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C.S. No.761 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.761 of 2016

M/s.A.S. Transport Pvt. Ltd.
Navin's Presidium,
8th Floor, "B" Block,
No.173, Nelson Manickem Road,
Aminjikarai,
Chennai - 600 029.

...Plaintiff

.Vs.

1.M/s. Boss Profiles Ltd.,
Old No.10, New No.43,
Alagiri Nagar, 5th Street,
Vadapalani, Chennai-600 026.

2.M/s.Firomad Distributors Ltd.,
Old No.10, New No.43,
Alagiri Nagar, 5th Street,
Vadapalani, Chennai-600 026.

3.Mr. Shaikh Akthar Ali,
Managing Director, M/s. Boss Profiles Ltd.,
2-C, Jamals Mandir,
No.45, 1st Street, Sait Colony,
Egmore, Chennai- 600 008.



4.Mr. Shaikh Akthar Ali,
Managing Director, M/s. Firomad Distributors Ltd.,
2-C, Jamals Mandir,
No.45, 1st Street, Sait Colony,
Egmore, Chennai- 600 008.

... Defendants

Plaint filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of the Code of Civil Procedure, praying for:

a) For the recovery of the sum of Rs.1,29,06,000/- due payable by the defendants being the amount payable to the plaintiff together with interest at the rate of 24% per annum till the date of realization.

b) To pay the costs of the suit.

c) To pass any such further orders.

For Plaintiff : Mr.S.Sabarish

For Defendants : Ex-Parte

J U D G M E N T

The plaintiff has come up with the above suit praying for:

a) For the recovery of the sum of Rs.1,29,06,000/- due payable by the defendants being the amount payable to the plaintiff together with interest at the rate of 24% per annum till the date of realization.



- b) To pay the costs of the suit.
- c) To pass any such further orders.

2. The brief facts of the plaint are as follows:

(i) The 1st and 2nd defendants approached the plaintiff through the defendants 3 and 4 for transportation of goods including the tiles manufactured at their Karaikal Plant to various destinations in the Country. Despite the defendants have promised to pay freight charges within 30 days from the date of receipt of freight bills along with acknowledged consignment notes on delivery of the goods, they have not paid freight charges in time and as on 27.12.2012, the due amount was accumulated to Rs.91,00,000/-.

(ii) In view of the aforesaid due amount, the defendants 3 and 4 acknowledged the liability and issued two cheques in bearing Nos.169923 and 169924 both dated 27.12.2012 for a sum of Rs.72,00,000/- and 19,00,000/- respectively drawn on Bank of India, at Chennai, totalling to Rs.91,00,000/- in favour of the plaintiff. The said



cheques were dishonoured on 18.01.2013 on the ground of insufficient fund. In this regard, various criminal cases have been filed against the defendants 3 and 4 for the offence under Section 138 of N.I. Act. During the pendency of the criminal cases, the defendants 3 and 4 moved for Anticipatory Bail before this Hon'ble Court in Crl. O.P. No.357 of 2013. During the pendency of the aforesaid Criminal case, having considered the facts and circumstances of the case, this Court has referred to the matter for mediation for amicable settlement. In the Mediation process, by virtue of Memo of Understanding executed on 11.07.2013, the plaintiff restricted his claim into Rs.40,00,000/- and the defendants 2 and 3 paid a sum of Rs.10,00,000/- by way of D.D. No.002917 agreeing to pay the remaining balance amount of 30,00,000/- on three equal monthly installments. With the part payment to the plaintiff, as the defendants failed to settle the entire remaining amount as on 10.10.2013, the said MOU was extended till 31.12.2013 by mutual agreement of both parties to pay the amount of Rs.25,00,000/- to the plaintiff. Even then, they have not paid the aforesaid amount as per the terms of the Memo of Understanding extended till 31.12.2013, another MOU dated 15.07.2013



was executed between the plaintiff and the defendants to pay the balance amount of Rs.16,50,000/- on or before 30.10.2014 including of Interest thereon. However, the plaintiff has not complied with the terms of the MOU. Hence, the plaintiff has filed this suit with the aforesaid prayer seeking for the entire outstanding amount from the defendants.

3. On the side of the plaintiff, one Mrs. D.Sayelathadevi W/o.Dhanapalan, the authorized representative of M/s. A.S. Transport Pvt. Ltd.,-the Plaintiff Company, has filed the proof affidavit for her chief examination and receipt of 8 documents as documentary evidence to prove the suit claim. In the Evidence, Mrs. D.Sayelathadevi W/o.Dhanapalan, was examined herself as PW.1 and marked the following documents as Exs.P1 to P8 as documentary evidence in order to prove the suit claim.

1. Ex.P1 is the Original Board Resolution dated 26.07.2023
2. Ex.P2 is the original Cheque bearing No.169923 dated 27.12.2012.
3. Ex.P3 is the the original Cheque bearing No.169924 dated 27.12.2012.
4. Ex.P4 is the return memo dated 18.01.2013.
5. Ex.P5 is the return memo dated 18.01.2013.



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6. Ex.P6 is the original Memorandum of Understanding dated 11.07.2013.
7. Ex.P7 is the original Memorandum of Understanding dated 15.07.2014.
8. Ex.P8 is the office copy of the legal notice issued by the Plaintiff's counsel dated 22.08.2016.

4. Since there was no representation on the side of the defendants on the date of hearing and called absent as well as no written statement had been filed on behalf of the defendants, they were set ex-parte by order dated 17.07.2023 of this Court.

5. On a perusal of the records, it is seen that two cheques were returned issued to the plaintiff company against the freight bills for a sum Rs.91,00,000/- payable to the plaintiff company and despite legal notice had been issued on the defendants, no reply was sent by the defendants. Further, upon pending of CrI.O.P.No.357 of 2013, even both MOUs dated 11.07.2013 and 15.07.2014 have been executed by the plaintiff and the defendants, the defendants have not complied with in terms of both the MOUs.



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6.Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P8 adduced by PW.1, this Court is of the view that the plaintiff company has proved the suit claim and hence, the Plaintiff company is entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for with costs. Time for payment is Two months.

18.08.2023

Lbm

1. List of Witnesses Examined on the side of the Plaintiff:-
 1. P.W.1 – Mrs. D.Sayelathadevi.
2. List of Exhibits Marked on the side of the Plaintiff:-
 1. Ex.P1 is the Original Board Resolution dated 26.07.2023
 2. Ex.P2 is the original Cheque bearing No.169923 dated 27.12.2012.
 3. Ex.P3 is the the original Cheque bearing No.169924 dated 27.12.2012.
 4. Ex.P4 is the return memo dated 18.01.2013.
 5. Ex.P5 is the return memo dated 18.01.2013.
 6. Ex.P6 is the original Memorandum of Understanding dated 11.07.2013.
 7. Ex.P7 is the original Memorandum of Understanding dated 15.07.2014.
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Lbm

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

18.08.2023

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Index : No

Internet : Yes

Speaking order/ Non-speaking order

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