IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2023

PRONOUNCED ON : 29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.No.676 of 2017
(Comm.Suits)
in A.No.1576 of 2022

Sicagen India Ltd.,
Represented by its Authorized signatory,
Mr.S.Mahadevan
4th Floor, SPIC House,
No.88, Mount Road, Guindy,
Chennai-600032. ... Plaintiff

vs

Sai Electromech Industries
Represented by its authorized signatory
853, GIDC Estate
Wadhodia,
Vadodara – 391 760.
Gujarat, India. ... Defendant

Prayer: Civil Suit is filed under Order XXXVII Rule 1 and 2 of the Civil Procedure Code read with Order IV Rule 1 of Original Side Rules, praying to,

(a) Directing the Defendant to pay to the Plaintiff a sum of Rs. 1,23,62,585/- (Rupees One Crore Twenty Three Lakhs Sixty Two Thousand Five Hundren and Eighty Five Only) with further interest at 24% per annum for the outstanding amount Rs.96,58,270/- (Ninety Six Lakhs Fifty Eight Thousand Two Hundred and Seventy Only) from the date of plaint till the date of realization.

(b) Awarding the costs of the suit.

(c) Granting any such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.D.S.Ramesh

For Defendant : Mr.R.Palaniandavan

J U D G E M E N T

The instant suit has been filed by the plaintiff seeking judgment and decree against the defendant directing the defendant to pay the plaintiff a sum of Rs.1,23,62,585/- (Rupees One Crore Twenty Three Lakhs Sixty Two Thousand Five Hundred and Eighty Five Only) with interest at the rate of 24% per annum for the principal outstanding amount of Rs.96,58,270/- from the date of plaint to the date of realisation.

Plaint Averments:

2.(i) The plaintiff is a Public Limited Company registered under the Companies Act, 1956. It is engaged in the business of selling of building materials, commercial vehicles, offering mechanical governor services and electronic governing system and also engaged in offering wide range of products and services in the power and process industrial markets, drum manufacturing and water treatment chemicals manufacturing and process etc., to their clients in India. The defendant-company is one such client of the plaintiff-company. The plaintiff supplied building materials to the defendant regularly on credit basis at the request of the defendant. The defendant used to pay the credit amount within time stipulated in the invoice raised by the plaintiff and also in the purchase order. The defendant requested the plaintiff to supply building materials and the same was accepted by the plaintiff. It was also averred that at the time of taking purchase order, it was made clear all the disputes were subject to the Chennai jurisdiction.

2.(ii) It was averred by the plaintiff that it supplied building materials to the defendant through its Bill/Invoice in the following manner:-

S.No.	Date	Bill/Invoice No.	Amount
1.	09.07.2015	2012161095	Rs.7,65,781/-
2.	17.7.2015	2012161105	Rs.13,72,042/-

S.No.	Date	Bill/Invoice No.	Amount
3.	12.8.2015	2012161124	Rs.13,95,940/-
4.	12.8.2015	2012161125	Rs.4,04,049/-
5.	31.8.2015	2012161138	Rs.6,13,831/-
6.	31.8.2015	2012161139	Rs.6,42,968/-
7.	09.09.2015	2012161145	Rs.79,233/-
8.	09.09.2015	2012161146	Rs.12,54,467/-
9.	30.09.2015	2012161174	Rs.27,21,645/-
10.	30.09.2015	2012161175	Rs.2,07,770/-
11.	30.09.2015	2012161176	Rs.2,00,550/-

2.(iii) It was stated by the plaintiff that it delivered the goods as mentioned above and the same was acknowledged by the defendant. It was further stated that as per the above transaction, a sum of Rs.96,58,270/- (Ninety Six Lakhs Fifty Eight Thousand Two Hundred and Seventy Only) was due to the plaintiff from the defendant after deducting the amount already paid towards cost of the supply of goods mentioned in invoice. It was further averred by the plaintiff that it sent a notice to the defendant for recovery of the above said amount and even after receipt of the notice, the defendant neither paid the amount nor replied to the notice. Therefore, the plaintiff was constrained to file the suit for recovery of above said sum together with interest at the rate of 24%. from 24.08.2015 to 02.01.2017. Hence, the above said suit is laid by the plaintiff seeking recovery of the amount as stated above.

2.(iv) The defendant failed to file written statement within time stipulated by the Commercial Courts Act, 2015 and hence, forfeited his right to file written statement. However, he was allowed to participate in the trial without filing written statement.

3. This Court after perusing the plaint framed the following issues on 02.08.2021:-

"(i) Whether any default in payment committed by the defendant towards goods sold and delivered?

(ii) Whether the plaintiff is entitled for a decree of Rs.1,23,62,585/- with interest as prayed?

(iii) Whether the suit is bad for non joinder of party?

(iv) What other relief the plaintiff is entitled?"

4. On the side of the plaintiff, one N.Aravindraj-Legal Executive of the plaintiff-company was examined as PW.1 and 20 documents were marked as Ex.P1 to P20. Yet another legal executive of the plaintiff-company viz., M.Sathishwaran was examined as PW.2 and through him 3 documents were marked as Ex.P21 to P24.

5. The learned counsel for the plaintiff by taking this Court to the evidence of PW.1 and PW.2 and the documents filed through them submitted that the plaintiff supplied building materials to the defendant and as per the documents produced before the Court, a sum of Rs.96,58,270/- (Ninety Six Lakhs Fifty Eight Thousand Two Hundred and Seventy Only) was due from the defendant towards cost of materials supplied to the defendant and the said amount was not paid by the defendant inspite of notice issued by the plaintiff calling upon him to pay the amount. The learned counsel further submitted that defendant issued cheques in favour of plaintiff for the above said sum and when the cheques were presented for collection, the same was dishonoured with an endorsement 'Insufficient Funds'. The learned counsel further submitted that the cheques issued by the defendant admitting the

liability were filed by the defendant himself in the application filed by him in A.No.5 of 2018 seeking revocation of leave granted to plaintiff to sue. The learned counsel by taking this Court to the averment of the defendant in his affidavit filed in respect of A.No.5 of 2018 submitted that the defendant admitted the supply of goods by the plaintiff and receipt of the same by the defendant and also issue of cheque by the defendant for discharging the amount due to the plaintiff.

6. The learned counsel for the defendant submitted that the plaint was not signed by the authorised person and hence, the suit is liable to be dismissed. The learned counsel by taking this Court to the Board Resolutions marked by the plaintiff as it's exhibits, submitted that there was no authorisation by the Board to verify the pleadings in favour of the person, who inturn sub-delegated the power in favour of other person, who verified the plaint. In nutshell, it is the submission of the learned counsel for the defendant that authorisation letter given by the Company Secretary is not sufficient and in the absence of Board Resolution authorising said Company Secretary to sub-delegate the power of verifying the pleadings, the plaint filed

by the plaintiff is defective. He relied on the judgment of the Hon'ble Apex Court in ***State Bank of Travancore vs. Kingston Computers India Pvt. Ltd.,*** reported in ***(2011) 11 SCC 524*** in this regard.

7. The learned counsel further submitted that the materials were supplied to the defendant, who is at Vadodara, Gujarat from the branch office of the plaintiff Ankleshwar, Gujarat. Therefore, according to the learned counsel, the entire suit transaction had taken place at Gujarat outside the territorial limits of this Court and hence, this Court has no jurisdiction to entertain the suit. The learned counsel also by taking this Court to the order passed by this Court in O.S.A.No.124 of 2020 submitted that in view of observations made in the order that it would not affect the merits of the case to be projected by the parties, it is open to the respondent to raise the issue of jurisdiction again at the time of final disposal of the suit. The learned counsel by relying on the judgment of this Court in ***Murthy Hosiery Mills vs. State Bank of India*** reported in ***2011-3-LW-376*** submitted that in order to maintain a suit before this Court the substantial part of the cause of action should have arisen within the territorial limits of this Court and in the present case, the

substantial part of the cause of action arose at Gujarat. The learned counsel further submitted that in the cause-title of the plaint, the defendant was shown as "Sai Electromech Industries, represented by its Authorised Signatory", however, the name of the person representing the defendant has not been mentioned by the plaintiff. When the name of the authorised person is not shown, the plaint is defective for improper description of the defendant. The learned counsel also brought to the notice of this Court that plaintiff filed application for amendment of the cause-title to include the names of the authorised person but for the reasons best known to it, withdrew the same later and therefore, the suit is liable to be dismissed for defective description of defendant's name.

Discussion on the Issue Nos.1 and 2:

8.(i) The legal executive of the plaintiff-company viz., PW.1 entered the box and deposed about the supply of building materials to defendant on a specific request made by the defendant for the same. The invoice raised by the plaintiff were marked as Ex.P7 to P17. The delivery challans were marked as Ex.P1 to P5 and P18. Therefore, there is evidence available on record in the form of invoices to support the claim of the plaintiff that it supplied materials to the defendant for the amount claimed in the suit. To establish the materials supplied by the plaintiff were received by the defendant, the delivery challans were marked as Ex.P1 to P5 and P18. However, the seal of the defendant concern was not found place in the delivery challans. Though it was signed by a person it is not known, who had signed in the delivery challans on behalf of the defendant. However, the placement of order by the defendant, despatch of materials by the plaintiff and the acceptance of delivery by the defendant were all admitted by the defendant in his affidavit filed in support of A.No.5 of 2018, application to revoke the leave filed by the defendant. Though the said affidavit is not marked in the suit, the application for revocation of the leave was filed in the present suit and it forms part of the court records. Therefore, the Court can certainly look into the affidavit filed by the defendant in his application for revocation of the leave.

8.(ii) Though in the affidavit, the defendant raised certain objection with regard to the goods supplied by the plaintiff as if, those goods were sourced from a third party instead of supplying the goods manufactured by the plaintiff. There is no evidence available on record to show that such objection was raised by the defendant immediately after receipt of the goods. In the said affidavit, the defendant also admitted about the issuance of cheques by him towards payment of amounts due. Even in the present suit, the defendant failed to file written statement and forfeited right to file his written statement.

8.(iii) In the absence of any contra pleading denying suit transaction by the defendant in the form of written statement, the burden on the plaintiff is very light and the plaintiff successfully discharged the same by producing invoices, delivery challans and also on the basis of the admissions of the defendant in his affidavit filed in A.No.5 of 2018. As per the invoices produced by the plaintiff, a sum of Rs.96,58,276/- is due from the defendant to the plaintiff towards materials supplied by it.

8.(iv) As rightly contended by the learned counsel for the defendant there is an endorsement in Ex.P7-invoice that entire amount due under the said invoice Rs.7,65,781/- was paid and no amount was due. Likewise, in Ex.P8 invoice there is an endorsement acknowledging the payment of Rs.2,34,222/- as against invoice value of Rs.13,72,042/-. Exs.P7 and P8 are plaintiff's own documents, any endorsement found thereon with regard to the payment is binding on the plaintiff. Therefore, as per the endorsement in Exs.P7 and P8, a sum of Rs.10,000,03/- has been paid to the plaintiff and the same has not been given credit to by the plaintiff while filing the present suit. Therefore, this Court comes to the conclusion that the plaintiff is entitled to only a sum of Rs.86,58,267/- together with interest.

8.(v) Though the plaintiff claimed 24% interest on the outstanding amount, this Court is not inclined to award the interest at the higher rate as claimed by the plaintiff in view of the prevailing situation and the low bank interest rate. Therefore, considering the fact the suit transaction is a commercial one, the plaintiff is entitled to interest on the aforesaid sum of Rs.86,58,267/- at the rate of 12% interest from 30.09.2015 till the date of realisation.

8.(vi) The learned counsel for the defendant submitted that the materials were supplied by the plaintiff from branch office of the plaintiff situated at Ankleshwar, Gujarat to office of the defendant at Vadodara, Gujarat. Therefore, the entire cause of action for filing the suit arose outside the territorial limits of the Madras High Court and hence, this Court cannot have the territorial jurisdiction to entertain the suit. This issue was raised by the defendant in his application seeking revocation of the leave granted to the plaintiff in A.No.5 of 2018.

8.(vii) After considering the point raised by the defendant, this Court rejected the said contention. On appeal filed by the defendant in O.S.A.No.124 of 2020, the Hon'ble Division Bench of this Court confirmed the order passed by the learned Single Judge, rejecting the contention of the defendant. The relevant observation of the Hon'ble Division Bench of this Court reads as follows:-

> *"15. The learned Single Judge, in the impugned order, on an in-depth analysis of the factual aspects, especially the averments made in the plaint as well as the very same decisions, had rightly reached the conclusion that there was a consensus*

addendum arrived at between the parties that money should be paid into the account of the respondent/plaintiff maintained in HDFC Bank having office at Anna Salai, Chennai and the respondent/plaintiff sold the goods on credit basis to the appellant/defendant/applicant in A.No.5 of 2018 and the cheques given by the appellant/defendant/applicant deposited from the Bank account at Chennai was not realised and as such, this Court is having jurisdiction to entertain the said suit. In the considered opinion of the Court, some of the arguments advanced by the learned counsel for the appellant/defendant also touches upon the merits of the suit, for which, there may be a requirement of oral and documentary evidences.

16. This Court, on a independent application of mind and on appraisal of the entire materials, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Single Judge for rejecting the application filed by the appellant/defendant for revocation of the leave to sue granted to the respondent/plaintiff and finds no merits in this Original Side Appeal."

Therefore, the Hon'ble Division Bench of this Court on independent consideration of materials available on record came to the conclusion that this Court has got territorial jurisdiction to entertain the suit and rejected the contention raised by the defendant. The order passed by the Hon'ble Division Bench of this Court was confirmed by the Hon'ble Apex Court in Special Leave Petition (C). No.14131 of 2020. Therefore, it is not open to the defendant to raise the very same point again at the time of final disposal of the suit by taking shelter under the observation made by the Division Bench of this Court that anything observed in the order in no way affect the merits of the case projected by the parties. When the Hon'ble Division Bench of this Court after independent consideration came to the conclusion that this Court has got territorial jurisdiction to entertain the suit and confirmed the order dismissing the application filed by the defendant to revoke the leave granted to the plaintiff, the same cannot be re-agitated by the defendant again at the time of final disposal.

8.(viii) Even otherwise, as per the invoice produced by the plaintiff, it was clearly mentioned all the payment has to be made to the plaintiff's bank account at Anna Salai, Chennai. It was also mentioned that in case of dispute, it was subject to Chennai jurisdiction. When defendant agreed to pay the amount to the plaintiff for the materials supplied under the invoice at Chennai certainly the part of cause of action arose within the territorial limits of this Court.

8.(ix) It is also seen that the cheques issued by the defendant were deposited in the banks situated within Chennai and got dishonoured. The plaintiff is having it's Head Office at Chennai. The averment made by the plaintiff that the personnel of the defendant came to Chennai and undertook to pay the bill amount after supply of materials and therefore, the contract was completed at Chennai wherein the consensus ad idem arrived at between the parties had taken place. The said material averments of the plaintiff was not controverted by defendant by filing any written statement.

8.(x) In the absence of any contra pleadings on this material particulars, the evidence of PW.1 in this regard is sufficient to discharge the burden on the plaintiff to prove the part of cause of action arose at Chennai. A perusal of the e-mail communication between the plaintiff and defendant would make it clear that the personnel of defendant came to plaintiff's office and agreed to pay the outstanding amount and they also entered into a memorandum of understanding. Therefore, the contention of the learned counsel for the defendant that this Court has no territorial jurisdiction to entertain the suit cannot be accepted.

8.(xi) As far as the contention of the learned counsel for the defendant that the plaint is not verified by duly authorised person, the same cannot be accepted. The plaint was verified by one S.Mahadevan. He was authorised by one R.Achuthan, Company Secretary of the plaintiff-company under Ex.P24 to verify the plaint. The Board Resolution authorising R.Achuthan Company Secretary to verify the pleadings before the court is produced as Ex.P21. The very same Board Resolution empowered R.Achuthan, Company Secretary to authorise any other officers/employee of the Company to verify the pleadings before the Courts. Therefore, the contention raised by the learned counsel for the defendant as if, the plaint was not verified by a person duly authorised by the Company, is rejected. Accordingly, the Issue Nos. 1 and 2 are answered in favour of the plaintiff.

Discussion on the Issue No.3:

9. The learned counsel for the defendant mainly submitted that the plaintiff failed to mention the name of the authorised signatory of the defendant concern and hence, the suit is bad for non-joinder of authorised signatory or mis-description of the defendant. The perusal of the affidavit filed by the defendant in A.No.5 of 2018, the application to revoke the leave granted to the plaintiff, would make it clear that defendant is a proprietary concern. The person, sworn the affidavit on behalf of the defendant in A.No.5 of 2018 in the first paragraph of the affidavit clearly described himself as a proprietor of the defendant. Therefore, it is clear that the defendant is only a proprietorship owned by the deponent of the said affidavit viz., Umangkumar Joshi.

10. When a suit is filed against the proprietorship concern, it can be sued in the name of the said concern as per the order XXX Rule 10 of Civil Procedure Code, 1908. The relevant provision reads as follows:-

> *"Order XXX Rule 10. Suit against person carrying on business in name other than his own.- Any person carrying on business in a name or style other than his own name, or a Hindu*

undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly."

11. Therefore, when a suit is filed against the proprietary concern, it can be sued in its name as if, it is a firm without mentioning the name of the proprietor. Though a Proprietary Concern is not a legal entity as in the case of company, still by virtue of concession given by Civil Procedure Code, a proprietary concern can be sued in it's name and style. Therefore, the objection raised by the defendant that failure to mention the authorised signatory of the defendant in the cause-title is fatal to the case is also rejected. Accordingly, the Issue No.3 is answered against the defendant.

<u>Discussion on the Issue No.4:</u>

12. In view of the discussions made earlier, the plaintiff is entitled to recover a sum of Rs.86,58,267/- together with interest at the rate of 12% per annum from 30.09.2015 to the date of actual realisaion.

In fine:

(i) The Suit is partly decreed by directing the defendant to pay the amount of Rs.86,58,267/- together with interest at the rate of 12% per annum from 30.09.2015 till the date of actual realisation.

(ii) Consequently, the connected application in A.No.1576 of 2022 is closed.

(iii) In the facts and circumstances of the case, there will be no order as to costs.

29.03.2023

Index : Yes
NCC : Yes
dm

List of witnesses examined on the side of the plaintiff:-

1. P.W.1-Mr.Aravindaraj – Authorised Signatory of the Plaintiff-Company

2. P.W.2-Mr.M.Sathishwaran – Authorised Person of the Plaintiff-Company

List of documents marked on the side of the plaintiff:-

Sl. No.	EXHIBTS	DATE	DESCRIPTION
1.	P1	02.07.2015	Original Delivery Challan

Sl. No.	EXHIBTS	DATE	DESCRIPTION
2.	P2	09.07.2015	Original Delivery Challan
3.	P3	09.09.2015	Original Delivery Challan
4.	P4	11.09.2015	Original Delivery Challan
5.	P5	16.09.2015	Original Delivery Challan
6.	P6	21.09.2021	Original Authorization Letter
7.	P7	09.07.2015	Original Tax Invoice No.2012161095
8.	P8	17.07.2015	Original Tax Invoice No.2012161105
9.	P9	12.08.2015	Original Tax Invoice No.2012161124
10.	P10	12.08.2015	Original Tax Invoice No.2012161125
11.	P11	31.08.2015	Original Tax Invoice No.2012161138
12.	P12	31.08.2015	Original Tax Invoice No.2012161139
13.	P13	09.09.2015	Original Tax Invoice No.2012161145
14.	P14	09.09.2015	Original Tax Invoice No.2012161146
15.	P15	30.09.2015	Original Tax Invoice No.2012161174
16.	P16	30.09.2015	Original Tax Invoice No.2012161175
17.	P17	30.09.2015	Original Tax Invoice No.2012161176
18.	P18	12.09.2015	Original Delivery Challan
19.	P19	30.03.2016	Email – Regarding Settlement of Outstanding
20.	P20	08.01.2021	Amendment Application filed by the Authorized Signatory of the Plaintiff-Company in A.No.275 of 2021
21	P21	25.05.2016	Certified True Copy of the Board Resolution
22.	P22	28.11.2018	Certified True Copy of the Board Resolution
23	P23	10.12.2021	Original Letter of Authorization
24	P24	20.07.2017	Original Letter of Authorization

List of witness examined on the side of the Defendant:-

-NIL-

List of documents marked on the side of the Defendant:-

-NIL-

S.SOUNTHAR, J.

dm

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