IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.11.2023	Delivered on: 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

A. S. (CAD). No.2 of 2022 and C.M.P. No.13232 of 2022
and
C.M.P. No.19616 of 2023

1. M/s. Senthamarai Marbles & Granite P. Ltd.,
represented by its Managing Director.

2. Sonai Tamilselvan, Managing Director,
M/s. Senthamarai Marbles & Granite P. Ltd.,

3. Kanimozhi, Director
M/s. Senthamarai Marbles & Granite P. Ltd.,

4. Akila, Director.
M/s. Senthamarai Marbles & Granite P. Ltd.,

5. Sonai Elangovan, Director
M/s. Senthamarai Marbles & Granite P. Ltd., ... Appellants

Vs.

S. Vivekanandan S/o. Subramaniam ... Respondent

PRAYER in A. (CAD). No.2 of 2022: Appeal filed under Section 13(1) of the Commercial Courts Act, 2015 praying to set aside the judgment and decree dated 21.12.2021 passed in O.S. No.227 of 2020 on the file of the learned Principal District Judge, Tiruppur.

PRAYER in C.M.P. No.19616 of 2023: Civil Miscellaneous Petition is filed under Order 41 Rule 27 of C.P.C. praying to permit the petitioner to produce the documents viz., mail confirmation dated 23.06.2017 and Stock Despatch Register series – 4 dated 23.06.2017 as additional evidence.

A. S. (CAD). No.2 of 2022

For Appellants : Mr. J. Gunaseelanmuthiah
For Respondent : Mr. L. Mouli

C.M.P. No.19616 of 2023

For Petitioners : Mr. J. Gunaseelanmuthiah
For Respondent : Mr. L. Mouli

COMMON JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Appeal has been filed as against the judgment and decree dated 21.12.2021 passed in O.S. No.227 of 2020 on the file of the learned Principal District Judge, Tiruppur, wherein the respondent / plaintiff herein has filed a Suit as against these appellants/defendants for recovery of money and the same was decreed in favour of the plaintiff and as against the said decree and judgment, this present appeal has been preferred by the defendants.

2. **The gist of the plaint averments are as follows:-**

The plaintiff is the Proprietor of M/s. Subbu's Associates and the plaintiff started the granite business by purchasing granite slabs from third parties exporters. The 2nd respondent/defendant herein is the Managing Director of the 1st defendant private company. The respondents 3 to 5 / defendants herein, are the Directors of the 1st respondent/defendant company and they are participating in the day to day affairs of the company dealing with the customers for negotiation and finalization of the rate of the product. The plaintiff/respondent herein, in order to purchase the granite slabs, placed orders with the defendant company from 16.04.2014 onwards. The plaintiff used to place orders over phone or by oral request from his place i.e., at Udumalpet. The plaintiff has been maintaining true, mutual and proper accounts in respect of day to day affairs. The plaintiff and the defendants had transactions from 16.04.2014 to 27.03.2017. The defendants had supplied goods on 27.03.2017 as per the directions of the plaintiff company to one Heritage Exports Private Limited. Subsequent to that, the defendants failed to supply the goods to the plaintiff. Later on, the plaintiff asked the defendants to return the money. The plaintiff, in fact, sent a mail to the defendants on 07.01.2020 mentioning the above transactions. The plaintiff is entitled for interest at 12% p.a. from the date of last transaction i.e., 27.03.2017 onwards for a sum of Rs.38,15,113/-. On 26.02.2020, the plaintiff had issued a legal notice to the defendants calling upon them to pay the above said amount. But the defendants failed to settle the same and not chosen to send any reply. The last transaction is on 27.03.2017. On account of National lockdown and consequent to the order passed by the Hon'ble Supreme Court, the Suit is filed with limitation i.e., on 20.06.2020. Therefore, the defendants are liable to pay the said interest at 12% p.a.

3. **<u>The gist of the Written statement averments are as follows:-</u>**

The averments made in the plaint are denied as false except those that are specifically admitted herein. The averments made in Para 2 that the 1st defendant company is running a Tiles business and the plaintiff had transaction with the 1st defendant from 16.04.2014 onwards are admitted. The averments made in Para 3 are denied as false. The averments made in Para that the 1st defendant company had dealing with the plaintiff from 16.04.2014 to 27.03.2017 and the same is liable to be proved by the plaintiff. The averments made in Para that as on 27.03.2017, the defendants are liable to pay a sum of Rs.38,15,113/- to the plaintiff are all denied as false. In fact, the 1st defendant company is a reputed company and the plaintiff also placed orders with the 1st defendant company and based on the orders, the 1st defendant had also supplied Tiles in regular basis. As per the request made by the plaintiff, the 1st defendant delivered Tiles for a sum of Rs.14,85,575/- to one Mani, Hosur, for which mail confirmation is available with the defendants. Likewise, as per the request of the plaintiff, the 1st defendant company had supplied Tiles for a sum of Rs.16,12,400/- to one Prasanth, for which mail confirmation is available with the defendants. Therefore, the defendants need not pay any amount to the plaintiff and the defendants have also delivered the goods to the concerned persons as requested by the plaintiff. The plaintiff has failed to produce any document to substantiate his claim. There is no cause of action to the suit and the suit is not maintainable and is liable to be dismissed.

4. During the pendency of appeal, the appellants / defendants have filed a miscellaneous application under Order 41 Rule 27 CPC requesting to permit the appellants to produce additional documents before this Court.

5. **The gist of the petition averments in CMP No.19616 of 2023 are as follows:-**

The petitioner is the 2nd appellant herein and he is well acquainted with the facts of the Suit. He filed an affidavit for himself and on behalf of other petitioners/appellants herein. The petitioners/appellants have filed appeal as against the judgment and decree passed in O.S. No.227 of 2020 dated 21.11.2021 on the file of the learned Principal District Judge, Tiruppur. They are having valuable points to succeed in the appeal. Actually they ought to have succeeded in the Trial Court but the Trial Court had not given chances to file documents in his side to prove his case, though the appellants / defendants raised issue regarding the suit amount relating to business transactions. As per the mail confirmations, the suit amount had also been paid to the respondent / plaintiff. But the respondent / plaintiff has suppressed all the documents and transactions between the respondent / plaintiff and the appellants / defendants and got decree in his favour. The petitioners have all documents to establish their case and thereby one more opportunity has to be given to mark the said documents. The Trial Court has pronounced the judgment without giving any such opportunity, thereby the petitioners are now ready to produce those documents such as mail confirmations and despatch registers and now they have filed the copies of the said documents. Therefore the documents have to be received on the side of the petitioners/ appellants / defendants as additional evidence.

6. **<u>The averments in the counter filed by the respondent / plaintiff are as follows:-</u>**

The averments made in the affidavit are denied as false. The averments made in Para 2 and 3 are stoutly denied by the respondent. In fact, as per the evidence of DW1, they have documents with them, relating to the respondent / plaintiff company, but they have not produced the same, which shows that the petitioners / appellants / defendants wantonly did not produce the said documents relating to the respondent / plaintiff's company and the petitioners / appellants / defendants have not given any sufficient reasons for non-production of the documents. Further the petitioners / appellants failed to establish that the documents mentioned in the petition have been filed before the Trial Court and the Trial Court refused to admit the same and also the documents claiming to be Despatch Register Series-4 are not relating to the respondent / plaintiff's company and therefore the conditions mentioned in Order 41 Rule 27 of CPC are not complied with and hence this petition is liable to be dismissed. Moreover, the petitioners / appellants have filed only the photocopy of the documents without originals and the same cannot be received as evidence and the document no.1 has been filed without any certificate and therefore the same cannot be received as evidence. Hence the petition is liable to be dismissed.

7. Based on the above said pleadings, on hearing both sides and perusing the records, the Trial Court has framed the following issues:-

7.1. Whether there is a business transaction between the plaintiff and the defendants as alleged in the plaint.

7.2. Whether the defendants are liable to pay the amount due as mentioned in the plaint.

7.3. Whether the plaintiff is entitled for the suit claim.

7.4. To what relief?

8. In order to prove his case, the plaintiff has examined PW1 and marked Ex.A1 to Ex.A4. On the side of defendants, DW1 was examined and no documents were marked. After evaluating the oral and

documentary evidence adduced on either side, the Trial Court has decreed the Suit in favour of the plaintiff.

9. As against the said decree and judgment, the unsuccessful defendants have filed this appeal before this Court on the following grounds:-

9.1. The decree and judgment of the lower Court is against law, weight of evidence and probabilities of the case.

9.2. The Trial Court failed to observe averment of written statement filed by the appellants / defendants.

9.3. The Trial Court failed to observe the evidence in cross examination of DW1. The Trial Court has not given opportunity to mark the documents viz., invoice notes and delivery report. The evidence was taken by the Trial Court in horrible manner.

9.4. No evidence produced by the plaintiff to prove the business transaction between them till 27.03.2017. The Trial Court failed to observe the same.

9.5. The Trial Court failed to consider that the plaintiff has not produced any evidence to corroborate his evidence.

9.6. The Trial Court failed to consider that whether the business transactions between plaintiff and the defendants from 16.04.2013 to 27.03.2017, are true or not.

9.7. The Trial Court failed to observe that only on the instructions given by the plaintiff, the defendants sent tiles to the value of Rs.14,85,575/- to one Mani and sent tiles to the value of Rs.16,12,400/- to one Prasanth. The defendants are ready to submit mail confirmations before this Court under Order 41 Rule 27 CPC.

10. The learned counsel appearing for the appellants / defendants would contend that the respondent / plaintiff has suppressed the facts that he had business transactions with the appellant / defendants' company and as per the instructions of the respondent / plaintiff, the 1st defendant company used to send marbels. As per the instructions given by the respondent / plaintiff, the appellants / defendants sent Tiles for a sum of Rs.14,85,575/- to one Mani and sent Tiles to the worth of Rs.16,12,400/- to one Prasanth. But the above said transactions have not been mentioned in the plaint and the same were suppressed by the respondent / plaintiff. The Trial Court also failed to consider the above said aspects and the appellants

/ defendants were unable to produce those documents with regard to the confirmation through mail by the respondent / plaintiff to the above said amount and without considering the above aspects and without considering the evidence of DW1, the Trial Court has wrongly decreed the Suit in favour of the respondent / plaintiff. Therefore, now the petitioners / appellants have produced the copy of mail confirmations and despatch registers and have filed separate application to receive the said documents as additional evidence in this appeal. Therefore the above said documents have to be received and the appeal is to be allowed by setting aside the judgment and decree passed by the Trial Court.

11. The learned counsel appearing for the respondent / plaintiff would contend that the appellants / defendants in their written statement itself categorically taken a plea that as per the direction of the respondent / plaintiff, they sent tiles for a sum of Rs.14,85,575/- to one Mani and sent tiles to the worth of Rs.16,12,400/- to one Prasanth. But they have not filed any document to prove their contention. Per contra, the respondent / plaintiff has proved the transaction and the amount payable by the appellants / defendants to the respondent / plaintiff. The Trial Court has

also elaborately discussed about the evidences adduced on both sides and decreed the Suit. During the pendency of the appeal, the appellants / defendants have filed an application to receive the additional documents under Order 41 Rule 27 of C.P.C. without stating proper reasons. Even according to the affidavit of the petitioners/defendants, they have not stated about the original documents and they only produced the xerox copy of the documents and the same cannot be accepted. Already, in the Trial Court itself, the petitioners/defendants know very well about the documents, but they had failed to produce those documents. Now without any valid reasons, they have filed this application and thereby, the reasons stated in the petition are not come under the purview of Order 41 Rule 27 of C.P.C. Therefore the appeal and the petition in C.M.P. No.19616 of 2023 are liable to be dismissed.

12. Heard both sides and perused the entire materials available on record, the Judgment and decree passed by the Trial Court and the grounds of appeal.

13. Both sides agreed to take the matter for final disposal at the

stage of admission itself.

14. Upon hearing both sides and perusing the entire available records, now the points for determination in this appeal are:

1. Whether the C.M.P. No.19616 of 2023 is to be allowed or not.

2. Whether there was a business transaction between the plaintiff and the defendants as alleged in the plaint.

3. Whether the defendants sent tiles

(a) to one Mani for a sum of Rs.14,85,575/- and

(b) to one Prasanth for a sum of Rs.16,12,400/-

4. Whether the plaintiff is entitled for the decree amount for a sum of Rs.53,03,007/- as prayed for in the Suit.

5. Whether this appeal in A.(CAD) No.2 of 2022 is to be allowed or not.

6. To what relief, the appellants are entitled to?.

The rank of the parties will be same as called in the Suit. The appellants will be called as defendants and the respondent in this appeal will be called as plaintiff.

15. **On POINT No.1:**

The appellants / defendants have filed this miscellaneous application under Order 41 Rule 27 C.P.C. to permit the petitioners/defendants to produce the additional documents as evidence. The petitioners' contention is that the above said documents are very essential to prove the case of the petitioners / defendants and they are ready to produce the copy of email confirmation dated 23.06.2017and Stock Despatch Register series – 4 dated 23.06.2017. According to the petitioners/defendants, those documents are very essential to prove their case. On the other hand, the respondent/plaintiff has raised his objection by stating that the petitioners have not produced the original documents and there is no reason stated by the defendants as to why the said documents were not produced before the Trial Court and thereby, they failed to satisfy the conditions referred in the Order 41 Rule 27 of C.P.C.

16. This petition has been filed by the petitioners/defendants requesting to receive the additional documents as additional evidence. They have produced the xerox copies of the documents and they have not produced the original documents and no reasons stated for non-production

of the original documents. Moreover, according to the petitioners / defendants, those documents are dated 23.06.2017 and were available at the time of trial, but no sufficient reason is stated by the petitioners / defendants for non-production of those documents before the Trial Court. It is well settled law that without satisfying the conditions mentioned in Order 41 Rule 27 of C.P.C., documents cannot be received and the petitioners / defendants have not stated any reason as to why they have not produced the above said documents before the Trial Court when those documents were very much available with them. Particularly, in the written statement itself, the petitioners / defendants pleaded about the availability of the documents and specifically stated that the documents will be produced at the time of trial. In spite of that, they have not produced the above said documents and even now also, the petitioners have only produced the xerox copies of the documents and not produced the original documents. Therefore, the petition filed by the petitioners / defendants has no merits and deserves to be dismissed. Thus, ***point no.1*** is answered.

17. **<u>On POINT No.2</u>**

The plaintiff's contention is that he had transaction with the 1st defendant company regarding marble business from 16.04.2014 to 27.03.2017. On various dates, the defendant purchased marbels and thereby, there was a due for a sum of Rs.38,15,113/- from the 1st defendant. The defendant denied the transactions upto 27.03.2017 but admitted the business transactions between the plaintiff and the defendants. The plaintiff in his evidence stated that he produced the Statement of Accounts Ex.A2, mail dated 07.01.2020/Ex.A.3, Legal notice dated 26.02.2020/Ex.A4 issued by the plaintiff to the defendants. As per the Statement of Accounts/Ex.A.2 and the mail sent by the plaintiff to the defendants/Ex.A.4, it is seen that there were transactions between the plaintiff and the defendants from 16.04.2014 to 27.03.2017. Therefore, from the evidence of PW1 and the documents Ex.A.1 to Ex.A.4, they reveal that there were business transactions between the plaintiff and the defendants from 16.04.2014 to 27.03.2017.

18. On the side of defendants, DW1, who was the Accountant in the 1st defendant company, was examined. He also admitted that on 13.03.2017 and 27.03.2017, there were two transactions taken place.

Therefore, the DW1 himself has admitted during his cross examination that there were transactions between the plaintiff and the defendants upto 27.03.2017. In the Written statement itself, it has been admitted by the defendants that the transactions were taken place between the plaintiff and the defendants from 16.04.2014. Therefore the plaintiff has proved that there were business transactions between the plaintiff and the defendants from 16.04.2014 to 27.03.2017. Thus, ***point no.2*** is answered, accordingly.

19. **<u>On POINT No.3:</u>**

The plaintiff's contention is that there is a due of Rs.38,15,113/0 as per the Statement of Account. But the defendants' contention is that already as per the instruction of the plaintiff, the 1st defendant company supplied the materials to one Mani of Hosur for a sum of Rs.14,85,575/- and to one Prasanth for a sum of Rs.16,12,400/-. The above said fact has been denied by the plaintiff. While so, it is the duty of the defendants to prove the above said transactions. In this context, DW1 in his evidence has stated that, the defendant company has accounts for the transactions between the plaintiff and the defendants but the said accounts have not been produced and also admitted that some of the transactions were made through cheque and some of the transactions were made through RTGS and also admitted that on 13.03.2017 and 27.03.2017, there were two transactions between the parties. But there is no document produced to prove the contention of the defendants. Therefore, the defendants failed to prove his contention that as per the instruction of the plaintiff, they supplied materials to one Mani of Hosur for a sum of Rs.14,85,575/- and to one Prasanth for a sum of Rs.16,12,400/-. Thus ***point no.3*** is answered accordingly.

20. **<u>On POINT No.4:-</u>**

As per the plaintiff, there were business transactions between the plaintiff and the defendants for a sum of Rs.38,15,113/-. The defendants have not denied the above said transaction. But the defendants' contention is that already as per the instruction of the plaintiff, the defendants had supplied materials to one Mani of Hosur for a sum of Rs.14,85,575/- and to one Prasanth for a sum of Rs.16,12,400/-. Whereas the defendants failed to prove the above said contention. As per Ex.A2, Ex.A3 and evidence of PW1, there is a due for Rs.38,15,113/- by the defendants to the plaintiff.

The plaintiff has issued legal notice dated 26.02.2020 calling upon the defendants to pay the said amount. But no reply was given by the defendants to the plaintiff. Therefore, the plaintiff has proved his case as against the defendants and thereby, the plaintiff is entitled to the relief of money decree for the suit amount. Thus, ***point no.4*** is answered accordingly.

21. **On POINT No.5**

The Trial Court, in its judgment, elaborately discussed about the evidence adduced on both sides and correctly came to a conclusion that the defendants failed to produce any document to prove his case and per contra, the plaintiff has proved his case through evidence of PW1 and Ex.A.1 to A4 and adducing sufficient evidence and thereby, correctly decreed the suit. Therefore, this Court has no warrant to interfere with the judgment of the Trial Court.

22. In view of the above discussions, this appeal is liable to be dismissed. Thus, ***point no.5*** is answered accordingly.

23. **On POINT No.6:-** To what relief, the appellants are entitled to?

The appellants / defendants have preferred this appeal as against the decree and judgment passed by the Trial Court. Already this Court has decided in previous para that the plaintiff is entitled for the recovery of money for a sum of *Rs.53,03,007/-* and the defendants failed to prove their case with sufficient reasons. Therefore, this appeal has no merits and deserves to be dismissed. Thus, ***point no.6*** is answered accordingly.

24. **C.M.P. No.19616 of 2023**

IN THE RESULT, this petition is dismissed.

25. **A. (CAD). No.2 of 2022 and C.M.P. No.13232 of 2022**

IN THE RESULT, this Appeal is dismissed. The judgment and decree dated 21.12.2021 passed in O.S. No.227 of 2020 on the file of the learned Principal District Judge, Tiruppur is hereby confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

(D.K.K.J) & (P.D.B.J)
20.12.2023

mjs

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No

D.KRISHNAKUMAR, J.,

and
P.DHANABAL,J

(mjs)

To

The Principal District Judge, Tiruppur.

Pre-delivery judgment in
A.(CAD) No.2 of 2022
and
C.M.P. No.19616 of 2023

20.12.2023