IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2023

PRONOUNCED ON: 11.07.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No.201 of 2020
and
A.No.1818 of 2020

White SRL Unipersonale,
Via Cozza Pilon 10/B,
36070 Castelgomberto, (VI) Italy,
Rep. by its Chief Executive Officer,
Mr.Giampaolo Benetti

...Plaintiff

Vs.

Rajesh Patel
Trading as Pats Impex,
Old.No.61, New No.32,
Perianna Maistry Street,
Periamet, Chennai - 600003.
and also at
Flat.No.C-17, 3rd Floor, Krishna Vilas,
New Door.No.6,
Police Commissioner Office Road,
Egmore, Chennai - 600008

...Defendant

PRAYER: Civil Suit is filed under order IV Rule 1 O.S. Rules read with order VII Rule 1 of CPC, praying to,

(a) Directing the defendant to pay the plaintiff a sum of Rs.48,12,942/-(Rupees Forty Eight Lakhs Twelve Thousand Nine Hundred Forty Two Only) towards payment of outstanding invoices along with further interet on the sum of Rs.30,55,836/- (Rupees Thirty Lakhs Fifty Five Thousand Eight Hundred And Thirty Six Only) at the rate of 24 percent p.a from date of plaint till the date of payment in full.

(b) Directing the defendant to pay the plaintiff a sum of Rs.68,00,580/- (Rupees Sixty Eight Lakhs Five Hundred And Eighty Only) towards reimbursement of demurrage and detention charges incurred by the plaintiff along with further interest on the sum of Rs.56,67,150/- (Rupees Fifty Six Lakhs Sixty Seven Thousand One Hundred and Fifty Only) at the rate of 24% per annum from the date of plaint till the date of payment in full;

(c) for entire costs of the suit; and pass such further or other reliefs as this Hon'ble Court may deem fit and necessary in the circumstances of the case and thus render justice.

For Plaintiff : Mr.Rajesh Ramanathan

For Defendant : Mr.S.P.Srinivasan

JUDGMENT

The present suit has been filed by the plaintiff seeking; (i) a sum of Rs.48,12,942/-(Rupees Forty Eight Lakhs Twelve Thousand Nine Hundred Forty Two Only) from the respondent towards payment of outstanding invoices along with further interest on the sum of Rs.30,55,836/- (Rupees Thirty Lakhs Fifty Five Thousand Eight Hundred And Thirty Six Only) at the rate of 24 percent p.a from date of plaint till the date of payment in full; (ii) a sum of Rs.68,00,580/- (Rupees Sixty Eight Lakhs Five Hundred And Eighty Only) towards reimbursement of demurrage and detention charges incurred by the plaintiff along with further interest on the sum of Rs.56,67,150/-(Rupees Fifty Six Lakhs Sixty Seven Thousand One Hundred and Fifty Only) at the rate of 24% per annum from the date of plaint till the date of payment in full; and for entire costs of the suit.

Plaintiff's case:-

2. The plaintiff which is a company registered under the laws of Italy and having its registered office at via Cozza Pilon 10/B, 36070, Castelgomberto (VI), Italy has instituted the above suit seeking recovery of

a sum of Rs.48.12.942/- being the outstanding amounts due under the invoices together with interest on a sum of Rs.30,55,836/- at the rate of 24% per annum from the date of the plaint till the date of payment in full and directing the defendant to pay the plaintiff a sum of Rs.68,00,580/- towards reimbursement of demurrage and detention charges incurred along with further interest on a sum of Rs.56,67,150/- together with interest at 24% from the date of the plaint till the date of payment in full.

2.1. The plaintiff would submit that they are a reputed exporter of leather cuttings and leather stock products which are greatly preferred by the automotive industries, premium shoe factories and niche clothing etc. They have an experience of 40 years in this Sector. The plaintiff has earned a reputation for their quality and timely delivery of products which includes able warehouse management and efficient after-sales service.

2.2. The plaintiff has had a long-term business association with the defendant who is also engaged in the same business. In the year 2017, the defendant had approached the plaintiff for importing various quantities of finished leather cuttings of different sizes and colours and taking into account their long-term association the plaintiff had agreed to export the consignments through various containers from Italy to Chennai. The following are the supplies effected by the plaintiff to the defendant:-

Sl. No.	*Date*	*Invoice No.*	*Container No.*	*Shipper*	*Amount in Euros*
1.	28/03/2017	64	BMOU 485745/7 Seal 023216	Evergreen Line	8675/-
2.	13/04/2017	76	TCLU 856582/4 Seal 023264	Evergreen Line	3986/-
3.	22/04/2017	78	MSCU 994856/0 Seal 024501 TCKU 971449/0971449/0 Seal 022248	Mediterranean Shipping Company	5237.20/-
4.	05/05/2017	90	TCLU 963236/2 Seal BMOU 580919/7 Seal 6838	Mediterranean Shipping Company	7585/-
5.	18/05/2017	102	TTNU 929012/5 Seal L947190	Mediterranean Shipping Company	6444.80/-
6.	09/06/2017	114	TCNU 5566892 Seal 023991	CMA CGM	7435/-
				Total	39,363/-

2.3. The plaintiff would submit that before the goods shipped by the plaintiff could reach the Chennai Port, the plaintiff had sought for the CAD payment for the consignments so as to forward the original document to the defendants to enable them to declare and take delivery of the goods at the

Chennai Port. Despite received of the invoices and acknowledgment of their liability to make payment, the defendant all of a sudden informed the plaintiff that they are not taking delivery as they are not in a position to make payment.

2.4. The plaintiff would further submit that although the defendant kept giving hopes to the plaintiff that they would make the payment for the invoices and declaration of consignments, however, even after the lapse of several months, the defendant had failed to make the payment or to take delivery of the consignments. Therefore, the plaintiff had to pay the demurrage charges to the agents and in all a sum of 73.000/- Euros towards demurrage charges had been accrued and paid. The plaintiff had addressed several emails and had also met the defendant in person to find a solution. The defendant who had admitted their liability, however, refused to take delivery of consignments pleading financial crisis. It also transpired that the defendant had written letters to the Central Board of Indirect Taxes and Customs, Chennai abandoning and relinquishing the title on the goods on the ground that they were not worthy for use and declaring that it was a huge financial loss to the defendant. Considering the fact that the transaction between the plaintiff and the defendant is commercial in nature, the suit has been filed as a commercial dispute of specified value under the provisions of Section 2(1)(c)(i) read with Section 2(i) and Section 7 of the Commercial Courts Act, 2015. Therefore, the suit.

Defendant's case:-

3. The defendant who had entered appearance has filed a written statement inter alia contending as follows:-

3.1. The defendant would submit that the plaintiff has portrayed the defendant in poor light but however, would admit that the plaintiff had given a helping hand in the defendant’s hour of need and that the defendant has been keeping up its promises and deadlines that were required in the business relationship between the plaintiff and the defendant. The defendant would further submit that they were unable to clear the goods only on account of paucity of funds and a sudden deterioration of the business. They would further accuse the plaintiff of selective production of certain emails forwarded by the defendant to the plaintiff with reference to the business transaction, the delays, the difficulties in organising clearance of consignments etc. The defendant would further submit that the plaintiff has deliberately kept away a necessary party from this suit. It is their contention that a considerable consignments of value had been delivered to M/s.Pleasant International, Chennai. They had also put the plaintiff on notice to disclose the transaction involving the said company from and out of 6 invoices set out in the plaint. They would plead that the said M/s.Pleasant International is a necessary party to this suit and therefore, the suit is bad for non-joinder of necessary parties.

3.2. The defendant would further submit that even in the month of August 2017, they had clearly expressed their inability to clear the shipments and had called upon the plaintiff to prudently minimize the loss by selling the consignments to other parties. It is the case of the defendant that had the same been done in time, penal cost, delay charge, demurrage and retention charges could have been mitigated. Therefore, it is the contention of the defendant that the plaintiff had also contributed to the loss. They would put the plaintiff to strict proof about the payment of the demurrage and retention charges. They would further allege that the plaintiff is guilty of playing fraud on Court by supplying words like "acknowledgment of liability" “admission of liability” “admission of debts” "admitted outstanding dues" etc., in the plaint. The defendant would further deny the amount claimed towards the invoices, demurrage charges etc., The defendant would submit that the value of the suit has been deliberately enhanced to bring it within the jurisdiction of this Court and particularly by enhancing the interest to 30% especially when there was no agreement between the parties to pay interest. Therefore, the defendant would seek to have the suit dismissed.

Issues:-

4. The following issues had been framed by this Court by order dated 01.04.2022:-

"(i) Whether the plaintiff exported finished leather cuttings from Italy to Chennai in the year 2017 on the request of the defendant?

(ii) Whether the consignments dispatched by the plaintiff from Italy to Chennai reached the Port of Chennai?

(iii) Whether the defendant failed to declare and take delivery of the consignments sent by the plaintiff?

(iv) Whether the goods consigned by the plaintiff to the

defendant were defective either wholly or in part?

(v) Whether the plaintiff is entitled to receive the value of outstanding invoices from the defendant?

(vi) Whether the plaintiff is entitled to demurrage charges and detention charges of Euros 73,000, which is equivalent to Rs.56,67,150/-, from the defendant?

(vii) Whether the plaintiff is entitled to interest at the rate of 24% p.a. on the amounts claimed in the suit?

(viii) Whether the suit is liable to be dismissed for non-joinder of M/s. Pleasant International, Chennai?

(ix) Whether this Court has the pecuniary jurisdiction to entertain the suit?

(x) Whether the parties are entitled to any other relief?"

Oral Evidence:-

5. The plaintiff has examined their Chief Executive Officer to adduce evidence on behalf of the plaintiff as P.W.1. He has also marked 12 documents in support of his case. In his chief examination, he has more or

less adopted the pleadings given in the plaint and the documents were marked. The defendant had cross-examined the plaintiff witness, P.W.1. However, the defendant has not entered the box to give evidence. Therefore, the matter was sent back to this Court for submitting arguments.

Submissions:-

6. Mr.Rajesh Ramanathan, learned counsel appearing on behalf of the plaintiff would reiterate the contents of his plaint and his chief examination. He would submit that the plaintiff had supplied the goods on the basis of the demand made by the defendant. After all the containers (6 in number) had landed at the Chennai Port, the defendant by his email dated 28.08.2017 for the first time had stated that he was able to release only one container under invoice no.102 and that the other containers were still remaining at the Chennai Port. In the said email, the defendant had stated that since he does not have the money to generate in the business, he was unable to clear the containers from the Port. Under this email he had also suggested the plaintiff to alternatively call back the containers as it is incurring heavy demurrage charges or sale it to any other third party in India. He would submit that after placing the order the defendant has reneged on its

agreement. He would further submit that the plaintiff has shown proof of having made the payments towards the demurrage charges by filing Ex.P.11 series and the invoices to show the value of the goods that have been shipped in Ex.P.2 to P.7 invoices. He would submit that the plaintiff has proved their case and being a commercial transaction they are entitled to interest. He would submit that even where the agreement is silent about interest payment, the Court can fall back on Section 61(2) of the Sale of Goods Act. He would rely upon the judgement reported as ***AIR 1984 SC 216 - Gopalakrishna Pillai Vs. K.M.Mani.*** Alongwith the written argument annexures showing the current rate of interest has also been filed. He would further submit that the defendant has not got into the box to adduce evidence and prove their case and has also not been able to elicit any contradictory evidence in the cross-examination. Therefore, he would pray that this Court please to decree the suit as prayed for.

7. Per contra, Mr.M.L.Joseph, learned counsel appearing for the defendant would rest his arguments on two contentions:-

(i) The value of the suit has been artificially enhanced to bring the suit within the jurisdiction of this Court. When in reality the plaintiff has no right to claim interest and it is this interest component that had inflated the value of the suit. (ii) His next argument was that there is no agreement for levying interest under the agreement and this fact has also been admitted by the plaintiff. In Question No.30, the plaintiff was asked a question as follows:- *“Is there anything in the invoice or any document Ex.P.1 to P.12 that if the defendant does not pay the money in time he is liable to pay with interest?”*. The answer to this question was, No, there is no agreement for payment of interest on delayed payments. He would further submit that the plaintiff has not done anything to mitigate the loss as they could have sold the goods as requested by the defendant which would have brought down the demurrage charges, the retention charges etc. He would vehemently contend that the invoices under which the transactions had taken place do not have any provision for levying interest on the payment under the various invoices.

Discussion:-

8. As already stated issues had been framed in this suit by order of this Court dated 01.04.2022.

Issues Nos.(i) to (iv):-

8.1. A reading of the written statement in its entirety would clearly show that nowhere has the defendant denied the transaction. In fact, in paragraph no.7 of the written statement, there is an admission of receipt of the goods which is seen from the following statement *“ The inability of the defendant to clear goods from the port is documented all through in emails between the defendant and the plaintiff."* The defendant has only questioned the quantum and not the transaction. The defendant have themselves stated that they have taken delivery of only one container and has not been able to take release of the remaining containers which would go to show that the consignments had been dispatched from Italy to Chennai. It is also not the case of the defendant that the plaintiff had complained that the goods which were despatched by the plaintiff were of inferior quality. Therefore, in the light of the above discussions, issue nos.(i) to (iv) are answered in favour of the plaintiff.

8.2. As regards issue Nos. (v) and (vi), the plaintiff has filed Ex.P.2 to Ex.P7 invoices and through Ex.P.11 payment of demurrage charges has also been proved. Although, the demurrage and retention charges were to be paid by the defendant, the defendant had not come forward to pay the same and consequently, the plaintiff had to pay the demurrage and retention charges as is evident from Ex.P.2, to P.7 invoices and Ex.P.9 email and Ex.P.11 proof of payments. Since the defendant have not denied receipt of the goods they are bound to make the payment under the invoices. Issue Nos.(v) and (vi) are also answered in favour of the plaintiff.

8.3. As regards the issue no.8 with reference to the non-joinder of necessary parties, the defendant have not set out as to how the said M/s.Pleasant International, Chennai was a necessary party to the suit and their connection to the transaction between the plaintiff and the defendant. That apart, the defendant has not got into the box to substantiate their allegations regarding non-joinder of necessary parties.

8.4. With reference to the issue no.(vii), the defendant has questioned the relief claimed for interest and has also taken a stand that the pecuniary jurisdiction of this Court has been invoked only by enhancing the suit value. Admittedly, the transaction in question is a commercial in nature. It is not the case of the defendant that there has been any delay in the supply of goods or that the goods supplied were of inferior quality. Therefore, there is a tacit admission that the plaintiff has performed their part of the contract and it is the defendant who has failed to take the consignments as agreed by them. There is a clear case of breach of contract by the defendant. Section 34 of the Code of Civil Procedure provides for payment of interest and the same is extracted herein under.

> *"**34. Interest.**— (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit : [Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or*

where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

(2) Where such a decree is silent with respect to the payment of further interest [on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie."

Admittedly, the transactions between the plaintiff and the defendant is a commercial transaction. The Hon'ble Supreme Court in the case reported in ***AIR 1984 SC 216 - Gopalakrishna Pillai Vs. K.M.Mani*** was dealing with a case where amount was claimed by the Applicant (Plaintiff) as refund for supplying a cow which did not yield the promised quantity of milk. It was his contention that this is a debt and he had also claimed interest though there was no agreement for payment of interest. The Hon'ble Supreme Court observed that the Applicant was entitled to interest by way of damages as per the provisions of Section 61(2) of the Sale of Goods Act.

8.5. In the Judgement reported in ***2009 (12) SCC 1 - State of Rajasthan Vs. Ferro Concrete Construction (P) Ltd.,*** the Hon'ble Supreme Court has summarized the principles relating to interest as follows:-

"(a) Where a provision for interest is made on any debt or damages, in any agreement, interest shall be paid in accordance with such agreement.

(b) Where payment of interest on any debt or damages is barred by express provision in the contract, no interest shall be awarded.

(c) Where there is no express bar in the contract and where there is also no provision for payment of interest then the principles of Section 3 of the Interest Act will apply and consequently interest will be payable:

(i) where the proceedings relate to a debt (ascertained sum) payable by virtue of a written instrument at a certain time, then from the date when the debt is payable to the date of institution of the proceedings;

(ii) where the proceedings is for recovery of damages or for recovery of a debt which is not payable at a certain time, then from the date mentioned in a written notice

given by the person making a claim to the person liable for the claim that interest will be claimed.

(d) Payment of interest pendente lite and future interest shall not be governed by the provisions of the Interest Act, 1978, but by the provisions of Section 34 of the Code of Civil Procedure, 1908 or the provisions of law governing arbitration as the case may be."

8.6. Therefore, from the above decision it is clear that where the agreement is silent about interest and does not expressly bar the grant of interest, then the Courts shall fall back on the provisions of Section 3 of the Interest Act which prescribes payment of interest at current rates. The Plaintiff has filed a memo containing these details. The defendant who was also called upon to produce the details has not done so. A perusal of the Table showing the Bank group wise Weighted Average Lending Rates as on May 2023 in respect of Scheduled Bank is 9.78% p.a.

9. In fine, the suit is decreed as follows:-

(a). the defendant to pay Rs.30,55,836/- together with interest @ 9.78% p.a. from the date of respective invoices till the date of payment;

(b). the defendant to pay a sum of Rs.56,67,150/- being the amounts paid towards the demurrage and detention charges together with interest @ 9.78% from the date of payment of the charges till the date of payment to the plaintiff;

(c). pay costs of the suit to the plaintiff. Consequently, the connected Application No.1818 of 2020 is closed.

11.07.2023

Index : Yes/No
Internet : Yes/No
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APPENDIX

List of witness examined on the side of the Plaintiff:-

1. Mr.Giampaolo (P.W.1)

List of Exhibits marked on the side of the Plaintiff:-

S.No.	***Exhibits***	***Description of documents***
1.	P1	The printout of the certificate of incorporation
2.	P2	The invoice No.0000064 dated 28.03.2017
3.	P3	The invoice No.0000076 dated 13.04.2017
4.	P4	The invoice No.0000078 dated 20.04.2017
5.	P5	The invoice No.0000090 dated 05.05.2017
6.	P6	The invoice No.0000102 dated 18.05.2017
7	P7	The invoice No.0000114 dated 09.06.2017
8.	P8	The printout of the email correspondence
9.	P9	The printout of the email issued by the defendant
10.	P10	The invoices issued towards demurrage costs
11.	P11	The proof of payments made by plaintiff
12.	P12	The statement of accounts

List of witness examined on the side of the Defendant:- -NIL

List of documents marked on the side of the Defendant:- -NIL

P.T. ASHA, J,

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Pre-Delivery Judgment
in
C.S.No.201 of 2020
and
A.No.1818 of 2020

11.07.2023