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AS.No.334 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.334 of 2013

Sree Rengaraaj Steel and Alloys Limited
by its Director P.Sampathkumar
Salem 636010

Appellant

Vs

MSTC Limited by its Regional Manager
I.N.Jha, Chennai-1

Respondent

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC, against the judgement and decree, dated, 20.11.2012, passed in OS.No.14336 of 2010, by the VII Additional City Civil Court, Chennai.

For Appellant : Mr.P.R.Raman, SC for Mr.A.Uma Sankar

For Respondent : Mr.P.Subba Reddy

JUDGEMENT

(Judgement of the Court was made by S.S.SUNDAR, J.)

1. The Defendant in OS.No.14336 of 2010, on the file of VII Additional City Civil Court, Chennai is the Appellant in this appeal.
2. The Defendant filed the suit originally in CS.No.1003 of 1999, before this Court. Later, the same was transferred to the VII Additional City Civil Court, Chennai and renumbered as OS.No.14336 of 2010.



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3. The Respondent/ Plaintiff filed the said suit for recovery of a sum of Rs.19,91,471/-, with interest at 25% p.a. from the Appellant/ Defendant. The Plaintiff is a Government Company. The Defendant is also a Company registered under the Companies Act, 1956. The Plaintiff has been carrying on the business of export and import trade, as a canalising agent under the export and import policy of Government of India. The Plaintiff used to book purchase orders for shredded scraps of various parties abroad to customers who intended to purchase from abroad.
4. It is admitted that as between the Plaintiff and the Defendant, there is a contract, the Defendant is liable to pay price for the quantity of the goods purchased by it. In addition to the price, it is also stated that the Defendant is liable to pay the Plaintiff bank charges and service charges at 1.1% to 2% per tonne. It is further stated that as part of the arrangement, for the quantity booked by the Defendant, the Plaintiff used to arrange bill of lading equivalent to the quantity booked by the Defendant or any other Indian customers so that the ship on arrival could deliver the Defendant identified quantities intended for the customer.
5. It is the case of the Plaintiff that the Defendant, who is one of the customers of the Plaintiff, purchased 4150 MT covered by various bills of lading. The Plaintiff has granted 175 days interest free time credit after delivery of the materials to the Defendant. It is also stated that the customer, like the Defendant, is liable for the price agreed and the difference calculated at the prevailing exchange rate as on the date of such payment. Stating that the



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Defendant has to pay an amount of Rs.23,59,408/- towards the purchase of materials through the Plaintiff, the suit came to be filed for recovery of a sum of Rs.19,91,471/- with interest at 24% p.a on the sum of Rs.12,01,942.88/- as the Plaintiff admitted payment of Rs.7,49,064/- on 06.07.1996. The suit was filed on 21.01.2000.

6. Though the Defendant filed a detailed written statement, raising several grounds, including a counter claim for a sum of Rs.15,66,705.70/-, one of the main grounds raised in the written statement is that the suit for recovery of money is barred by limitation, as the suit itself is laid three years after the cause of action arose for recovery of money. It is seen that the Defendant though seriously disputed the liability, the quantity of material purchased by the Defendant through the Plaintiff and the money due as per the terms of the contract between the Plaintiff and the Defendant, are not in dispute. The counter claim is based on the allegation that the Plaintiff had received excess amount towards change in Dollar value and the amount lying with the Plaintiff as provisional demurrage deposit.
7. As seen from the pleadings, the claim is based on actual transaction. The Trial Court, despite the fact that a specific plea is raised by the Defendant in the written statement, raising the question of limitation, did not frame an issue. However, the Trial Court found that as per the ledger account, which is marked as Ex.A10, the last credit made towards the amount due was on 06.07.1996. Accepting the said payment as a payment made by the Defendant towards the liability, the Trial Court held that the suit filed by the



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Plaintiff is within time. Aggrieved by the judgement and decree of the Trial Court, the above appeal is preferred by the Defendant, who had suffered a decree for money.

8. The learned senior counsel for the Appellant has no quarrel with the findings of the Trial Court on all other issues, except limitation. He submitted that the document Ex.A10 only shows an adjustment of account by the Plaintiff towards demurrage deposit amount and that the same cannot be termed as payment in terms of Section 19 of the Limitation Act. The learned counsel then pointed out that the Trial Court has failed to frame a specific issue on the question of limitation and that therefore, there was no focus on the issue with reference to the facts pleaded and admitted before the Trial Court.
9. The learned counsel for the Respondent, however, submitted that the Trial Court has rightly considered the payment as per the ledger account as an acknowledgement. He referred to several communications between the parties and tried to convince this Court that the amount, which was adjusted as per the ledger account, is the amount, which is admittedly payable by the Plaintiff to the Defendant. Pointing out that there was a demand by the Defendant, the learned counsel submitted that the Trial Court has rightly relied upon the payment by way of adjustment to save the period of limitation. The learned counsel for the Respondent further submitted that the account maintained by the Plaintiff is a current account and that therefore, the last entry regarding payment should be taken as the starting point of limitation.



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10. This Court need not elaborate the facts since the learned counsel on either side has admitted the position that the only issue to be considered is whether the adjustment of a sum of Rs.5,16,000/-, under Ex.A10 will constitute an acknowledgement under Section 19 of the Limitation Act or not?

11. From the pleadings and the facts admitted, there is no dispute that no payment has come from the Defendant. The last payment, as per the ledger account, was on 08.12.1995. It is admitted by the Plaintiff that the entry on 23.07.1996 is just an adjustment of payment, by referring to the entry as if the payment was shown towards demurrage deposit.

12. Section 19 of the Limitation Act reads as follows:-

“19. Effect of payment on account of debt or of interest on legacy:-

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation.—For the purposes of this section,

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) “debt” does not include money payable under a decree or order of a court.”

13. From the plain language of Section 19 of the Limitation Act, it refers to payment on account of a debt or interest before the expiration of the period



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of limitation by the person liable to pay the debt or his agent. Unless the payment is made by the Defendant towards the liability before the expiration of the period of limitation, there cannot be an acknowledgement in terms of Section 19 of the Act to save the period of limitation. In this case, self-serving adjustment of account in the ledger maintained by the Plaintiff cannot be considered as an acknowledgement, particularly, when it is admitted that no payment as such was received from the Defendant towards debt or liability as per the ledger account.

14.It is well settled that to attract Section 19, there must be a payment within the prescribed period of limitation and it should be acknowledged by some form of writing. Though the payment, if it exists, extends the period of limitation, it should be proved that the payment was an acknowledgement of the existing debt. In this case, this Court is unable to find the ingredients so as to treat that the adjustment of a sum of Rs.5,16,000/- by the Plaintiff himself in the ledger will not constitute an acknowledgement as contemplated under Section 19 of the Limitation Act.

15.It is worthwhile to refer to an unreported judgement of the Division Bench of the Andhra Pradesh High Court, dated 20.06.2018, made in AS.No.63 of 2008 (M/s.Sri Gayatri Fertilisers and Chemicals Vs. M/s.Madras Fertilisers Limited), wherein it was held as follows:-

“27. It is needless to point out that if several transactions between two parties had taken place on a one-on-one basis, independent of each other, limitation will start running from each of the transactions separately. But if there is an open, mutual and current account, limitation will start running from the last of the transactions.



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29. Interestingly, five cheques which dishonoured on 05-7-1996 and 08-7-1996 are included in the Statement of Account Ex.A-2 after the entry relating to 23-7-1996. Thereafter, there is another entry with the caption "SDD ADJ.CREDIT NOTE" which is dated 30-9-1996, relating to the encashment of a sum of Rs.1,57,940=53 ps from the deposits.

30. The limitation could not have started from 30-9-1996, merely on the basis of a unilateral entry made by the respondent/plaintiff in their books of account, encashing the security deposits given under Exs.A-9 and A-10. Exs.A-9 and A-10 are respectively dated 04-01-1996 and 14-3-1996. As per the terms and conditions contained in Exs.A-9 and A-10, the deposits made thereunder were to be with the plaintiff for a minimum period of one year. Merely because they can encash the deposit at any time, the same will not tantamount to an acknowledgement of liability on the part of the appellants/defendants. If a unilateral adjustment of a security deposit will not constitute acknowledgement of liability, the same cannot extend the period of limitation.

16.In view of the facts admitted and the position of law indicated by this Court, this Court finds that the judgement and decree of the Trial Court is not sustainable as the suit filed by the Plaintiff is barred by limitation.

17.In the result, this appeal suit is allowed. The impugned judgement and decree, dated 20.11.2012, made in OS.No.14366 of 2010, by the VII Additional City Civil Court, Chennai, is set aside and the suit in OS.No.14366 of 2010 is dismissed. No costs.

(S.S.S.R.J.) & (A.A.N.J.)
25.01.2023

Index:Yes/No
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S.S.SUNDAR, J.



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and
A.A.NAKKIRAN

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To

1. The VII Additional City Civil Court, Chennai
2. The Record Keeper, VR Section, Madras High Court

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