



AS.No.824 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

A.S.No.824 of 2018
and CMP No.21752 of 2018

1. M/s.Bhaarath Metals
Rep by its Partner, MPN Pardiban
17, Malaiappan Street, Chennai 600 001.

2. MPN Pardiban ... Appellants/Defendants

vs.

M/s.M.P.Natarajan & Co.
Rep. by its Partner Mr.MPN Ezhilarasu
No.284, Mint Street, Chennai 600 003. ... Respondent/plaintiff

Appeal suit has been filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code, to set aside the judgment and decree dated 28.2.2017 passed by the learned VII Additional Judge, City Civil Cout, Chennai in OS.No.10838 of 2010 with cost.



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For Appellants : Mr.S.Sathish Kumar

For Respondent : Mr.D.Manimaran

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The defendant in OS No.10838 of 2010 is on Appeal, aggrieved by a money decree granted for a sum of Rs.19,38,784/- with future interest on Rs.11,27,000/- at 24% per annum from the date of plaint till date of the decree and thereafter at 6% per annum from the date of decree till date of realisation.

2. The suit was laid by the plaintiff a Partnership Firm claiming that the defendants owes a sum of Rs.11,27,200/- as per accounts. It is the claim of the plaintiff that the plaintiff and the first defendant were engaged in Iron and Steel business and on orders, the plaintiff had supplied C.R.Sheets to the defendants and there were also certain adjustment of accounts between the plaintiff and the first defendant. As per the accounts that was furnished by the defendants to the plaintiff as



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on 31.03.2007, there was a sum of Rs.11,27,200/- is due and payable to the plaintiff by the defendants.

3. A notice was issued on 31.07.2009 calling upon the first defendant to pay the said sum with interest. Since there were certain typographical errors, an errata was sent on 02.08.2009 making good the typographical errors. The first defendant sent a reply on 24.08.2009 contending that these were only Book transactions and there was no actual supply of C.R.Sheets by the plaintiff to the first defendant. The claim that the first defendant owed monies to the plaintiff was also stoutly denied. This led to the suit being filed.

4. The defendants resisted the suit reiterating the averments contained in the reply notice. It also contended that the second defendant's wife was a partner of the plaintiff Firm till 31.03.2007 and she had retired only on that date. The amounts due to her were adjusted. It was also claimed that the partner of the plaintiff Mr.Ezhilarasu, who happens to be the brother of the second defendant, their mother and son of Mr.Ezhilarasu were partners of the first defendant Firm and they



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retired on 31.03.2007.

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5. According to the second defendant, the partner of the plaintiff Mr.M.P.N.Ezhilarasu, being the elder brother was in management of all the businesses run by the brothers. The family members were partners in all the Firms. There was a cessation of the joint businesses on and from 31.03.2007, which resulted in retirement of the members of the family of the elder brother from the defendant Firm and another Firm called Bharath Metals. The second defendant was to carry on the business of Bharath Metals and Parthiban Steels separately and business of M.P. Natarajan & Co., was to be carried on by the elder brother M.P.N.Ezhilarasu and his family members. The sum and substance of the defence was that there were no actual transactions, these were only journal entries made for the convenience of accounting.

6. On the above pleadings, the learned Trial Judge framed the following issues:

1. Whether the plaintiff is entitled for a sum of



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Rs.19,38,784/-;

2. Whether the defendants jointly and severally to pay interest at 24% per annum on Rs.11,27,200/- from the date of suit till the date of decree and at the same rate till the date of realisation.

7. At trial, the Managing Partner of the plaintiff Mr.M.P.N.Ezhilarasu was examined as P.W.1 and Exhibits A1 to A10 were marked. The second defendant, who is the partner of the first defendant Firm was examined as D.W.1 and Exhibits B1 to B4 were marked.

8. The learned Trial Judge on a consideration of the evidence on record concluded that the plaintiff has established that the sum of Rs.11,27,200/- is due and payable to it by the plaintiff. In coming to the conclusion, the learned Trial Judge relied upon Exs. A1 and A2 which are journal accounts of the plaintiff maintained by the defendants and had submitted to the Income Tax Department. The learned Trial Judge also took into consideration the balance sheet of the defendants filed as on



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30.09.2006 which showed the plaintiff as a sundry creditor for a sum of Rs.5,27,200/-. The ledger accounts maintained by the plaintiff marked as Ex.A8 was also taken into account, since it tallied with the contents of Exs.A1, A2 and the Balance Sheet of the first defendant viz. Ex.A9.

9. On a consideration of the documents that were produced, the learned Trial Judge came to the conclusion that the plaintiff has proved that the defendants owed a sum of Rs.11,27,200/- and therefore, decreed the suit. Aggrieved the defendants are on Appeal.

10. We have heard Mr.S.Sathish kumar, learned counsel appearing for the appellants and Mr.D.Manimaran, learned counsel appearing for the respondent.

11. Mr.S.Sathish kumar, learned counsel appearing for the appellants would vehemently contend that the Trial Court erred in granting a decree based on the journal entries without proof of the actual transactions. He would also draw our attention to the evidence of the partner of the plaintiff as P.W.1 to contend that P.W.1 had actually



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admitted that he has received the consideration for the supply of C.R.Sheets to the defendants. The learned counsel would also contend that the partner of the plaintiff having been the partner of the first defendant also is not entitled to maintain the suit. The learned counsel would also draw our attention to Exs.A8 and A9 to contend that these documents have not been admitted by the defendants and therefore, the Trial Court was not right in relying upon those documents to grant a decree.

12. Contending contra, Mr.D.Manimaran, learned counsel appearing for the respondent would submit that once Exs.A1, A2 and A9 are admitted, the defence completely fails and therefore, the Trial Court was right in granting a decree for payment of money. He would point out that Exs. A1 and A2 contained the signature of D.W.1, who is the partner of the first defendant Firm, and they show that the defendants owe a sum of Rs.11,04,544/- to the plaintiff. He would also draw our attention to Ex.A9, the Balance Sheet of the first defendant signed by its Auditor till 30.09.2006, wherein the first plaintiff is shown as a sundry creditor to the tune of Rs.5,27,200/-.



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13. The learned counsel would also draw our attention to the Bank Statement of the defendants marked as Ex.B2 to contend that a sum of Rs.12,00,000/- has been credited to the account of the defendant on 30.03.2007 and it is shown to have been transferred from the plaintiff and there is a also a entry for withdrawal of Rs.6,00,000/- towards the loan account of M.P.Natarajan & Co. Therefore, according to the learned counsel, the combined effect of Exs.A1, A2, A8, A9 and B2 would conclusively establish that the defendants owed monies to the plaintiff.

14. We have considered the submissions of the learned counsel on either side.

15. On the above contentions, the following points are framed for determination:

1. Whether the Plaintiff has proved that as per the accounts of the defendant, the defendant owes a sum of Rs.11,27,200/- to the plaintiff; and



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2. Whether the Trial Court was right in granting a decree.

On the Points:

16. The suit itself is one for recovery of money based on accounts. The plaintiff would claim that on settlement of accounts, it was found that a sum of Rs.11,27,200/- is due and payable by the defendants to it. In support of the said claim, the plaintiff has relied upon Exs. A1, A2, A8, A9 and B2. Though the defendants would not admit Ex.A8, the defendants do not deny Exs.A1, A2, A9 and B2. Exhibits A1 and A2 would demonstrate that there was a balance of Rs.11,04,544/- due and payable by the defendants to the plaintiff as on 30.03.2007. This fact is buttressed in part by Ex.A9 the Balance Sheet of the defendants, signed by its Auditor and filed with the Income Tax Authorities.

17. The Bank Account Ex.B2 would show that there is a transfer of Rs.12,00,000/- from the account of the plaintiff to the account of the



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defendant on 30.03.2007 and transfer of Rs.6,00,000/- from the account of the defendants to the account of the plaintiff on the same day, leaving a balance of Rs.6,00,000/-. Therefore, the combined effect of Ex.A9 and Ex.B2 would be that the defendant owes a sum of Rs.11,27,200/- to the plaintiff. This fact is also buttressed by Exs.A1 and A2 which are documents admitted by the defendants. Therefore, we are unable to fault the Trial Court for having come to the conclusion that the plaintiff is entitled to a decree for money for a sum of Rs.11,27,200/-.

18. As regard the question of locus, which is now sought to be raised by the learned counsel, we do not find any plea in the written statement and no issue was framed by the Trial Court.

19. Hence, we do not see any reason to interfere with the judgment and decree of the Trial Court, the Appeal fails and it is accordingly dismissed. However, considering the relationship between the parties, we do not impose any costs. Consequently, the connected miscellaneous petition is closed.



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(R.SUBRAMANIAN, J .) (N.SENTHILKUMAR, J.)
15.11.2023

Index : No
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Speaking order
jv

To

1. The VII Additional Judge,
City Civil Court,
Chennai.
2. The Section Officer,
V.R.Section,
Madras High Court.



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