IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.S.Nos.559 and 280 of 2004

M/s. Mustafa's PTE Ltd.,
No.1, North Bridge Road
No.19-05, High Street Centre,
Singapore-179094
Rep.by its Power of Attorney,
Syed Abdul Kader.
[Amended as per Order dated 29.11.2019
in Appl.No.9116 of 2019] .. Plaintiff in C.S.No.559 of 2004

Versus

1.Mustafa Gold Mart,
Mustafa Centre,
160/95, Usman Road
T.Nagar, Chennai - 600 017
Rep. by its Proprietor, Mr. Mustaq Ahmed.

2. Hassan Ali ... Defendants in C.S.No.559 of 2004

Hassan Ali,
Proprietor
Nazia Exports,
No.11, Ranganathan Street,
Chepauk, Chennai – 600 005. .. Plaintiff in C.S.No.280 of 2004

Versus

Mustafa Gold Mart,
Rep. by its Proprietor,
Mustaq Ahmed.
Mustafa Centre
160/95, Usman Road,
T.Nagar, Chennai - 600 017. ... Defendant in C.S.No.280 of 2004

Prayer in C.S.No.559 of 2004: This plaint is filed under Order IV Rule 1 of the Original Side Rules, 1956 read with Order VII Rule 1 of the Code of Civil Procedure, praying to pass judgment and decree against the defendants as follows:

a) To direct the first and second defendants jointly and severally to pay to the plaintiff a sum of Rs.62,12,383/- together with interest at 12% p.a., thereon from the date of judgment till the date of decree and thereafter till the date of realization;

b) Costs of the suit.

Prayer in C.S.No.280 of 2004: This plaint is filed under Order VII Rule 1 of the Code of Civil Procedure and Order IV Rule 1 of the Original Side Rules of this

Court, praying to pass judgment and decree against the defendant as follows:

a) to direct the defendant to pay the plaintiff a sum of Rs.4,24,32,925.45 together with interest at the rate of 12% per annum on the principal of Rs.3,00,96,428.61 lakhs till the date of realization thereof.

b) Costs of the suit.

In C.S.No.559 of 2004:

For Plaintiff : Mr. A. Palaniappan
For 1st Defendant : Set ex-parte on 22.07.2016
For 2nd Defendant: Mr. Hassan Ali (Party-in-Person)

In C.S.No.280 of 2004:

For Plaintiff : Mr. Hassan Ali (Party-in-Person)
For Defendant : Mr. M.Devendran

COMMON JUDGMENT

The plaintiff has instituted C.S.No.280 of 2004 praying to direct the defendant to pay a sum of Rs.4,24,32,925.45 together with interest at the rate of 12% per annum on the principal sum of Rs.3,00,96,428.61 till the date of realisation.

2. The plaintiff has instituted C.S.No.559 of 2004 praying to direct the first and second defendants therein to jointly and severally pay the plaintiff a sum of Rs.62,12,383/- together together with interest at 12% thereon from the date of judgment till the date of decree and thereafter, till the date of realisation.

3. The plaint averments in C.S. No. 280 of 2004 are briefly set out hereunder.

(i) The plaintiff is the proprietor of a firm called Nazia Exports, which he started in the year 1994, dealing with sale of jewel boxes and jewel pouches. According to the plaintiff, he is also the Managing Partner of a Partnership firm called Abdul Ali & Co., along with his wife and three children. The firm M/s.Abdul Ali & Co. was started by his father Late Abdul Ali during the year 1960 and it was also engaged in the supply of jewellery boxes and pouches. From the year 1998, the plaintiff has been carrying on both the firms namely Nazia Exports as well as Abdul Ali & Co. in which, 150 employees were employed with a combined turn over of Rs.90 lakhs as on 31.03.1998 with a profit of over Rs.15 lakhs per annum.

(ii) The plaintiff proceeds to contend that in the course of the business, during the year 1994, he got acquainted with Mustafa's PTE Limited, Singapore, a company incorporated under the laws of Singapore and they have placed orders with the plaintiff for supply of jewellery boxes and he also supplied them. It is stated that the plaintiff was closely acquainted with Mr. Mustaq Ahmed, Managing Director of M/s. Mustafa PTE Limited, the defendant herein. During such relationship, the defendant expressed his intention to the plaintiff to start a proprietorship concern in Chennai under the name 'Mustafa Gold Mart' to commence retail jewellery business with an investment of Rs.50 crores. The defendant also entrusted the entire responsibility for commencing such business with the plaintiff and also promised the plaintiff a good position of All India Head of Mustafa Group of Companies with a lucrative share in the profits of the business apart from all the perks attendent to the high executive position. On such promise, the plaintiff closed down his business and concentrated on commencing the business establishment on behalf of the defendant. The office address of the plaintiff was used by the defendant and it was shown in the Income Tax returns, Sales Tax forms as well as Reserve Bank of India as at that time, there was no separate office space available for the defendant. The plaintiff also had negotiation with prospective owners of the land and facilitated the defendant to purchase two grounds of land in Chennai by a registered sale deed dated 10.02.1999 and subsequently, with the hard labour of the plaintiff, a show room was established for the defendant. At this stage, the defendant requested the plaintiff to accommodate his close relative by name Ishtiaq Ahmed and Minnathullah who was his friend's son in the business by stating that they will assist the plaintiff in his work of establishing the show room as Managers. While setting up the business, since it was felt that a trading company should be incorporated in India to which, finished jewellery and other consumables would be imported from all parts of the world and so that, a distribution network can be establilshed and the defendant can be restricted to retail business, the plaintiff was again asked to complete all the formalities of incorporation of such a company and was offered a share in the new company. Accordingly, the plaintiff took steps to form and incorporate one Adampur Distributors Pvt. Ltd. in March, 2000 and the plaintiff was made as a Executive Director in the new company with a small share of 2% which further reinforced the belief that the association with the defendant would bring great rewards. During June 2000, around 800 kilogram of gold ornaments were imported by the defendant from Mustafa's PTE Limited, Singapore and the plaintiff personally engaged himself in clearing the consignment by appointing C&F Agents. After many months of hard work of the plaintiff, the show room was opened on 04.10.2000.

(iii) According to the plaintiff, as he concentrated fully for several months for the opening of a show room for the defendant, he lost his entire business in Abdul Ali & Co., as well as Nazia Exports which he carried on for several years. However, after the show room was opened, the employees employed by the defendant, did not give the plaintiff due respect. When the plaintiff noticed breach of the discipline among the employees and questioned it, Minathullah challenged the plaintiff directly. When this was reported by the plaintiff to the defendant, he did not listen to or supported the cause of the plaintiff. According to the plaintiff, the defendant made many promises to induct him as a share holder in the jewellery business, but he was not even paid his monthly salary and he was not aware as to whether he is one of the Directors of the company or not. When the plaintiff sought a clarification from the defendant about his position, he simply replied that if the plaintiff did not wish to continue, he can very well leave the organisation. The plaintiff therefore demanded compensation to off set the loss occasioned to him in his business while concentrating entirely for development of the show room for defendant. Even though the defendant agreed to pay a lumpsum compensation to the plaintiff, it was not forthcoming. Subsequently, the defendant suggested that it was not possible to pay him compensation by way of cash but a consignment of finished goods from Singapore would be directly delivered to plaintiff and it can be taken delivery of by the plaintiff. Accordingly, a consignment exported by the defendant from Singapore was transported by AI 439-13/10 from Singapore and delivered it to Nazia Exports run by the plaintiff. The consignment contained 22 carats gold jewels weighing 80.528.77 grams, valued at US Dollars 7,27,322.84 C&F. Originally the consignment was addressed to Adampur Distributors Private Limited but subsequently, changed to Nazia Exports and the consignment valued at Rs.3,39,15,064/- was taken delivery by the plaintiff on 19.10.2000. Thus, the consignment was sent to the plaintiff as an offer to off set the loss occasioned to him.

(iv) It is the further case of the plaintiff that the customs duty on the consignment was paid to the plaintiff by the defendant amounting to Rs.32,21,151/- through a cheque No. 254573 dated 19.10.2000 drawn on Bank of India, T. Nagar, Chennai, but Mustafa's PTE Ltd., Singapore did not raise any invoice on the plaintiff. The plaintiff filed Bill of Entry and received delivery of the consignment on 19.10.2000 but on the same day, he physically delivered the entire consignment to the defendant and raised an invoice bearing No.001 dated 01.11.2000 for Rs.3,63,08,811.61 on the defendant. According to the plaintiff, the sum of Rs.3,63,08,811.61 includes sales tax and an undisclosed profit margin of Rs.8,73,364/- for the plaintiff. As per the terms of the plaintiff's invoice, the payment has to be made within 30 days of date of invoice failing which, interest at 12% per annum will be charged. The defendant accepted the plaintiff's invoice and did not raise any dispute pertaining to the terms of invoice. In those circumstances, the plaintiff was eagerly waiting for payment to utilise it in his new business, but the payment is not forthcoming. Therefore, by letter dated 07.12.2000, address to the defendant in Singapore, plaintiff informed that Mr. Ishitaq Ahmed, who is looking after the show room in Chennai, was not even willing to meet him in person. It is also stated that he sacrificed his entire career for the sake of defendant, but he has been betrayed.

(v) The plaintiff further states that as per the then prevailing foreign exchange regulations, an import transaction of such high value has to be routed through the Bankers, but it was not done. The plaintiff therefore informed the Reserve Bank of India about the import of the goods. The authorities informed the plaintiff that it may be condoned provided proper documentation was made. The plaintiff therefore requested the defendant to furnish the original invoice from Singapore for transfer of consignment. The plaintiff also requested the defendant a written confirmation from the foreign exporter that the consignment was due to the plaintiff as a reward or compensation for the services rendered by him. However, there was no response, hence, the plaintiff sent a letter dated 01.02.2001 to Mustafa's PTE Ltd., Singapore to send the original invoice and to request the defendant to make payment immediately. However, there was no response to this letter. Hence, the plaintiff sent another letter dated 17.02.2001 as a reminder to the defendant to settle the sum of Rs.3,47,88,428.62. After repeated reminders, the defendant paid a sum of Rs.46,92,000/- by a cheque No.271418 dated 29.04.2001 drawn on Bank of India, Chennai and the plaintiff was asked to sign a voucher to receive the cheque. However, there was no assurance for payment of the balance amount. The plaintiff therefore sent a letter dated 02.05.2001, calling upon the defendant to settle the balance Rs.3,00,96,428.62. For this letter dated 02.05.2001, a reply dated 04.06.2001 was sent calling upon the plaintiff to confirm whether the amount of

Rs.46,92,000/- was sent to the overseas supplier. Subsequently, by Fax dated 06.06.2001, Mustafa's PTE Ltd., Singapore, made a demand on the plaintiff to settle their invoice of US dollar $ 727,322.84 corresponding to the consignment sent to the plaintiff on 17.10.2000. Immediately, by letter dated 07.06.2001, the plaintiff reiterated his demand to the defendant to pay the balance amount. Subsequently, by a letter dated 09.06.2001, the plaintiff informed Mustafa's PTE Ltd., Singapore that their demand is unjust since there was an agreement with the Managing Director that there would be no payment from the plaintiff for this consignment. However, by registered letter dated 12.06.2001, the defendant once again asked for confirmation whether the part remittance of Rs.46,92,000/- had been paid to the Oversear Supplier. By reply dated 18.06.2001, the plaintiff informed the defendant not to be bothered about the plaintiff's supplier and to make the balance payment. At this stage, there was an enquiry by the Reserve Bank of India against the plaintiff, based on the complaint given by Mustafa's PTE Ltd., that payment had not been received by them. The Reserve Bank of India, after enquiry, closed the issue by writing to the Singapore company on 09.03.2002 that it was a commercial dispute which has to be settled through legal action. While so, the defendant by letter dated 25.06.2001, refused to pay the balance amount. There were several communications between the plaintiff and the defendant regarding the balance payment to be made by the defendant. By a letter dated 17.08.2001, the plaintiff made it clear that unless payment is received, he cannot settle the overseas supplier. By a letter dated 25.08.2001, the defendant admitted that Mustafa's PTE Ltd., Singapore and the defendant were two different companies, but they were under the same management. The defendant falsely contended that invoice of the plaintiff did not bear date and therefore, the copy of invoice was once again sent to the defendant through registered post on 29.08.2001. The plaintiff also clearly mentioned that there were several misconduct by the Managers of the defendant leading to his cessation of service and the jewellery shipped to the plaintiff from Singapore is as a compensation. Finally, by registered letter dated 10.11.2003, the plaintiff made a demand for the balance payment, but there was no response. Hence, the suit in C.S.No.280 of 2004 is filed by the plaintiff.

4. Opposing the averments in the plaint (C.S.No.280 of 2004), the defendant filed a written statement stating as follows:

(i) Mustaq Ahmed, Proprietor of the defendant business Mustafa Gold Mart was not permanently residing in Chennai due to his business commitments. During the course of his business, the plaintiff was employed by the defendant for a monthly salary. The defendant was appointed mainly to interact with Mustafa's PTE Ltd., Singapore. The plaintiff was not given the responsibility to set up the show room or operations at Chennai as stated in the plaint. The plaintiff, as one of the employees, was entrusted with certain jobs, which he is bound to do in accordance with the terms of employment. Taking advantage of his employment with the defendant, the plaintiff intended to enrich himself contrary to the impressions he had given to the defendant about his honesty and integrity. At the time when the plaintiff sought for employment, he assured the defendant that he is conversant with the legal formalities relating to gold business, including purchase and sale relating to import etc., and therefore the defendant appointed the plaintiff for a substantial salary. The plaintiff was not given the responsibility of setting up the chennai operations including purchase of show room space, legal formalities etc. The plaintiff was an employee and he was not given the responsibility of setting up the show room. The plaintiff was not offered or considered for a plum position in the defendant group of companies. During the course of his employment, the defendant issued a letter of authority in favour of the plaintiff for certain purpose, by treating the plaintiff as one of the employees of defendant. The defendant denied the averment that the office of the plaintiff was used prior to the setting up of the showroom of the defendant in Chennai. Whatever work done by the plaintiff is in his capacity of an employee of the defendant and not otherwise.

(ii) The defendant would further contend that it is true that a company by name Adampur Distributors Private Limited was established. The plaintiff was asked to do certain work in the said company since the plaintiff had worked as an employee with reasonable efficiency and therefore, he was given a nominal share of 0.01% in the said company. The plaintiff was paid huge salary beyond his eligibility but he expected more. The plaintiff was not lured to offer great positions in the company of the defendant, as stated in the plaint. During the course of his full time employment, the plaintiff was expected to concentrate on his employment and that the defendant is not concerned with any private business of the plaintiff. In fact, the plaintiff wa a full time employee of the defendant and he cannot grumble that he was not allowed to carry on private business, particularly when he was receiving full salary for his full time employment with the defendant. While so, the question of the plaintiff losing his business will not arise for consideration. When the plaintiff was paid salary for his work, the question of compensating him for the alleged loss of business will not arise. The defendant did not make any promise to compensate the plaintiff, as alleged.

(iii) With respect to the consignment of gold ornaments, it was received from Singapore and the plaintiff was at that time in employment of the defendant. The plaintiff was assigned certain responsibilities and was put in charge of the said import. The entire consignment was intended for the defendant and the plaintiff has no manner of right or interest over the said consignment except that the plaintiff as an employee of the defendant had to clear and deliver the goods to the defendant. The averment that the defendant offered to the plaintiff for invoicing the entire consignment to the defendant and payment will be made within 30 days to the plaintiff is false. The plaintiff has no wherewithal either to purchase or pay for such large quantity of gold ornaments nor did the plaintiff pay a single pie towards the cost of gold ornaments. The ornaments were imported by the defendant for the defendant company at Chennai and there was no offer or assurance of compensation since the work done by the plaintiff in regard to the said import was only as an employee and not more. The plaintiff, who is employed on a monthly salary, cannot at any stretch of imagination be offered a consignment of gold ornaments valued at Rs.3,39,15,064/- without payment of value thereof. The defendant states that it is not known as to what service was rendered by the plaintiff entitling him to such large payment of Rs.3.4 Crores in addition to monthly salary. The plaintiff rendered service as an employee for which he was paid salary. When the consignment was to be despatched, the plaintiff advised the defendant to address it to Nazia Exports so that, he would clear the goods and do every thing necessary to deliver the goods. There was no question of the plaintiff raising an invoice on the defendant for the gold which was purchased by the defendant from a company in which he is the Managing Director. The defendant never imagined that the plaintiff would take advantage of the situation to suit his needs. The very fact that the defendant was asked to pay customs duty and no invoice was raised by the Singapore supplier in the name of the plaintiff clearly establishes that there was no sale by the Singapore party to the plaintiff nor a sale by the plaintiff to defendant. It was an import by the Singapore company in which the defendant is the Managing Director meant to the proprietary business of the defendant at Chennai. The entire expenses for importing and customs duty was borne by the defendant. The goods were delivered on the same day to the defendant would only show that the plaintiff cannot assert any right or interest over such consignment. Consequently, the question of payment within 30 days from the date of invoice to the plaintiff will not arise in this case. There was no sale by the plaintiff to the defendant warranting any payment. The averment that the defendant paid Rs.15,20,383/- towards sales tax is denied as false. The plaintiff was paid Rs.15,20,383/- and Rs.46,92,000/- by Ishtiaq Ahmed based on a false representation made by the plaintiff that he was instructed by the defendant to receive those two payments and to remit it to Singapore company. But the plaintiff did not send the amount to Singapore and attempting to misappropriate the said amount. Such payment was made to the plaintiff without the knowledge of the defendant. The plaintiff has to account for Rs.15,20,383/- and Rs.46,92,000/- received from the defendant's business by way of false representation. No payment was due to the plaintiff and the plaintiff never made any demands as alleged in the plaint. The defendant is bound to return the sum of Rs.62,12,383/- which he received on false representation. The defendant is also taking action against the plaintiff for receiving the sum of Rs.62 lakhs on false representation to send the money to the Singapore company.

(iv) According to the defendant, there was no sale made by the Singapore company to plaintiff, nor an import by the plaintiff of goods purchased by it. The Air way bill was taken in the name of Nazia Exports to facilitate the clearance and delivery of the goods to the defendant. However, with a view to gain unfair advantage, the plaintiff made it appear that there was a violation of Reserve Bank norms and wanted the Singapore company to give a letter to the advantage of plaintiff. It was only then that the entire play of the plaintiff came to light. Since the export from Singapore of the above consignment was intended for the defendant, the question of giving any certificate that it was intended as a reward or compensation to the plaintiff will not arise. There was no need for the Singapore company or this defendant to reward the plaintiff. The plaintiff had collected Rs.62 lakhs from the defendant company by false representation with an intention to cheat the defendant. The defendant was not aware of the demand made by the plaintiff in his letter dated 01.12.2001 or 17.02.2001 for payment of Rs.3,47,88,428/- as those letters were addressed to Ishtiaq Ahmed. There was no amount due and payable by the defendant to the plaintiff, as claimed in the suit. In fact, the plaintiff has to pay Rs.62 lakhs to the defendant, which he received from Ishtiaq Ahmed by making false representation.

(v) The defendant further contends that the suit claim is based on an alleged sale effected during November 2000 and therefore, the suit filed in the year 2004 is barred by limitation. There was no admission of any liability made by the defendant to the plaintiff. There was no sale made by the plaintiff to the defendant and the consignment was sent by the Singapore company in which the defendant was the Managing Director, to the company of the defendant at Chennai. The plaintiff, as an employee of the defendant, merely looked after the import of the consignment at Chennai but he is taking advantage of his position, thereby the plaintiff committed breach of the trust reposed by the defendant on him.

(vi) It is further stated by the defendant in the written statement that the suit is not maintainable inasmuch as it is filed against Mustafa Gold Mart, which is only a trade name. Mustaq Ahmed carries on a proprietary business in the trade name of Mustafa Gold Mart. The Plaint cites Mustafa Gold Mart which is only a trade name and not a legal entity and only a legal entity can be represented in law. A trade name cannot be represented by a person since it has no legal existence. Under Order VII Rule 1 of the Code of Civil Procedure, a plaint can be presented only against the defendant, who is a juristic person. Since the plaint is presented against a trade name, which is not a juristic person or legal entity, the suit is not maintainable and it is liable to be dismissed.

(vii) That apart, the defendant made a counter claim for Rs.3,39,15,064/- payable by the plaintiff. The prayer of counter claim in C.S.No.280 of 2004 is as follows:

(a) to direct set-off of the sum of Rs.3,39,15,064/- against the sum claimed by the plaintiff;

(b) set off directing the plaintiff to pay to the defendant a sum of

Rs.4,01,27,447/- together with interest thereon at the rate of 12% per annum from the date of the counter claim till the date of decree and thereafter, till the date of recovery;

(c) dismiss the suit filed by the plaintiff in C.S.No.280 of 2004, and

(d) to direct the plaintiff to pay to the defendant the costs of the suit as well as the set-off and counter claim.

5. Denying the allegations made by the defendant in the written statement in C.S.No.280 of 2004, the plaintiff filed a reply statement stating there was no contract of employment of the plaintiff with the defendant and the plaintiff did not agree for any terms and conditions for employment and neither any statutory registers were signed by the plaintiff as required by the Shops and Establishments Act nor drawn any salary from the defendant. As the plaintiff was the working partner of the defendant-firm, he used to get the money for conveyance charges and car parking charges only. The plaintiff was entrusted with the task of establishing the entire business right from the

beginning of purchase of showroom space, registration of deeds, recruiting the staffs etc. on the basis that the plaintiff would be made as a partner entitled to share in the management and profits of the defendant. With regard to the averment that the plaintiff as an employee of the defendant business was required to interact with Mustafa PTE Ltd. Singapore, it has been stated that several purchase orders were placed by Singapore with the plaintiff from the year 1995 until 2001 which would show that there was business relationship between the plaintiff and Singapore Company. Before establishment of the defendant's firm, the defendant was carrying on his business through the plaintiff's address and the same was the defendant's communication address of the defendant even till 2001 for the purpose of TNGST and long after, the plaintiff left the defendant. The whole responsibility was offered by the defendant Mushtaq Ahmed to the plaintiff for establishing the defendant's firm at Chennai and the documents related thereto are all in the custody of the defendant. When the defendant's firm registering the Usman Road property for purchase, there was deficiency in paying the stamp duty and that the plaintiff only paid a sum of Rs.4.25 lakhs in case and also a sum of Rs.5 lakhs from the account fo Nazia Exports on 30.08.200 and later on, the defendant repaid the said sum of Rs.4.25 lakhs by ways of cheque and that, no employee will have the wherewithal or incentive to initiative to personally fund the stamp duty deficiency. The document No.15, filed by the defendant in their counter claim would reveal that an authorisation was given to the plaintiff to run the entire establishment of the defendant business at Chennai. Even in the trade website viz., www.chennaibest.com, the establishment of the defendant company was explained in a good manner by the plaintiff himself in the capacity of the CEO of the company. The defendant themselves admitted that all the work were by the plaintiff but the plaintiff denies the allegation that it was in the capacity of an employee. The plaintiff done all the work on the promise of the proprietor of the defendant to share the business profits after its establishment. The plaintiff was holding the post of Executive Director in Adampur Distributors Private Ltd. and he was not paid huge salary. In fact, a resolution was passed that the plaintiff would be getting remuneration of Rs.25,000/- per month for the period of five year but the salary was paid only for 3 or 4 month. Though the defendant has stated that the plaintiff was paid salary, they have not mentioned the exact figure. Further, the plaintiff was threatened by one Riyasathullah, father of Minnathullah and a police complaint was also lodged in this regard.

6. The plaintiff who appeared as party-in-person in both these suits, vehemently contended that the present suit has been instituted by the plaintiff to recover the unpaid invoice amount towards supply of jewellery ornaments made by his firm Nazia Exports to the defendant. The supply was made on 19.10.2000 by a delivery note followed by a sale invoice No.001 dated 01.11.2000 for Rs.3,95,29,962.91 and after deducting the advance amount of Rs.32,21,151/-, the net balance payable was Rs.3,63,08,811.61/-. Subsequent to this, payment was made by the defendant on 15.12.2000 for Rs.15,20,383.17/- through a cheque jointly signed by Ishtiaq Ahmed and Minnathullah, marked as Ex.P35. The second payment was given on 25.04.2001 for Rs.46,92,000. As on 25.04.2001, the net balance payable by

the defendant was Rs.3,00,96,428.61. Inspite of several demands made by the plaintiff through various letters, Istiaq Ahmed, who is the step brother of the defendant and who was in charge of the defendant's firm, created a false demand and forced the plaintiff for a settlement. Therefore, the plaintiff issued a final notice on 10.11.2003 before instituting the present suit, for which, no reply was sent. According to him, the balance principal amount was Rs.3,00,96,428/- plus accumulated interest of Rs.1,22,36,497/- at 12% per annum and both put together was the suit claim of Rs.4,24,32,925/- as on the date of instituting the suit.

7. The sale made to the defendant was a contract of sale through a commercial invoice No.001 dated 01.11.2000 which was assessed by the Tamil Nadu General Sales Tax authorities under Ex.P32. The transaction was also subjected to Income Tax under Ex.P33. These documents were accepted by the defendant without any objection and it clearly proves that the plaintiff is entitled to the suit claim. Further, in his deposition, Istiaq Ahmed, Manager of the defendant, admitted it to the Assistant Commissioner of Income Tax

Department, under Ex.P39 dated 21.03.2005. However, in the written statement, the defendant projected the plaintiff as one of the employees of the defendant firm and there was no sale to the defendant company by Nazia exports run by the plaintiff.

8. Referring to Ex.P26 series, Income Tax returns, the plaintiff submits that the firms run by him were profitable and the average income was Rs.15,00,000/- for the year 1998, 1999 and 2000. The plaintiff is a holder of B.Tech Chemical Engineering and he had immensely contributed for establishing the show room for the defendant on the assurance that the plaintiff will be given a highest position and reward in the business show room to be established.

9. As far as the transfer of title of goods from M/s.Adampur Distributors Pvt Ltd., to the firm Nazia Exports is concerned, he referred to Ex.P1 to show that the name change was done in Singapore by giving an indemnity bond to Air India that the goods shall be handed over to Nazia Exports and the ownership was unconditionally transferred to the company run by the plaintiff.

The consignment was sent to the plaintiff firm Nazia Exports by the defendant consciously signing several documents relating to the consignment. Once the title of goods transferred and bill of entry stood in the name of Nazia Exports and duty was paid from Nazia Exports account, as per Exs. P27, P28 and P29, it can be inferred that the transfer of consignment was voluntarily done by the defendant and it was not at the instance of the plaintiff.

10. The learned counsel for the defendant would submit that the suit is not maintainable. The Plaintiff is one of the jewellery box suppliers for Mustafa PTE Limited, Singapore and on the basis of such relationship, the plaintiff volunteered to assist the defendant to set up a jewellery unit in Chennai. The relationship between the plaintiff and the defendant is only on employer-employee relationship and nothing more. The defendant, on his own funds, purchased 2 grounds of land through a sale deed dated 10.02.1999 and it has got nothing to do with the plaintiff. For the purpose of importing gold jewellery from Mustafa PTE Limited, the defendant started M/s.Adampur Distributors Pvt Ltd., in which the plaintiff was provided with 0.01% share on continuous

insistence by him. The sharing ratio would clearly establish the minuscule and negligible role played by the plaintiff. During June 2000, around 800 kilograms of gold were imported by the defendant from Mustafa PTE Limited in which transaction, the plaintiff involved only as an employee of the defendant. In the middle of the transaction, the plaintiff, as an employee of defendant, advised to change the consignee name in the Airway Bill to that of the plaintiff's concern M/s. Nazia Exports, to avoid the cumbersome formalities and the defendant also complied with the same. The gold ornaments were only meant for the defendant and the plaintiff, as an employee, engaged himself in this transaction.

11. The learned counsel for the defendant further submitted that for the purpose of importing the consignment of gold, Rs.32,21,151/- was received from the defendant through a cheque dated 19.10.2000 and the approval for transfer of the said amount to the plaintiff was made by the defendant himself as could be evident from Ex.D4. Subsequently, without the knowledge of the defendant, the plaintiff, by misrepresentation, obtained the part amount of

Rs.15,20,383/- from Ishtiaq Ahamed in terms of cheque No.262528 dated 15.12.2000 drawn on Bank of India. In addition to the above, the plaintiff also obtained Rs.46,92,000/- deceitfully. Thus, Rs.62,12,383/- excluding the amount received for customs duty, the plaintiff ought to have transferred it to the Mustafa PTE Limited. Though initially the plaintiff undertook to transfer the amount to the supplier Mustafa PTE Ltd., subsequently denied the request and resorted to file the present suit without any basis. The defendant denies the transfer of ownership over the consignment of gold in favour of the plaintiff. The consignment of gold was sent to M/s.Adampur Distributors Pvt Ltd., but the name was changed only at the instance of the plaintiff.

12. The learned counsel for the defendant submitted that the plaintiff, as an employee, received salary from the defendant which could be evident from Ex.D20, salary slip, the employee movement register reflecting the designation of the plaintiff and his employee ID number 000127 as could be seen from Ex.D17. The pay roll register, Ex.D7 would also makes the position of the plaintiff as an employee. The plaintiff was an employee of the defendant from

01.10.2000 appointed to take care of the import obligations of the defendant from the parent concern Mustafa PTE Ltd., Singapore. On the other hand, the defendant went to the extent of claiming that he was not an employee nor was there any contract of employment with the defendant in para No.2, page No.2 of the reply statement. However, this allegation is in contradiction from his own pleading in para No.8 of the proof affidavit admitting that he is drawing salary of Rs.10,000/- from the defendant. Further, the plaintiff in para No.11 of the reply statement admitted that he was receiving Rs.25,000/- as salary from Adambur Distributors Pvt Ltd. for the work done by him and it is also evident from Ex.D8. Curiously, the vouchers for the salary payment to plaintiff was approved by none other than the plaintiff himself. Therefore, the plaintiff is estopped from controverting or denying the payments received as salary and claiming that he had a contract with the defendant. Thus, by virtue of Exs. D7, D17 and D20, it is clearly established by the defendant that the action of the plaintiff in importing gold jewellery was in his capacity as an employee of the defendant and nothing else.

13. The learned counsel for the defendant further contended that the plaintiff has not produced any document to establish the alleged oral gift. It is highly improbable and imaginary for the plaintiff to claim that a consignment of 80,428.77 grams of gold jewellery worth Rs.3 crores was gifted to him by the defendant. No prudent employer would reward his employee with a consignment of gold for having rendered service for a couple of years. When the plaintiff received his remuneration for the work rendered, it is futile to contend that he was gifted with the consignment of 80,428.77 grams of gold. The learned counsel for the defendant reiterated that Ex.P1, Airway Bill dated 12.10.2000 finds the name of the plaintiff concern only at his instance. Mere change in the airway bill will not be taken that the consignment was intended to be delivered to the plaintiff. Similarly, Ex.P30, Special Import Licenses bears the name of Adampur Distributors Pvt Ltd., at the instance of the plaintiff. Here again, changing the name of the Import License cannot be construed that the goods were intended to be delivered to the plaintiff. Similarly, Ex.P41, Form-D under Tamil Nadu General Sales Tax Rules and Ex.P3, Invoice No.1

dated 01.11.2000, will not confer any right to the plaintiff to show that the entire consignment has been delivered in his favour. Above all, in the communication dated 19.06.2001, sent by Mustafa PTE Ltd., to the plaintiff, it was clearly stated that there was no oral agreement, as claimed by the plaintiff and the bill is over due for payment. Similarly, through a communication dated 23.06.2001, Ex.D11, the plaintiff undertook to effect payment, however, retracted later and filed the present suit for recovery of the amount.

14. With reference to the counter claim sought for in C.S.No.280 of 2004, it is contended by the learned counsel for the defendant in C.S.No.280 of 2004, that Rs.46,92,000/- was fraudulently taken by the plaintiff as part of the sale consideration. But the said amount of Rs.15,20,383/- in all an amount of Rs.62,12,383/- was taken for effecting sales tax compliance by the plaintiff. Thus, it is clear that the plaintiff was unable to even effect payment of sales tax for the consignment. This was also admitted by the plaintiff in his cross-examination. Since it is clearly admitted by the plaintiff that Rs.15,20,383/- was a part payment to the plaintiff, the defendant is entitled to recover the said

amount along with interest from the plaintiff.

15. The learned counsel for the defendant further submitted that the defendant sought for set off of Rs.3,39,15,064/- as against the plaintiff towards the cost of the gold ornaments received by him from Mustafa PTE Ltd. The defendant had given an undertaking to pay the said sum to supplier Mustafa PTE Limited and therefore, the defendant is entitled to set off the aforesaid amount. The defendant is substantially holding all the share capital of Mustafa PTE Ltd., and therefore, it is insisted that the amount payable by the defendant in respect of the said transaction to Mustafa PTE Ltd., is liable to be set off. Accordingly, the learned counsel for the defendant prayed for dismissal of the suit filed by the plaintiff and to allow the counter-claim for Rs.62,12,383/- against the plaintiff.

16. The Plaintiff in C.S.No.559 of 2004 has filed the suit to direct the first and second defendants jointly and severally to pay to the plaintiff a sum of Rs.62,12,383/- together with interest at 12% p.a., thereon from the date of judgment till the date of decree and thereafter till the date of realization with

costs of the suit.

17. The plaint averments in C.S. No. 559 of 2004 are briefly set out hereunder.

(i) The plaintiff is a company incorporated in the Republic of Singapore. The Plaintiff is represented by their power of attorney Mr.Abdul Haq at Chennai. The Plaintiff company is predominantly engaged in the business of gold and diamond jewellery in Singapore and it is also engaged in export of gold and diamond jewellery to various countries, including India. During the course of such business, the plaintiff also had business relationship with the first defendant, which is also dealing in gold and jewellery in Chennai, Tamil Nadu. According to the plaintiff, the second defendant is an employee of the first defendant and was transacting the business of the first defendant with the plaintiff. The plaintiff was also aware that the second defendant is acting on behalf of the first defendant and he is also having a proprietary firm in the name of Nazia exports.

(ii) According to the plaintiff, during September 2000, the first defendant proposed to purchase approximately 800 kilograms of gold ornaments. This transaction was supervised and monitored by the second defendant on behalf of the first defendant. As per the requirement, the plaintiff also despatched 80528.77 gms. of 22 carat gold ornaments valued at US $ 7,27,322.84 on CIF basis which is equivalent to Rs.3,39,15,064/- as per the then prevailing exchange rate. The consignment sent by the plaintiff from Singapore to Chennai was also cleared and by the first defendant and the second defendant, on behalf of the first defendant arranged for payment of customs duty for the import of gold ornaments amounting to Rs.32,21,151/- and took delivery of the entire jewelleries. The defendants have also assured and undertook to pay the entire cost of the gold ornaments amounting to Rs.3,39,15,064/-. When the plaintiff contacted the first defendant, it was informed that the first defendant paid to the second defendant the sums of Rs.15,20,383/- on 13.12.2000 and Rs.46,92,000/- on 24.04.2001 in all Rs.62,12,383/- for being paid to the plaintiff towards the costs of the gold ornaments, however, the plaintiff did not receive the said amount either from the first defendant or from the second defendant. According to the plaintiff, whenever enquiries are caused, the second defendant, who is an employee of the first defendant, made false representations and misappropriated the amount without remitting it to the account of the plaintiff. It is stated by the plaintiff that the goods were sold only to the first defendant and the second defendant acted for and on behalf of the first defendant as an employee. Therefore, both the defendants are jointly and severally liable to pay the plaintiff the full sale consideration of Rs.3,39,15,064/-. In such circumstances, the plaintiff sent a notice to the first and second defendants, calling upon them to pay the sum of Rs.3,39,15,064/- together with interest. On receipt of the notice, the first defendant sent a reply stating that already, they paid Rs.94,33,534/- to the second defendant out of which a sum of Rs.32,21,383/- was paid towards customs duty and the balance sum of Rs.62,12,383/- would have been paid by the second defendant to the plaintiff. In fact, the first defendant expressed shock and surprise at the conduct of the second defendant in not remitting the amount to the plaintiff. At the same time, the first defendant stated that their liability should be restricted to the balance sum out of Rs.3,39,15,064/- and the second defendant is liable to pay the amount received from the first defendant under the guise of paying it to the plaintiff. Subsequently, discussions had taken place during which, the first defendant undertook to pay the balance sum of Rs.2,77,02,681/-. Thus, it is evident that the first defendant undertook to pay the sum of Rs.2,77,02,681/- and the balance is payable by the second defendant but the plaintiff has not received the balance amount from the second defendant. In any event, as the first defendant undertook to pay the sum of Rs.2,77,02,681/-, the plaintiff is restricting his claim in the suit to the extent of Rs.62,12,383/- which the second defendant has to pay, but misappropriated it. Even though the second defendant acted on behalf of the first defendant in taking delivery of the consignment, the first defendant feigns ignorance of the acts of the second defendant and informed that the second defendant is taking advantage of the fact that the proprietor of the first defendant was not permanently residing in Chennai. The first defendant also stated that the second defendant has committed various acts of omission and commission and has siphoned-off the funds from the business transaction. It was also inferred that the second defendant has filed a frivolous suit against the first defendant wherein he admitted the receipt of the aforesaid sum of Rs.62,12,383/- payable to the plaintiff. Thus, it is the contention of the plaintiff that the defendants 1 and 2 are jointly and severally liable to pay the suit amount of Rs.62,12,383/- together with interest.

18. Even though notice/summons were issued to the first defendant in C.S. No. 559 of 2004 as early as on 17.12.2012, there was no representation made to the first defendant and therefore, by order dated 22.07.2016, the first defendant was set ex-parte in C.S.No.559 of 2004.

19. The suit was contested by the second defendant in C.S. No. 559 of 2004 by filing a written statement in which, it is stated that the second defendant had filed the suit in C.S.No.280 of 2004 against the first defendant which is concerning the same set of facts by which the second defendant has claimed balance payment of Rs.3,00,96,428.61 together with interest based on the supply of gold ornaments to the first defendant. The present suit is nothing

but a counter blast by the first defendant's proprietor who is also in the plaintiff's management. The averments made in the plaint in C.S.No.280 of 2004 has been reiterated in the written statement. According to the second defendant, he had joined the first defendant-Company only as an employee for salary. The allegation in the plaint that the first defendant proposed to purchase 800 kgs. of gold is correct, but it was not from the plaintiff. The purchase was made from Adampur Distributors Private Ltd. which was the trading company established for this very purpose and all the import licence were in the name of the said Company and in order to settle this defendant with just compensation, the 80 kg. gold ornaments were transferred from the name of Adambpur Distributors Private Limited to the importer Nazia Exports by transferring the import licences and amending the Airway Bill. All these acts could not have been done unilaterally by this defendant, particularly the change effect in the Airway Bill which change was made pursuant to a telex transmission by the plaintiff to Air India, Chennai. These facts have been suppressed in the plaint in order to show a picture as if the plaintiff supplied the material to the first defendant and this defendant suddenly misappropriated the consignment meant for the first defendant misusing the trust of Mushtaq Ahmed which is nothing but a false case foisted to avoid the first defendant's liability.

20. With regard to the allegation that the defendant handed over the gold ornaments to the first defendant as an employee is false. The first defendant was fully aware of the invoice raised, the liability to pay the value of the goods to this defendant and also the fact that this defendant received the 80 kgs. of gold consignment as compensation offered voluntarily and hence, this defendant need not remit any amount to the plaintiff.

21. As far as the allegation that the first defendant had agreed to remit to the plaintiff the entire cost of the consignment but there was delay and the plaintiff did not take further action due to trade relations, is nothing but a cock and bull story. There was no question of making payment for this consignment, since the plaintiff and the first defendant were aware that under the Foreign Exchange Management Act, 1999, according to Section A-20 i A.P. (DIR Series)

Circular No.9 (August 24, 2000), no transaction of import into India over the value of USD $ 25,000/- can be paid directly by the importer unless the importer was inter-alia a limited company. It has to be routed through a dealer (bank) which has to satisfy itself about the transaction to avoid hawala transactions. Thus, the moment the Airway bill was amended to say that this defendant was the importer, the plaintiff's right to receive the consideration through legal means was lost. Further, the first defendant also cannot pay for the goods since it is a proprietary concern just like Nazia Exports. Only the Adampur Distributors Private Limited could remit the amount to the plaintiff. Thus, the plaintiff was all along aware that this 80 kgs. consignment was never going to be paid for.

22. Further, no action was taken by the plaintiff to recover the value on the consignment is false since a complaint was made to the Reserve Bank of India which has been filed along with the plaint itself dated 11.07.2001 by which, the plaintiff has complained that the goods supplied to this defendant has not been paid for. On the one hand, the plaintiff would claim the entire

value of the consignment from this defendant and when it suits the plaintiff to save the first defendant, an action is brought in this Court that the goods were meant for only the first defendant and not this defendant but this defendant should pay for part value received from the first defendant.

23. The allegation that the first defendant was contacted repeatedly for settlement of the sale value is false, since both the plaintiff and the first defendant though they are different entities, admit to being managed only by Mr.Mustaq Ahmed. This fact is admitted by the first defendant in the written statement filed in C.S.No.280 of 2004. The Mustaq Ahmed is the common factor in both establishments and to say that the plaintiff did not know of the payments made to this defendant is completely false. The payment of Rs.46,92,000/- on 24.04.2001 was pursuant to several letters demanding payment, some of which were also sent to the plaintiff. Even the first defendant has acknowledged that this sum represented part payment towards this defendant's invoice No.001 dated 01.11.2000.

24. The plaintiff has stated that, out of the sum of Rs.62,12,383/-, the

sum of Rs.15,20,383/- was paid by the first defendant on 13.12.2000 towards the sales tax on the invoice value for which also the plaintiff has filed the suit. But this defendant paid the sum of Rs.15,20,383 to the sales tax department by way of Cheque No.801751 dated 19.12.2000. Earlier the plaintiff contended that this defendant was only an employee. Thereafter, the allegation was made that goods were supplied only to the first defendant and finally, they made allegation that since this defendant was monitoring the sale by the plaintiff to the first defendant, this defendant is also liable. These contentions are not only absurd but they are also contradictory and false. In fact, only after receipt of the suit summons in C.S.No.280 of 2004, the present suit came to be filed with false allegations to avoid the liability of the first defendant.

25. It is averred in the plaint that the first defendant undertook to pay the plaintiff the balance sum of Rs.2,77,02,681/- which will not bind this defendant nor affect this defendant's claim in C.S.No.280 of 2004. However, this defendant places on record of the fact that the first defendant while agreeing to pay the plaintiff it so called "dues" has also filed a counter claim

against this defendant in the suit in C.S.No.280 of 2004 for an amount of Rs.62,12,383/- and also claims set of Rs.3,39,15,064/- on the basis that the plaintiff is the same as the first defendant. The plaintiff cannot take such a completely contradictory pleas for the sake of avoiding the liability. Further, the allegation that the plaintiff is restricting the present suit to Rs.62,12,383/- is meaningless considering the fact that no amount is due to the plaintiff from this defendant. Therefore, the present suit is frivolous, vexatious and without any cause of action and also barred by limitation. Hence, the same is liable to be dismissed.

26. The learned counsel for the plaintiff in C.S. No. 559 of 2004 submitted that the plaintiff is a private limited company incorporated in accordance with the laws of Republic of Singapore and represented by their Power of Attorney agent Mr.Abdul Haq at Chennai. During the pendency of the suit, the plaint was amended to the effect that the plaintiff is represented by their power of attorney Mr. Syed Abdul Kader in terms of the power of attorney dated 30.10.2019. According to the learned counsel for the plaintiff, the first

defendant is the proprietorship business of Mr.Mustaq Ahmed, who is the Director and major stake holder of plaintiff. The first defendant is also the sister concern of the plaintiff company. The second defendant was an employee of the first defendant, who was dealing with the EXIM affairs of the first defendant. That apart, the second defendant was also running his proprietorship concern by name M/s. Nazia Exports. M/s. ADPL is a private limited company incorporated under the Companies Act and it is this company which is utilised for the purpose of importing and exporting of gold ornaments for the first defendant. The export import licence stood in the name of ADPL. The second defendant was also made as a Director of ADPL for the purpose of overseeing import and export operations exclusively made for the first defendant with respect to import of gold jewellery and ornaments despatched by the plaintiff from Singapore.

27. During the course of their business, the plaintiff planned to establish retail jewellery business in Chennai. In this context, the second defendant gained acquaintance of Mr.Mustaq Ahmed/first defendant as the second

defendant was supplying jewellery boxes and pouches which were manufactured in India to Singapore. The plaintiff has no other connection, whatsoever, with the second defendant. While so, the second defendant volunteered to assist the plaintiff and first defendant to open a showroom in Chennai. It was represented by the second defendant that his existing business in the name of M/s. Abdul Ali and Co., in manufacturing jewellery box is dwindling and therefore requested to join as an employee in the first defendant concern, which was to be started. The second defendant also stated that he is conversant with EXIM laws in India as he was handing export of jewellery boxes on his own. Accordingly, during June 1998, the second defendant joined Mustafa Group as an employee.

28. At this juncture, the first defendant purchased a land measuring an extent of 2 grounds with the superstructure in Usman Road, T. Nagar, by a sale deed dated 10.02.1999. In this transaction, a stamp duty deficit of Rs.3.80 lakhs was paid through the bank account of the second defendant and immediately, the said amount was reimbursed to the second defendant.

Thereafter, on 04.10.2000, the first defendant gold jewellery showroom was opened in Chennai for which the second defendant was made in charge to look after import of gold through ADPL for the first defendant. During October 2010, a consignment consisting of 22 carat gold jewels weighing 80.52877 kilogram of gold valued at Rs.3,39,15,064/- was dispatched by plaintiff to ADPL from Singapore to Chennai vide Airway bill No.098-7439 5565 marked as Ex.P1. The consignment reached Chennai Airport on 12.10.2010 and on 18.10.2000, the first defendant requested the plaintiff to change the name of the consignee from ADPL to M/s.Nazia Exports, a proprietorship firm run by the second defendant. After the amendment of the name of consignee, the second defendant had taken delivery of the gold consignment. Such amendment was made only at the insistence of the second defendant.

29. The learned counsel for the plaintiff further submitted that the averments in the written statement of the second defendant that the first defendant promised to deliver gold to second defendant is untenable. The second defendant also falsely alleged that he was inducted as a Partner of

Mustafa Gold Mart. On the other hand, the second defendant joined the company of the first defendant during June 1998 for monthly salary and served for 18 months. There is no reason for the first defendant to gift such huge amount to the second defendant who joined his company 18 months before. During the course of employment of the second defendant, the first defendant relieved him as he was indulging in misappropriation of money. At no point of time, the first defendant engaged the second defendant for establishing the business in Chennai.

30. As far as the suit claim is concerned, the first defendant handed over the sum of Rs.62,12,383/- and it was also received by the second defendant under the pretext of paying it to the plaintiff. However, the second defendant wantonly and deliberately withheld the amount and did not pay it to the plaintiff and therefore, the present suit is filed by the plaintiff. The learned counsel also invited the attention of this Court to Ex.P12, a communication dated 18.06.2001 written by the second defendant to the first defendant where-under, the second defendant assured to pay the suit amount to the

plaintiff. As the amount was not paid, the plaintiff even approached the Reserve Bank of India with a complaint dated 11.07.2001 but ultimately, the Reserve Bank of India by a letter dated 09.03.2002, directed the plaintiff to resolve the dispute through legal proceedings. In any event, the invoice dated 11.10.2000 was raised by the plaintiff in the name of ADPL which in turn was meant to be delivered to first defendant. The consignment of gold jewellery was despatched as per Ex.D2, Bill of Lading dated 12.10.2000 through ADPL. During the course of transaction, the second defendant misdirected the plaintiff to change the name of the consignee as Nazia Exports instead of ADPL. M/s.Nazia Exports is a firm owned by the second defendant. The second defendant cleverly diverted the consignment of gold to M/s.Nazia Exports and making a false claim as if, the entire gold consignment was meant to the second defendant. Therefore, the present suit is filed for recovery of the amount paid by the first defendant to the second defendant, with a direction to remit it to the account of the plaintiff. As the second defendant did not pay the amount and with-held it for his own personal gain, the present suit is filed for recovery of the amount.

31. Per contra, the second defendant, who appeared in person, in C.S.No.559 of 2004, submitted that the averments in the plaint are vague and unclear. It is alleged that the first defendant employed the second defendant as his employee and the second defendant misappropriated the sum of Rs.62,12,383/- without remitting it to the plaintiff. However, there is no document forthcoming to show that the suit payment was made to the second defendant by the first defendant. The entire pleadings in the plaint, are only against the first defendant.

32. The consignment in question was taken delivery only by the first defendant and it is also admitted by the plaintiff in the plaint. Even otherwise, in the plaint, the plaintiff has not furnished the dates of the purchase order, invoice number or any other particulars relating to the valuable shipment containing 800 kilograms of gold. The plaintiff has only furnished the value of the shipment being Rs.3,39,15,064/-. After this shipment, there is nothing on record to show that the plaintiff has ever made any demand from the second

defendant for payment and the only communication was through the notice dated 15.06.2004 sent to the defendants demanding the amount. In other words, after a period of more than three years and 8 months, for the first time, the plaintiff issued the notice dated 15.06.2004 demanding immediate settlement for the value of the shipment taken delivery by the first defendant. On receipt of the notice, a reply dated 16.06.2004 was sent by the second defendant denying the allegations. The first defendant also sent a reply on 16.06.2004 admitting the consignment of gold and taking delivery of the consignment. The first defendant also admitted the liability to the extent of Rs.2,44,81,530/- out of the total value of Rs.3,39,15,064/- however, it is alleged that the balance amount of Rs.94,33,534/- has been paid to the second defendant for being remitted to the plaintiff. Even the first defendant alleged that the balance amount has been misappropriated by the second defendant and it is far from truth.

33. On the one hand, the plaintiff claims that they are not making any claim for the sum of Rs.2,44,81,530/- which the first defendant undertook to

pay, however, the present suit has been filed for recovery of Rs.62,12,384/- jointly and severally from both the defendants. The first defendant did not file any written statement and therefore he was set ex-parte on 22.07.2016. The first defendant, after giving a reply notice to the notice sent by the plaintiff admitting the liability to pay the amount towards consignment of gold jewels, disappeared from the suit and did not contest the case by filing a written statement. On the other hand, during cross-examination, the plaintiff admitted that the shipment in question was actually sold to a company called Adampur Distributors Private Limited and the bill of lading, original invoice and packing lists were issued only in their name. This is evident from Exhibits D1 and D2 marked on the side of the second defendant. Further, the cross-examination of plaintiff also disproves that Ex.P1, invoice is forged. The invoice numbers, telephone number, purchase order number etc., stand in the name of Adampur Distributors.

34. Therefore, the entire case of the plaintiff is false and consequently, the plaintiff is not entitled to the relief of recovery of money. The plaintiff has

come forward with this suit with false averments. The plaintiff has not approached this Court with clean hands and they have based the suit claim on wrong facts or by suppressing the real facts. It is well settled that a party who withholds vital documents in order to gain advantage in the suit would be clearly guilty of playing fraud on the Court.

35. Apart from filing written statement, the second defendant also filed an application under Order VII Rule 11 of CPC to reject the plaint. The said application was dismissed on the ground that the second defendant has to prove his innocence only during the course of trial. Thereafter, the second defendant filed additional written statement with the leave of this Court contending *inter-alia* that there is no material evidence made available to show that the second defendant collected Rs.62,12,383/- from the first defendant with an assurance to pay it to the plaintiff. In the absence of any documents to prove that this defendant engaged himself in shipment of the consignment or given assurance to the plaintiff to pay the cost of the consignment, the suit is not maintainable. There is no cause of action as against this defendant. Even

according to the plaintiff, this defendant acted on behalf of the first defendant, while so, he cannot be mulcted with any liability to pay the cost of the consignment. The second defendant in his written statement has clearly mentioned the actual transaction that the said shipment was a settlement done by the actual owners of gold at Mustafa centre, Singapore represented by Mustaq Ashmed and the said fact was admitted by P.W.1 in answer to my question Nos.53, 54 and 55 and also admitted that this shipment which was transferred to Nazia Export was free of payment in answer to the question Nos.60 and 61.

36. The plaintiff could not prove by oral or documentary evidence that this shipment was sold to the first defendant in answer to issue No.1. Hence, there is no question of this suit amount of Rs.62,12,383/- was a liability of the first defendant to the plaintiff and as to why these two payments were given to the 2nd defendant was proved by Ex.D16, in answer to issue No.2. The limitation for 1st payment of Rs.15,20,383/- on 13.12.2000 expires on 12.12.2003 and the payment on 24.04.2001 for Rs.46,92,000/-, the limitation

expires on 23.04.2004. No evidence was filed to prove that the plaintiff and the 1st defendant are under the same management which answers the issue No.4. As admitted by P.W.1, there is no evidence to prove any kind of agreement or written contract in between the plaintiff and defendants which was breached in answer to issue No.5. Ex.D6 proves that this defendant was taken as 10% partner by the 1st defendant. Exs.D13, D17, D18 and D25 proves the transaction of Nazia Exports with the 1st defendant for which these two part payment were made. He further submitted that after a period of 15 years, a new power of attorney was substituted and the plaint was amended to change the suit claim amount in U.S. Dollars. But the plaintiff cannot claim this amount in US Dollars 132,403.72 as an export proceeds from both the defendants after a period of 23 years since as per the strict guidelines of RBI Circular of FEMA Act of 1999 all import payments has to be settled within period of six months and any deferred payments not later than 3 years and also remittance of import bills done under any violation of FEMA Act will not be permitted and this shipment documents are more than USD 25000 were not routed through an AD Bank. Hence, the exchange control department will not permit this remittance. Therefore, he prayed this Court to dismiss this suit exemplary costs.

37. Heard both sides and perused the materials available on record in both the suits.

38. This Court, by order dated 03.02.2015, framed the following issues in C.S.No.280 of 2004:-

(i) Was the relationship between the plaintiff and the defendant was that of business Associates or one of employer-employee ?

(ii) Did the plaintiff help and aid in the establishment of the defendant and commencement of business and did the defendant agree to compensate the plaintiff for such services ?

(iii) Was the consignment of 80,528.77 gms. of gold sent by Mustafa PTE. Ltd, Singapore, intended for the use and benefit of the plaintiff or for the defendant ?

(iv) Whether any invoice was raised by the plaintiff and accepted by the defendant in respect of the 80,528.7 gms. of gold ?

(v) Is the plaintiff entitled to recover Rs.3,00,96,428.44 from the defendant together with interest of 1,23,293,98.84 at 12% per annum ?

(vi) Is the defendant a juristic person and is the suit as filed against the defendant maintainable ?

(vii) In the light of set-off pleaded by the defendant, is the defendant liable to pay consideration for the delivery of gold by the plaintiff to the defendant ?

(viii) Whether the suit filed by the plaintiff is barred by limitation ?

(ix) Whether the defendant is entitled for a decree directing set-off of a sum of Rs.3,39,15,064/- against the amount claimed by the plaintiff ?

(x) Whether the defendant is entitled to the counter-claim against the plaintiff for a sum of Rs.4,01,27,447/- together with interest thereon at 12% per annum from the date of counter-claim till the date of decree and thereafater, till the date of recovery ?

(xi) Whether the plaintaiff as an employee of the defendant, is right in with-holding the sum of Rs.62,12,383/- comprising of payments effected by the manager of the first defendant, vide two cheques of Rs.15,20,383/- and Rs.46,92,000/- on the promise that the plaintiff would pay the same to Mustafa Gold Mart, Singapore, on behalf of the defendant ?

39. This Court, by order dated 22.07.2016, framed the following issues in C.S.No.559 of 2004:

(i) Whether the jewellery mentioned in the suit, were sold by the plaintiff to the first defendant ?

(ii) Whether payment made by the first defendant to the second defendant, is independently represented towards part-sale consideration or was it meant for the benefit of the second defendant ?

(iii) Whether the plaintiff has filed a suit on behalf of the first defendant ?

(iv) Whether the plaintiff and the first defendant are under the same Management ?

(v) Whether there is a privity of contract between the plaintaff and the second defendant ?

(vi) Whether the suit is maintainable when the first defendant has made a counter-claim in C.S.No.280 of 2004 ?

(vii) Whether the second defendant is an employee of the first defendant ?

(viii) Is the suit barred by limitation ?

(ix) What are the other reliefs ?

40. This Court, by order dated 26.07.2023 framed the following additional issues in both the suits:

(i) Whether the plaintiff suppressed all the material facts and documents for the transaction of gold expert, consignment of which was imported by the first defendant, since the plaintiff was not the owner of the shipment ?

(ii) Whether the Power of Attorney Abdul Huq, the alleged employee of the plaintiff-Company who was 17 years during the year 1999 was the duly authorised competent person to verify, sign and institute this suit in the absence of any whisper about plaintiff-Company's certificate of incorporation, company's Board Resolution, or any proof of legal entity ?

41. In C.S.No.280 of 2004, on the side of the plaintiff, the plaintiff--Hassan Ali was examined as P.W.1 and 46 documents were marked as Ex.P.1 to Ex.P.46. On the side of the defendants, one Minnathullah was examined as D.W.1 and one M.Kamal Pasha was examined as D.W.2 and 20 documents were marked as Ex.D1 to Ex.D20.

42. In C.S.No.559 of 2004, on the side of the plaintiff, the Plaintiff Mr.Syed Abdul Kader was examined as P.W.1 and 14 documents were marked as Ex.P.1 to Ex.P.14. On the side of the defendant, the 2nd defendant Mr.Hassan Ali was examined as D.W.1 and 28 documents were marked as Ex.D1 to Ex.28 in which, Ex.D1 and D2 were marked during cross examination of P.W.1.

C.S.No.280 of 2004:

Issue No.1:

43. The plaintiff in C.S.No.280 of 2004, who is the second defendant in C.S.No.559 of 2004, appeared as party-in-person, vehemently contended that the present suits have been initiated to recover the amounts stated in the prayer of the suit, towards supply of jewellery ornaments made by the firm-Nazia Exports to the defendant. The same made to the defendant was a contract of sale through a commercial invoice, dated 01.11.2000, which was assessed by the TNGST authority under Ex.P-32. The transaction was also subjected to income tax under Ex.P-33. The documents were admitted by the defendant, without any objection. According to the defendant(s), the plaintiff who was one of the employees of the defendant, and there was no sale to the defendant-Company by Nazia Exports run by the defendants. Ex.P-26 series are the Income Tax Returns filed by the plaintiff and the firm run by him, was profitable and the income was arrived at Rs.15 lakhs per year. The plaintiff is a

holder of B.Tech (Commercial Engineer) and had manifestly contracted for establishing show room for the defendant on the assurance that the plaintiff will be given highest position and reward in the show-room business to be established. Ex.P-1 goes to show that the name change was done in Singapore by giving an indemnity bond to Air India that the goods shall be handed over to Nazia Exports and the ownership was unconditionally transferred to the Company run by the plaintiff. The consignment was sent to the plaintiff by the defendant consciously signing several documents relating to the consignment. The Bill of Entry of Nazia Exports was paid from their accounts as per Ex.P-29 and it can be inferred that there was transfer of assignment voluntarily done by the defendant and it was not at the instance of the plaintiff.

44. The case of the defendant is that the plaintiff is one of the jewellery box suppliers for M/s.Mustafa PTE Limited, Singapore and on the basis of such relationship, the plaintiff volunteered to assist the defendant to set up a jewellery unit in Chennai. The relationship between the plaintiff and the defendant is only an employer-employee relationship and nothing more. The

defendant, on his own funds, purchased two grounds of land through the sale deed, dated 10.02.1999 and it has got nothing to do with the plaintiff. For the purpose of importing the gold jewels from Mustafa's PTE Limited, the defendant started M/s.Adampur Distributors Private Limited, in which the plaintiff was provided with 0.01% share on continuous insistence by him. The sharing ratio establishes the minuscule and negligible role played by the plaintiff. During June 2000, around 800 kgs. of gold were imported by the defendant from M/s.Mustafa PTE Limited, in which transaction, the plaintiff is involved only as an employee of the defendant. In the middle of the transaction, the plaintiff, as an employee of the defendant, was advised to change the consignee's name in the Airway Bill to that of the plaintiff's concern M/s.Nazia Exports, only to avoid the cumbersome formalities and the defendant also complied with the same. The gold ornaments were only meant for the defendant and the plaintiff, as an employee, engaged himself to facilitate the transaction. For the purpose of importing consignment of gold, Rs.32,21,151/- was received from the defendant through cheque dated 19.10.2000 and the approval for transfer of the said amount to the plaintiff, was made by the defendant himself, which is evident from Ex.P-4. Subsequently, without the knowledge of the defendant, the plaintiff, by mis-representation, obtained the part amount of Rs.15,20,383/- from Ishtiaq Ahamed in terms of Cheque No.262528, dated 15.12.2000 drawn on Bank of India and in addition to the above, the plaintiff also obtained Rs.46,92,000/- deceitfully. Subsequently, after excluding the amount received for customs duty, the plaintiff ought to have transferred Rs.62,13,383/- to Mustafa PTE Limited. Though initially, the plaintiff undertook to transfer the same to the supplier M/s.Mustafa PTE Limited, but subsequently, the plaintiff denied the request and resorted to file the present suit without any basis. The defendant denies the transfer of ownership over the consignment of gold in favour of the plaintiff. The consignment of gold was sent to M/s.Adampur Distributors Private Limited, but the name was changed only at the instance of the plaintiff.

45. Further, D.W.1 in his evidence, has stated that the plaintiff as an employee received salary from the defendant, for which they marked Ex.P-20

salary slip. The employee-movement-Register reflects the designation of the plaintiff and his employee ID. In order to prove the same, it was marked as Ex.D-17 and the pay-roll-Register was marked as Ex.D-7. The plaintiff was an employee of the defendant from 01.10.2000 and was appointed to take care of the import obligations of the defendant from the parent-concern of M/s.Mustafa PTE Limited, Singapore. Even in the reply notice sent by the defendant, it is clearly stated that the plaintiff was an employee of the defendant-firm. The defendant has clearly stated in the pleadings that the plaintiff was an employee of the defendant and also during evidence, he has clearly stated that the plaintiff was only an employee of the defendant and not under contract of employment. Further, in the evidence of P.W.1, he has clearly stated that the defendant himself admitted that the plaintiff was receiving Rs.10,000/- per month as salary. Even the plaintiff in paragraph 11 of the reply statement, admitted that he was receiving Rs.25,000/- as salary from Adampur Distributors Private Limited for the work done by him. Ex.P-8 proved the same. Further, from Exs.D-7, D-17 and D-20, it is clear that the role of the plaintiff in importing gold jewellery was in his capacity as an employee of the defendant. Therefore, the plaintiff is estopped from controverting or denying the payments received as salary to claim that he had a contract with the defendant.

46. From the pleadings and the oral and documentary evidence, and even the admission made by the plaintiff, it is clear that the relationship between the plaintiff and defendant is only employer and employee and not a business associate. The first issue is answered in the above terms.

47. Issue No.2: According to the plaintiff, the sale made to the defendant was a contract of sale through a commercial invoice, dated 01.11.2000, which was also assessed by Ex.P-32 and the transaction was also subjected to Income Tax in Ex.P-33 and the documents were accepted by the defendant without any objection.

48. The plaintiff is the Proprietor of M/s.Nazia Exports dealing in sale of jewel boxes and jewel pouches. He is also the Managing Partner of the Partnership Firm, called Abdul Ali and Co. In the course of business during

1994, he got acquainted with M/s.Mustafa PTE Limited and the plaintiff was closely associated with M/s.Abdul Ali & Co., and the defendant in the suit. During such relationship, the defendant expressed his intention to plaintiff to start a Proprietary concern in Chennai under the name of M/s.Mustafa Gold Mart and to commence retail jewellery business with investment of Rs.50 crores. The defendant also entrusted the entire responsibility for commencing such business with the plaintiff and also promised the plaintiff a good position of All India Head of Mustafa Group of Companies with lucrative share in the profits of business, apart from all the perks attached there-to that of the high executive persons. On such promise, the plaintiff closed down his business and concentrated in the commencement of business to be established on behalf of the defendant. The office address of the plaintiff was used by the defendant for all the communication purposes like General Sales Tax (GST), Income Tax, Bank transactions in India, etc. There was no separate office available for the defendant. The plaintiff also had negotiated with the prospective owners of the land and facilitated the defendant to purchase 2 grounds of land in Chennai by the registered sale deed dated 10.02.1999 and subsequently, with the hard labour of the plaintiff, a show room was established. At this stage, the defendant requested the plaintiff to accommodate his close relatives by name Ishtiaq Ahmed and Minnathullah, who were his friends' son in the business stating that they will assist the plaintiff in his work of establishing the show room as Managers. While setting up the business, since it was felt that a trading Company should be incorporated in India, to which, finished jewellery and other consumables would be imported from all parts of the world, so that, a distribution net work can be established and the defendant can be restricted to retail business, the plaintiff was again asked to complete all the formalities of incorporation of such a company and was offered a share in the new company. Accordingly, the plaintiff took steps to form and incorporate M/s.Adampur Distributors Pvt. Ltd. in March 2000 and the plaintiff was made Executive Director in the new Company with a small share of 2%, which further reinforced the belief that the association with the defendant would bring great rewards. However, after the showroom was opened, the employees employed by the defendant, did not give the plaintiff due respect and the same was brought to the knowledge of the defendant and the defendant made promise to introduce him as shareholder in the jewellery business, but he was not even paid his monthly salary and he was not aware as to whether he is one of the Directors of the Company or not.

49. According to the defendant, Mustaq Ahmed being the Proprietor of the defendant-business M/s.Mustafa Gold Market, was not permanently residing in Chennai due to his business work and during the course of business, the defendant was appointed mainly to communicate with M/s.P.T.E. Limited, Singapore. The plaintiff was not given responsibility to set up a show-room or operations at Chennai. The plaintiff as one of the employees, was entrusted with certain jobs which he is bound to do in accordance with the terms of employment. Taking advantage of the employment with the defendant, the plaintiff was given monthly salary, but the plaintiff intended to enrich himself contrary to the impression that he had with the defendants about the anxiety and integrity. At the time when the plaintiff sought for employment, he

assured the defendant that he is conversant with the legal formalities relating to gold business including purchase of sale relating to import etc., and therefore, the defendant appointed the plaintiff for substantial salary. During the course of his employment, the defendant issued letter of authority in favour of the plaintiff for certain purposes by treating the plaintiff as one of the employees of the defendant. Whatever the work done by the plaintiff is in his capacity as an employee of the defendant and not otherwise, for which he was duly paid salary. The plaintiff was asked to do certain works in the Adampur Distributors Private Limited, since he had worked as an employee with reasonable efficiency and therefore, he was given a nominal share of 0.01% in the said Company. The plaintiff was paid huge salary, but he expected more. During the course of his full employment, the plaintiff is expected to concentrate on all works and the defendant is concerned only with his private business. The plaintiff was a full-time employee of the defendant and he cannot be allowed to carry on the private business, particularly when he was receiving full salary on full time employment with the defendant. When the plaintiff was paid salary for his work, the question of paying compensation for the alleged loss of business, will not arise. The defendant did not make any promise to compensate the plaintiff.

50. The defendant never made any promise or agreed to compensate, and he was appointed and engaged as an employee of the said PTE Company. Therefore, the defendant has proved through documentary evidence that the plaintiff was only engaged as an employee. Even though the plaintiff-Company has stated that he played major role for establishment of show room in Chennai, but the same was denied by the defendants and the defendants stated that the plaintiff was only engaged as an employee and as an employee, he has done all the work, for which, salary was paid to him. Contrary to that effect, the plaintiff has not produced document to show that the defendant agreed to compensate the plaintiff or reward him. Therefore, in the absence of any oral or documentary evidence or any independent evidence, this Court cannot come to the conclusion that the defendant agreed to compensate the plaintiff or reward him. As plaintiff, he has to plead and prove his case

independently and he cannot take the advantage of the loop-holes left by the defendant. The plaintiff has not produced any oral and documentary evidence to show that the defendant made a promise to compensate him for the service rendered, except salary. This issue is answered accordingly.

51. Issue No.3: According to the plaintiff, the consignment exported by the defendant from Singapore was transported by AI 439-13/10 from Singapore and delivered it to Nazia Exports run by the plaintiff. The plaintiff is the Proprietor of the Nazia Exports. The consignment contained 22 carots gold jewels weighing 80.528.77 grams, valued at US $ 7,27,322.84 C & F. Originally, the consignment was addressed to Adampur Distributors Private Limited, but subsequently, it was changed to Nazia Exports and the consignment valued at Rs.3,39,15,064/- was taken delivery by the plaintiff on 19.10.2000. It is alleged that the consignment was sent to the plaintiff to off-set the loss occasioned to him. The customs duty on the consignment was paid to the plaintiff by the defendant amounting to Rs.32,21.151/- through cheque No.254573, dated 19.10.2000, drawn on Bank of India, T.Nagar, Chennai, but

Mustafa PTE Limited, Singapore did not raise any invoice on the plaintiff. The plaintiff filed Bill of Entry and received delivery of the consignment on 19.10.2000, but on the same date, he physically delivered the entire consignment to the defendant and raised invoice bearing No.001, dated 01.11.2000 for Rs.3,63,08,811.61 on the defendant.

52. According to the plaintiff, a sum of Rs.3,63,08,811.61 includes the sales tax and an undisclosed profit margin of Rs.8,73,364/- was made by the plaintiff. As per the terms of the plaintiff's invoice, the payment has to be made within 30 days of the date of invoice, failing which, the interest @ 12% per annum would be charged. The defendant accepted the plaintiff's invoice and did not raise any dispute pertaining to the terms of invoice. In those circumstances, the plaintiff was eagerly waiting for payment to utilise it in his individual business, but the payment is not forthcoming. Therefore, the plaintiff sent a letter to the defendant on 07.12.2000 addressed to the defendant in Singapore. The plaintiff informed that Mr.Ishtiaq Ahmed who is looking after the show room in Chennai, was not even willing to meet in

person. As per the prevailing foreign exchange regulations, the import transaction of such high value has to be routed through the Bankers, but it was not done. The plaintiff informed the Reserve Bank of India about the import of the goods. The authorities informed the plaintiff that it may be condoned, provided proper document was made. The plaintiff therefore requested the defendant to furnish the original invoice from Singapore for transfer of consignment. The plaintiff also requested the defendant a written confirmation from the foreign exporter that the consignment was due to the plaintiff as a reward or compensation for the service rendered by him. However, there was no response and hence, the plaintiff sent a letter dated 01.12.2001 to M/s.Mustafa PTE Limited, Singapore to send original invoice and to request the defendant to make payment immediately. Since there was no response, the present suit has been filed.

53. According to the defendant, the consignment was received from Singapore and the plaintiff was, at the time, an employee of the defendant. The plaintiff was assigned certain responsibilities to look after the said export.

The entire consignment was intended to the defendant and the plaintiff has no right or interest over the said consignment, except as an employee of the defendant, who had to clear and deliver the goods to the defendant. The defendant never offered the plaintiff the entire consignment and assured that the payment will be made within 30 days to the plaintiff. The plaintiff has no wherewithal either to purchase such large quantity of gold ornaments, nor did he has a single pie payable towards the cost of gold ornaments. The gold ornaments were imported by the defendant for their company at Chennai, and there was no offer or assurance of compensation, since the work done by the plaintiff in regard to the said import was only as an employee and not more. The plaintiff who was employed on a monthly salary, cannot by any stretch of imagination, be offered a consignment of gold ornaments valued at Rs.3,39,15,064/- without payment of value thereof. It is not known as to what service was rendered by the plaintiff entitling him to such large amount of about Rs.3.4 crores in addition to the monthly salary. When the consignment was to be despatched, the plaintiff advised the defendant to address it to Nazia

Exports, so that he would clear the goods and do everything necessary to deliver the goods. There was no question of the plaintiff raising an invoice on the defendant for the gold which was purchased by the defendant from a Company, in which he was the Managing Director. The defendant never imagined that the plaintiff would take advantage of the situation to suit his needs. The very fact that the defendant was asked to pay the customs duty, and no invoice was raised by the Singapaore supplier in the name of the plaintiff, clearly establishes that there was no sale by the Singapore party to the plaintiff, nor the sale by the plaintiff to the defendant. The entire expenses for importing and customs duty were borne by the defendant, and the goods were delivered on the same day to the defendant only shows that the plaintiff cannot have any right or interest over such consignment. There was no sale by the plaintiff to the defendant warranting any payment. There was no sale made by the Singapore Company to the plaintiff, nor was there any import by the plaintiff for the goods purchased it. The Air-way bill was taken in the name of the Nazia Exports only to facilitate the clearance and delivery of the goods to the defendant. Since the export from Singapore in respect of the above consignment, was intended for the defendant, the question of giving any certificate that it was intended as a reward or compensation to the plaintiff, will not arise. There was no need for the Singapore Company or the defendant to reward the plaintiff. The plaintiff collected Rs.62 lakhs from the defendant-Company by false representation, with an intention to cheat the defendant and the defendant was not aware of the demand made by the plaintiff in his letter dated 01.12.2001 or 17.12.2001 for payment of Rs.3,47,88,428/-, as those letters were addressed to Ishtiaq Ahmed. There was no amount due and payable by the defendant to the plaintiff, as claimed in the suit.

54. Admittedly, in this case, during the relevant period, the plaintiff was working with the defendant. Though according to the defendant, he was working as employee for the salary the plaintiff claimed that he has made certain efforts on behalf of the defendant to establish a show-room in Chennai and helped him for purchasing the land and also for establishment of show-room, and therefore, he gave the said gold as reward and also his air-bill

consignment or the airway-bill was also taken in the name of the Nazia Exports. Subsequently, he has also paid the amount for clearance and for tax and other clearance. When the defendant denied the same, the consignment was exported for the defendant and not for the plaintiff, it is for the plaintiff to establish the same.

55. It is not the case of the plaintiff that he purchased gold or imported the gold from the Singapore Company for his own purpose. It is not the case of the plaintiff that he paid the value of the goods to the Singapore Company for his own purpose. It is not the case of the plaintiff that he paid the value of the goods either to the Singapore Company or the defendant, and therefore, the goods belong to him. The plaintiff also admitted that the defendant has clearly stated that the air-way bill was taken in the name of Nazia Exports to facilitate the clearance and delivery of the goods to the defendant. Merely because the air-way bill was taken in the name of Nazia Exports owned by the plaintiff, it cannot be construed that the consignment is intended to the plaintiff. The plaintiff has taken unfair advantage and therefore, it is for the plaintiff to prove

that the consignment was exported from Singapore, was intended for him. The consignment was addressed to Nazia Exports only at the instance of the plaintiff to facilitate quicker clearance of the consignment. Therefore, in the circumstances, it is for the plaintiff to prove the entitlement of the consignment. Though the plaintiff was in acquaintance with the defendant, the plaintiff himself admitted that he received the salary from the defendant. If that be so, it is for the plaintiff to prove his case that he is the owner of the consignment. He cannot take advantage of the loop-holes left by the defendant and also take advantage of the fact that some of the bills or the documents standing in the name of the firm owned by him. Unless the plaintiff established that he is the owner of the consignment of gold weighing around 80 grams, he is not entitled for the same.

56. In this case, the plaintiff has not proved that the consignment of 80,428.77 grams of gold sent by the said Mustafa is for use by the plaintiff. Therefore, it has to be held that the above said consignment only belongs to the defendant. Admittedly, certain documents in respect of the consignment

stands in the name of the firm of the plaintiff, but the authorisation was given in the name of the plaintiff only to clear the consignment and it does not mean that the plaintiff is the owner of the goods. The delivery of the consignment to the plaintiff is not for his use or the plaintiff is the owner of the consignment. Admittedly, the defendant only paid the taxes and charges and the goods were delivered to the defendant and they were not the goods delivered to the plaintiff. When once the goods were delivered to the defendant, if at all it is because of the goods of the plaintiff, he would have claimed the consignment from the defendant immediately. But, he did not claim this consignment immediately and now, he has filed the present suit for recovery of the money. Therefore, this issue is answered in favour of the defendant and against the plaintiff. Issue No.3 is answered accordingly.

57. Issue No.4 : As already held in the earlier issue that the defendant has not given explanation to the invoice raised by the plaintiff and accepted by the defendant in respect of the subject matter of the consignment and since admittedly, the plaintiff was working as an employee of the defendant-

Company, the defendant has clearly stated that the relationship between the plaintiff and the defendant would only be employer-employee and nothing more. The defendant, on his own, purchased two grounds of land and executed the sale deed, it has got nothing to do with the same. For the purpose of importing gold jewels from Mustafa PTE Limited, the defendant started the said Adampur Distributors Private Limited, in which the plaintiff was provided with 0.01% share on continuous insistence by him. During June 2000, around 800 kgs. of gold were imported by the defendant from Mustafa PTE Limited, in which transaction, the plaintiff involved only as an employee of the defendant. In the middle of transaction, the plaintiff as an employee of the defendant, advised to change the consignment name in the Airway Bill to the plaintiff-concern, viz., M/s.Nazia Exports to avoid the cumbersome formalities and the defendant also complied with the same. The gold ornaments are only meant for the defendant and the plaintiff, as an employee, engaged himself in this transaction. The defendant, for the purpose of importing the consignment of gold valued at Rs.32,21,151/- paid a cheque dated 19.10.2000 for clearing the goods and the approval for transfer of the said amount to the plaintiff was made by the defendant himself, for which Ex.D-4 was marked. However, without the knowledge of the defendant, the plaintiff, by misrepresentation, obtained part of the amount of Rs.15,20,383/- from Ishtiaq Ahmed, in terms of cheque drawn on Bank of India, and in addition, the plaintiff also received Rs.46,92,000/- deceitfully. Thus, Rs.62,12,383/- excluding the amount received for the customs duty, the plaintiff ought to have transferred it to Mustafa PTE Limited. Though initially, the plaintiff undertook to transfer the amount to the supplier M/s.Mustafa PTE Ltd., subsequently he denied the same. Therefore, the defendant also filed counter-claim for that amount.

58. The defendant has clearly stated in the explanation the reason for raising invoice in the name of the plaintiff. To controvert the same, there is no other document shown in evidence or to prove that the plaintiff is the owner of the said consignment. Therefore, it cannot be said that the defendant has accepted the invoice raised by the plaintiff. The defendant expressly denied the same and explained the circumstances under which the invoice was raised by

the plaintiff. Therefore, under the above circumstances, taking advantage of the invoices raised by the plaintiff, he cannot claim the ownership. This issue is answered accordingly.

59. Issue No.5: According to the plaintiff, the present suit has been filed to recover the unpaid invoice amounts towards the supply of jewellery ornaments made by his firm called as Nazia Exports to the defendant. The supply was made on 19.10.2000, the sale invoice was dated 01.11.2000 for Rs.3,63,08,811.61, after deducting the advance amount of Rs.32,21,151/-. No balance amount was payable. Subsequent to the payment made by the defendant on 15.12.2000, for Rs.15,20,83.17 through cheque jointly signed by Ishtiaq Mohammed and Minnathullah under Ex.P-35, the second payment was given on 25.04.2001 for Rs.46,92,000/- and on 25.04.2001 for Rs.46,92,000/- was made and net balance was payable by the defendant for Rs.3,00,96,481.61 paise. Inspite of several demands made by the plaintiff through various letters, Ishtiaq Ahmed, who is the step brother of the defendant, and who was in-charge of the defendant-firm, created a false

demand and forced the plaintiff for a settlement. Therefore, the plaintiff issued a final notice on 10.11.2003 before instituting the present suit, for which, no reply was sent. According to him, the balance principal amount was Rs.3,00,96,428/- plus accumulated interest of Rs.1,22,36,497/- @ 12% per annum and both put together was the suit claim.

60. According to the defendant, the relationship between the plaintiff and the defendant is only of an employer-employee and nothing more. During June 2000, around 800 kgs. of gold was imported by the defendant from M/s.Mustafa PTE Limited, in which transaction, the plaintiff involved only as employer of the defendant. In the middle of the transaction, the plaintiff as employee of the defendant, advised to change the consignment for the air-way bill in the name of plaintiff-concern and in order to avoid cumbersome formalities, the defendant also complied with the same. The gold ornaments were only meant for the defendant. As an employee, the plaintiff engaged himself in the transaction. For the purpose of importing consignment of gold, Rs.32,21,151/- was received by the plaintiff through cheque dated 19.10.2000

under Ex.D-4. Even according to the defendant, subsequently, without the knowledge of the defendant, the plaintiff by mis-representation, obtained part payment of Rs.15,20,383 from Isthiaq Ahamed, in terms of cheque No.262528, dated 15.12.2000 drawn on Bank of India. In addition to that, the plaintiff also received Rs.46,92,000/- deceitfully. Thus, the defendant, apart from Rs.32,21,151/- for approval for transfer of the said amount received by the plaintiff, received Rs.62,12,383/-, excluding the amount received for customs duty. The defendant denies the transfer of ownership over the consignment of gold in favour of the plaintiff. The consignment of gold was sent to M/s.Adampur Distributors Private Limited, but the name was changed only at the instance of the plaintiff, who as an employee received the salary from the defendant, which could be seen from Ex.D-20. In order to prove the employer-employee relationship, the documents in Exs.D-7, D8, D-17 and D-20 were marked. These documents clearly proved the relationship between the plaintiff and the defendant. The plaintiff was an employee of the defendant from 01.10.2000, appointed to take care of the import obligations of the defendant from the parent concern M/s.Mustafa PTE Limited, Singapore. The plaintiff admitted the same and he also has admitted that he received Rs.25,000 as salary from the Adampur Distributors Private Limited for the work done by him. Ex.D-8 proves the same.

61. The plaintiff has not produced any document to establish the alleged oral gift. The allegation that the consignment of 80,428.77 of gold jewels were already gifted to him, is utter false. No prudent employer would reward his employee with a consignment of gold for having rendered service for a couple of years. When the plaintiff received remuneration for the work rendered. it is futile to contend that he was gifted with the consignment of gold, weighing about 80,428.88 gms. Ex.P-1, dated 12.10.2000 shows the name of the plaintiff-concern only at his instance. Mere change in the air-way bill will not be taken that the consignment was intended to be delivered to the plaintiff. Ex.P-30 special import licence bears the name of Adampur Distributors Private Limited at the instance of the plaintiff. Mere changing of the import licence, cannot be construed that the goods were intended to be delivered to

the plaintiff as an owner.

62. Admittedly, the goods were delivered to the defendant only. The defendant has stoutly denied the ownership of the gold and it is for the plaintiff to prove the same, to the effect that either the plaintiff imported the gold for consideration or the defendant had gifted the gold. In the above circumstances, the plaintiff has not proved that he is the owner of the above said gold. When once the plaintiff filed the suit, it is for the plaintiff to prove the ownership or right in the gold and then only he is entitled to the claim for the amount. The defendant has given explanation as to under what circumstances certain documents were executed during the delivery of the goods and that they have allowed the plaintiff to use their name, that too, at the instance of the plaintiff and the plaintiff, in his capacity as an employee.

63. As already held in the other issues, the defendant is the owner of the gold and the consignment was intended to the defendant and not for the plaintiff and it was held that the plaintiff has not proved the ownership of the gold and the defendant is not liable to be compensated for consideration in

respect of the delivery of ownership by the plaintiff to the defendant. The plaintiff is not a seller and they only delivered the gold to the defendant. The plaintiff as an employee of the defendant, in order to take delivery of certain documents as insisted by him, got certain documents executed in his name. The plaintiff cannot take advantage of the same and claim the ownership, unless he proved that he paid consideration for the gold or it was donated or gifted to him. As already held that the plaintiff is not the owner and the defendant is not liable to pay the consideration, the plaintiff has taken delivery of the gold only as an employee of the defendant and not as owner of the consignment. This issue is answered accordingly. Therefore, in the above circumstances, the plaintiff is not entitled to recover the same.

63. Issue No.6: The plaintiff has filed the suit since the defendant is not a juristic person and the plaintiff and the defendant were running gold market and it is not the company or partnership firm registered under the Partnership Act or Companies Act. They are only proprietorship concern. Therefore, the suit could be filed only against the Proprietor, whereas, the cause title shows

M/s.Mustafa gold market, i.e., Proprietorship concern, represented by its Proprietor Mustaf Ahmed. Though the plaintiff has not filed the suits against the Proprietor directly, the plaintiff has stated that they are represented by Proprietor. Since the Proprietorship concern is not a legal entity and only the defendant's Proprietorship shall be sued or the Proprietor shall be sued against their party or the Proprietor shall be sued. However, the suit is not only filed against the Proprietorship concern, but it is also filed to show that the Proprietor is Mustafa Ahamed.

64. Therefore, in the above circumstances, the suit is maintainable. However, the defendant is not the juristic person. Though the defendant is not the juristic person, the suit filed is represented by the Proprietor. Hence, the suit against the Proprietor is maintainable. This issue is answered accordingly.

65. Issue No.7: According to the plaintiff, the consignment was taken delivery by the plaintiff on 19.12.2000 and the customs duty for the consignment was paid to the plaintiff by the defendant at Rs.15,20,383/- through cheque dated 19.12.2000 drawn on the Bank of India. The plaintiff

filed Bill of Entry and received the delivery of consignment on 19.12.2000, but on the same day, he physically delivered the entire consignment to the defendant and raised invoices, which were delivered to the plaintiff. The defendant also received the consignment and the plaintiff raised Bill of Entry and delivery of the consignment. When the plaintiff delivered consignment on the same day and physically delivered the entire consignment to the defendant and raised the invoice if at all they are plaintiff's goods, it could not have been delivered. If at all the plaintiff would not have delivered the entire consignment to the defendant, he could have received the money immediately or demanded the value of the goods immediately. There is no specific agreement to that effect.

Issue No.8:

67. The delivery was taken on 01.11.2000 and the entire consignment was in respect of the invoice dated 01.11.2000 for Rs.3,39,15,064/- on the defendant. He received the amounts on 17.02.2001. The defendant paid Rs.46,92,000/- and also the customs duty, but the consignment was paid to the

plaintiff. The last payment was made in 2001 and the suit was presented before this Court on 20.11.2003. Therefore, the suit is filed within the period of limitation. The suit has been filed within three years from the date of last payment and the suit is not barred by limitation. The issue is answered accordingly.

68. Since issues 1 to 8 in C.S.No.280 of 2004 have already been answered, and C.S.No.559 of 2004 is filed by the opposite party, the issues 9 to 11 in C.S.No.280 of 2004 and issues 1 to 9 in C.S.No.559 of 2004 (which are similar to the issues already answered in C.S.No.280 of 2004) are answered together. Therefore, issues 9 to 11 in C.S.No.280 of 2004 and issues 1 to 11 in C.S.No.559 of 2004 are answered as follows.

69. As already held that the plaintiff has not proved that he is the owner of the consignment, though the invoices were in the name of the plaintiff-concern, but it was explained by the defendant as to under what circumstances, the invoice stood in the name of the plaintiff at the relevant point of time and proved that the plaintiff was an employee. Contrary to that,

the plaintiff has not produced any other document, except the invoices. As already held, in order to get delivery and to avoid cumbersome process during delivery, the invoices were raised in the name of the plaintiff and therefore, the allegation that the plaintiff is the owner of the consignment and the defendant is only a mere money-lender of the consignment, cannot be accepted. Since the ownership is not proved, the question of set-off does not arise.

70. Regarding the counter claim of the defendants, the plaintiff has filed the suit for recovery of amount in respect of gold and mainly the plaintiff claimed that the invoice stood in their name and for the valuable service rendered by the plaintiff, the defendant has given gold as "reward". The gold was delivered to the defendant and therefore, the defendant is liable to pay the amount and according to the defendant, by mis-representation, the plaintiff received the amount of Rs.62,12,383/- from Mustaq Ahamed. The defendant has filed counter-claim for recovery of the amount received by the defendant. In this regard, the defendant has admitted that the plaintiff was an employee of the defendant, and the defendant himself stated in the written statement

that the plaintiff was asked to do certain works in the said Company. Since the plaintiff has worked as an employee with reasonable efficiency, he was given a nominal share of 0.01% in the said Company. The plaintiff was paid regular salary beyond the eligible amount, but he expected more.

71. The learned counsel for the defendant submitted that the plaintiff was paid salary, and the relationship between the plaintiff and defendant is only that of employer-employee and nothing more. The defendant on his own funds, purchased 2 grounds of land. The defendant started M/s.Adampur Distributors Private Limited, in which the plaintiff was provided with 0.01% share. The share ratio clearly established the negligible role played by the plaintiff. The defendant was a Singapore based Company and they wanted to establish the show-room in Chennai. On a perusal of the entire materials on record, it is seen that, both the plaintiff and the defendant have not come to Court with clear version and clean hands. Therefore, in the above circumstances, the defendant is not entitled to the relief of counter-claim. Therefore, this issue is answered accordingly.

72. The case of the plaintiff in C.S.No.559 of 2004 is that they are a Private Limited Company incorporated in accordance with law in the Republic of Singapore. The first defendant was running Proprietorship business of M/s.Mustafa Ahamed who is the Director and major stake-holder of the plaintiff and the first defendant is the sister concern of the plaintiff-Company. The second defendant was an employee of the first defendant-Company and the second defendant was dealing with the affairs of the first defendant-Company. The second defendant was also running Proprietorship concern, by name M/s.Nazia Exports. Further, M/s.Adampur Distributors Private Limited was incorporated under the Companies Act. It is the Company which had been utilised for the purpose of importing and exporting gold ornaments from the first defendant. Export-import licence stood in the name of M/s.Adampur Distributors Private Limited. The second defendant was also given certain assignment(s) in M/s.Adampur Distributors Private Limited, for the purpose of overseeing the import and export operations exclusively for the first defendant with respect to the import of gold jewellery and ornaments despatched by the

plaintiff from Singapore. During the course of their business, the plaintiff planned to establish a retail jewellery business in Chennai. In this context, the second defendant gained acquaintance with the first defendant. The second defendant, by then, was supplying the jewellery boxes and pouches which were manufactured and supplied to India and also Singapore. The second defendant volunteered to assist the plaintiff and the first defendant to open a show-room in Chennai. The second defendant also stated that he is conversant with import and export obligations, as he was in the export of jewellery boxes on his own. During June 1998, the second defendant joined Mustafa group as an employee and the first defendant purchased the land measuring an extent of two grounds with superstructure in T.Nagar, Chennai, under sale deed, dated 10.02.1999. The transactions in respect of the delivery of goods, were paid through Bank Account of the second defendant. On 04.10.2000, the first defendant opened a gold jewellery show-room in Chennai, for which the second defendant was made in-charge to look after the gold transactions. During October 2010, the consignment consisting of 22 carots of gold jewels weighing 80,528.77 gms., valued at Rs.3,39,15,064/-, were despatched by the plaintiff to Adampur Distributors Private Limited, from Singapore to Chennai, vide air-way bill. The consignments had reached Chennai Airport on 12.10.2000 and 08.12.2000. The first defendant requested the plaintiff to change the name of the consignment from Adampur Distributors Private Limited to M/s.Nazia Exports, the proprietorship firm run by him. After change of the name of the consignment, the second defendant has taken delivery of gold consignment and such change was made only at the instance of the second defendant. The second defendant joined the Company of the first defendant during June 1998 for monthly salary and he served for 18 months. During the course of employment of the second defendant, the first defendant relieved him, as he was involved in misappropriation of money and at no point of time, the first defendant engaged the second defendant for establishing the business in Chennai. The first defendant handed over the necessary amount towards the consignment and it was also received by the second defendant under the pretext of paying it to the plaintiff. However, the second defendant did not pay it to the plaintiff and therefore, the present suit in C.S.No.559 of 2004 is filed by the plaintiff for recovery of the amount of Rs.62,12,383/- paid by the first defendant to the second defendant for making payment to the plaintiff.

73. The first defendant remained ex-parte and the second defendant who appeared in person, contested the suit.

74. The case of the second defendant is that the consignment in question was taken delivery only by the first defendant and it is also admitted by the plaintiff in the plaint. Even otherwise, in the plaint, the plaintiff has not furnished the date of purchase order, invoice number or any other particulars relating to the shipment containing 800 kgs. of gold. The plaintiff has only furnished the value of the shipment and after the shipment, there is nothing on record to show that the plaintiff has made demand for payment from the second defendant and only annexed the notice issued thereunder, that the second defendant had to pay the remaining amount. After the period of three years 8 months, for the first time, the plaintiff issued notice for immediate settlement of the value of the shipment and the consignment was taken

delivery by the first defendant. The first defendant also sent a reply with regard to the consignment of gold and took delivery of the consignment. The first defendant admitted their liability after adjusting the same with the total value of the consignment. However, the balance amount therein was paid to the second defendant for being remitted to the plaintiff. On the one hand, the plaintiff claims that they are not making any claim which the first defendant undertook to pay. However, the present suit in C.S.No.559 of 2004 has been filed for recovery of Rs.62,12,383/- jointly and severally from the defendants. The first defendant did not file any written statement and they had sent only the reply notice. During cross-examination, the plaintiff admitted that the shipment in question was actually meant for Adampur Distributors Private Ltd., and the Bill of Lading and original notice were raised and the plaintiff denied the loss shown only in their name. Further, the cross-examination of P.W.1 also disproves Ex.P-1, but the invoice, telephone number, purchase order number, etc., stand in the name of M/s.Adampur Distributors Private Limited. The plaintiff could not prove by oral and documentary evidence to show that the shipment was sold to the first defendant.

75. According to the plaintiff-Company, the first defendant is the sister concern of the plaintiff-Company. The second defendant was an employee of the first defendant-Company who was dealing with the business affairs of the first defendant. Since the plaintiff has established the business in India in Chennai, in the name of M/s.Adampur Distributors Private Limited, incorporated under the Companies Act, which is utilised for the purpose of importing and exporting of gold ornaments for the first defendant. The second defendant was made a Director of the said Company for the purpose of seeking the import and export, exclusively made for the first defendant with respect to the import of gold jewels and ornaments despatched from the plaintiff to Singapore. During October 2000, the consignment consisting of 22 carats of gold jewels weighing about 800 Kgs., was sent by the plaintiff to M/s.Adampur Distributors Private Limited,, from Singapore for Chennai. The consignment had also reached Chennai. The first defendant requested the plaintiff to change the name of the consignment from M/s.Adampur Distributors Private Limited, to

the name of the firm run by the second defendant. This transaction was supervised by the second defendant on behalf of the first defendant. The consignment sent by the plaintiff from Singapore to Chennai, was also cleared by the second defendant on behalf of the first defendant, arranged for payment of customs duty and imported gold ornaments amounting to Rs..32,21,151/- and took delivery of the entire jewels. The defendants have assured and undertook to pay the entire cost of gold ornaments amounting to Rs.3,39,15,064/-. When the plaintiff contacted the first defendant, it was informed that the first defendant paid to the second defendant a sum of Rs.15,20,383/- on 13.12.2000 and Rs.46,92,000/- on 24.04.2001 and in all, Rs.62,12,383/- was paid towards the cost of the gold ornaments. However, the plaintiff did not receive the amount either from the first defendant or from the second defendant. Therefore, both defendants are jointly and severally liable to pay the suit amount.

76. According to the plaintiff, the plaintiff had sent the gold weighing about 800 Kgs. of gold to the first defendant. The second defendant being an

employee of the first defendant, took delivery on behalf of the first defendant and delivered it to the first plaintiff. But there is no evidence/materials to show that the plaintiff sold the gold jewels to the first defendant. There is no evidence produced, except the consignment sent by the plaintiff to Adampur Distributors Private Limited. No other materials are produced to show that they have sold the jewels to first defendant and admittedly, the plaintiff and the first defendant are the sister concerns.

77. According to the plaintiff, they imported gold to India in the name of Adampur Distributors Private Limited. After the consignment reached India at the instance of the second defendant, the consignment address was changed and the same was in the name of the second defendant, who had taken delivery and handed over it to the first defendant.

78. According to the second defendant, he was running the Proprietorship concern and he was doing the business of importing the jewel boxes and pouches. The plaintiff wanted to open the show room in Chennai. In that way, he helped for purchasing the land. The second defendant had

rendered valuable service, for which, he was rewarded by giving jewels. All the airway-bills, tax and other evidence connected thereto, are only in the name of the second defendant, which clearly shows that the goods are meant only for the second defendant. Therefore, he need not pay for the amount, since it was a reward given to him. Since the second defendant handed over the gold to the first defendant for part payment and also paid the money as part consideration of gold, the first defendant has to pay the balance amount for which the second defendant filed the suit against the first defendant in C.S.No.280 of 2004 and the same is pending before this Court. Therefore, the second defendant has no obligation to pay the amount to the plaintiff, since all the documents have been with-held. The first defendant remained ex-parte in the suit (C.S.No.559 of 2004). The payment made by the first defendant to the second defendant is independent of sale consideration. Hence, it is only for the benefit of the second defendant.

79. According to the plaintiff, he sent the gold to the first defendant, which is none other than the sister concern of the plaintiff. The gold was sent

to the first defendant and since the second defendant was an employee of the first defendant, at the instance of the second defendant, they were asked to change the name of the consignment for getting delivery without any damages. Accordingly, the second defendant handed over the consignment to the first defendant and it is not the gold meant for the second defendant.

80. Admittedly, the second defendant is an employee of the first defendant and the first defendant remained ex-parte in these suits and the second defendant in C.S.No.559 of 2004 filed the suit in C.S.No.280 of 2004, in which, the first defendant has clearly given the explanation as to under what circumstances the second defendant's name was shown in the consignment bills and other related documents. The second defendant admitted that he was working as employee under the first defendant and he has not produced any document to show that the gold was distributed through the second defendant by the first defendant, as reward. However, the plaintiff himself admitted that the second defendant was one of the Directors of the Adampur Distributors Private Limited. In those circumstances, already the first defendant filed a suit

and also counter-claim. Since both the plaintiff and the first defendant are sister concerns, the first defendant remained ex-parte in C.S.No.559 of 2004. Admittedly, the second defendant has some role in the transactions, and he was given 0.01% share in the profit.

81. Therefore, under those circumstances, the amount of Rs.62,13,383/- cannot be treated as part-consideration of the gold. The plaintiff and the second defendant has not come to Court with clean hands. The actual transaction, actual involvement of the parties and actual role of the second defendant and the actual relationship between the plaintiff and defendants, are not shown in these suits, except certain facts regarding the relationship of employer-employee. The involvement of parties had not been disclosed correctly by both parties. Therefore, they have not come to Court with clean hands and the suit claim has to be treated as a consideration payable by the first defendant either to the plaintiff or to the benefit of the second defendant.

82. Admittedly, the plaintiff has stated that the first defendant is the sister concern of the plaintiff-Company and the parties had certain transactions

in Chennai. They wanted to open a show-room in Chennai and they have also purchased the land for the same and also established a show-room. The gold consignment was sent by the plaintiff in the name of Adampur Distributors Private Limited to Chennai from Singapore and during that time, the second defendant was an employee. The subject gold was sent by the plaintiff to the first defendant, which was taken by the second defendant. According to the plaintiff, the gold jewels were sent to the first defendant. But it is the stand of the second defendant that the same was given to the second defendant as a reward for the valuable service extended by him for the first defendant for establishing the show-room and also for helping in the consignment and due to the fact that he is also well-versed in the export and import of jewel boxes and pouches.

83. There are no clear materials to show that the plaintiff sold the gold consignment to the first defendant and the first defendant has to pay the amount to the plaintiff. However, the second defendant has taken a different stand that the gold that was given by the first defendant, is towards reward.

Since that gold was handed over to the first defendant as part consideration, which was paid by the first defendant to the second defendant. However, since the first defendant has already filed a suit for counter-claim in the earlier suit against the second defendant and that if at all the plaintiff was independent and the first defendant also had not stated in the written statement that the plaintiff-Company is a separate entity and the plaintiff sold the gold to the first defendant. He has also not taken a plea of non-joinder of necessary parties. No issue was also framed in that suit and the first defendant himself has filed the set-off and also taken a plea on the set-off and also the counter-claim in the very same claim made in the suit. In the above circumstances, this Court can infer that the first defendant has filed the suit through the plaintiff after the second defendant had filed the suit against the first defendant in C.S.No.280 of 2004 and subsequently, the plaintiff has filed the present suit in C.S.No.559 of 2004 in June 2004. After the second defendant has filed the present suit in C.S.No.559 of 2004, the plaintiff and first defendant colluded with each other and filed the present suit in C.S.No.559 of 2004 against the second defendant.

The first defendant remained ex-parte in C.S.No.559 of 2004.

84. The plaintiff is a Company incorporated in the Republic of Singapore. The plaintiff-Company is predominantly engaged in the business of the gold and diamond jewellery in Singapore and also engaged in the export of gold and diamond to various countries including India. During such business, the plaintiff also had business relationship with the first defendant which is dealing in sale of gold in Tamil Nadu at Chennai. Further, according to the plaintiff, he sold the gold to the first defendant, for which, he sent consignment and the second defendant as an employee, on behalf of the first defendant, had taken delivery. Though the sale was monitored by the second defendant, and by reason of management of the said sale, the second defendant became liable to pay the amount.

85. According to the plaintiff, he sold 80 Kgs. of gold to the first defendant. Though originally the consignment was sent to Adampur Distributors Private Limited, subsequently, at the request of the parties, the second defendant who was monitoring and acting on behalf of the first

defendant, had taken delivery of consignment and therefore, the air-bills and other related documents were changed in the name of the second defendant. The second defendant took delivery and handed over the gold to the first defendant, and therefore, the plaintiff came to know that the first defendant had paid Rs.62,12,383/- to the plaintiff, which actually was not paid.

86. Since the second defendant did not pay the said amount, notice was sent by the plaintiff to the defendants 1 and 2. Though the second defendant denied the same, he has stated that the gold was given by the second defendant by way of reward, but the first defendant stated that he has already paid the amount of Rs.62,12,383/- to the second defendant and he undertook to pay the balance amount and therefore, now the plaintiff has filed the suit for recovery of Rs.62,12,383/-.

87. According to the plaintiff, he sold the goods to the first defendant, but however, the first defendant has taken delivery through the second defendant, and he has not made payment and when they sent the notice, it was informed by the first defendant that they are liable to pay the suit

amount. However, on a reading of the plaint, it is otherwise. Now, the first defendant remained ex-parte in C.S.No.559 of 2004.

88. The suit gold was sold by the plaintiff to the first defendant. Though according to the plaintiff, he sold the gold to the first defendant and the consignment was sent in the name of Adampur Distributors Private Limited, subsequently, at the request of the second defendant, the same was changed in the name of the second defendant. The second defendant was an employee and he was acting on behalf of the plaintiff and therefore, except the consignment, no other document is produced to show that it was an outright sale.

89. According to the plaintiff, he sold the gold to the first defendant, which is a sister concern of the plaintiff and in all the pleadings, it is stated that the plaintiff sold the gold to the first defendant and the plaintiff has also taken the consignment, through the Adampur Distributors Private Limited, through the second defendant, an employee acting on behalf of the first defendant. Since the plaintiff has stated that on the undertaking given by the first

defendant, he has not filed the suit, and the amount was stated to have been paid by the first defendant to the second defendant. The second defendant has to pay the amount. If at all the plaintiff and the first defendant are different and the first defendant sold the gold for consideration, the amount is said to have been paid by the first defendant to the second defendant, and it did not reach the plaintiff, who ought to have filed the suit for the entire consideration. Since the suit in C.S.No.559 of 2004 is filed for recovery of Rs.62,12,383/-, jointly and severally liable to be paid to the plaintiff, this Court infers that the plaintiff has no independent claim against the second defendant, since the second defendant was only an employee. In the above circumstances, it can be stated that the plaintiff has filed the suit on behalf of the first defendant.

90. Though during the cross-examination and also during the course of arguments, the plaintiff's counsel has stated that the first defendant is the sister concern and even the first defendant, though remained ex-parte in the suit in C.S.No.559 of 2004, was shown as the sole defendant in C.S.No.280 of 2004. The written statement filed by the second defendant in the suit was

worded as sole defendant in the other suit in C.S.No.280 of 2004, in which they have filed the written statement and the first defendant as sole defendant in the other suit stating that the Proprietor of Mustafa Gold Mart is the Managing Director of the Singapore Company.

91. The plaintiff-Company sold the goods to the first defendant and at the request of the second defendant, the consignment was sent in the name of M/s.Nazia Exports in order to get easy delivery at the instance of the second defendant. The consignment, air-way bill(s) and the other documents issued, were changed, and therefore, all the documents issued in the name of he second defendant and the second defendant also took the delivery and handed over the gold to the first defendant. Taking advantage of the same, the second defendant, claiming ownership of the said gold, stated that the first defendant gifted the gold to the second defendant, as a reward. Since the first defendant has given the gold to the second defendant, the first defendant made part payment and therefore, for the balance amount, the suit in C.S.No.280 of 2004 is filed. According to the plaintiff, he sold the goods to the first defendant, who

has taken delivery at the instance of the Adampur Distributors Private Limited and since it is a Company and import can be done only with the Company in the name of the Company. The Adampur Distributors Private Limited was established by the first defendant for the purpose of import of gold and also dealing with all the customs clearance and other formalities. However, since the second defendant was an employee of the first defendant, he was acting on behalf of the first defendant, in order to avoid cumbersome procedure in taking delivery of the imported gold, the second defendant was asked to issue all the documents in the name of the Proprietary concern of the second defendant. Therefore, the first defendant has given the same. The first defendant also made part payment and which is meant to be sent to the plaintiff, and the second defendant did not pay the said amount. The first defendant has given an undertaking to the plaintiff for the balance amount, and the suit for recovery of the amount is filed by the plaintiff only for the balance amount against the first and second defendants.

92. There is no material to show that the plaintiff and the first defendant

are under the same management. The plaintiff himself stated that he sold the goods only to the first defendant, and not to the second defendant, and even the plaintiff himself stated that the second defendant was working as an employee under the first defendant. The first defendant remained ex-parte in the other suit in C.S.No.559 of 2004 and the plaintiff also stated that the second defendant is only an employee and in order to get the delivery of the imported goods, the document was issued in his name. In the above circumstances, there is no privity of contract between the plaintiff and the second defendant.

93. According to the plaintiff, he sold the goods to the first defendant and also sent the consignment at the request of the first defendant, initially in the name of the Adampur Distributors Private Limited, and subsequently, in the name of the Proprietary concern of the second defendant. It is not the case of the plaintiff that there is a contractual liability between the plaintiff and the second defendant. Since the plaintiff as well as the first defendant, had taken a stand in the other suit that the second defendant is only an employee of the

first defendant and he took delivery only on behalf of the first defendant and already, the first defendant has filed counter-claim in the earlier suit filed by the second defendant in C.S.No.280 of 2004, the present suit is not maintainable. Further, there is no privity of contract between the plaintiff and the second defendant, in respect of the claim made by the plaintiff and it is against the first defendant only.

94. Further, the suit in C.S.No.559 of 2004 is not barred by limitation. The consignment date is after the delivery date of first payment and therefore, the suit in C.S.No.280 of 2004 is not barred by limitation. The first defendant made payment to the second defendant i.e. on 29.04.2001. The suit is not filed by the second defendant, but by the plaintiff and therefore, the suit in C.S.No.559 of 2004 is barred by limitation.

95. When the consignment was received and it was started from that date, even assuming that the payment of the amount by the first defendant to the second defendant was on 21.04.2001, the suit should have been filed within three years and therefore, the suit in C.S.No.559 of 2004 is not filed in

time, and hence, it is barred by limitation.

96. All the issues framed in both the suits are answered in the above lines.

Additional issues in both the suits:

97. Since the additional issues are answered jointly, for ease of reference, the plaintiff in C.S.No.280 of 2004 will hereinafter be referred to as the 'plaintiff' and the plaintiff in C.S.No.559 of 2004 will be referred to as the defendant.

98. The plaintiff suppressed all the material facts and the transaction in respect of the consignment. The plaintiff was not the owner of the shipment. On a reading of the entire materials in both the suits, i.e., the plaint and the written statements in the suits, and perusing the evidence in both the suits, it is clear that the plaintiff has not come to the Court with clean hands. They have suppressed several material facts like the relationship and also the other transactions. Even in this case, the shipment was not in the name of the first defendant and the imported gold is not in the name of the first defendant and

admittedly, it was in the name of Adampur Distributors Private Limited and subsequently, and even admittedly, the name was transferred in the name of the second defendant. The plaintiff has weaved one story and the first defendant stated otherwise. On a perusal of the written statement and the evidence, both oral and documentary, on record, it is clear that none of the parties have given the correct facts. In this case, all the parties have not approached the Court with clean hands.

99. As far as the Power of Attorney is concerned, both the suits were filed in the year 2004 and the age of the Power of Attorney was mentioned as 22 years at that period of time. The defendants have not produced any material to show that at the time of delivery of consignment, the Power Agent was aged about 70 years and the document was not executed in India and it was only in Singapore. At the time of filing the suits, the age of the person was only 22 years and therefore, the additional issues are not much importance for being decided in the present suits.

99. On a perusal of the entire oral and documentary evidence,

admittedly, the subject matter of the consignment gold in both the suits, is one and the same and the transaction in both the suits is one and the same. The consignment was sent by the plaintiff from Singapore and the suits are filed within three years in the name of the first defendant/defendant. Admittedly, the consignment records are not in the name of the first defendant. Admittedly, the consignment was sent to M/s.Adampur Distributors Private Limited, which is a private limited company and which is utilised for the purpose of importing and export of gold ornaments of the first defendant. This is admitted. The consignment was originally in the name of Adampur Distributors Private Limited. Even admittedly, the second defendant was also made a Director of the said Company and the export of the consignment is exclusively made by the second defendant with respect of gold import and despatched by the plaintiff from Singapore. Therefore, none of the parties have expressed their actual facts and the actual relationship. Even the plaintiff stated that the goods were sent only to the first defendant and the first defendant said that the second defendant was engaged for dealing with the import and export and therefore, the documents were given in his name. The second defendant stated that he has done a lot of service to the first defendant, for which, the gold was given as reward, therefore, the second defendant is the owner of the goods. On a reading of the materials and facts and oral and documentary evidence, this Court finds that none of the parties have approached this Court with clean hands and not gave the actual facts and the actual terms.

100. According to the plaintiff, he was rewarded by the employer with the consignment of gold for the work done by him. It is his further contention that he was instrumental in zeroing on the land in the bustling locality in the city of Chennai for the purpose of establishing the jewellery show-room. Therefore, he justified that it was a gift given by his employer. This contention of the plaintiff is hard to be accepted. It is unbelievable that an employer has gifted his employee a whooping gold for the outstanding performance of the plaintiff. It is not the case of the plaintiff that similar gift was offered by the employer to some other employee in the jewellery show-room. Therefore, it is

too big a pill to be swallowed by the plaintiff to contend that his employer had gifted him the valuable gold. No prudent employer would offer his employee the price-worthy-gold, particularly for the so-called hard work done by the plaintiff. At this juncture, it is to be noted that if an employer offers such a valuable gift only to the plaintiff and not to the other employees in an organisation, it would only cause chaos in the administration of the organisation. Further-more, it is the undisputed admission on the part of the plaintiff that he was only an employee in the Company, for which he was also paid salary.

101. In the above facts and circumstances, the contention of the plaintiff with regard to the reward of gold by his employer, has to be rejected.

102. The decisions/citations relied on by the parties, are distinguishable on facts and hence, they are not applicable to the facts of the present case.

103. The issues/additional issues are answered in the above terms.

104. In the result, both the suits are dismissed. The counter-claim filed by the defendant in C.S.No.280 of 2004 praying to direct the set-off of the sum

of Rs.3,39,15,064/- against the sum claimed by the plaintiff, is allowed. The defendant is also entitled to a set-off, directing the plaintiff to pay a sum of Rs.4,01,27,447/- together with interest thereon at the rate of 12% per annum from the date of the counter-claim until the date of the decree, and thereafter, until the date of recovery. However, considering the facts and circumstances, the parties are directed to bear their own costs.

02.08.2024

Index: Yes/no

Speaking Order: Yes/no

Neutral Case citation: Yes/no

cs

List of witnesses examined on the side of plaintiff in C.S.No.559 of 2004:

P.W.1 Syed Abdul Kader

List of documents marked on the side of plaintiff in C.S.No.559 of 2004:

Exhibit	Description of documents
P-1	Series of certified copy of the invoices and packing lists dated 11.10.2000
P-2	Certified copy of the bill of entry dated 19.10.2000
P-3	Certified copy of the bill of entry dated 19.10.2000
P-4	Certified copy of the Bank statement of the first defendant dated 01.11.2000
P-5	Certified copy of the Fax message from the plaintiff to D2, dated 06.06.2001
P-6	Certified copy of the communications from the plaintiff to D2, dated 13.08.2001
P-7	Office copy of the legal notice dated 01.06.2004 issued to D1 and D2 along with two postal receipts
P-8	Acknowledgement card for D1 for the legal notice dated 01.06.2004
P-9	Original reply notice dated 16.06.2004 by D1
P-10	Certified copy of the communication by D2 to the plaintiff dated 01.02.2001
P-11	Certified copy of the communication by D2 to D1 dated 18.06.2001
P-12	Certified copy of the communication by D2 to D1 dated 17.08.2001
P-13	Original registered Power of Attorney dated 30.10.2019 executed in the name of Syed Abdul Kader
P-14	Acknowledgement card provided by the D2 for the legal

Exhibit	Description of documents
	notice dated 01.06.2004

List of witnesses examined on the side of defendants in C.S.No.559 of 2004:

D.W.1 Hassan Ali

List of documents marked on the side of defendants in C.S.No.559 of 2004:

Exhibit	Description of documents
D-1	Certified copy of the invoice and packing list dated 11.10.2000
D-2	Certified copy of the air way bill
D-3	Certified copy of the Income Tax Returns of the second defendant for the Assessment Year 1999-2000
D-4	Certified copy of the Bank Statement of the first defendant dated 05.06.1999
D-5	Original Bank Statement of the second defendant for the period from 01.04.2000 to 31.03.2001
D-6	Certified copy of the Application Form A & D reflecting 10% partnership
D-7	Original Hotel receipt of stay in London dated 25.11.2000
D-8	Extract copy of the Circular No.9 of RBI under FEMA Act of 1999 dated 24.08.2000

Exhibit	Description of documents
D-9	Series of the 12 numbers of receipts for Foreign Exchange
D-10	Original Certificate of Incorporation and Memorandum and Articles of Association of Adampur Distributors Private Limited
D-11	Photocopy of the Minutes of the meeting dated 08.03.2000
D-12	Photocopy of the Certificate of Registration of Adampur Distributors Pvt. Ltd., dated 11.04.2000
D-13	Ceeertified copy of the invoice raised by the second defendant to the first defendant dated 01.11.2000
D-14	Photocopy of the complaint given by Mustaf Pte. Ltd., against Nazia Exports dated 11.07.2001
D-15	Original notice from RBI dated 17.07.2001
D-16	Certified copy of the letter from the first defendant to the second defendant
D-17	Certified copy of the Assessment Order of the Commercial Tax Officer of the first defendant dated 08.11.2001
D-18	Certified copy of the Income Tax Assessment Order of Nazia Exports dated 23.01.2003
D-19	Photocopy of the notice from Assistant Commissioner of Income Tax and reply filed by the second defendant dated 29.10.2003
D-20	Certified coy of the reply received from RBI against the complaint of the plaintiff to the second defendant dated 09.03.2002
D-21	Office copy of the legal notice from the plaintiff to the second defendant dated 01.07.2004

Exhibit	Description of documents
D-22	Original Search Report of Adampur Distributors Pvt. Ltd.
D-23	Certified copy of the notice issued to the first defendant and reply filed by the first defendant dated 21.03.2005
D-24	Certified copy of the order copy of the XIth Magistrate Court in C.S.No.10176 of 2008 dated 31.07.2015
D-25	Certified true copy of the order of the Income Tax Appellate Tribunal on the second defendant, dated 27.06.2008
D-26	Served copy of the proof oaffidavit of Minathullah filed in C.S.No.280 of 2004
D-27	Print out of the article published in Singapore Daily against Mr.Mushtaq Ahemd dated 16.07.2018
D-28	Print out of the article published in Singapore Daily against Mr.Mushtaq Ahmed dated 14.10.2020

List of witnesses examined on the side of the plaintiff in C.S.No.280 of 2004:

P.W.1 Mr.Hassan Ali

List of documents marked on the side of the plaintiff in C.S.No.280 of 2004:

Exhibit	Description of documents
P-1	Airway Bill dated 12.10.2000
P-2	Delivery challan dated 19.10.2000 issued by the

Exhibit	Description of documents
	plaintiff
P-3	Invoice dated 01.11.2000 issued by the plaintiff
P-4	Certified copy of the authorisation given by the defendant to the plaintiff
P-5	Letter dated 07.12.2000 sent by the plaintiff to the defendant
P-6	Letter dated 01.02.2001 sent by the plaintiff to the defendant
P-7	Letter dated 07.02.2001 sent by the plaintiff to the defendant
P-8	Certified copy of the notice dated 14.02.2001 received from Commercial Tax Officer
P-9	Letter dated 17.02.2001 sent by the plaintiff to the defendant
P-10	Letter dated 02.05.2001 sent by the plaintiff to the defendant
P-11	Letter dated 04.06.2001 issued by the defendant to the plaintiff
P-12	Letter dated 06.06.2001 by the Mustafa Private Limited to the plaintiff
P-13	Letter dated 07.06.2001 sent by the plaintiff to the defendant
P-14	Registered air mail dated 09.06.2001 by the plaintiff to the defendant
P-15	Letter dated 12.06.2001 issued by the defendant to the plaintiff
P-16	Letter dated 18.06.2001 issued by the plaintiff to the defendant

Exhibit	Description of documents
P-17	Letter dated 25.06.2001 sent by the plaintiff to the defendant
P-18	Letter dated 17.08.2001 sent by the plaintiff to the defendant
P-19	Letter dated 25.08.2001 issued by the defendant to the plaintiff
P-20	Letter dated 29.08.2001 sent by the plaintiff to the defendant
P-21	Letter dated 10.11.2003 sent by the plaintiff to the defendant
P-22	series (5 Nos.) are the orders placed by Singapore Company on 03.09.1997, 20.03.1998, 02.11.1999 and 14.01.1999
P-23	(series) (page Nos.1 to 50) are the certified copies of bill of lading and shipping bills in respect of supplies made to Singapore Company
P-24	Statement of account of the plaintiff maintained in Karur Vysia Bank
P-25	Statement of Account of the defendant in Bank of India
P-26	(series) (3 Nos.) are three copies of total income of return for the plaintiff for the financial year 1999, 2000 and 2001
P-27	Custom duty paid challan dated 19.10.2000
P-28	Bill of entry dated 19.10.2000
P-29	Clearing agent invoice dated 19.10.2000
P-30	Eighteen copies of special import licenses
P-31	Notice of sale tax dated 01.03.2001

Exhibit	Description of documents
P-32	(series) (2 Nos.) are the assessment order copies
P-33	Assessment order copies of income tax department
P-34	Original invoice and packing list sent by Singapore Company
P-35	Photocpy of the cheque dated 13.12.2000 given by the plaintiff towards payment of sale tax
P-36	Copy of the article on web-site
P-37	Letter dated 16.08.2004 received by the plaintiff from the defendant
P-38	Letter sent by the plaintiff to the Assistant Commissioner of Income Tax
P-39	Letter received from the Assistant Commissioner of Income Tax by the defendant
P-40	Letter from the defendant to the Assistant Commissioner of Income Tax
P-41	Application for registrartion to change the Proprietorship
P-42	Letter received from RBI, Chennai
P-43	Auditor letter sent to the plaintiff attached with postal cover
P-44	Certified copy of the complaint filed in C.C.No.10176 of 2008 on the file of XI Metropolitan Magistrate, Saidapet
P-45	Photocopy of the deed of dissolution
P-46	Photocopy of the day-to-day cash book maintained by the defendant

List of witnesses marked on the side of the defendant in C.S.No.280 of 2004

D.W.1 Mr.Minnathullah

D.W.2 Mr.M.Kamal Pasha

List of documents marked on the side of the defendant in C.S.No.280 of 2004

Exhibit	Description of document
D-1	Authorisation Letter dated 02.07.2018
D-2	Copy of invoice No.786-11/00 raised by Mustafa's PTE Ltd. against Adampur Distributors Pvt. Ltd., dated 11.10.2000
D-3	Copy of the Invoice No.786-11/00 raised by Mustafa's PTE Ltd., aghainst the plaintiff dated 11.10.2000
D-4	Original voucher passed by the plaintiff for the customs duty, dated 16.10.2000
D-5	Copy of Delivery Challan of the plaintiff provided to the defendant, dated 19.10.2000
D-6	Actual invoice raised b y Nazia Exports as against the defendant dated 01.11.2000
D-7	Payroll register for the period ending 31.10.2000
D-8	Original voucher series signed by the plaintiff for the receipt of salaryfrom Adampur Distributors Pvt. Ltd.
D-9	Bank Statements of the Adampur Distributors Pvt. Ltd., Bank of India, Usman Road Branch, depicting the transfser of salary in favour of the plaintiff, for the period 01.04.2000 to 31.12.2000

Exhibit	Description of document
D-10	Original letter by Fax from Mustafa's PTE Ltd., to the plaintiff dated 19.06.2001
D-11	Original letter by plaintiff to Mustafa's PTE Ltd., dated 23.06.2001
D-12	Minutes of meeting of the Board of Directors of Adampur Directors of Adampur Distributoes Pvt. Ltd., dated 12.07.2001
D-13	Office copy of letter sent by Mustafa's PTE Ltd., to plaintiff dated 02.08.2001
D-14	Original letter sent by the plaintiff to the defendant dated 10.08.2001
D-15	Office copy of letter sent by Mustafa's PTE Ltd. to plaintiff dated 13.08.2001
D-16	Copy of reply with receipt to the letter daed 10.08.2001 sent by defendant to the plaintiff dated 16.08.2001
D-17	Original employee movement report of the defendnt dated 29.01.2002
D-18	Legal notice issued by the Mustafa's PTE Ltd. to the counter claimant and plaintiff, dated 01.06.2004
D-19	Reply notice to the legal notice given by the counter claimant to the Mustafa's PTE Ltd., dated 16.06.2004
D-20	Series of pay advice receipts of the defendant proprietorship for the salary paid to the plaintff

02.08.2024

cs

P.VELMURUGAN, J

cs

Pre-delivery Judgment in

C.S.Nos.559 and 280 of 2004

Judgment Delivered on : 02.08.2024