IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

Appeal Suit No. 468 of 2019
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1. Liberty Leather
   Represented by its Proprietor E.S.Gopi,
   91/B, 1 & 2 Phase II,
   Sidco Industrial Complex,
   Sipcot Ranipet - 632 403.

2. E.S. Gopi, Proprietor,
   Liberty Leathers,
   91/B, 1 & 2 Phase II,
   Sidco Industrial Complex,
   Sipcot Ranipet - 632 403. ..Appellants

Versus

1. M/s.Indpelkemica,
   5/733, MBT Road,
   Bharathi Nagar, Ranipet - 632 403,
   Vellore District,
   Authorized Agent of SESN STRADA VOLPIANO,
   119/123 - 10040, LEINI (TO) ITALY
   A Partnership Firm,
   Rep.by its Partner S.Palanivel.

2. The Senior Manager,
   Bank of Baroda,
   PB 440, No.120/2, Long Bazzar,
   Vellore - 632 044. ..Respondents

Appeal Suit is filed under Section 96 of the Civil Procedure Code against the decree and judgment dated 01.08.2018 in O.S. No. 35 of 2016 on the file of the II Additional District Judge, Vellore at Ranipet.

For Appellants	: Mr. N. Ramesh
For Respondent No.1	: Mr. P. Senthil Dhandapani
For Respondent No.2	: Notice served - No appearance

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JUDGMENT

*(Judgment of the Court was delivered by **J.NISHA BANU, J**)*

The defendants 1 and 2 in O.S. No. 35 of 2016 on the file of the II Additional District Judge, Vellore @ Ranipet are the appellants in this Appeal. They are aggrieved by the judgment dated 01.08.2018 passed in O.S.No.35 of 2016 directing payment of Rs.35,53,068/- together with interest at 12% per annum on Rs.27,17,000/- from the date of plaint till date of decree and judgment and thereafter at 6% per annum till the date of realization.

2. For the sake of convenience, the parties shall be referred to as 'plaintiff' and defendants' as has been arrayed in the suit.

3. The first respondent herein, who is the plaintiff has instituted the suit in O.S.No.35 of 2016 under Order 37 Rule 1 and 2 of the Code of Civil Procedure. In other words, the suit was filed as a summary suit. According to the plaintiff, Sesn Volpiano 119/123-10040 Leini (To) Italy is the manufacturer and seller of leather chemicals and they are supplied through the plaintiff as their Authorized Agent. It is further stated that the plaintiff was appointed by the Principal through a letter dated 01.04.2012, in which, the duties and responsibilities of the plaintiff are mentioned. According to the plaintiff, during the period from August, 2012, supplies have been made to the defendants 1 and 2 on their request through various invoices. The transaction between the plaintiff and the defendants 1 and 2 is such that as and when the defendants 1 and 2 place orders to the plaintiff, the plaintiff forwards it to the Principal at Italy. In this fashion, the defendants 1 and 2 placed orders through the plaintiff and the Principal supplied tannery/leather goods to the defendants 1 and 2. As per the invoice, the mode of payment is delivery against admission, whereby the defendants 1 and 2 can get the invoice from the third defendant bank and they admitted to pay the amount within a particular period. The defendants 1 and 2 have also given a specific undertaking to the third defendant bank to pay the amount by availing facilities offered by the plaintiff. The defendants 1 and 2 ought to have paid and cleared the invoices from the third defendant Bank,

then and there, however, they have committed default. The Principal of the plaintiff as well as the plaintiff have sent numerous reminders to the defendants 1 and 2, but they failed and neglected to respond to those communications. As on date of filing the suit, the total amount due and payable to the plaintiff by the defendants 1 and 2 is EURO 35731.2 and in terms of Indian Rupees, it will be at Rs.34,53,068/- as per the conversion rate prevailed as on 08.12.2014 at 76.04 per EURO. Above all, it was submitted by the plaintiff that the defendants 1 and 2 have become bankrupt and they have been indebted in the business. Some of the properties of the defendants 1 and 2 have been attached by various borrowers and some of the banks also initiated SARFAESI proceedings against the defendants 1 and 2. Therefore, the plaintiff submitted that the institution of the suit to recover the money has become necessary. Accordingly, the suit was filed by the plaintiff.

4. On receipt of the summons in the suit, the defendants 1 and 2 have filed an application seeking leave to defend the suit. In the said application, it was contented by the defendants 1 and 2 that the suit filed by the plaintiff under Order 37 Rule 1 and 2 C.P.C is not maintainable. It is also the specific defence of the defendants 1 and 2 that they have not given any undertaking for payment of Invoice Nos.352, 446 and 502 for total sum of EURO 35,731.20.

According to the defendants 1 and 2, the plaintiff has no *locus standi* to institute the suit and if at all, the Principal in Italy has to file the suit. On perusal of the Agency Agreement, it is seen that it is not in the form of either under the subrogation or under the provision contemplated under the Power of Attorney Act. The self styled agency agreement could neither be treated as Power of Attorney nor in the form of agreement. In the absence of any legal authority conferred to the plaintiff by the Principal, the institution of the suit itself is not proper. The defendants 1 and 2 have also submitted that the plaintiff failed to prove their right to claim the suit amount. It is not known as to how the suit can be instituted without proper bilateral contract between the Principal of the plaintiff and the plaintiff. In the absence of the same, the present suit structure itself is liable to be rejected. In the said application, the defendants 1 and 2 have referred to the application filed under Order 7 Rule 11 (d) of C.P.C to reject the plaint and it was dismissed by the trial Court on 11.01.2017. According to the defendants 1 and 2, they have also filed an appeal before this Court challenging the order dated 11.01.2017. It was also stated that the provisions under Order 37 Rule Rule 1 and 2 will not get attracted in the present suit in view of the application filed by the defendants 1 and 2 to reject the plaint under Order 7 Rule 11 C.P.C. In any event, as there are several disputed facts, it is just and necessary that leave has to be granted to the defendants 1 and 2 to enable them to bring certain facts, which are absolutely and necessary for adjudication of the present suit. Accordingly, the defendants 1 and 2 have sought for granting leave to defend the suit in O.S.No.35 of 2016 filed by the plaintiff.

5. Before the trial Court, on behalf of the plaintiff, Ex.A1 to Ex.A10 were marked. On behalf of the defendants 1 and 2, neither any witness was examined nor any document was marked. The trial court, after hearing the learned counsel for the plaintiff and the defendants 1 and 2 and as well as the third defendant Bank decreed the suit filed by the plaintiff. The trial Court, by the decree and judgment dated 01.08.2018 not only decreed the suit filed by the plaintiff but also dismissed I.A.No.169 of 2016 and I.A.No.10 of 2017 filed by the defendants 1 and 2 seeking leave to defend the suit. As far as the suit filed by the plaintiff is concerned, the trial Court, on assessing the documentary evidence come to the conclusion that the plaintiff has established their case and proved the suit claim by way of documentary evidence. Consequently, it was held that the plaintiff is entitled to the suit claim and accordingly, the suit was decreed with costs.

6. Assailing the decree and judgment passed by the trial Court, the present Appeal has been filed by the defendants 1 and 2. It is contended by the learned counsel for the appellants that there is no contract between the Principal of the plaintiff and the plaintiff. The chemicals have been supplied only by the Principal from Italy directly to the defendants 1 and 2 while so the suit ought to have filed by the Principal having their office at Italy and not the plaintiff. Even according to the Agency Agreement dated 01.04.2012, the plaintiff was appointed only as Distributor for a period of 5 years from 2012. But, this agreement is not properly stamped and adjudicated as required under law. Even though the defendants 1 and 2 disputed the quantity of chemicals supplied and also their liability to pay the amount, the trial Court erroneously decreed the suit filed by the plaintiff.

7. The learned counsel for the appellant/defendants 1 and 2 further submitted that the suit is not based on a dishonoured cheque or a written agreement containing the liquidated amount, but it was filed on the ground that the goods are supplied, invoices were raised, but, the bills are not paid. The suit under Order 37 Rule 1 and 2 C.P.C will lie only if the suit is based on a dishonoured cheque or an amount, claimed as a liquidated amount. The suit claim made by the plaintiff is not a liquidated amount payable under any

agreement, therefore, the suit itself is not maintainable and it is liable only for dismissal. In this context, the learned counsel for the appellant placed reliance on the judgment in the case of ***IFCI Factors Ltd. Vs. Maven Industried Ltd. & Ors. 225 (2015) DLT 32*** and submitted that there are triable issues in the suit for adjudication, however, by discarding those issues, the trial Court simply decreed the suit with costs. According to the learned counsel, If there are triable issues and a doubt is left with the trial Judge about the defendant's good faith or the genuineness of the triable issues, it ought to have granted leave instead of ousting the appellant from putting forth their defence. Accordingly, the learned counsel for the appellants/defendants 1 and 2 prayed for allowing this Appeal.

8. Per contra, the learned counsel for the first respondent/plaintiff would submit that the application filed by the defendants 1 and 2 seeking leave has been dismissed by the trial Court. As against the same, the defendants 1 and 2 have not filed any appeal and it has become final. Even though the defendants 1 and 2 raised the plea that there is no legal contract between the Principal of the plaintiff and the plaintiff, the learned counsel for the first respondent/plaintiff invited the attention of this Court to the Agency Appointment Letter dated 01.04.2017, wherein it is clearly stated that the

plaintiff is the Authorized Distributor in India for sales and service of complete range of Chemicals to factories and enterprises owned by the government, private & public companies in India. When such a clear and categorical mention is made in the Distribution Agreement, the defence put forth by the defendants 1 and 2 as though the plaintiff is not entitled to institute the suit cannot be countenanced. The Agency Agreement Letter dated 01.04.2012 has been filed before the Court below as Ex.P3. The invoices evidencing the supply of chemicals to the defendants 1 and 2 have been marked as Ex.A5, Ex.A6 and Ex.A7. It is not the case of the defendants 1 and 2 that they have not received the supply effected by the plaintiff. While so, it is the duty to pay the amount claimed by the plaintiff in the suit. The trial Court, taking note of the fact that there is no dispute involved in the matter of orders placed by the defendants 1 and 2, invoices raised by the plaintiff and the consequential supply effected, has rightly decreed the suit with costs. It is also stated that the defendants did not pay the amounts covered in the invoices raised during the year 2012 and now more than a decade has passed. By virtue of non-payment of the amount by the defendants 1 and 2, the plaintiff has been put to irreparable business loss. Therefore, the learned counsel for the plaintiff prayed for dismissal of the appeal and for confirmation of the decree and judgment passed by the trial Court.

9. Heard the learned counsel appearing for the appellants/defendants 1 and 2 and the learned counsel appearing for the first respondent/plaintiff. There is no representation for the third respondent/bank. We have perused the materials placed on record.

10. Admittedly, the plaintiff has instituted the suit under Order 37 Rule 1 and 2 C.P.C. by contending that the defendants 1 and 2 have received the supply of goods/materials from the plaintiff, but did not make the payment. The defendants 1 and 2 have also give undertaking before the third defendant to the effect that they will effect payment towards the supply of the goods in due course. This was not denied or disputed by the appellants/ defendants 1 and 2 even before us. What is sought to be contended is that the plaintiff has no *locus standi* to institute the suit and if at all, the suit ought to have been filed by the Principal carrying business at Italy. This submission of the learned counsel for the appellants/defendants 1 and 2 cannot be countenanced. The plaintiff has marked Ex.A3, Agency Agreement, before the trial Court to show that the they are the Authorized Distributors for effecting supply for and on behalf of the Principal at Italy. The plaintiff was also authorized to effect the supply of the goods throughout the territory of India. While so, it is futile on

the part of the defendants 1 and 2 to contend that the suit instituted by the plaintiff, as such, is not maintainable. In any event, the applications filed by the defendants 1 and 2 seeking to grant leave has been dismissed by the trial Court. As against the order of dismissal, dismissing the application seeking leave to defend, the defendants 1 and 2 have not chosen to prefer any appeal. However, the present appeal has been filed only as against the decree and judgment passed in the suit filed by the plaintiff for recovery of money. As rightly pointed by the learned counsel for the first respondent/plaintiff, the defendants did not dispute or deny that they have received the supplies of chemicals effected by the plaintiff. Having received the supply, which are duly covered by invoices raised the plaintiff, it is bounden duty of the defendants 1 and 2 to make the payment. It is also not the case of the defendants 1 and 2 that they have already made the payment and in spite of the same, excess amount is sought to be recovered by the plaintiff. Thus, the contentions raised in the present appeal are purely on technicalities which cannot be countenanced by this Court. The defendants 1 and 2, having received the supplies effected by the plaintiff, have no other option except to pay the amount. The non-payment of the admitted amount by the plaintiff cannot be accepted. The trial Court taking note of the fact that the suit has been instituted as summary suit and upon perusal of the documents filed on behalf of the plaintiff, has rightly decreed the suit filed by the plaintiff. We do not find any reason to take a different view than the one taken by the trial Court to decree the suit.

11. In the result, the Appeal Suit filed by the defendants 1 and 2 is dismissed confirming the decree and judgment dated 01.08.2018 passed in O.S.No.35 of 2016 on the file of the II Additional District Judge, Vellore at Ranipet. However, considering the facts and circumstances of the case, there shall be no order as to costs.

(J.N.B., J.) (R.K.M., J.)
19.09.2024

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To

The II Additional District Judge, Vellore at Ranipet.

J. NISHA BANU, J.
and
R.KALAIMATHI, J.

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A.S.No.468 of 2019

19.09.2024