IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.1221 of 2008

M/s.Subiksha Trading Services Pvt. Ltd.
Rep. by its Director R.Subramaniam
No.75-C, II Main Road
Gandhinagar, Adyar
Chennai 600 020. .. Appellant

vs

M/s. Century Flour Mills Ltd.
Rep. by its Sales Manager Sri N.Chokalingam
Indian Chamber Buildings
1st Floor, Esplanade
Chennai 600 108. .. Respondent

Prayer: Appeal under Section 100, CPC, against the decree and judgment dated 12.02.2008 passed by the learned III Additional Judge, City Civil Court, Chennai in A.S.No.664 of 2007 confirming the decree and judgment dated 29.12.2006 passed by the learned VII Assistant City Civil Court in O.S.No.1854 of 2004.

For Appellant : Ms.J.Madhuri

For Respondent : Mr.L.Rajasekar

JUDGMENT

The defendant is the appellant. The parties are referred to the ranks as per the suit.

2. The plaintiff are the manufacturers of maida, suji and atta. The defendant had purchased maida and suji, on credit basis from the plaintiff against invoices. The balance, as of 07.11.2001, was Rs.1,58,456.18/-. As the amount have not been settled, the parties had exchanged notices.

3. It is the plea of the plaintiff that a cheque had been issued for Rs.43,047/- on 29.10.2001 towards part payment. This cheque was returned by the bank as the payment was stopped by the defendant. Notice was issued to the defendant on 07.11.2001 demanding payment. On 16.11.2001, a reply was sent by the defendant admitting to the supply of goods, but disputing the accounts. Despite the demand, as there was no satisfaction, a suit came to be presented in O.S.No.1854 of 2004 on the file of the City Civil Court of Madras.

4. In response to the suit, the defendant filed a written statement,

wherein, he admitted to the purchase of maida and suji, but took a curious stand that he would make the payment only on production of books of account. Pending the proceedings, the defendant issued Exhibit B.1, calling for the purchase order and delivery challan. It was suitably replied under Exhibit B.2, pointing out that there was no dispute in the supply of goods and none of the invoices, that had been raised or supplies made, were even controverted in the written statement.

5. For the first time, after the parties had entered the Court hall, a dispute was raised on books of accounts, purchase order and delivery challans. The Trial Court as well as the Lower Appellate Court decreed the suit as prayed for. This second appeal was admitted on the following substantive question of law:

> a. Whether a suit filed on accounts would be maintainable without production of the original account books as mandated under Order VII Rule 17 of the C.P.C?
>
> b. Whether the non-production of account books in a suit for accounts is not fatal to the suit?
>
> c. Whether the onus of delivery or non-delivery of goods alleged to be sold, would lie on the defendant?

d. Whether any decree could be passed without the plaintiff proving delivery of goods?

e. Whether the onus of sending an invoice does not lie on the plaintiff?

6. Expanding on these questions, Ms.Madhuri would submit that the books of accounts are mandatory as per Section 209 of the Companies Act of 1956 and the same have not been produced, the Court must hold against the plaintiff. She would further argue that there is no proof of delivery of goods, the suit must be dismissed. Apart from that, she would plead that there is no contract for interest and hence, the Court erred in awarding interest for the same. Finally she would say that the respondents are to be blamed for having kept the appeal pending from 2008 till 2023 and even on that score, the interest must not be granted.

7. I have heard Mr.Rajasekar, learned counsel appearing on behalf of the respondent, who would rebut the submissions made by the learned counsel for the appellant.

8. I am afraid that the arguments that books of account has not been produced is not acceptable. It is not the case of the defendant that no

supplies have been made. In order to prove *prima facie* supplies had been made, Exhibist A.1 to A.4 have been produced. Further, the computerized ledger account for the period 01.04.1999 to 31.03.2002 and 01.04.2002 to 31.03.2003 and 01.04.2003 to 31.03.2004, have been produced in the form of Exhibits A.5 and A7. The parties, in the written statement as well as in the reply notice, have accepted that deliveries have been made. If as pleaded by Ms.Madhuri there is some short delivery, the burden is on the defendants to prove the same. Unfortunately, this is not the case projected before the Trial Court or before the Lower Appellate Court. I will not permit a new plea to be raised, especially in the second appeal when the same is not supported by factual foundation, ie., in written statement or at least in the reply notice. The invoice and ledger produced in Exhibits A.2 to A.7 satisfies me that the books of account need not be produced.

9. Maintenance of books of accounts in Section 209 of the Companies Act is for statutory compliance. If the arguments of the learned counsel is to be accepted, the commercial structure of this Country will fall crumbling down. Supplies are demanded and they are satisfied on such demand following the practices of trade. The practices of the trade are not

entirelycaptured by the Companies Act, but the said Act has been enacted in order to hold the Company responsible by the regulatory authorities under this Act in case the books are not properly maintained.

10. If the Company does not maintain books of accounts, as required under the Company Act, it is liable for penalty under that Act, but, that does not mean it looses the right to recover the money due. Especially so, in this case, where the defendant has not even taken effort to plead that there was short supply. On the contrary, paragraph 5 of the written statement admits to the supply. Therefore, I reject the arguments on the books of accounts as well as the plea that the goods have not been delivered.

11. On the interest aspect, the learned counsel for the appellant would argue that there is no contract for interest and therefore, the interest need not be paid. The plaintiff as well as the defendants are commercial entities and apart from that, it is one of the terms and conditions of sale, especially clause (5), which states, interest at the rate of 24% will be charged and collected on all credit bill if unpaid within 48 hours. The agreement under clause (5) would clearly annihilate the arguments of the learned counsel for

the appellants that there is no agreement for interest.

12. Finally, the second appeal been pending before the Court, none of the litigants can be blamed for the same. I am not willing to accept any of the pleas raised and none of the question of law raised by the appellant apply with the facts of the present case. I have to take notice of the fact that pending the appeal, the appellant was wound up by an order of the Court in C.P.No.68 of 2009. The said order was confirmed by a Division Bench of this Court in O.S.No.144 to 147 of 2012 dated 05.08.2015. The Company is now under the care and custody of the official liquidator.

13. The second appeal stands dismissed. The judgment of the Court below in A.S.No.664 of 2007 on the file of the III Additional City Civil Court in confirming the judgment and decree in O.S.No.1854 of 2004 on the file of the VII Assistant City Civil Judge stands confirmed. Costs throughout.

14. The learned counsel for the respondent would bring it to the notice of this Court that pending the appeal, a sum of Rs.1,15,600/- had

been deposited to the credit of the suit. The respondent is permitted to withdraw the amount, following the procedure established by law.

15. The learned counsel for the appellant would argue that the Company is under liquidation and therefore, costs need not be imposed. This is a suit for recovery of money on goods sold and delivered. It is the settled proposition of law that, cost follows the result of the suit. Therefore, I am not willing to accept the argument of the learned counsel for the appellant. It is rejected. Costs throughout.

03.04.2023

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V. LAKSHMINARAYANAN,J.

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