DW1, filed evidence affidavit in

lieu of chief-examination. Ex.B1 is Board Resolution, authorizing him to give evidence. Ex.B2 is office copy of purchase order, one among several similar orders, dated 25.09.2009. It is stated that there is a clause for arbitration in Ex.B2 and as per the arbitration clause, the matter has to be referred to the arbitrator for adjudication of such disputes. Similarly, as per the purchase order, the Courts at Cochin have alone got jurisdiction. Ex.B3 is e-mail dated 25.11.2009 and other connected e-mails related to supplies and other correspondence. In his chief-examination it is mentioned that the plaintiff instead of supplying laminated rolls, as per the specifications made in the purchase orders, supplied plasma with 2.2 OD WVTR (Water Vapour Transmission Rate). He further explained that as per clause 6 of purchase order the goods supplied by the plaintiff are subject to inspection and examination by defendant company and thereafter if any goods are found to be defective and not in conformity with the specifications, in the purchase order, such goods are liable to be rejected. It is stated in chief-examination by DW1

that test certificates are neither supplied nor delivered along with the material.

14. In cross-examination on behalf of plaintiff, DW1 has fairly admitted that as per Ex.A1 disputes if any are only subject to Hyderabad jurisdiction. He stated that e-mails were sent mentioning the defects in the goods supplied by the plaintiff. He denied the suggestion that Ex.B3 is created only to defeat the claim of the plaintiff and that original of Ex.B2 was not sent to the plaintiff through courier. DW1 has fairly admitted that as per Ex.A1 there is an interest clause and the defendant has not raised any objection with regard to the conditions mentioned in Ex.A1. DW1 has admitted that defendant has not supplied any cylinder for marking their symbol and the defendant has agreed to pay the cost of cylinder to the plaintiff. DW1 further stated that immediately after receipt of goods objections were raised through phone. It is also stated by DW1 that prior to Ex.B2-purchase order also the defendant has purchased material from the plaintiff. DW1 has fairly admitted that the material alleged to have been rejected is not sent or returned to the plaintiff.

15. Be it stated that as per Ex.A1-invoice dated 21.08.2009 the dispute is subject to the jurisdiction of Courts at Hyderabad and Ranga Reddy District only. Similarly, as per Ex.B2 dated 25.09.2009 any such dispute is subject to jurisdiction of Courts at Cochin only. Undisputedly, the plaintiff has issued a legal notice dated 10.03.2010 calling upon the defendant for payment of outstanding due amount. Ex.A21 is the postal acknowledgment card. It is not the case of the defendant that they have raised objection immediately on receipt of legal notice stating that any dispute is only subject to the jurisdiction of Courts at Cochin and that the parties have invoked the arbitration clause.

16. Sections 15 to 20 of Civil Procedure Code (for short 'CPC') deal with place of suing. Section 16 of CPC envisages that the suit to be instituted where the subject matter is situated. This Section recognises a well established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is

: 10 :

not situated has no power to deal with and decide the rights or interests in such property.

17. Section 17 of CPC deals with the suits for immovable properties, situate within the jurisdiction of different Courts. Whereas, Section 18 of CPC deals with the place of institution of suit where local limits and jurisdiction of Courts are uncertain.

18. Section 20 (c) contemplates as under :

Section 20 (c) of Civil Procedure Code :

Other suits to be instituted where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction

(a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) Any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or

personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

19. Section 20 (c) of CPC contemplates that subject to the limitations aforesaid in Sections 15 to 19 every suit shall be instituted in the Courts within the local limits of whose jurisdiction the cause of action arose. The explanation to Section 20 of CPC clearly shows that a corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

20. Admittedly, the plaintiff is having its registered office at Kattedan and its unit is within the territorial limits of Courts at Hyderabad and Ranga Reddy District and that is the reason why in Ex.A1-invoice it is categorically mentioned that the disputes are only subject to Hyderabad jurisdiction.

21. Section 20 of CPC leaves no room for any doubt that the suit would lie in the Court within local limits of whose jurisdiction cause of action has arisen wholly or partly. Section 20 of CPC is a residuary provision and covers those cases not falling within the limitations of Sections 15 to 19 of CPC and makes it abundantly clear that the Section takes within its sweep all personal actions. Therefore, considering the fact that as per Ex.A1 the plaintiff has specified that any dispute is subject to the jurisdiction of Courts at Hyderabad and the plaintiff being the master of the suit, as they are carrying out business within the territorial limits of Courts at Hyderabad and Ranga Reddy District, has rightly instituted the suit before the Courts in Ranga Reddy District.

22. The trial Court while relying on the principles laid in **Hanil Era Textiles Limited Vs. Puromatic Filters (P) Limited¹**, **New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Company Limited²** and **M/s.Swastik Gases**

¹ 2004 (4) SCJ 703

² 2004 (5) SCJ 194

Private Limited Vs. Indian Oil Corporation Limited³ has rightly arrived at a conclusion that the Courts of Ranga Reddy District at L.B.Nagar have territorial jurisdiction and accordingly, I do not find any irregularity in the findings recorded by the trial Court on this aspect.

23. The defendant has raised another objection stating that there is arbitration clause and the trial Court has failed to refer the matter to arbitrator and on that count the judgment and decree of the trial Court is liable to be set aside. It is true under Ex.B2 that there is an arbitration clause but the defendant has not insisted for referring the matter to the arbitrator before filing the written statement or first statement. On the contrary, the plaintiff has clearly stated that though there is an arbitration clause, it was not acceptable to the plaintiff. In this context, I may refer to Section 8 of Arbitration and Conciliation Act, 1996 (for short the Act), wherein it is contemplated that the expression "first statement on the substance of the dispute" contained in Section 8(1) of the Act must be contradistinguished with the expression

³ 2013 (9) SCC 32

"written statement". It employs submission of the party to the jurisdiction of the judicial authority. What is, therefore, needed is a finding on the part of the judicial authority that the party has waived its right to effect the arbitration clause. If an application is filed before actually filing the first statement on the substance of the dispute, the party cannot be said to have waived his right or acquiesced himself to the jurisdiction of the court.

24. In the case on hand, no such application is filed by the defendant as required under Section 8(1) of the Act, the defendant has filed the written statement and not insisted for arbitration clause, whereas, the plaintiff has categorically stated that such arbitration clause was not acceptable to him. Thus, the defendant has failed to file any application before the first statement on substance of the dispute, he has not filed any other application except filing the written statement and thereby it can be safely concluded that the defendant is not entitled to raise such objection having filed the written statement and as such having remained silent, not entitled to raise objection or to deny the suit claim on the ground that the matter has to be

referred to the arbitrator and that in view of arbitration clause the suit is bad in law.

25. The prime contention of the defendant is that the material supplied by the plaintiff is not of superior standards and he has been disputing the quality and insisting for test report but at no point of time the plaintiff has submitted test report. Be it stated that, as admitted by DW1, even prior to Ex.B2 the plaintiff has supplied material and the defendant has accepted the same. Further, the defendant has not returned the material for which he claimed that it is not as per the specifications, as admitted by DW1, nor it was informed by the defendant to the plaintiff that the material was lying in the godown of the plaintiff and the plaintiff is at liberty to collect the same. Except agitating through Ex.B3 e-mail there is no such proof or correspondence to the effect that the defendant has been insisting or agitating for test reports or supply of material as per the specifications or that the material supplied by the plaintiff company was with 2.2 OD WVTR instead of sending material as per the specifications in the purchase order or the invoice.

26. On a conjoint reading of Exs.B2 and B3 purchase order and e-mail correspondence and considering the conduct of the defendant, who remained silent without disputing the receipt of said quantities and claim for an amount of Rs.11,90,000/- with future interest at 24% per annum and the admission made by DW1 in the cross-examination, it is clear that it was not informed to the plaintiff that the material supplied by him is against the specifications and it is not put to use by the defendant and hence, called upon the plaintiff to take back the said material. In such circumstances, with the oral and documentary evidence available on record only one reasonable inference that can be drawn is that on the one hand the defendant has quietly used the material and on the other hand, he started agitating through Ex.B3 e-mail correspondence when the plaintiff demanded for payment of the amount due. The defendant might have insisted for supply of goods as per the specifications through Ex.B3 e-mail correspondence but that does not amount that the quality of material supplied is far inferior and that it was rejected by the defendant and plaintiff was called upon to

: 17 :

take back the material. In such circumstances, I do not find any irregularity or infirmity in the findings recorded by the trial Court as the supply and delivery of material is admitted by the defendant the burden is on the defendant to establish that the material supplied is far inferior quality and it is against the specifications and that plaintiff is called upon to collect the same.

27. Be it noted that even subsequent to Ex.B3 correspondence, as admitted by DW1, the plaintiff has supplied the material and the defendant has accepted and received the same. The defendant has received the material basing on the purchase orders even after 25.09.2009. Thus, if the defendant is not really satisfied with the material supplied by the plaintiff, as a prudent businessman, he would have stopped further purchases from the plaintiff but the defendant has continued to accept the supplies, which clearly shows that the defendant has received goods and utilized the same and therefore, in such facts and circumstances, the defendant is estopped from raising objections stating that the material supplied as per the purchase order is not as per

the specifications and that he is not liable to pay the amount towards supply of the material.

28. Therefore, all these facts and circumstances would establish that the defendant has utilized the material, which is not returned to the plaintiff and there was no communication calling upon the plaintiff to take back the material supplied against the specifications and that the defendant is liable to pay for the material supplied by the plaintiff and received by the defendant either before or subsequent to Ex.B2. The defendant except agitating that the material supplied was against the specifications, not denied the liability for payment of Rs.11,90,000/- as claimed by the plaintiff through Ex.A19 legal notice. In that view of the matter, considering the oral and documentary evidence adduced on both sides, in my considered opinion, the trial Court has rightly appreciated the evidence and answered the issues in favour of the plaintiff. The defendant having pleaded that the supply of material was against the specifications failed to return the material to the plaintiff, failed to prove that it was not accepted or received and even failed to issue reply to

Ex.A19 legal notice. The silence of the defendant in such circumstances except agitating through Ex.B3 e-mail goes in long way leading to adverse inference holding that though agitated about the supply of material against the specifications demanding for test reports, the defendant was using the material as supplied by the plaintiff and liable to pay the amount for the material received by him.

29. As far as interest clause is concerned, it is mentioned in clear terms in Ex.A1 invoice and it is also admitted by DW1 that as per Ex.A1 invoice, the plaintiff is entitled to claim interest at 24% per annum and the defendant did not resist the same. Be it stated that it is commercial transaction between the parties and rate of interest is mentioned in the notice. Thus, I do not find any infirmity or irregularity in the findings recorded by the trial Court. Accordingly, for the aforesaid reasons these points are answered in favour of the plaintiff and against the defendant holding that the judgment and decree impugned does not warrant any interference by this Court.

: 20 :

30. In the result, this appeal suit is dismissed with costs confirming the judgment and decree dated 09.09.2015 in O.S.No.531 of 2010 on the file of the VIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. Miscellaneous petitions, if any, pending, in this Appeal Suit, shall stand closed.

A.VENKATESWHARA REDDY, J

21-09-2022
abb