



S.A.No.277 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.277 of 2023

&

C.M.P.No. 8174 of 2023

The Superintending Engineer,
Tamil Nadu Electricity Board,
CEDC/ South,
K.K. Nagar,
Chennai – 600 078.

... Appellant

Vs

M/s.Ambica Gen Power
Represented by its Proprietor
Promod Kumar Dage,
No.5, Bakers Street,
1st Floor, Chennai – 600 001.
Respondent

...



S.A.No.277 of 2023

WEB COPY

Prayer : The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 10.12.2020 made in A.S.No.377 of 2018 on the file of XVII Additional Judge, City Civil Court, Chennai reversing the Judgement and Decree dated 28.06.2017 made in O.S.No. 5830 of 2011 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mrs. J.Hemalatha

For Respondent : Mr. R.Anantha Ramakrishnan.

JUDGEMENT

The Tamil Nadu Electricity Board who was the defendant in the suit O.S.No.5830 of 2011 is the appellant before this Court challenging the Judgement in A.S.No.377 of 2018 reversing the Judgement and Decree in O.S.No.5830 of 2011 of the XVIII Assistant



S.A.No.277 of 2023

WEB COPY

Judge, City Civil Court, Chennai. The facts are briefly set out herein below with the parties being referred to in the same rank as before the Trial Court.

2. The plaintiff had filed the above referred suit for recovery of a sum of Rs.4,87,755/- together with interest at 22 % per annum for the sum of Rs.3,11,002/- from the date of the plaint till the date of realisation. It is the case of the plaintiff that it is a proprietary concern dealing with copper enamel wires and electrical items. The defendant had invited tender for the supply of 640 Kgs of TC fuse wire 14 SWG for their use. On 26.05.2008, purchase order for the supply of these materials were placed and the plaintiff agreed to supply these goods to the defendant and the defendant after checking the sample had entered into the contract.

3. Pursuant to the approval of their bid, the plaintiff had paid



S.A.No.277 of 2023

WEB COPY

security deposit and had also produced sales tax certificates and other documents as required. The plaintiff was called upon to effect supply and accordingly the plaintiff supplied goods to the tune of Rs.2,96,192/-.

4. On 04.08.2008, the Chief Stores Officer Central Stores / CEDC (South) wrote a letter to the plaintiff stating that the goods supplied by the plaintiff were defective as the TC fuse wire had blown off immediately when tested and they wanted the plaintiff to replace the entire material, to this the plaintiff had issued a reply dated 06.08.2008, denying the allegation and contending that goods supplied were in conformity with the sample and they requested the material to be re-tested in a common lab i.e., National Test House, Tharamani, Chennai which is a Central Lab and they had requested the defendant to organise a joint inspection.



S.A.No.277 of 2023

WEB COPY

5. The plaintiff would submit that the report given by the defendant's lab has been issued in a biased manner and the defendant had inspected the materials in their own lab without their presence. On 06.09.2008, the plaintiff issued a notice to the defendant asking them to organise a joint inspection. The plaintiff would submit that this was not a new request that they were making. When a similar dispute had arisen in the year 2006, the materials were sent to the National Test House, Tharamani and the report issued by them was accepted by the defendant. On the basis of which the defendant had accepted the plaintiff's goods.

6. The plaintiff would further submit that on 24.12.2008 the defendant had issued a letter stating that the plaintiff had not come for witnessing the testing of the material and directed the plaintiff to take back the defective goods within a period of 15 days from the date of receipt of a letter and directed the plaintiff to pay a sum of Rs.32,781/-

5/15



S.A.No.277 of 2023

WEB COPY

(subsequently modified to Rs.47,590/-) towards purchase order PO.No.37/08-09 dated 26.05.2008. The defendant thereafter claimed a liquidated damages of Rs.26,919/- being 10% of the purchase value. The plaintiff therefore filed O.S.No.2155 of 2009 on the file of the XII Assistant Judge, City Civil Court, Chennai for sending sample of the goods to the National Test House and for an injunction restraining defendants from recovery or adjusting a sum of Rs.47,550.20/- from the pending bills.

7. This said suit was decreed on 29.10.2009 and the plaintiff had sent a letter dated 20.05.2010 calling upon the defendant to comply with the decree in O.S.No.2155 of 2009. The plaintiff would submit that the defendant has not paid a sum of Rs.2,96,192/- which was due and payable to the plaintiff for the supply of materials. Since the payment has not been made within a stipulated time, the plaintiff had also sought interest and has come forward with the suit in

6/15



S.A.No.277 of 2023

question.

WEB COPY

8. The defendant had filed a written statement inter alia denying the plaintiff's case and submitted that the goods supplied by the plaintiff was of an inferior quality and the same was tested twice at the MRT lab and the goods were found to be not satisfactory as at the rated current 102 Amps and the same had blown off immediately. Since the goods supplied were not of good quality, the defendant had called upon the plaintiff to take back the defective goods. They would further submit that there is no provision for testing the material in any other lab except conducting test in the departmental MRT lab. In the light of the supply of defective goods, the plaintiff is liable to pay liquidated damages which has been quantified at Rs.47,590/-.



S.A.No.277 of 2023

WEB COPY

9. The defendant would further submit that the decree in O.S.No.2155 of 2009 was an ex parte decree and that an application to set aside ex parte decree was filed and the matter in issue has been resolved. They would further submit that when the plaintiff fails to pay the amount of liquidated damages, the Board has the right to recover from the plaintiff or other supply bill pending in other circles.

10. The Trial Court has framed the following issues:

“(i) Whether the plaintiff is entitled for the relief as prayed for?”

“(ii) To what other reliefs?”

11. The proprietor of the plaintiff firm was examined as P.W.1 and Ex.A.1 to Ex.A.20 were marked. On the side of the defendant, an Authorised Assistant Engineer of the Board was examined as D.W.1 and Ex.B.1 to Ex.B.11 were marked.



S.A.No.277 of 2023

WEB COPY

12. The learned Trial Court had proceeded to dismiss the suit as against which the plaintiff had filed A.S.No.377 of 2018 on the file of the XVII Additional Judge, City Civil Court, Chennai. The learned Judge allowed the appeal, challenging the same the defendant is before this Court.

13. Mrs. Hemalatha, learned counsel appearing on behalf of the defendant would submit that the goods that have been supplied were of inferior material and therefore the defendant was not under any obligation to purchase the goods of the plaintiff. She would submit that in respect of the very same transaction earlier the suit in O.S.No.2155 of 2009 was filed and therefore, the present suit is hit by provisions of Order II Rule 2. That apart, she would submit that the purchase order has been terminated, therefore the suit is not maintainable.

9/15



S.A.No.277 of 2023

WEB COPY

14. The learned counsel for the caveator would submit that the suit is for recovery of money due towards the goods supplied, which supply is not denied by the defendant. He would submit that therefore the suit is not barred by the provisions of Order II Rule 2 CPC. Therefore, he would submit that the appeal deserves to be dismissed.

15. Heard the learned counsels and perused the records.

16. The suit is one filed for recovery of money due towards the supply of goods. The defendant accept the fact that the goods have been supplied to them. However, they would contend that they are not liable to pay any amounts for the simple reason that the goods are defective and the plaintiff has been asked to take back the goods. The suit for mandatory injunction which is filed by the plaintiff earlier in O.S.No.2155 of 2009 has been decreed in and by which the defendant

10/15



S.A.No.277 of 2023

WEB COPY

was directed to send the material to the National Test House. The defendant has neither challenged this Judgement and Decree nor have they taken any effective steps to send the material for testing to the National Test House. On the contrary, the defendant is adopting a dog in the manger attitude.

17. This assumes significance since a letter dated 21.11.2008, Ex.B.6, has been issued by the defendant to the plaintiff informing them that they had decided to conduct the re-test in their lab on 25.11.2008. They had also stipulated that the test was subject to certain conditions. However, under Ex.B.7 letter dated 24.12.2008, they would state that since the plaintiff had not turned up, the goods are requested to be taken back within 15 days from the date of receipt of the letter. This letter does not even mention as to whether the testing had taken place and the result of this test is that the material was faulty / defective. However, the defendant board demanded

11/15



S.A.No.277 of 2023

liquidated damages to the tune of Rs.32,781/-.

WEB COPY

18. In the absence of proof that the goods supplied by the plaintiff was of an inferior quality by conducting a test in the presence of the plaintiff, there is no ground for the defendant to deny the payment to the plaintiff. Both the Courts below have considered these factors and on the available evidence had decreed the suit. The defendant has not made out any substantial question of law warranting interference and even the ground of bar under Order II Rule 2 of CPC cannot be countenanced for the simple reason that the earlier suit is one for mandatory injunction directing the material to be tested at the MRT Labs and the present suit is one for recovery of amounts due towards the goods supplied.

19. In the result, the Second appeal is dismissed. Consequently, the connected civil miscellaneous petition is closed. No costs.

12/15



WEB COPY



S.A.No.277 of 2023

08.11.2023

kan

Index : Yes/No

Speaking order/non-speaking order

To,

1.The XVII Additional Judge,
City Civil Court,
Chennai.

2.The XVIII Assistant Judge,
City Civil Court,
Chennai.

13/15



WEB COPY



S.A.No.277 of 2023

P.T.ASHA, J.,

kan

S.A.No. 277 of 2023



WEB COPY



S.A.No.277 of 2023

08.11.2023