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C.S.No.665 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM

THE HONOURABLE **MR.JUSTICE SETHILKUMAR RAMAMOORTHY**

C.S.No.665 of 2019

Volex Interconnect (India) Private Limited,
Represented by its Authorized Signatory
Having its Registered Office at
Level 9, Olympia Taknos Park,
No.28, SIDCO Industrial Estate,
Guindy, Chennai - 600 032.

... Plaintiff

-VS-

1.Siva

2.Mr.Rajinikanth,
Proprietor Technique Engineering Works,
son of Mr.Subramanian,
No.11/18, Devar Street,
Venkatapuram, Ambattur,
Chennai - 600 053.

3.Axis Bank Ltd.,
Thiruvanmiyur Branch,
Represented by its Branch Manager,
New No.137, Old No.44/1, East Coast Road,
Srinivasapuram, Thiruvanmiyur,
Chennai - 600 041.

... Defendants



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WEB CO **PRAYER:** Plaintiff filed under Order IV Rule 1 of the O.S.Rules Read with

Order VII Rule 1 of the CPC, prayed for a judgment and decree:-

(a) Directing the defendant 1 and 2 to jointly and severally pay the plaintiff a sum of Rs.3,91,08,708/- (Rupees Three Crores Ninety One Lakhs Eight Thousand Seven Hundred and Eight only) together with interest at 12% per annum from the date of the suit till the date of realization.

(b) Directing the first defendant to pay a further sum of Rs.56,18,000/- (Rupees Fifty Six Lakhs and Eighteen Thousand only) together with interest at 12% per annum from the date of the suit till date of realization.

(c) Directing the defendants jointly and severally to bear the cost of the suit.



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For Plaintiff : Mr.Surya Senthil
for M/s.Surana & Surana
For Defendants : Set *Ex parte*

JUDGMENT

The suit was filed for recovery of a sum of Rs.3,91,08,708/-, jointly and severally, from the first and second defendants with interest thereon at 12% per annum from the date of suit till the date of realization. In addition, the plaintiff has prayed for a direction to the first defendant to pay a sum of Rs.56,18,000/- along with interest thereon at 12% per annum from the date of plaint till the date of realization. In the plaint, the plaintiff stated that it is a subsidiary of Volex PLC (UK). The plaintiff was engaged in the manufacturing and assembling of medical and telecommunication cable assemblies and power cords. The first defendant was appointed as the Financial Manager of the Indian Operations of the plaintiff. As the Financial Manager, it is stated that he was solely responsible for banking, non-banking and other financial transactions of the plaintiff.



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2. According to the plaintiff, during a routine check carried out in 2018, various discrepancies in the accounts of the plaintiff were noticed, especially in the form of transfers to third parties and cash withdrawals. Therefore, the plaintiff engaged in correspondence with the first defendant in this regard. Upon further enquiry, it was discovered that the first defendant had misappropriated an aggregate sum of Rs.4,47,26,708/-. Hence this suit.

3. The first defendant was set *ex parte* on 26.09.2022 and the second and third defendants were set *ex parte* on 26.08.2022. Thereafter, the matter was posted for recording the *ex parte* evidence of the plaintiff.

4. The plaintiff examined Mr.A.Velmurugan, its authorized representative, as P.W.1. In course of the examination in chief of P.W.1, the 35 documents listed at the foot of this judgment were exhibited as Exs.P1 to P35.

5. Learned counsel for the plaintiff invited my attention to Exs.P2 to



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P16 and pointed out that these exhibits evidence the payments made by the first defendant acting purportedly for and on behalf of the plaintiff to various third parties. By turning to paragraph 23 of the plaint, he pointed out that the details of these transactions are set out therein. In addition, he pointed out that the first defendant made withdrawals from the bank account by drawing self cheques for such purpose. The details of such withdrawals are set out at paragraph 27 of the plaint and are corroborated by Ex.P35, which is the bank statement in relation to the account maintained by the plaintiff with Axis Bank. Since it is a commercial transaction, learned counsel states that the interest claim is reasonable.

6. On the basis of the evidence recorded by the plaintiff in order to establish this claim and taking into account that no contra evidence was adduced, the plaintiff is entitled to the decree prayed for albeit only against the first defendant. Although it is pleaded that the second defendant colluded with the first defendant, it was the first defendant who made both the electronic money transfers (NEFT) and withdrawals. Hence, only the first defendant is liable for the suit claim. As the successful party the



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plaintiff is also entitled to costs.

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7. Accordingly, the suit is decreed by directing the first defendant to pay the plaintiff:

(i) a sum of Rs.3,91,08,708/- with interest thereon at 12% per annum from the date of plaint till the date of realization.

(ii) a sum of Rs.56,18,000/- to the plaintiff with interest thereon at 12% per annum from the date of plaint till the date of realization.

(iii) the costs of the suit.

23.01.2023

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Index : Yes / No

Internet : Yes / No

Plaintiff's witness:

P.W.1 - Mr.A.Velmurugan

Documents exhibited by the plaintiffs:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Certified true copy of the board resolution dated 08.07.2022.
Ex.P2	Printout of proof of payment effected by the first defendant to the second defendant for the period from 16.03.2017 to 21.03.2018 (Sec.65B affidavit of Indian Evidence Act is filed).



<i>Exhibits</i>	<i>Documents</i>
Ex.P3	Printout of proof of payment effected by the first defendant to Mr.C.Tessappan dated 30.12.2016 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P4	Printout of proof of payment effected by the first defendant to Mr.D.Sudhakaran dated 17.02.2017 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P5	Printout of proof of payment effected by the first defendant to Mr.G.Muthukumar for the period from 25.01.2017 to 10.03.2017 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P6	Printout of proof of payment effected by the first defendant to Mr.G.Pavithra dated 27.06.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P7	Printout of proof of payment effected by the first defendant to Jaya and Co., for the period from 10.05.2018 to 25.06.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P8	Printout of proof of payment effected by the first defendant to Mr.K.Raman dated 27.12.2016 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P9	Printout of proof of payment effected by the first defendant to P.K.Autos dated 27.12.2016 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P10	Printout of proof of payment effected by the first defendant to RKR Fabric & Engineering Works for the period from 24.02.2017 to 13.06.2017 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P11	Printout of proof of payment effected by the first defendant to Mr.S.Arokiam dated 07.01.2017 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P12	Printout of proof of payment effected by the first defendant to Mr.S.Senthil for the period from 15.12.2016 to 23.02.2017 (Sec.65B affidavit of Indian Evidence Act is filed).



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<i>Exhibits</i>	<i>Documents</i>
Ex.P13	Printout of proof of payment effected by the first defendant to Mr.Siva Sriramulu for the period from 14.12.2016 to 08.11.2017 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P14	Printout of proof of payment effected by the first defendant to Mr.Sivakumar dated 13.06.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P15	Printout of proof of payment effected by the first defendant to Mr.T.Vijay on 30.12.2016 and 30.04.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P16	Printout of proof of payment effected by the first defendant to Mr.Vijay Anand dated 20.03.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P17	Printout of the complaint to Commissioner of Police dated 03.08.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P18	Printout of the bank statement submitted by Mr.Siva to Mr.Darren Morris from 01.02.2018 to 10.07.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P19	Printout of Email dated 26.04.2017 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P20	Printout of Email dated 17.08.2017 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P21	Printout of Email dated 03.10.2017 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P22	Printout of Email dated 10.01.2018 mentioned in Sec.65B affidavit of Indian Evidence Act.
Ex.P23	Printout of Email dated 20.05.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P24	Printout of Email dated 22.05.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P25	Printout of Email dated 11.07.2018 (Sec.65B affidavit of Indian Evidence Act is filed).



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<i>Exhibits</i>	<i>Documents</i>
	Evidence Act is filed).
Ex.P26	Printout of Email dated 11.07.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P27	Printout of the bank statement produced by the first defendant to the plaintiff for the period from 01.04.2018 to 31.05.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P28	Printout of Email dated 12.07.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P29	Printout of Email dated 12.07.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P30	Printout of the Email regarding payment initiated by the first defendant to the second defendant dated 12.07.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P31	Printout of the Email regarding payment initiated by the first defendant to the second defendant dated 13.07.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P32	Printout of the letter dated 13.07.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P33	Printout of the letter dated 16.07.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P34	Printout of the letter dated 31.10.2018 (Sec.65B affidavit of Indian Evidence Act is filed).
Ex.P35	Original Bank Statement received from Axis Bank for the period from 01.01.2018 to 11.07.2018 (marked by P.W.1 in additional chief by filing additional proof affidavit).

SENTHILKUMAR RAMAMOORTHY,J



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