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C.S(Comm.Div.)No.140 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S(Comm.Div.)No.140 of 2022

Kothari Petrochemicals Limited,
having its Registered and Head Office at
No.115, Mahatma Gandhi Salai,
Nungambakkam,
Chennai 600 034.
Represented by its Deputy General Manager,
SCM and Commercial,
Mr.S.V.Ramesh

...Plaintiff

Vs.

1. B.V.Sadanand
2. S.L.Manjula

...Defendants

PRAYER: Complaint is filed under Order 7 Rule 1 of C.P.C read with order IV Rule 1 of High Court O.S.Rules praying for the following reliefs:-

1) To direct the first defendant to pay to the plaintiff a sum of Rs.1,05,21,013/- and to direct the 1st defendant to pay to the plaintiff subsequent interest @ 24% per annum on Rs.62,29,524/- from the date of the complaint till the date of realization.



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2) To direct the defendants jointly and severally to pay the cost of the suit.

For Plaintiff : M/s.S.Suba Shiny

For Defendants : Mr.B.Leelesh Sundaram
1 and 2 for M/s.Nathan and Associates

JUDGMENT

The suit has been filed by the plaintiff seeking for recovery of a sum of Rs.1,05,21,013/- together with interest @ 24% per annum on the sum of Rs.62,29,524/- from the date of the plaint till the date of realization.

2.It is the case of the plaintiff that they are engaged in the business of sale of Poly-Isobutylene and remnant LPG. In the course of the business, the first defendant had contacted the plaintiff for the supply of remnant LPG. The plaintiff had been supplying the same from time to time and had raised invoices upon the first defendant on such sale. The plaintiff would submit that a running account was maintained in respect of the first defendant for the supply of goods.



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3.It is the further case of the plaintiff that they had raised several invoices on the first respondent based on requests and purchase orders and the first defendant had also acknowledged the supply. As on 31.07.2019, a sum of Rs.1,23,74,518/- was due and payable to the first defendant and the said outstanding was admitted by the first defendant vide his letter dated 11.10.2019. In the said letter, the defendant had sought time to make the payments.

4.As on 06.10.2021, after adjusting the payments made by the first defendant, there continued to be an outstanding of Rs.66,14,524- payable by the first defendant to the plaintiff towards the invoices dated 03.07.2019, 05.07.2019, 06.07.2019, 07.07.2019, 08.07.2019, 08.07.2019, 11.07.2019, 12.07.2019 and 14.07.2019. However, the first defendant had made a part payment and thereafter, no amounts were paid by him. Thereafter, there was a meeting between the plaintiff and the first defendant on 27.10.2020, which was minuted and yet another meeting on 12.02.2021. Though the said amount was



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over due, the defendant did not come forward to make the payments, despite several phone calls and letters. This constrained the plaintiff to issue a legal notice dated 21.07.2021 calling upon the defendant to pay a sum of Rs. 91.48.810/- being the principal amount as well as the interest calculated @ 24% per annum from the date of respective invoices. The notice was received by the first defendant, however, he has not come forward to clear the outstanding. Therefore, the plaintiff has been constrained to file the above suit.

5.The plaintiff has filed the statement of accounts to show the total outstanding from the first defendant, which also includes the interest calculation.

6.The defendant, though served, had failed to file their written statement in time, and their right to file the written statement stood forfeited. The second defendant is none other than the wife of the first defendant. She has been impleaded as party to the suit and she had



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deposited the title deeds with the plaintiff with an intent to create a mortgage.

7. It appears that the parties had gone before the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, but the settlement was not arrived at. The plaintiff had also obtained an order from this Court, directing the defendants to furnish security for the suit claim.

8. The following issues had been framed by this Court, by orders of this Court dated 17.07.2023.

“1. Whether the Plaintiff is entitled to the principal due amount of Rs.62,29,524/- and interest @ 24 % on the said principal amount for the period from 24.08.2019 to 31.05.2022 amounting to 42,91,488/- and totally aggregating to Rs 1,05,21,013/- from the 1st Defendant , towards supply of goods ?

2. Whether the 2nd Defendant stood as Guarantor for



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the dues of the 1st Defendant to the Plaintiff ?

3. Whether the 2nd Defendant has created a Mortgage by deposit of title deed and deposited the Original Gift Deed dt 28.12.2011 in her favour,, Registered as Document no.2035 /2011-2012, Book I, Pages 1 to 8, SRO Jaya Nagar, pertaining to her property being residential site measuring 2900 sq ft and situated at southern part of Survey No 107 of Hemmigepura Village, Kengeri Hobli to the Plaintiff?

4. Whether the Plaintiff is entitled to enforce the said Mortgage by Deposit of Title deed against 2% Defendant in the event of default of payment by the 1% Defendant?

5. Whether the Plaintiff is entitled to interest @ 24% per annum on Rs.62,29.524/- from the date of the Plaint



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till the date of realisation?

6.What other reliefs the Plaintiff is entitled to?

9.The plaintiff had examined himself as P.W1, who has also been cross examined by the learned counsel for defendants and marked Exs.P1 to P18.

10.Mr.AR.Ramanathan, learned counsel for the plaintiff would submit that the amounts are claimed for the supply of Poly-Isobutylene and remnant LPG to the defendant. He would submit in the course of the business, the first defendant had accumulated the unpaid amounts. The first defendant has acknowledged his liability under Ex.P3. Exs.P13 and P14 are the minutes of the meeting that has been held between the parties. The invoices under which the goods have been supplied have been marked as Ex.P4 to P12. The legal notice issued by the plaintiff to the first defendant has been marked as



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Ex.P15. Postal acknowledgment received from the first defendant has been marked as Ex.P16. Statement of accounts and interest calculation have been marked as Exs.P17 and P18. Therefore, it is the contention of the learned counsel for the plaintiff that the plaintiff has proved the outstanding of the defendant and the fact that there is a categoric acknowledgment by the defendant, the suit be decreed as prayed for.

11.Mr.B.Leelesh Sundaram, for M/s.Nathan and Associates, learned counsel appearing for defendants would submit that, though the defendants have not filed the written statement, they have been able to establish through cross-examination of P.W.1 that Exs.P13 and P14 are fabricated documents. He would submit that there are no signatures inside the seal. Further, the seal in the minutes is totally different. He would further submit that the claim of interest is rather usurious and that the plaintiff is not entitled to the relief as claimed for.



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12. Heard the learned counsel on either side and perused the materials available on record.

13. The contentions raised by the defendants cannot be accepted since no written statement has been filed. If these contentions had been raised in the written statement, the plaintiff would have had the opportunity to deny them. However, the defendants have not even come forward to file the written statement, and as on date, the defense is unknown to the plaintiff. The letter dated 11.10.2019 (ExP3) and the minutes (ExP13 and P14) would clearly show the acknowledgment of debt by the first defendant. The said acknowledgment has not been questioned by the defendants during the cross-examination of P.W1. Neither have the defendants taken steps to send the document for forensic examination. If really the documents were not executed by the defendants, then the first defendant ought to have filed their written statement and put forward their case. The statement of accounts has



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been produced by the plaintiff which the defendant had objected stating that the same is a xerox copy and not accompanied by Section 65B certificate. However, it is seen that a Section 65 B Certificate has been filed. Therefore, the plaintiff has proved not only the supply of goods which was accepted by the defendants but also the non-payment. The defendants have only challenged the same, stating that the signature is different, but however no steps have been taken to prove the same, and therefore, the defense is not available to the defendant.

14.The plaintiff has contended that the second defendant, who is none else than the wife of the first defendant, has created a mortgage by depositing the original deeds which is evidenced by a memorandum of deposit of title deeds. Admittedly, the title deeds have not been deposited by the second defendant nor has she executed any mortgage document. It is only the first defendant who has deposited the original documents with the plaintiff. Therefore, issue No. 3 has to be



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answered against the plaintiff and in favour of the second defendant.

Since the second defendant is not a party either to the invoices or to the acknowledgment of liability and the minutes of the meeting, the plaintiff cannot enforce the mortgage by deposit of title deeds against the second defendant. Therefore, issue Nos.2, 3 and 4 are answered in favour of the defendant. As regards issues Nos.1 and 2, the plaintiff has proved the supply and the fact that the first defendant has failed to re-pay the money. Therefore, the substantial question of law No.1 is answered in favour of the plaintiff.

15. The plaintiff has claimed the interest @ 24% per annum even the Banks are not levying interest @ 24%. Though the defendants have undertaken to pay the interest @ 24% under the respective invoices, this Court is inclined to grant interest @ 9% per annum from the date of the suit till the date of realisation. In the



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result, the suit is partly decreed. The first defendant shall pay the sum of Rs.1,05,21,013/- together with interest at 9% on Rs.62,29,524/- from the date of plaint till the date of judgment together with costs.

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Index : Yes/No
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