IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.03.2023
Pronounced on	24.05.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.S. (Comm. Div.) No.10 of 2022

M/s.Sai Infra Equipment Pvt. Ltd.,
No.1, Sai Avenue,
Green Glen Layout ORR, Bellandur,
Bangalore – 560103.
rep. by its Director
Mr.Kathirvelu Ilango. ... Plaintiff

Vs.

M/s.Geo Foundations & Structures Pvt. Ltd.,
No.89, I Main Road,
Gandhi Nagar, Adyar,
Chennai – 600 020.
rep. by its Managing Director
Mr.Ravichandran ... Defendant

Civil Suit (Commercial Division) filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of C.P.C., to pass a Judgment and Decree against the defendant;

a) directing the defendant to pay a sum of Rs.1,01,11,084/- which is due and payable by the defendant to the plaintiff,

b) to pay further interest at the rate of 24% p.a., on Rs.1,01,11,084/- from the date of plaint till the date of realization, the cause being commercial disputes as provided for in Section 2(1)(c)(vi) of the Commercial Court, Commercial Appellate Court, Commercial Judicial and Commercial Appellate Judicial of High Court Act, 2015,

c) to pay the costs of this suit, and

d) to pass such further or other orders as may be deemed fit and proper under the circumstances of the case and thus render justice.

For Plaintiff : Mr.S.Venkatesan

For Defendant : No appearance

JUDGMENT

Heard the learned counsel for the plaintiff. The Suit Summons on the sole defendant was served on 03.02.2022. Despite the same, the sole defendant chose to remain absent and was thus set *ex- parte*.

2. The sole defendant has thus forfeited the right to file a Written Statement under the provision of the Commercial Courts Act, 2015. By an order dated 08.12.2022, the case was therefore directed to be listed before the Additional Master - II for recording evidence.

3. Thus, the case was listed before the Additional Master - II on 19.12.2022. Before the Additional Master - II, the plaintiff marked the following suit documents as Exhibits P1 to P15:-

Table No.1

Date	Exhibits Nos.	Nature of Documents
07.04.2015	Ex.P1	Copy of work order issued by the plaintiff to defendant
2015-2021	Ex.P2	Copy of general ledger from plaintiff's statement of account
15.12.2015	Ex.P3	Copy of Invoice issued by the plaintiff to defendant
02.02.2016	Ex.P4	Copy of Invoice issued by the plaintiff to defendant
11.11.2016	Ex.P5	Copy of Tax Invoice issued by plaintiff to defendant
20.06.2017	Ex.P6	Copy of Tax Invoice issued by plaintiff to defendant
24.09.2018	Ex.P7	Copy of Notice issued by the plaintiff to defendant
21.03.2018	Ex.P8	Copy of E-mail communication from plaintiff to defendant
13.07.2019	Ex.P9	Copy of E-mail communication from plaintiff to defendant
02.08.2019	Ex.P10	Copy of E-mail communication from plaintiff to defendant
13.08.2019	Ex.P.11	Copy of E-mail communication from

		plaintiff to defendant
16.08.2019	Ex.P12	Copy of E-mail communication from plaintiff to defendant
11.08.2020	Ex.P13	Copy of E-mail communication from plaintiff to defendant
28.08.2020	Ex.P14	Copy of E-mail communication from plaintiff to defendant
1.12.2017 to 31.12.2017	Ex.P15	Copy of statement of account

4. The plaintiff has filed this money suit to recover a sum of Rs.1,01,11,084/- from the defendant together with interest at 24% per annum on the aforesaid amount of Rs.1,01,11,084/- from the date of plaint till date of realization. The plaintiff has claimed that the aforesaid amount is allegedly due from the defendant for the usage of the construction materials/equipment's of the plaintiff hired by the defendant.

5. The plaintiff claims to be in the business of renting of heavy construction equipment such as Batching Plant, Concrete Pumps, Transit Mixer, Tower Crane, Mobile Crane, Hydra Crane, Passenger Hoist, Rope Suspension, Platform and Self Tower Erection Service which were hired by the defendant.

6. It is the specific case of the plaintiff that the sole defendant had approached plaintiff and had placed Ex.P1 Purchase Order dated 07.04.2015 on the plaintiff for hiring some of the construction equipment's viz. Plant CP 18 – Schwing Shetter with Hopper and Screw Conveyor etc. together with labour charges for the defendant's project of Doubling Track Between Haripad and Ambalapuzha for southern Railways.

7. It is further case of the plaintiff that the defendant initially made few intermittent payments to the plaintiff. It is further case of the plaintiff, a running account was maintained in Ex.P2 General ledger for the transaction with the defendant.

8. It is further case of the plaintiff that as per Ex P1 Purchase Order dated 7.4.2015, the defendant was required to guarantee a minimum of 800 Cubic Metric per month and thus for every month, the defendant was required to pay a minimum sum of Rs.5,00,000/- to the plaintiff.

9. It is the further case of the plaintiff that the defendant made only a part payment for few of the invoices raised by the plaintiff and that payments made by the defendant were not against any specific invoices raised by the plaintiff.

10. It is the case of the plaintiff that the defendant made only a part payment to the plaintiff and failed to pay for the remaining balance amount on the invoices raised.

11. Under these circumstances, the plaintiff claims to have sent several E-mail Communications *vide* Ex.P8 to P14 and called upon the defendant to pay for the amounts. It is case of the plaintiff that since the defendant failed to pay the balance amount, the plaintiff was constrained to issue Ex.P7 Legal Notice dated 24.9.2018 to the defendant and called upon the defendant to pay a sum of Rs.65,44,156/- with respect to outstanding due for the Ambalapuzha Project and another Project at Vallarpadam.

12. It is the case of the plaintiff that a sum of Rs. 1,01,11,084/- is still due and payable by the defendant to the plaintiff towards principal and interest regarding the project at Ambalapuzha alone.

13. To substantiate the above, the plaintiff has filed Ex.P2 General Ledger maintained by the plaintiff for the defendant for the Ambalapuzha Project. Hence, the plaintiff has prayed for a Judgment and Decree against the defendant for sum of Rs.1,01,11,084/- together with interest at the rate of 24% p.a. and costs.

14. Though the suit claims is based on the 25 Invoices and on the amounts transferred by the plaintiff to the defendant on 01.04.2017 reflected in Ex.P2 General Ledger, only four invoices were marked in Ex.P3 to P6 as detailed below:-

Table No.2

Sl. No.	Ex.	Date	Amount
1	Ex.P3	15.12.2015	Rs.5,21,176/-
2	Ex.P4	02.02.2016	Rs.5,72,500/-
3	Ex.P5	11.11.2016	Rs.5,75,000/-
4	Ex.P6	20.06.2017	Rs.5,75,000/-
Total			**Rs.22,43,676/-**

15. Ex.P3 Invoice dated 15.12.2015 for Rs.5,21,176/- pertains to Vallarpadam Project. Ex.P3 Invoice dated 15.12.2015 for Rs.5,21,176/- is not mentioned in Ex.P2 Legder maintained by the plaintiff. Ex.P6 is the last Invoice dated 20.06.2017. Therefore, ordinarily, the limitation to file the present suit would have expired on 19.06.2020.

16. However, on account of out break of Covid-19 pandemic and the disruption caused due to the lock down imposed, the suit was filed belatedly by the plaintiff on 03.02.2021. The plaint was thereafter admitted on 28.01.2022. The Hon'ble Supreme Court has condoned the delay *vide* its order dated 23.03.2020. Thus, the suit is construed to have been filed within time.

17. It appears that the defendant had raised two Purchase Orders i.e. Ex.P1 Purchase Order dated 07.04.2015 bearing reference No.GFS-CN/402/SR-WO-07/15 for Ambalpuzha Project and another Purchase Order bearing reference No. GFS-CN/154/CPT-07/ WO-05/15 for Vallarpadam Project.

18. Ex.P3 Invoice dated 15.12.2015 pertains to Purchase Order bearing reference No. GFS-CN/154/CPT-07/WO-05/15 raised for Vallarpadam Project. Therefore, Ex.P3 Invoice dated 15.12.2015 is not relevant. During the course of hearing, it was confirmed that Ex.P3 Invoice dated 15.12.2015 pertains to Vallarpadam Project.

19. During the course of hearing, it was informed that in respect of Vallarpadam Project also, the defendant had failed to pay the amount for invoices raised and there were outstanding dues and therefore, the plaintiff has filed COS.No.1723 of 2022 against the defendant which is said to be pending before City Civil Court at Chennai.

20. Since the defendant remained *ex-parte,* the Court took efforts to examine the case of the plaintiff before passing this *ex-parte* Judgment based on the documents that were marked before learned Master. It was noticed that the plaintiff has filed Ex.P3 to Ex.P6 Invoices as sample invoices, though the suit was claimed for Rs.1,01,11,084/- [57,12,477 (Principal Amount) + 43,98,607(Interest)] based on the 25 Invoices and on the amounts transferred by the plaintiff to the defendant on 01.04.2017

reflected in Ex.P2 General Ledger account maintained by the plaintiff for the period between 2015 to 2021.

21. After the case was reserved for passing Judgment and Decree on 24.01.2023, the case was listed on 01.03.2023 to elicit further clarification as to why rest of the invoices reflected in Ex.P2 General Ledger were not marked as Exhibits. Although the plaintiff could have been asked to amend the plaint schedule, it was felt that rest of the Invoices which were not filed along with the plaint can be allowed to be marked as Exhibits as details of these Invoice were reflected in Ex.P2 General Ledger.

22. Office copies of rest of the 22 Invoices (other than Ex.P4-Ex.P6) reflected in Ex.P2 General Ledger were filed and compared and returned. The photo copies are marked as Ex.P16 to Ex.P37 as detailed below:-

Table No.3

Date	Exhibit Nos.	Amounts
19.12.2015	Ex.P.16	Rs.6,67,929.00
19.12.2015	Ex.P.17	Rs.5,72,500.00
19.12.2015	Ex.P.18	Rs.4,58,057.00

19.12.2015	Ex.P.19	Rs.5,72,500.00
02.02.2016	Ex.P.20	Rs.5,72,500.00
31.03.2016	Ex.P.21	Rs.5,72,500.00
31.03.2016	Ex.P.22	Rs.5,72,500.00
03.05.2016	Ex.P.23	Rs.5,72,500.00
03.05.2016	Ex.P.24	Rs.1,04,539.00
11.11.2016	Ex.P.25	Rs.5,75,000.00
11.11.2016	Ex.P.26	Rs.1,72,040.00
11.11.2016	Ex.P.27	Rs.5,75,000.00
11.11.2016	Ex.P.28	Rs.2,53,000.00
11.11.2016	Ex.P.29	Rs.5,17,500.00
11.11.2016	Ex.P.30	Rs.2,08,725.00
11.11.2016	Ex.P.31	Rs.5,75,000.00
11.11.2016	Ex.P.32	Rs.2,04,032.00
11.11.2016	Ex.P.33	Rs.1,26,500.00
11.11.2016	Ex.P.34	Rs.5,75,000.00
20.06.2017	Ex.P.35	Rs.5,75,000.00
20.06.2017	Ex.P.36	Rs.5,75,000.00
20.06.2017	Ex.P.37	Rs.5,75,000.00
Total		**Rs.24,68,859.00**

Total value of 25 invoices in Table 2 and 3 is Rs.47,12,535/- [Rs.22,43,676 + Rs. 24,68,859]

23. Ex.P1 is a Purchase Order dated 07.04.2015 of the defendant. Ex.P1 Purchase Order dated 07.04.2015 was placed by the defendant for hiring including labor charges for Batching Plant CP18 – Schwing Shetter with Hopper and Screw Conveyor for loading material into bins, 2 Transit Mixers, and 1 JCB for loading.

24. Point for consideration is whether the defendant can be made liable to pay the above amount based on the Ex.P1 Purchase Order dated 07.04.2015 and for the amount as reflected in Ex.P2 General Ledger maintained.

25. As per Terms & Condition Nos.17 and 18 of Ex.P1 Purchase Order dated 07.04.2015, the plaintiff was required to submit the computerized batch report for every concrete poured to the Engineer of the defendant and that the payments were to be made on monthly basis based on the quantity procured and certified by Engineer. Terms & Condition Nos.17 and 18 of Ex.P1 Purchase Order dated 07.04.2015 read as under:-

Table No.4

Terms & Condition Nos.17 of Ex.P1 Purchase Order dated 07.04.2015,	Terms & Condition No. 18 of Ex.P1 Purchase Order dated 07.04.2015,
17.The Contractor to submit the computerized Batch report for every concrete pour to the Engineer.	***18.Payment shall be made monthly based on the quantity produced and certified by Engineer.***

26. However, computerized batch report which should have been sent to the defendant has not been filed. Terms & Condition No.19 of the Ex.P1 Purchase Order dated 07.04.2015 is hand written. It reads as under:-

> " ***Monthly minimum filling quantity is 800 cum, Total quantity assumed is 10500 cum for 11 months. Balance quantity shall be adjusted in final bill".***

27. Terms & Condition No.19 of the Ex.P1 Purchase Order dated 07.04.2015 indicates that monthly minimum billing quantity was to be 800 Cubic Meter and the total quantity assumed for 11 months was 10,500 Cubic Meter and the balance quantity was to be adjusted in the final bill. If Terms & Condition No.19 was to be applied, minimum quantity for 11 months would be 8,800 [8 x 11] Cubic Meter and not 10,500 Cubic Meter.

28. Terms & Condition No.19 of Ex.P1 dated 07.04.2015 is hand written and bears a counter signature of another person. The signature is different from the signature of the four persons who have signed Ex.P1 Purchase Order. There is no explanation either in the plaint or during oral evidence or in the proof affidavit as to who has counter-signed the Terms

and Condition No.19 of Ex.P1 Purchase Order. Therefore,Terms & Condition No.19 of Ex.P1 dated 07.04.2015 cannot be accepted as evidence.

29. While marking the Exhibits before the Additional Master - II, the plaintiff filed a petition together with affidavit under Section 65-B of the Indian Evidence Act, 1872. Relevant portion of the affidavit filed by the plaintiff reads as under:-

> "***3.The petitioner relies upon the following documents which are computer generated documents in support of the plaintiff's case. The computer generated copy is duly stored and saved in the plaintiff's E-mail which can be accessed by the plaintiff alone, as it is password protected. The same is printed by the plaintiff from the plaintiff computer.***

Date	***Exhibits***	***Nature of Documents***
21.03.2018	Ex.P.8	Copy of E-mail communication from plaintiff to defendant
13.07.2019	Ex.P.9	Copy of E-mail communication from plaintiff to defendant
02.08.2019	Ex.P.10	Copy of E-mail communication from plaintiff to defendant
13.08.2019	Ex.P.11	Copy of E-mail communication from plaintiff to defendant
16.08.2019	Ex.P.12	Copy of E-mail communication from plaintiff to defendant

11.08.2020	Ex.P.13	Copy of E-mail communication from plaintiff to defendant
28.08.2020	Ex.P.14	Copy of E-mail communication from plaintiff to defendant

4.I humbly pray the above mentioned documents may be taken on record and marked as exhibits."

30. The Hon'ble Supreme Court in **Anvar P.V.** Vs. **P.K.Basheer and others**, (2014) 10 SCC 473 has clearly given conditions to be followed while filing a Certificate under Section 65B of the Indian Evidence Act, 1872 as follows:-

> "*15.Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:-*
>
> *a) There must be a certificate which identifies the electronic record containing the statement;*
> *b) The certificate must describe the manner in which the electronic record was produced.*
> *c) The certificate must furnish the particulars of the device involved in the production of the record.*
> *d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and*
> e) *The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*"

31. The Hon'ble Supreme Court in **Arjun Panditrao** Vs. **Kailash Kushanrao Gorantyal and others**, (2020) 7 SCC 1 has further held that "so long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted and relied upon in evidence".

32. In Ex.P8 dated 21.03.2018, it has been stated that there was outstanding due of Rs.65,44,156/-. However, there are no documents to substantiate that the amount mentioned as due was for the services rendered and/or for the supply of equipments to the defendant mentioned above. As the affidavit filed by the plaintiff does not meet the requirements of Section 65B of the Indian Evidence Act, 1872, Ex.P8 Email dated 21.03.2018 being an electronic record cannot be admitted in evidence,

33. Ex.P9 is again a printout of Email dated 13.07.2018 which was purportedly sent by the defendant to the plaintiff attaching a copy of

Ledger of GPT GEO (JV) Projects at Vallarpadam Kochi with a request to the plaintiff to collect a copy of Southern Railway Projects at Ambalapuzha from defendant's Chennai Office. During the trial, it has been wrongly recorded as aforesaid Ex.P9 Email dated 13.07.2018 has been sent by the plaintiff to the defendant. Ex.P9 Email dated 13.07.2018 also gives a Email-ID of the Chennai Office. However, copy of the attachment to Ex.P9 Email dated 13.07.2018 has not been filed. As the affidavit filed by the plaintiff does not meet the requirements of Section 65B of the Indian Evidence Act, 1872, Ex.P9 Email dated 13.07.2018 also cannot be admitted in Evidence.

34. Ex.P10 is also an Email dated 02.08.2019 purportedly sent long after Ex.P6 last Invoice dated 20.06.2017 was raised. However, there are no details of the outstanding due in Ex.P10. That apart, Ex.P10 Email dated 02.08.2019 is an electronic record. As the affidavit filed by the plaintiff does not meet the requirements of Section 65B of the Indian Evidence Act, 1872, Ex.P10 Email dated 02.08.2019 also cannot be admitted in Evidence.

35. Ex.P11 is yet another Email dated 13.08.2019 which is alleged to have been issued by the plaintiff to the defendant, wherein, there is a general reminder to the defendant to pay the amount. Ex.P11 Email dated 13.08.2019 again does not give any details of the outstanding due from defendant to the plaintiff. As the affidavit filed by the plaintiff does not meet the requirements of Section 65B of the Indian Evidence Act, 1872, Ex.P11 Email dated 13.08.2019 being an electronic record also cannot be admitted in evidence.

36. Ex.P12 is also another Email dated 16.08.2019 addressed to one Madhu of the defendant. Ex.P12 Email dated 16.08.2019 indicates that the plaintiff had attempted to speak with the said Madhu purportedly of the defendant over Phone.

37. In Ex.P12 Email dated 16.08.2019, the plaintiff had expressed its financial difficulties faced on account of failure of the defendant in repaying the dues. However, Ex.P12 Email dated 16.08.2019 does not reveal that the said Madhu was an employee of the defendant and/or what was the relationship between the said Madhu and the defendant company.

The proof affidavit is also silent. Ex.P12 Email dated 16.08.2019 also does not reveal as to from where the said Email was addressed to the defendant. As the affidavit filed by the plaintiff does not meet the requirements of Section 65B of the Indian Evidence Act, 1872, Ex.P12 Email dated 16.08.2019 being an electronic record also cannot be admitted in Evidence.

38. Ex.P13 has two Emails both dated 11.08.2020. The first Email was purportedly sent at 10.33 a.m by the plaintiff to the defendant. The second Email was purportedly sent at 11.05 am by defendant to the plaintiff in response to the first Email sent by the plaintiff at 10.33 a.m The Email that was purportedly sent by the plaintiff to the defendant at 10.33 a.m appears to be a general reminder regarding the outstanding due and a request to the defendant to supply Ready Mix Concrete to the Batching Plant of the plaintiff in Udangudi being set up by the plaintiff to adjust the alleged amount due from the defendant to the plaintiff.

39. The second Email purportedly sent by the defendant to the plaintiff was at 11.05 a.m. It was a reply to the first Email sent by the

plaintiff to the defendant at 10.33 a.m., wherein, the defendant replied that due to the out break of Covid-19, the office of the defendant was locked and its Directors were out of station. The reply of the defendant *vide* second Email in Ex.P13 dated 11.08.2020 sent at 11.05 a.m. reads as under:-

> Due to Pandemic COVID-19 out office was locked down and Directors are not in station and held up in Kerala. Once lockdown is over, we will consult to directors and let you know.

40. As the affidavit filed by the plaintiff does not meet the requirements of Section 65B of the Indian Evidence Act, 1872, Ex.P13 Emails dated 11.08.2020 being an electronic record also cannot be admitted in evidence.

41. Ex.P14 is another Email dated 28.02.2020 sent by the plaintiff to the defendant. Prior to Ex.P14 Email dated 28.02.2020, the plaintiff appears to have sent two Emails on 21.08.2020 and on 25.08.2020 respectively. In these Emails, the plaintiff sent the following message:-

> *We are need of M 35 500 m CUBE Ready Mix Concrete for our Usage in Udangudi Site.*

Kindly confirm the possibility of Supply as per requirement.
You can adjust the amount for the O/s Amount payable to us.
Please send your Quote to place the work order with terms and conditions.

42. As the affidavit filed by the plaintiff does not meet the requirements of Section 65B of the Indian Evidence Act, 1872, Ex.P14 Email dated 28.02.2020 being an electronic record also cannot be admitted in Evidence.

43. None of these Emails marked as Exs.P8 to P14 also reveal any details in respect of the amounts due from the defendant to the plaintiff. There was also no response to the above Emails from the side of the defendant to the plaintiff regarding the amounts due.

44. Even though the plaintiff has filed a petition together with affidavit under Section 65B of the Indian Evidence Act, 1872, it cannot be said that the requirements of Sections 65 and 66 of the Indian Evidence Act, 1872 were complied by the plaintiff in Ex.P8 to P14 is concerned.

45. Therefore, Ex.P8 to P14 cannot be admitted in evidence as affidavit filed by the plaintiff is not in accordance with the requirement of Section 65B of the Indian Evidence Act, 1872.

46. Ex.P2 is also a computer printout of the General Ledger for the years 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020 and 2020-2021 maintained by the plaintiff. Ex.P2, General Ledger specifies the amounts due under the Contract for supply of heavy construction equipment's to the defendant under Ex.P1 purchase order dated 07.04.2015. Ex.P2, General Ledger is also an "electronic record" within the meaning of Section 65B of the Indian Evidence Act, 1872.

47. Since Ex.P2 is also an electronic record, it should also have accompanied a Certificate under Section 65B of the Indian Evidence Act, 1872. However, Ex.P2 General Ledger does not accompany a Certificate under Section 65B of the Indian Evidence Act, 1872. Therefore, Ex.P2 General Ledger also cannot be admitted in Evidence.

48. The plaintiff appears to have sent Ex.P7 Legal Notice dated 24.09.2018 to the defendant. There is a hand noting that it was sent for both sites viz., for construction of Flyover and Rail Over Bridge at Vallarpadam and Ambalapuzha sites. Ex.P7 Legal Notice dated 24.09.2018 refers to a Email dated 21.03.2018 (Viz.,Ex.P8) sent to the defendant for payment due pertaining to both the sites (Vallarpadam and Ambalapuzha) amounting to Rs.65,44,156/-.

49. A reading of the above Ex.P2 Ledger Statement indicates that the aforesaid amount of Rs.1,01,11,084/-, which amount is prayed by the plaintiff to be recovered from the defendant along with interest at 24% per annum in this suit, is the alleged due for Ambalapuzha Project from the defendant, whereas as per, Ex.P7 dated 24.09.2018 a demand of Rs.65,44,156/- was for construction of Flyover and Rail Over Bridge at Vallarpadam and Ambalapuzha sites. For Vallarpadam Project, the plaintiff has filed Ex.P3 Invoice dated 15.12.2015 for a sum of Rs.5,21,176/- as detailed above.

50. Ex.P15 is a mere Bank statement of the plaintiff maintained with ICICI Bank for the period between 01.12.2017 and 31.12.2017. There is no explanation forthcoming either in the plaint or in the proof affidavit or at the time of marking of documents as Exhibits regarding the amounts due.

51. There is no clear explanation either in the plaint or in the proof affidavit for the plaintiff to seek for an *exparte* Judgment and Decree against the defendant.

52. As mentioned above this suit has been filed based on the amounts due as per Ex.P2 General Ledger maintained by the plaintiff for the defendant. According to the plaintiff, the defendant has not fully paid the dues and that there was Outstanding balance for each of the financial year as detailed below:-

<u>Table No.5</u> *– (2015-2016)*

Sl. No.	***Date***	***Exhibits***	***Amount***
1	19.12.2015	Ex.P16	Rs.6,67,929.00
2	19.12.2015	Ex.P17	Rs.5,72,500.00

Sl. No.	*Date*	*Exhibits*	*Amount*
3	19.12.2015	Ex.P18	Rs.4,58,057.00
4	19.12.2015	Ex.P19	Rs.5,72,500.00
5	02.02.2016	Ex.P20	Rs.5,72,500.00
6	02.02.2016	**Ex.P4**	Rs.5,72,500.00
7	31.03.2016	Ex.P21	Rs.5,72,500.00
8	31.03.2016	Ex.P22	Rs.5,72,500.00
Sub Total			**Rs.45,60,986.00**
Less: Total amount paid by the defendant			(-) Rs.18,16,784.00
Outstanding Balance for the year 2015-2016			**Rs.27,44,202.00**

Table No.6 *– (2016-2017)*

Sl. No.	*Date*	*Exhibits*	*Amount*
1	03.05.2016	Ex.P23	Rs.5,72,500.00
2	03.05.2016	Ex.P24	Rs.1,04,539.00
3	11.11.2016	Ex.P25	Rs.5,75,000.00
4	11.11.2016	Ex.P26	Rs.1,72,040.00
5	11.11.2016	Ex.P27	Rs.5,75,000.00
6	11.11.2016	Ex.P28	Rs.2,53,000.00
7	11.11.2016	Ex.P29	Rs.5,17,500.00
8	11.11.2016	Ex.P30	Rs.2,08,725.00
9	11.11.2016	Ex.P31	Rs.5,75,000.00
10	11.11.2016	Ex.P32	Rs.2,04,032.00
11	11.11.2016	**Ex.P5**	Rs.5,75,000.00
12	11.11.2016	Ex.P33	Rs.1,26,500.00
13	11.11.2016	Ex.P34	Rs.5,75,000.00
Sub Total			**Rs.50,33,836.00**

Sl. No.	*Date*	*Exhibits*	*Amount*
Less: Total amount paid by the defendant			(-) Rs.30,76,568.00
Outstanding Balance for the year 2016-2017			**Rs.19,57,268.00**

Table No.7 *– (2017-2018*

Sl. No.	*Date*	*Exhibits*	*Amount*
1	20.06.2017	Ex.P35	Rs.5,75,000.00
2	20.06.2017	Ex.P36	Rs.5,75,000.00
3	20.06.2017	**Ex.P6**	Rs.5,75,000.00
4	20.06.2017	Ex.P37	Rs.5,75,000.00
Add: Amount transfer to the defendant on 01.04.2017			(+) Rs.5,00,000.00
Add: Amount transfer to the defendant on 01.04.2017			(+) Rs.4,99,942.00
Outstanding Balance for the year 2017-2018			**Rs.32,999,42.00**
Less: Total amount paid by the defendant			(-) Rs.22,88,935.00
Outstanding Balance for the year 2018-2019			**Rs.10,11,007.00**

Table No.8 - *(Outstanding Balance for the respective years)*

Year	*Amount*
2015-2016	Rs.27,44,202.00
2016-2017	Rs.19,57,268.00

Year	*Amount*
2017-2018	Rs.10,11,007.00
Sub Total of Outstanding Balance	**Rs.57,12,477.00 ***

**** Principle Amount***

Table No.9 *- (Interest for the delay payment for the respective years)*

Year	**Amount**
2018-2019	(+) Rs.17,70,868.00
2019-2020	(+) Rs.17,70,868.00
2020-2021	(+) Rs. 8,56,871.00
Sub Total of Interest on Outstanding Balance	**Rs.43,98,607.00**

Table No.10 *- (Sub Total of outstanding Balance together with interest)*

Particulars	**Amount**
Outstanding Balance	Rs.57,12,477.00
Interest on Outstanding Balance	Rs.43,98,607.00
Sub Total of outstanding Balance together with interest	**Rs.1,01,11,084.00**

53. There is no explanation either in the plaint or in the proof affidavit or during oral examination regarding the amounts transfered by the plaintiff to the defendant on 01.04.2017 as reflected in Ex.P2 General Ledger for the financial year 2017-2018.It is a self serving one.

54. The plaintiff has also not filed any of the Service Tax Returns for the respective Financial Years indicating the payment of service on the Invoices raised in terms of Rule 6 of the Service Tax Rules, 1994 read with returns under Rule 7 of the aforesaid Rules.

55. The suit is based on the alterations in Ex.P1 Purchase Order dated 07.04.2015. It is not signed by any of the four persons who have put their signature at the bottom of Ex.P1 Purchase Order dated 07.04.2015. Condition No.19 has been incorporated by making an addition in writing and bears a signature of a person who is not one of the four persons. There is no clear explanation in the plaint.

56. Similarly, the plaintiff has not filed any audited profit and loss account and the balance sheet showing the defendant as a sundry debtor. Thus, self serving Invoices for the three assessment years, based on which the plaintiff has claimed the *ex parte* decree, will not entitle the plaintiff to the suit claim.

57. If the plaintiff had filed any of the above documents recognizing the supply of Equipment to the defendant as service and paid service tax under the Service Tax Rules, 1994 and recognized the amount due form the defendant as income and paid corresponding Income Tax under the Income Tax Act, 1961, it could have been assumed that the plaintiff was entitled for the relief even in absence of Written Statement of the defendant. As the plaintiff has relied upon only self serving documents without any acknowledgment of debt towards the invoice raised on the defendant, the plaintiff cannot succeed.

58. This Civil Suit (Commercial Division) is therefore liable to be dismissed. It is accordingly dismissed. The parties to bear their own cost.

24.05.2023

Internet : Yes/No
Index: Yes/ No
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Plaintiff's witness:

Mr.Kathirvelu : P.W.1

Documents exhibited by the Plaintiff:

Sl. No.	Date	Exhibits Nos.	Nature of Documents
1	07.04.2015	Ex.P1	Copy of work order issued by the plaintiff to defendant
2	2015-2021	Ex.P2	Copy of general ledger from plaintiff's statement of account
3	15.12.2015	Ex.P3	Copy of Invoice issued by the plaintiff to defendant
4	02.02.2016	Ex.P4	Copy of Invoice issued by the plaintiff to defendant
5	11.11.2016	Ex.P5	Copy of Tax Invoice issued by plaintiff to defendant
6	20.06.2017	Ex.P6	Copy of Tax Invoice issued by plaintiff to defendant
7	24.09.2018	Ex.P7	Copy of Notice issued by the plaintiff to defendant
8	21.03.2018	Ex.P8	Copy of E-mail communication from plaintiff to defendant
9	13.07.2019	Ex.P9	Copy of E-mail communication from plaintiff to defendant
10	02.08.2019	Ex.P10	Copy of E-mail communication from plaintiff to defendant
11	13.08.2019	Ex.P.11	Copy of E-mail communication from plaintiff to defendant
12	16.08.2019	Ex.P12	Copy of E-mail communication from plaintiff to defendant
13	11.08.2020	Ex.P13	Copy of E-mail communication from plaintiff to defendant
14	28.08.2020	Ex.P14	Copy of E-mail communication from plaintiff to defendant
15	1.12.2017	Ex.P15	Copy of statement of account

	to 31.12.2017		
16	19.12.2015	Ex.P16	Copy of Invoice
17	19.12.2015	Ex.P17	Copy of Invoice
18	19.12.2015	Ex.P18	Copy of Invoice
19	19.12.2015	Ex.P19	Copy of Invoice
20	02.02.2016	Ex.P20	Copy of Invoice
21	31.03.2016	Ex.P21	Copy of Invoice
22	31.03.2016	Ex.P22	Copy of Invoice
23	03.05.2016	Ex.P23	Copy of Invoice
24	03.05.2016	Ex.P24	Copy of Invoice
25	11.11.2016	Ex.P25	Copy of Invoice
26	11.11.2016	Ex.P26	Copy of Invoice
27	11.11.2016	Ex.P27	Copy of Invoice
28	11.11.2016	Ex.P28	Copy of Invoice
29	11.11.2016	Ex.P29	Copy of Invoice
30	11.11.2016	Ex.P30	Copy of Invoice
31	11.11.2016	Ex.P31	Copy of Invoice
32	11.11.2016	Ex.P32	Copy of Invoice
33	11.11.2016	Ex.P33	Copy of Invoice
34	11.11.2016	Ex.P34	Copy of Invoice
35	20.06.2017	Ex.P35	Copy of Invoice
36	20.06.2017	Ex.P36	Copy of Invoice
37	20.06.2017	Ex.P37	Copy of Invoice

C.S.N., J.

24.05.2023

C.SARAVANAN, J.

Jen

Pre-Delivery Judgment made
in
C.S. (Comm. Div.) No.10 of 2022

24.05.2023