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C.S. No.333 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

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ITC Limited
Education and Stationery Products Business,
ITC Centre, 5th Floor,
No.760, Anna Salai,
Chennai-600 002
Rep. by its Management Accountant,
Power of Attorney Holder
Mr.Hardik Patel

.. Plaintiff

vs.

Mrs.Sheela Girish,
W/o.Girish,
Proprietor,
S.L.V. Enterprises,
No.4, 1st Cross, 8th Main, Bhuvaneshwari Nagar,
T.Dasarahalli,
Bangalore-560 057.

... Defendant

PRAYER: Complaint filed under Order IV Rule 1 of Original Side Rules Read with Order VII Rule 1 CPC prays for a judgment and decree against the Defendant (a) for a sum of Rs.1,75,32,768/- (Rupees One Crore Seventy Five Lakhs Thirty Two Thousand Seven Hundred and Sixty Eight only) together with interest at the rate of 24% on Rs.1,10,77,944/- (Rupees One



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Crore Tel Lakhs Seventy Seven Thousand Nine Hundred and Forty Four only) from the date of plaint till the date of realization; and (b) for costs of this suit.

For Plaintiff : Ms. Vandana Parasuram for
M/s.K.Krishnamoorthy

For Defendant : Set *ex parte*

J U D G M E N T

The plaintiff filed a suit for recovery of Rs.1,75,32,768/- from the defendant with interest on the principal sum of Rs.1,10,77,944/- at 24% p.a. from the date of plaint till the date of realization.

2. The plaintiff stated that it is in the business of supplying educational and stationery products. Upon being approached by the defendant in relation thereto, goods were supplied by the plaintiff to the defendant under multiple invoices. A running account was maintained in respect of supplies made by the plaintiff to the defendant. After providing credit to payments made by the defendant, the plaintiff states that a principal sum of Rs.1,10,77,944/- and interest thereon in an aggregate sum of



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Rs.1,75,32,768/- was due and payable by the defendant to the plaintiff as on the date of plaint.

3. In spite of suit summons being served on the defendant, the defendant failed to appear. Consequently, by order dated 06.12.2022, the defendant was set *ex parte* and the matter was placed before the learned Additional Master I for recording the *ex parte* evidence of the plaintiff on 20.12.2022.

4. The plaintiff has examined Mr.Hardik Patel, Management Accountant of the plaintiff as PW1. During the course of examination-in-chief of PW1, the 10 documents listed at the foot of this judgment were exhibited as Exs.P1 to P10.

5. Learned counsel for the plaintiff invited my attention to Ex.P3, which specifies the terms and conditions applicable to all the transactions. This document has been signed by both parties. As per clause 5 thereof, learned counsel points out that the rate of interest was agreed to be duly



communicated by the plaintiff to the defendant from time to time. Learned counsel also points out that the defendant confirmed the amount due and payable as on 31.01.2018 under Ex.P5 in an aggregate sum of Rs.53,57,773/-. According to learned counsel, this includes interest at 24% per annum. Learned counsel also relies upon the statement of accounts (Ex.P9). She points out that interest waivers were provided from time to time, such as by entry dated 24.03.2018 for a sum of Rs.3,18,590.57. She submits that the suit claim was made on the basis of the said statement of account which shows a closing balance of Rs.1,75,32,768/-.

6. The plaintiff has placed on record one original invoice as Ex.P6. As discussed above, the confirmation of balance statement as on 31.01.2018 is on record as Ex.P5. The terms and conditions of the transaction provide for the communication of the rate of interest. No document directly evidencing the communication of the rate of interest is on record, but the confirmation of balance, as on 31.01.2018, includes interest. Ex.P9, which is the statement of account, evidences that the amount outstanding as on 31.07.2021 is Rs.1,75,32,768/-. Thereafter, the plaintiff admitted receipt of a



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sum of Rs.2,10,000/-. Hence, the net outstanding amount is
Rs.1,73,22,767/-.

7. Thus, the assertions in the plaint were duly proved by adducing evidence in support thereof. By taking into account the fact that no evidence to the contrary was adduced by the defendant, the plaintiff is entitled to succeed. Therefore, the plaintiff is entitled to a sum of Rs.1,73,22,767/-. As regards interest in the post suit period, the plaintiff shall be entitled to interest at 12% per annum. As the successful party, the plaintiff is also entitled to costs.

8. In the result, the suit is decreed as follows:

(i) the defendant is directed to pay to the plaintiff a sum of Rs.1,73,22,767/- with interest on the principal sum of Rs.1,10,77,944/- at 12% p.a. from the date of plaint until realization; and

(2) the defendant is directed to pay costs.

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Plaintiff's witness:

Mr.Hardik Patel : P.W.1

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Defendant's witness : Nil

Documents exhibited by the Plaintiff:

Sl.No	Exhibits	Date	Particulars of Documents
1.	Ex.P1	17.11.2014	The original constitution letter
2.	Ex.P2	-	The original Letter from the defendant authorising transporters to collect the goods dated nil.
3.	Ex.P3	-	The original conditions of sale.
4.	Ex.P4	17.11.2014	The original Certificate from Karnataka Bank Limited Hesaraghatta Main Branch.
5.	Ex.P5	31.01.2018	The original confirmation of balance statement.
6.	Ex.P6	25.08.2018	The original Invoice for supply from plaintiff to defendant.
7.	Ex.P7	20.05.2019	The office copy of the Legal notice from plaintiff's counsel
8.	Ex.P8	18.10.2019	The original bank statement from the plaintiff's banker.
9.	Ex.P9	From 01.04.2014 to 31.07.2021	The original statement of accounts.
10.	Ex.P10	-	The copy of Power of attorney of Mr.Hardik Patel dated 11.12.2018 (original seen, copy



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Sl.No	Exhibits	Date	Particulars of Documents
			marked and returned) (the learned counsel for the plaintiff stated that only one original is available, the same to be produced in other cases also. And the learned counsel for the plaintiff undertakes to produce the original before the Court.)

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SENTHILKUMAR RAMAMOORTHY,J

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