IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2024

PRONOUNCED ON : 10.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AS.No.207 of 2006

M/s.National Textiles Corporation Limited
New Delhi by its Unit Coimbatore Spinning and
Weaving Mills, Coimbatore 641009, represented
by its General Manager. Appellant

Vs

1. M/s.Rajendra & CO. represented by
   Partner Rajendra N Patel, Ahmedabad 380009

2. Rajendra Natwarlal Patel (died)
3. Taraben Natwarlal Patel (died)
4. Pankaj Natwarlal Patel
5. Rajendra Natwarlal Patel (Died)
6. Meena Patel
7. Chitran Rajendra Patel
8. Anmol Rajendra Patel Respondents

Prayer:- This Appeal Suit has been filed, against the judgement and decree dated 30.08.2004 made in OS.No.154 of 2002 by the Additional District Court, FTC No.II, Coimbatore.

For Appellant : Mr.T.R.Rajagopalan, SC

For Respondents : Mr.Philip Ravindran Jesudoss-R1
Mr.Karthik Sundaram-RR6 to 8

JUDGEMENT

1. This Appeal Suit has been filed, by the unsuccessful Plaintiff in OS.No.154 of 2002, against the judgement and decree dated 30.08.2004 passed in the

said suit by the Additional District Court, FTC No.II, Coimbatore.

2. For the sake of convenience, the parties hereinafter are referred as per their litigation status before the Trial Court.
3. The Plaintiff is M/s.National Textile Corporation Limited, represented by its Spinning and Weaving Mills Unit at Coimbatore and the 1st Defendant is a Partnership Firm and the Defendants 2 and 3 are the Partners of the 1st Defendant Firm. The above suit was laid for recovery of amount due from the Defendant Firm towards the cost of supply of material.
4. Before the Trial Court, the Defendants filed a written statement, disputing the claim made by the Plaintiff on the ground of limitation, inter alia, contended that the Defendants are not liable to pay the suit claim of Rs.9,91,240.33/- and that the Plaintiff is not entitled for interest at 24% p.a. and that the Court has no territorial jurisdiction to try the issue and that the suit is bad for non joinder of necessary parties and that there is no agreement for purchase of cotton yarn from the Plaintiff. It is further contended that the various amounts paid by the Defendants on various dates were not given credit to by the Plaintiff and the commissions were not properly adjusted and that it is the Plaintiff, who has to make a payment of Rs.51,041.33/- to the Defendants and that there is no contract for payment of interest on the defaulted amount.
5. On the above pleadings, the Trial Court had formulated as many as 10 issues, as raised in the written statement, as could be seen from the impugned judgement of the Trial Court. During the trial, on the side of the Plaintiff, PW.1 was examined and Ex.A1 to Ex.A27 were marked and on the

side of the Defendants, neither any oral evidence was adduced nor any document was marked. On consideration of both the oral and documentary evidence, the Trial Court has agreed with the case of the Plaintiff, in respect of all issues (1) to (10), except issue (2), namely, the point of limitation and on the point of limitation, the Trial Court dismissed the suit. Hence, this appeal has been filed by the Plaintiff.

6. This Court heard the learned counsel on either side, considered their submissions and also perused the materials placed on record.

7. The Defendants have not filed any appeal, challenging the findings of the Trial Court in respect of the issues (1) to (10), except the issue (2) relating to point of limitation and hence, the scope of this appeal is now reduced into one whether the suit claim is barred by limitation, as pleaded by the Defendants is valid?

8. Pending the appeal, the 2nd Defendant, Rajendra Natwarlal Patel died on 03.02.2008 and the 3rd Defendant Taraben Natwarlal Patel died on 23.02.2007. By order dated, 10.02.2020 in CMP.No.16418 of 2018, the Respondents 4 to 8 were brought on record as the legal representatives of the deceased Defendants 2 and 3.

9. On a perusal of the oral evidence of PW.1 and the other documentary evidence, this Court finds that as per Ex.A1, dated 10.04.1995, the 1st Defendant Firm was appointed as a Depot Agent by the Plaintiff and that as per Ex.A3, dated 01.04.1995, which is an agreement entered into between the Plaintiff and the 1st Defendant Firm, the 1st Defendant is entitled to get

commission of 1½ % for the sale turnover upto Rs.10 lakhs and 1¼% over and above Rs.10 lakhs turnover. It is also seen that as per Ex.A4, dated 01.10.1995, which is also an agreement, Agencyship was extended from 01.10.1995 to 31.03.1996 and that Ex.A11 to A21 are the communications exchanged between the parties with regard to payment. As per Ex.A22, dated 11.06.1997, which is a communication sent by the Plaintiff to the 1st Defendant, details of accounts are furnished.

10.It is the contention of the learned senior counsel for the Appellant that the 1st Defendant by a letter dated 02.05.1996, (which was marked as Ex.A26), admitted the liability to an extent of Rs.10,07,303/- and hence, in view of such admission of liability, the Trial Court has not considered Ex.A26 and wrongly came to the conclusion that the suit is barred by time.

11.The learned counsel for the Respondents, who are the legal representatives of the deceased Partners, namely, the Defendants 2 and 3 would submit that the appeal is not maintainable against the legal heirs of the 2nd Defendant and the estate of the 1st Defendant has not devolved upon the legal heirs of the 2nd Defendant, namely, the Respondents 6 to 8.

12.After hearing the rival submissions made by the learned counsel on either side and after perusing the citations and the findings rendered by the Trial Court in the impugned judgement, I find that the 2nd Defendant passed away due to cancer on 03.02.2008 and the 3rd Defendant, mother of the 2nd Defendant and the other partner of the 1st Defendant also passed away on 23.02.2007. As the 2nd Defendant, Rajendra Natwarlal Patel survived by his wife Meena Patel and two daughters, they are now arrayed as parties in this appeal.

13.My attention is drawn to Section 42(c) of the Partnership Act. In terms of the said Section 42(2), upon death of a Partner, the Partnership Firms stands dissolved. In the case on hand, both the Partners of the 1st Defendant Firm died as stated supra, thereby dissolving the 1st Defendant Firm. Further, in the decision of the Honourable Supreme Court reported in **2010 2 SCC 407 (Mohd.Laiquiddin and another Vs. Kamala Devi Misra and others),** it was held that when there are only two Partners, constituting the Partnership Firm, on the death of one of them, the Firm is deemed to be dissolved despite existence of a clause which says otherwise.

14.In this case, it is further pleaded that the present Defendants/Respondents have not inherited any assets from the Partnership Firm, even after the demise of the 2nd Defendant and they have not derived any assets or liabilities arising out of the Partnership Firm and therefore, they cannot be proceeded with in the present appeal.

15.Though the Trial Court gave a finding that the calculation made by Plaintiff is just and fair, however, it held that the suit is barred by limitation. In this regard, for the purpose of calculating the period of limitation, it is pertinent to refer to the relevant dates, namely,

(1) 30.04.1996, date of termination of the Depot Agency
(2) 31.03.1997, the date of credit of interest towards security deposit
(3) 07.06.1999, the date of filing of the plaint.

16.According to the Defendants as well as the findings of the Trial Court, the case in hand is covered by Article 3 of the Limitation Act and the period of Limitation begins to run from the date, on which the agency was terminated, namely, 30.04.1996 and the date of filing of the Plaint is 07.06.1999. On perusal of the Plaint, I find that the Plaintiff claims to have credited interest towards security deposit on 31.03.1997, that too after almost a year of termination of Depot Agency Agreement. Further, in the letter dated 15.07.1996, marked as Ex.A15, sent to the 1st Defendant by the Plaintiff, it is stated as follows:-

> "In your statement you have claimed interest for consignment deposit. But, we have already adjusted the deposit towards sale proceeds and also there is no such provision for claiming interest as per the consignment agreement."

17.Even the Clause 7 of the Depot Agent agreement dated 01.04.1995, which was marked as Ex.A3, states that no interest shall be payable by the Plaintiff to the 1st Defendant on security deposit given by them to the Plaintiff and it reads as under:-

> "All payments, remittances or deposits made by the Depot Agent with the Mills under this clause will bear no interest, unless otherwise specifically agreed and will be liable to be adjusted against the proceeds of sales of the Sales Depot to be accounted for by the Depot Agent to the Mills.

18.The word "deposit" in the said Clause 7 of the Depot Agent Agreement does include the word "Security Deposit" and Security Deposit did attract interest, as contended by the learned senior counsel for the Appellant.

19.On a combined reading of Ex.A1, A3 and A4, I find that the 1st Defendant, Partnership Firm was appointed as a Depot Agent and the terms and conditions and the rate of commission are extracted in Ex.A3. Agencyship between the parties was extended under Ex.A4. In Ex.A11, the Plaintiff has made a demand for payment due by the 1st Defendant on 08.05.1996. By Ex.A12, dated 20.06.1996, the Plaintiff demanded the 1st Defendant to settle the old dues . Ex.A13, Proforma Statement of Account of the 1st Defendant Firm, shows a balance of Rs.1,66,201/- and Ex.A14 shows a balance of Rs.1,54,628/-. The Plaintiff demanded a sum of Rs.5,49,620/- under Ex.A15 and the details and statement of accounts are given in Ex.A22, as per which, as on 31.03.2008, a sum of Rs.9,91,240.33/- is due and payable by the 1st Defendant. Ex.A26 is the letter given by the 1st Defendant, which is claimed to be a communication, admitting the liability to an extent of 10,07,303/-. The reply given by the Plaintiff to the 1st Defendant is Ex.A27. Thus, this Court finds that the date of termination of the Depot Agency is 30.04.1996 and the date of credit of interest towards security deposit is 31.03.1997. As per Ex.A26, it is dated 02.05.1996 and the suit was filed on 07.06.1999.

20.Perused Ex.A26, which is a letter given by the 1st Defendant Firm to the Plaintiff. The essential parts of the said letter are extracted as under:-

> "In this regard, we wish to inform you that a sum of Rs.3,00,000/- as detailed below is lying with you on account security deposit.

Amount	DD.No.	Date
Rs.1,50,000	035262	19.04.1995
Rs.1,50,000	116544	18.10.1995
Rs.25,000	Transferred from CBE Murugan Mills as per your letter YA/Depot/AHD/95-96 dated 28.07.95	

Rs.3,25,000		

> We therefore request you to kindly transfer the above security deposit of Rs.3,25,000/- to Depot Account to bring down the dues considerably. The necessary credit note in light of above transaction may please be sent to us to transact in our books.
>
> As regards consignment sales, we are sending separate letter."

21(a). On perusal of the recitals in the said letter under Ex.A26, I find that it clearly amounts to admission of liability and the said letter was also reiterated in Ex.A27 and hence, I find that the contention raised by the learned senior counsel for the Appellant is found to have force.

21(b). In view of the discussion in the preceding paragraphs as to the deposit and the security deposit, I find that the same is adjusted at the request of the Defendant Firm, while acknowledging the liability and therefore, on a combined reading of Ex.A13 and Ex.A14 sent by the 1st Defendant to the Plaintiff with regard to the statement of accounts and the statement of accounts sent by the Plaintiff to the 1st Defendant as reflected in Ex.A15, I have no hesitation to hold that the amount due has been arrived at and that under Ex.A26 dated 02.05.1996, the 1st Defendant has admitted and acknowledged its liability and pleaded for adjustment whereby it can be said that the Defendant Firm owe so much of amount to the Plaintiff and a counter claim was not filed and hence, the period of limitation has to start run from the letter of acknowledgement.

22(a). In view of the discussions made in the preceding paragraphs regarding the word "deposit" at Clause 7 of the Depot Agreement, the security deposit is also inclusive of the same and attract interest and hence, the adjustment of the amount of credit of interest towards security deposit on 31.03.1997 makes the suit claim in time since the suit was filed on 07.06.1999.

22(b). Hence, the calculation for the period of limitation done by the Trial Court is erroneous and thus, I find that the Trial Court has committed an error with regard to the instructions of the Defendant that the security deposit amount will be adjusted and Ex.A15 produced by the Plaintiff gives the details of account of the transaction between the Plaintiff and the Defendant. On the basis of the said account, the suit is well within time. The Trial Court failed to advert to Ex.A26 letter written by the 1st Defendant.

22(c). As discussed supra, it amounts to acknowledgement of liability and if the period of limitation is calculated from the date of adjustment as per Ex.A26, the suit is in time and the Defendants having failed to challenge the acknowledgement letter Ex.A26, it is always open to the Plaintiff to adjust the account pursuant to the receipt of the letter and the suit having filed on 07.06.1999 and when the period of limitation is calculated as per Ex.A26, the suit is well within time and hence, the point is answered in affirmation in favour of the Appellant/Plaintiff.

22(d). Since the Trial Court has rendered all other findings in favour of the Plaintiff with regard to liability, quantum, interest and adjustment, which were not challenged by the Defendants and since the suit has been rejected by the Trial Court solely on the point of limitation, as discussed supra, the suit claim amount has to be decreed and hence, the suit claim is hereby decreed as prayed for.

23. The next contention that was raised by the Defendants is that the 1st Defendant Firm had two Partners, namely the Defendants 2 and 3, mother and son and both of them also died and their respective legal representatives were brought on record and hence, the liability is on the part of the Partnership Firm alone and not on the part of the legal representatives of the deceased Partners, the Defendants 2 and 3, of the 1st Defendant Partnership Firm.

24. In view of the judgement of the Honourable Supreme Court dated 05.04.2024 arising out of SLP(C)No.11757 of 2022, the law is settled that the legal heirs of the deceased partner do not become liable for any liability of the Firm upon the death of the partner. However, it has to be stated that the property of the Partnership Firm stands liable and hence, though the legal heirs are not personally liable for the debts of the Partnership Firm, the property and the estate stood in name of the Partnership Firm on the date of death of the partner are liable to be proceeded with. Though in the counter statement, the newly added legal representatives of the deceased Partners claim that they have not inherited any of the properties of the Firm, they have not disclosed the fact whether any property has been left behind in the Partnership Firm and whether they have dealt with the property and hence, considering the scope of the appeal and the liability of the 1st Defendant Partnership Firm, wherein on the date of filing of the appeal both the Defendants 2 and 3 Partners of the Partnership Firm, the 1st Defendant were alive and the Defendants 2 and 3 having died pending the

appeal, the property of the Partnership Firm is liable to be proceeded with for the suit claim.

25. In the result, this Appeal Suit is allowed. The judgement and decree dated 30.08.2004 made in OS.No.154 of 2002 by the Additional District Court, FTC No.II, Coimbatore is set aside. The suit in OS.No.154 of 2022 is hereby decreed to the extent indicated above, with costs, payable by the 1st Defendant Partnership Firm to the Plaintiff. No costs.

10.06.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
Srcm

To

1. The Additional District Court, FTC No.II, Coimbatore.
2. The Record Keeper, VR Section, Madras High Court

RMT.TEEKAA RAMAN, J.

Srcm

Pre-Delivery Judgement in
AS.No.207 of 2006

10.06.2024