IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.296 of 2018
and
C.M.P.No.7061 of 2018

D.Vijayakumar
Proprietor,
M/s.VGP & Co.,
No:10/18, Venkatasamy Lane,
Mylapore,
Chennai – 600 004. ..Appellant

Vs.

M/s.C.Thirupugal Nadar and Sons,
Rep.by its General Manager, Mr.C.T.Chithranjan,
No:129, G.A.Road,
Old Washermenpet,
Chennai – 600 021. ..Respondent

Appeal filed under Order XLI Rule 1 read with Section 96 of C.P.C., praying to set aside the Judgment and Decree dated 28.07.2017 made in O.S.No.6486 of 2014 by the Learned XIX Additional City Civil Court, Chennai.

For Appellant : Mr.V.Anil Kumar

For Respondent : Mr.R.C.Manaoharan

JUDGMENT

The Appeal Suit has been filed to set aside the Judgment and Decree dated 28.07.2017 made in O.S.No.6486 of 2014 passed by the XIX Additional City Civil Court, Chennai.

2. The appellant is the defendant and the respondent/plaintiff instituted a suit for Recovery of a sum of Rs.11,94,116/- with further interest of 12% per annum till the date of realisation.

3. The plaintiff has stated that they are carrying on the business of trade manufacturing and dealers in Dal in wholesale and retails. The defendant purchased Dal on credit by bill No.4782 dated 24.10.2011 for Rs.9,03,310/- and in bill No.4912 dated 12.11.2011 for Rs.9,44,648/-. After the purchase of the Dal vide bill Nos.4782 dated 24.10.2011 for Rs.9,03,310/- and bill No.4912 for Rs.9,44,648/-, the defendant made a part payment of Rs.9,25,000/- on 13.02.2012. The said payment was available on records and audited and submitted to the Sales Tax Authority and

Income Tax Department. The balance amount was not paid by the defendant. The plaintiff issued a notice dated 13.09.2014 to repay the amount due to the plaintiff to the tune of Rs.9,04,633/-. The plaintiff claimed interest at the rate of 24% from the date of default committed by the defendant.

4. Since the efforts taken by the plaintiff went in vain, a legal notice dated 13.09.2014, demanding to repay the dues along with the interest was issued to the defendant. Since the defendant has not settled the amount due to the plaintiff, the plaintiff instituted the suit for recovery of money along with interest.

5. The defendant filed written statements, denying the plaint averments. The written statement states that the constitution of the plaintiff company has not been disclosed and the authority of Mr.Chittaranjan to institute the suit on behalf of M/s.C.Thirupugal Nadar and Sons has not been produced. The defendant is the proprietor of M/s.VGP and Company and was originally carrying on the business of processing Dal and selling the same and had a mill at Tandiarpet, which was owned by Mr.C.T.Chidambaram. The defendant had transactions with the plaintiff.

The defendant had been doing the business for a very long time and had a very cordial relationship with Mr.C.T.Chidambaram. In the year 2012, the defendant had purchased certain goods from the plaintiff, when the same was managed by Mr.C.T.Chidambaram. Since the defendant had to receive a lot of money for the goods supplied to various customers and since the defendant did not receive the same, their business ended in huge loss and consequently, he was not able to settle the money to the plaintiff. The defendant sold his only house to repay all the creditors. The defendant arrived at a settlement with all the creditors including the plaintiff. The defendant closed his mill, which was being operated from a rented place. On 12.02.2012, a compromise was arrived with the plaintiff, wherein the plaintiff agreed to receive 50% of the amount outstanding, amounting to Rs.9,25,000/- as full and final settlement, in respect of all the claims against the defendant. The defendant sold his house on 10.02.2012 and settled all the creditors including the plaintiff. At that time, Mr.C.T.Chidambaram was alive and he had deputed one Mr.Saravanapandian to accompany his employee to receive the amount along with the letter acknowledging receipt of Rs.9,25,000/- as full and final settlement. The letter was handed over to the defendant on 12.02.2012 simultaneously when a sum of Rs.9,25,000/-

was paid to the plaintiff. The amount of Rs.9,25,000/- was paid in full and final settlement. Due to serious loss suffered by the defendant in his business, the mill was closed down and he sold his only house and thereafter, settled all the creditors.

6. After the demise of Mr.C.T.Chidambaram, the plaintiff after a lapse of about 2 ½ years, issued a notice, demanding the balance amount, ignoring the fact that sum of Rs.9,25,000/- was paid by the defendant as full and final settlement, which was accepted by Mr.C.T.Chidambaram during the relevant point of time. The copy of the letter dated 12.02.2012 was handed over and the circumstances were also explained to the plaintiff. The defendant states that they did not have any resources and the settlement was made in full quit. Accordingly, the defendant prayed for dismissal of the suit.

7. The plaintiff filed reply statement, stating that the defendant purchased Dal on credit basis as stated in the plaint. The amount due and the payment made are recorded and in respect of the part payment, the records are audited and submitted to the Sales Tax Authority and Income Tax Department. The plaintiff had stated that they have not signed the letter as

alleged and the letter is a forged one. They have pleaded that there was no reply to the legal notice and therefore, an adverse inference has been drawn against the defendant regarding the alleged settlement letter.

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

(1) Whether the plaintiff is entitled for a decree, directing the defendant to pay a sum of Rs.11,94,116/- with further interest of 12% per annum till the date of realisation of the amount?

(2) Whether the defendant is not liable to pay any amount to the plaintiff?

(3) To what relief, the plaintiff is entitled for?

9. The trial Court considered the full and final settlement letter, which was mainly relied upon by the defendant to establish that the plaintiff agreed for such a settlement and 50% of the amount outstanding was settled as full and final settlement. The plaintiff disputed the said letter of settlement by stating that it was not signed by the authorized person on behalf of the plaintiff-M/s.C.Thirupugal Nadar and Sons.

10. Regarding the dispute, the trial Court considered the deposition of P.W.1 and Mr.R.Kandasamy, D.W.2.

11. The General Manager of the plaintiff's company examined himself as P.W.1 and Exs.A2 & A3 are the plaint alleged original bills to establish the purchase of Dal by the defendants on 24.10.2011 and 12.11.2011 for the two sums of Rs.9,03,310/- and Rs.9,44,648/-. The defendant has filed documents to establish that similar settlements are made in respect of other traders with whom they had business transactions. In the written statement, the defendant has stated that their company have sustained serious financial loss in their business and accordingly, the mill was closed down. The defendant sold his only house in the year 2012 and settled all his creditors by paying 50% of the amount outstanding at that point of time. Thus, the defendant marked all those documents to establish that they have settled 50% of the dues outstanding to other creditors and similarly, 50% of the amount has been paid to the plaintiff as full and final settlement. Ex.B1 document is the Settlement Letter. Ex.B3, series of documents are relating to the other settlements made by the defendant with the creditors. The said documents were considered by the trial Court and the trial Court further considered the deposition of D.W.2, Mr.Kandasamy, who was the Scribe in respect of Ex.B1 and Ex.B3 series of documents. All those documents were written by the said Mr.Kandasamy, D.W.2 in his office.

12. In this context, the trial Court made a finding that Ex.B1 coupled with Ex.B3 document only give raise to an undeniable presumption and a probability that the defendant after suffering a loss in his business, genuinely and sincerely decided to settle at least 50% of the amounts, which were due and payable by him to his creditors. Therefore, the defendant had sold away his only house with a *bonafide* intention to settle at least 50% of their creditors' dues and accordingly, instructed all his creditors to come and meet him with their respective letter heads, so that he could disburse 50% of their respective dues and take a receipt from them. This is how Ex.B3, series of receipts have arisen, is the only probability made out by the defendant. The authorised signatories of the respective creditors have come and received 50% of their respective dues and issued receipts in their respective Letterheads, after the recitals therein where handwritten from one and the same person of the defendant to the effect that 50% settlement was done.

13. It is an admitted case of the plaintiff that the defendant had already settled 50% and only the balance 50% remains to be paid. In such circumstances, the statement of Mr.Ganesh Kumar, D.W.3, denying or admitting his signature is of no consequence to the defendant.

14. The plaintiff had established their case regarding sale of Dal to the defendant through two bills, which were not disputed. With regard to the settlement of 50% of the bill amount by the defendant to the plaintiff was also not disputed by the plaintiffs. Further, it is an admitted fact that on receipt of the legal notice under Ex.A4, the defendant had not replied the same. Thus, the Court drew an inference that the defendant had not settled 50% of the dues and if at all the entire sum has been settled, they would have replied spontaneously. Therefore, the trial Court with reference to Issue No.1, arrived a conclusion that the plaintiff was able to establish that the defendant was due to pay 50% of the bill amount to the plaintiff as per the plaint averments. Consequently, Issue No.2 is also held against the defendant and accordingly, the defendant was directed to pay the suit amount of Rs.11,94,116/- with interest at the rate of 12% per annum.

15. The learned counsel for the appellant/defendant mainly contended that the trial Court has failed to consider the fact regarding the settlement arrived between the parties. Though the trial Court found that the settlement letter and the other settlement letters with the other creditors were prepared by Mr.R.Kandasamy, D.W.2 and the said witness deposed before the Court

that the Ex.B1 document was prepared in his office in the presence of the representative of the respondent-M/s.C.Thirupugal Nadar and Sons and there is no reason to make a finding that the appellant/defendant is liable to pay the balance dues. It is further contended that the deposition of D.W.2 is clear that the said Mr.R.Kandasamy had written the Ex.B1 document in his office. The Letterhead of M/s.C.Thirupugal Nadar and Sons was handed over to the D.W.2 by one Mr.Ganesan, Grandson of C.T.Chidambaram, who was the Proprietor of M/s.C.Thirupugal Nadar and Sons company. Further, D.W.2 deposed that the letter, Ex.B1 document was prepared in order to settle the dispute between the plaintiff and the defendant and to settle the dues. Thus, the purpose, for which, the Ex.B1 document was prepared was deposed by D.W.2 in clear terms. More so, the Letterhead of the respondent-M/s.C.Thirupugal Nadar and Sons was handed over by Mr.Ganesan to the Scribe, D.W.2. Therefore, this Court is unable to arrive at a conclusion that Ex.B1 document is a forged document.

16. If at all the Letterhead of the plaintiff-M/s.C.Thirupugal Nadar and Sons is a forged document or an unauthorized person, has signed the settlement on behalf of the M/s.C.Thirupugal Nadar and Sons, the said

company would have initiated all appropriate action including criminal action against all such persons, who have committed such forgery or misrepresented the company for the purpose of entering into a settlement with the appellant/defendant. Admittedly, no such action was initiated. The suit itself was filed after a lapse of about two and a half (2 ½) years from the date of purchase of Dal by the defendant from the plaintiff. Therefore, the overall facts and circumstances would reveal that the Ex.B1 document was intended by both the plaintiff and the defendant. Accordingly, it is a settlement entered into between the parties and 50% of settlement was agreed. Thus, there is no reason to believe Ex.B1 document marked by the defendant in the suit is a forged document and in this regard, the trial Court has committed an error in not considering the vital document, Ex.B1 for the purpose of considering the issues. Thus, as far as Issue No.1 is concerned, the plaintiff though able to prove that the defendant purchased the Dal in two bills and settled only 50% of the amount and remaining 50% due outstanding has not been paid, the subsequent settlement letter, Ex.B1 would establish that the parties had settled the issues between them by receiving 50% of the amount and thus, the Issue No.1 is answered in favour of the defendant and the Settlement Letter in Ex.B1 document is a valid document and therefore, institution of the suit subsequently by the grandson of Mr.C.T.Chidambaram with an intention to recover the entire amount would not serve any purpose as in the present case, the settlement was entered into between the plaintiff and the defendant with the knowledge of Mr.C.T.Chidambaram, who was the owner of M/s.C.Thirupugal Nadar and Sons.

17. This being the factum, Issue Nos.2 and 3 were also consequentially answered in favour of the defendants.

18. Accordingly, the Judgment and Decree dated 28.07.2017 made in O.S.No.6486 of 2014 passed by the XIX Additional City Civil Court, Chennai is set aside and the Appeal Suit in A.S.No.296 of 2018 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.02.2023

Index : Yes
Speaking order:Yes
Neutral Citation:Yes
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To
The XIX Additional City Civil Court,
Chennai.

S.M.SUBRAMANIAM, J.

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A.S.No.296 of 2018

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