



C.S. (Comm.Div.) No.58 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. (Comm.Div.) No.58 of 2022

M/s.Sinto Bharat Manufacturing Pvt. Ltd.,
represented by its Authorised Signatory
Arjun Bagri

.. Plaintiff

-VS-

1.M/s.Abhijeet Metalics,
a Partnership Firm,
represented herein by its Partners
Abhijeet D.Patil and D.D.Patil

2.D.D.Patil

3.Abhijeet D.Patil

.. Defendants

Plaint filed under Order VII, Rule 1 of Code of Civil Procedure, 1908 read with Order IV, Rule 1 of the Original Side Rules to pass a judgment and decree jointly and severally against the defendants herein by directing them to pay to the plaintiff:

a)a sum of Rs.1,87,81,578/- (Rupees One Crore Eighty Seven Lakhs Eighty One thousand Five Hundred and Seventy Eight only) together with interest at 18% per annum on Rs.1,11,00,000/- (Rupees One Crore Eleven Lakhs only) from the date of plaint till date of recovery of the entire decree amount;



(b)for the costs of this suit.

(amended as per order dated 14.10.2024 in A.No.4535 of 2024)

WEB COPY

For Plaintiff : Mr.S.Raghunathan

For Defendants : Exparte

JUDGMENT

This suit was originally filed for recovery of a sum of Rs.2,03,81,578/- (Rupees Two Crores Three Lakhs Eighty One Thousand Five Hundred and Seventy Eight only) together with interest at 18% per annum on Rs.1,11,00,000/- (Rupees One Crore Eleven Lakhs only) from the date of plaint till the date of payment and for costs of the suit.

2.This suit has been filed on the ground that the defendants had placed order with the plaintiff for purchase of certain equipments, but, had not taken delivery of the same from the plaintiff despite several assurances. The plaintiff, in the plaint, has referred to various communications sent by the defendants to the plaintiff assuring that payments will be made to the plaintiff. According to the plaintiff, the equipments sold to the defendants, were customised only for the utility of the defendants and therefore, the same cannot be sold to third parties in the event of the defendants failing to



take delivery of the equipments from the plaintiff. The equipments made ready for the defendants by the plaintiff were based on the purchase orders, placed by the defendants on the plaintiff.

3.After filing the suit, in order to mitigate the loss of the plaintiff, the plaintiff filed A.No.6601 of 2023 seeking for appointment of an Advocate Commissioner to inspect the customised equipments, lying in the plaintiff's premises, situated at No.204, Kolambakkam Village, GST Road, (NH 45) Madhurantakam Taluk, Kancheepuram District, Tamil Nadu 603 307, which were purchased by the defendants, but not taken delivery.

4.The defendants had filed a written statement in the main suit, but, thereafter, they were set exparte since their counsel on record reported no instructions and thereafter the defendants failed to appear.

5.This Court, in order to mitigate the loss of the plaintiff, had also appointed an Advocate Commissioner through its order dated 13.12.2023 in A.No.6601 of 2023 to inspect the equipments lying in the plaintiff's premises and submit a report before this Court after inspection. As directed



WEB COPY

by this Court, the Advocate Commissioner submitted a report along with the enclosures after he had inspected the equipments, which were lying in the plaintiff's premises. Even after the Advocate Commissioner had conducted an inspection in respect of the equipments lying in the plaintiff's premises, the defendants failed to defend the suit. Therefore, this Court by its order dated 15.02.2024, was constrained to appoint another Advocate Commissioner to sell the equipments lying in the plaintiff's premises in accordance with the terms and conditions of sale approved by this Court to mitigate the loss of the plaintiff. In accordance with the directions given by this Court on 15.02.2024, the Advocate Commissioner sold the equipments lying in the plaintiff's premises in "as is where is" condition for a total sale consideration of Rs.16,00,000/- to the successful bidder and the sale was also confirmed by this Court thereafter.

6. After the sale proceeds were realised by the plaintiff towards part satisfaction of the suit claim, the plaintiff had filed an amendment application to amend the suit claim in view of the fact that the plaintiff was able to recover a sum of Rs.16,00,000/- subsequent to the filing of the suit. The amendment application also came to be allowed by this Court and the



plaint was amended accordingly. Now, the suit claim of the plaintiff against the defendants is Rs.1,87,81,578/- (Rupees One Crore Eighty Seven Lakhs Eighty One thousand Five Hundred and Seventy Eight only) together with interest at 18% per annum from the date of plaint till the date of realisation and for costs of the suit.

7.The plaintiff's Authorised Signatory Mr.Arjun Bagri was examined as their witness (P.W.1). He has also filed proof affidavit reiterating the amended plaint averments. Through P.W.1, the following documents were marked as Exs.P1 to P26:

Ex.P1 is the office copy of the quotation issued by the plaintiff to the first defendant dated 02.01.2017.

Ex.P2 is the photocopy of the purchase order bearing No.SBML/01/17-18 issued by the first defendant to the plaintiff dated 07.11.2017.

Ex.P3 is the printout of the statement of account reflecting the part payments made by the first defendant to the plaintiff's bank account for the period 01.02.2018 to 03.03.2018.

Ex.P4 is the printout of the email sent by the first defendant to the plaintiff dated 15.05.2018.

Ex.P5 is the printout of the email sent by the plaintiff to the first defendant dated 29.10.2018.

Ex.P6 is the printout of the email sent by the plaintiff to the first defendant dated 14.01.2019.



Ex.P7 is the printout of the email sent by the plaintiff to the first defendant dated 04.02.2019.

Ex.P8 is the photocopy of the amended purchase order issued by the first defendant dated 27.02.2019.

Ex.P9 is the printout of the email sent by the first defendant to the plaintiff dated 03.05.2019.

Ex.P10 is the printout of the email sent by the first defendant to the plaintiff dated 21.05.2019.

Ex.P11 is the printout of the email sent by the first defendant to the plaintiff dated 21.08.2019.

Ex.P12 is the printout of the minutes of the meeting between the plaintiff and the first defendant dated 27.12.2019.

Ex.P13 is the printout of the email sent by the first defendant to the plaintiff dated 28.02.2020.

Ex.P14 is the printout of the email sent by the plaintiff to the first defendant dated 05.03.2020.

Ex.P15 is the printout of the email sent by the first defendant to the plaintiff dated 06.03.2020.

Ex.P16 is the printout of the email sent by the plaintiff to the first defendant dated 17.05.2020.

Ex.P17 is the printout of the email sent by the first defendant to the plaintiff dated 21.06.2020.

Ex.P18 is the printout of the email sent by the first defendant to the plaintiff dated 18.07.2020.

Ex.P19 is the printout of the email sent by the plaintiff to the first defendant dated 23.11.2020.



Ex.P20 is the printout of the email sent by the plaintiff to the first defendant dated 01.02.2021.

Ex.P21 is the printout of the email sent by the first defendant to the plaintiff dated 02.02.2021.

Ex.P22 is the printout of the email sent by the plaintiff to the first defendant along with the invoice dated 31.03.2021.

Ex.P23 is the office copy of the notice issued by the plaintiff's counsel to the defendants dated 10.12.2021.

Ex.P24 is the original reply received from the defendants' counsel dated 29.12.2021.

Ex.P25 is the true copy of the statement of accounts dated 17.03.2022.

Ex.P26 is the photocopy of the board resolution dated 22.02.2022.

8.As seen from the documents marked as exhibits on the side of the plaintiff, it is clear that there is a binding contractual relationship between the plaintiff and the first defendant. The first defendant had requested the plaintiff for a quotation for the manufacture and supply of the equipments, which is evidenced by Ex.P1. Thereafter, a purchase order was placed by the first defendant on the plaintiff on 07.11.2017 (Ex.P2) for the supply of equipments. The defendants had also approved the preliminary drawings sent by the plaintiff on 27.02.2017, which has to be read in conjunction with the purchase order dated 07.11.2017/Ex.P2. In accordance with the purchase



WEB COPY



order, the defendants have also made a part payment towards the purchase value and they had also agreed to adhere to the terms and conditions of the purchase order. The first defendant has approved the plaintiff's detailed Engineering Drawings and specifications through their email dated 15.05.2018, which has been marked as Ex.P4. Therefore, it is clear that the defendants have formally accepted the technical specifications of the equipments supplied by the plaintiff.

9.Subsequently, the defendants wanted to amend the purchase order, which was agreed upon by the plaintiff as seen from the amended purchase order dated 27.02.2019, which has been marked as Ex.P8. The plaintiff, based on the amended purchase order dated 27.02.2019 (Ex.P8) recommenced manufacturing the equipments in and around March 2019 and upon doing so, informed the first defendant about the same and requested the defendants to come over and inspect the equipments at the plaintiff's premises.

10.The email of the first defendant dated 21.08.2019 has been sent to the plaintiff. Ex.P11 would further establish that the plaintiff had complied



with its obligations in terms of the amended purchase order and the defendants had acknowledged the plaintiff's fulfillment of its obligations outlined in the said purchase order.

11.As seen from the documents marked as Exhibits as well as from the pleadings made in the plaint as well the admission made by the defendants in their written statement, it is clear that the defendants, having purchased the equipments from the plaintiff tailor made for them, had failed to take delivery of the same and also failed to make payments to the plaintiff for the value of the equipments. The Exhibits marked on the side of the plaintiff also would confirm that the defendants had expressed financial difficulty in making payments to the plaintiff. In addition to the same, judicial notice also can be taken note of the fact that despite filing of the written statement and despite the fact that an Advocate Commissioner appointed by this Court sold the equipments through orders passed by this Court, the defendants having chosen not to defend the suit, will clearly reveal that they are not in a position to pay the outstanding dues of the plaintiff.



WEB COPY

12.The plaintiff filed documents, which are marked as Exs.P14 and P15, which will reveal that the defendants have admitted their liability to the plaintiff. As seen from Exs.P20, 22 and 24, a time limit has been given by the plaintiff to the defendants to make the outstanding payments. The various acts of omission on the part of the defendants as seen from the Exhibits marked on the side of the plaintiff, will collectively establish a clear breach on the part of the defendants of both the contractual terms as well as the terms that the defendants had of their own accord revised. The plaintiff, on account of the breach of contract, committed by the defendants, is entitled to be compensated as claimed in the suit under Section 73 of the Indian Contract Act.

13.The defences raised in the written statement are moon shine and they have been raised only for the purpose of delaying the inevitable. Since the defendants have remained exparte subsequent to the filing of the written statement, there is also no necessity for this Court to give its finding with regard to the defences raised by the defendants in their written statement as they are not supported by any evidence. The documents filed on the side of the plaintiff, which have been marked as exhibits, conclusively prove that



WEB COPY

the plaintiff is entitled for the suit claim. After adjustment of a sum of Rs.16,00,000/- recovered by the plaintiff from and out of the sale proceeds received pursuant to the sale of the equipments by the Advocate Commissioner appointed by this Court, still there is a sum of Rs.1,11,00,000/- due and payable by the defendants jointly and severally to the plaintiff towards the principal amount.

14.In view of the delay in payment of the outstanding amount due to the plaintiff and being a commercial transaction, the plaintiff is also entitled to claim interest at the rate of 18% per annum being a commercial transaction from the defendants.

15.The first defendant being a partnership firm and the second and third defendants being the partners of the first defendant are jointly and severally liable to pay the suit claim to the plaintiff.



C.S. (Comm.Div.) No.58 of 2024

WEB COPY

16. For the aforesaid reasons, the suit claim is proved by the plaintiff.

Accordingly, this suit is decreed as prayed for with costs.

07.11.2024

vga



List of Witness examined on the side of the Plaintiff:-

Mr.Arjun Bagri (PW1)

List of Exhibits marked on the side of the Plaintiff:-

Ex.P1 is the office copy of the quotation issued by the plaintiff to the first defendant dated 02.01.2017.

Ex.P2 is the photocopy of the purchase order bearing No.SBML/01/17-18 issued by the first defendant to the plaintiff dated 07.11.2017.

Ex.P3 is the printout of the statement of account reflecting the part payments made by the first defendant to the plaintiff's bank account for the period 01.02.2018 to 03.03.2018.

Ex.P4 is the printout of the email sent by the first defendant to the plaintiff dated 15.05.2018.

Ex.P5 is the printout of the email sent by the plaintiff to the first defendant dated 29.10.2018.

Ex.P6 is the printout of the email sent by the plaintiff to the first defendant dated 14.01.2019.

Ex.P7 is the printout of the email sent by the plaintiff to the first defendant dated 04.02.2019.

Ex.P8 is the photocopy of the amended purchase order issued by the first defendant dated 27.02.2019.

Ex.P9 is the printout of the email sent by the first defendant to the plaintiff dated 03.05.2019.

Ex.P10 is the printout of the email sent by the first defendant to the plaintiff dated 21.05.2019.



Ex.P11 is the printout of the email sent by the first defendant to the plaintiff dated 21.08.2019.

Ex.P12 is the printout of the minutes of the meeting between the plaintiff and the first defendant dated 27.12.2019.

Ex.P13 is the printout of the email sent by the first defendant to the plaintiff dated 28.02.2020.

Ex.P14 is the printout of the email sent by the plaintiff to the first defendant dated 05.03.2020.

Ex.P15 is the printout of the email sent by the first defendant to the plaintiff dated 06.03.2020.

Ex.P16 is the printout of the email sent by the plaintiff to the first defendant dated 17.05.2020.

Ex.P17 is the printout of the email sent by the first defendant to the plaintiff dated 21.06.2020.

Ex.P18 is the printout of the email sent by the first defendant to the plaintiff dated 18.07.2020.

Ex.P19 is the printout of the email sent by the plaintiff to the first defendant dated 23.11.2020.

Ex.P20 is the printout of the email sent by the plaintiff to the first defendant dated 01.02.2021.

Ex.P21 is the printout of the email sent by the first defendant to the plaintiff dated 02.02.2021.

Ex.P22 is the printout of the email sent by the plaintiff to the first defendant along with the invoice dated 31.03.2021.

Ex.P23 is the office copy of the notice issued by the plaintiff's counsel to the defendants dated 10.12.2021.



C.S. (Comm.Div.) No.58 of 2021

Ex.P24 is the original reply received from the defendants' counsel dated 29.12.2021.

WEB COPY

Ex.P25 is the true copy of the statement of accounts dated 17.03.2022.

Ex.P26 is the photocopy of the board resolution dated 22.02.2022.

07.11.2024

vga



WEB COPY



C.S. (Comm.Div.) No.58 of 2022

ABDUL QUDDHOSE, J.

vga

C.S. (Comm.Div.) No.58 of 2022

07.11.2024