IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25.04.2024

JUDGMENT DELIVERED ON : 29.07.2024

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Suit No. 125 of 2016

M/s.Shriya Rice Mills,
a registered Partnership firm,
represented by its Managing Partner,
Mr.Gautam A.Sreeram,
Plot Nos.116 and 117, Industrial Growth Centre,
Hyderabad Road, Raichur – 584 134,
Karnataka State. .. Plaintiff

Vs.

1. M/s.Sakthi Vinayagaa Agency,
Rep.by Chandramohan,
No.15/29, Shop No.10, 1st Floor,
Purasawalkam Main Road,
Purasawalkam, Chennai – 600 007.

2. M/s.RPS & CO.,
Rep.by its Proprietor,
T.S.T.R.Prem Kumar,
Shop No.8/2, Kamaraj Park Street,
Royapuram, Chennai – 600 013.

3. M/s.Shri Lakshmi Traders,
by Proprietor Karthikeyan,
No.23/7C, Thiruvallur Street,
Ethiraj Nagar, Chennai – 600 017.

4. M/s.Vishnu Ganapathy Traders,
Rep.by Proprietor Mr.M.R.Ganesan,
No.43, T.V.Iyer Koil Street,
Acharappan Street,
Chennai – 600 001.

5. M/s.Varshini Traders,
Rep.by Proprietor Mr.Sathish,
No.111, Kumbalamman Kovil Street,
Tondiarpet, Chennai – 600 081.

6. M/s.Pavithra Traders,
Rep.by Proprietor R.Ramachandran,
No.60/72, Sivan Koil Street,
Chennai – 600 079.

7. M/s.VGP & Co.,
Rep.by its Proprietor Mr.Vijayakumar,
No.65/3, Rajeswari Nagar, 2nd Street,
Chennai – 600 116.

8. M/s.Shree Hariharan Enterprises,
No.12/39, Sivasundaram Street,
Chennai – 600 079.

9. M/s.S.R.K & Co.,
Rep.by its Proprietor,
S.Raghavan Sriraman,
No.81, Senniamman Koil Street,
Chennai – 600 033.

10. M/s.Rajan Stores,
Rep.by its Proprietor
Mr.Jaya Rajan,
No.3-C/25, Agaraharam Street,
1st Lane, Saidapet, Chennai – 600 015.

11. M/s.Kishore Agency,
Rep.by its Proprietor
Mr.Raghunathan,
No.1/3, Balaji Nagar, 1st Street,
Vanagaram, Chennai – 600 095.

12. M/s.Jayanthi Traders,
No.25, Gandhi Nagar 1st Main Road,
Adyar, Chennai – 600 020.

13. M/s.Thirumurugan Traders,
Rep.by its Proprietrix,
Ms.Krishnaveni,
No.72, Old No.7-C, Tiaruvalluvar Street,
Ethiraj Nagar, West Mambalam,
Chennai – 600 033.

14. M/s.Sree Pethanatchi Stores,
No.16-A, Maduravoyal Main Road,
Chennai – 600 095.

15. M/s.Sivasakthi Stores,
Rep.by its Proprietor Mr.Murugesan Rajaganesan,
No.29/3, Balaji Nagar 3rd Street,
Vanagaram, Chennai – 600 095.

16. M/s.N R Balaji Foods,
No.95, Ragavan Street,
Valasaravakkam, Chennai – 600 087.

17. M/s.Sri Mahalakshmi Co.,
No.100, Somu Sundaram Street,
West Saidapet, Chennai – 600 015.

18. M/s.Sri Srinivasa Traders,
No.365/2, 1st Main Road,
Valavan Nagar, Chennai – 600 099.

19. M/s.Bismillah Traders,
Rep.by its Proprietor Mr.Md.Hanifha S.A.Kathar,
No.36/52, Vanagaram High Road,
Near Amman Koil, Chennai – 600 095.

20. M/s.S.Sundaresan & Co.,
Rep.by its Proprietor Mr.Saravanan Kumar,
No.465, Villupuram Main Road,
Madurai – 625 012.

21. M/s.Anantha Traders,
No.95, Ramaiah Street,
Jaihindpuram, Madurai - 625 011.

22. M/s.Jayam Traders,
No.95/CD, Aruppukottai Main Road,
Villupuram, Madurai – 625 012.

23. M/s.Sri Vinayaga Traders,
No.22/78, Ramaiha Street,
Jaihindpuram, Madurai – 625 001. .. Defendants

Prayer:-

Civil Suit has been filed under Order IV, Rule 1 of O.S. Rules, read with Order VII Rule 1 CPC, 1908, prays for a judgment and decree against the defendants :

i) For recovery of sum of Rs.3,02,77,955.71/- together with future interest at 21% p.a., on Rs.1,73,70,645/- from the date of the plaint till the date of realization from defendants 1 and 2 and defendants 2 to 23 jointly and severally as per the Schedule appended to the plaint ;

ii) grant such further or other reliefs;

iii) for costs of the suit.

For Plaintiff	:	Mr.R.Thiagarajan
For Defendants	:	Mr.J.Kamaraj for D2 D1 and D3 to D23 – set *ex-parte* on 25.11.2021 --------

<u>J U D G M E N T</u>

The suit is instituted by the plaintiff against the defendants for recovery of a sum of Rs.3,02,77,955.71/- together with future interest at 21% per annum on Rs.1,73,70,645/- from the date of the plaint till the date of realization from defendants 1 and 2 and defendants 2 to 23 jointly and severally as per the Schedule appended to the plaint and for costs.

2. The averments made in the plaint are as follows:-

2.1. The plaintiff/Firm is a registered Partnership firm consisting of four partners, who entered into a Partnership Deed dated 29.04.2010 and subsequently, the said Partnership was duly registered before the Registrar of Firms, Raichur, dated 04.05.2010. The plaintiff/Firm is in the business of procurement of paddy for processing and sales of raw rice, boiled rice and its bye-products. The plaintiff was having their factory in Raichur, Karnataka. However, it has been engaged in sales across various States in India. During the course of their business, the Proprietor of the first defendant/Company, namely one Chandramohan contacted the plaintiff for procurement of rice of different varieties and qualities manufactured and marketed by the plaintiff, so as to engage in sale of the plaintiff's product in Chennai and other places in Tamil Nadu. Thus, defendants 1 and 2 introduced themselves as brokers mainly dealing in procurement of rice and used to visit the factory premises of the plaintiff/Firm and also inspected the quality and various varieties of rice and collected samples so as to show the same to their customers. It is stated that the prevailing practice of trade is that the brokers, who normally act as an intermediary between the manufactures and wholesale and retail buyers, will negotiate with the Mill owners. The intermediary will negotiate the final price and quantity/quality and upon conclusion, the broker would send the buyer's name, price agreed, TIN No., address, contact number and the quantity. The brokers would send the details by SMS to the plaintiff and thereupon, the goods are dispatched, and if the payments are made within a period of 7 to 10 days then 4% discount will be given. If payment is made within 25 to 30 days, 3% cash discount will be given and if the payment is made after 45 days, then it shall carry interest at 48% per annum. Normally, payments are made by RTGS or NEFT, else the brokers collect the cheques which are deposited into the plaintiff's Account with Corporation Bank in Raichur. The invoices contain the terms of sale. The schedule of the amounts due and payable is set out in the plaint.

2.2. It is the claim of the plaintiff that defendants 1 and 2 have not only acted as mere rice brokers, but they had also acted as the agents on behalf of their principals, with necessary authority to place the orders with the plaintiff and they had undertaken the responsibility to settle the plaintiff's claim. Thus, the plaintiff has been sending Statement of Accounts to defendants 1 and 2 and also to the respective vendees, viz., defendants 3 to 23, for the supplies made by the plaintiff, indicating the quantity supplied, value of the goods and the payments received and they have also sent repeated reminders to the defendants for demanding payment for the value of the goods supplied, together with interest, as per the trade customs and usage. Even after repeated reminders and demands, the defendants have failed to pay for the goods supplied by the plaintiff. Admittedly, defendants 1 and 2 had guaranteed the payment of dues by various purchases with the plaintiff, since they placed the orders on behalf of defendants 3 to 23 as well. As such, they are jointly and severally liable to pay Rs.1,73,70,645/- towards principal value of the goods, together with interest at 21% per annum. As such, the plaintiff is entitled to recover Rs.3,02,77,955.71/- till date of the plaint and thereafter Rs.1,73,70,645/- with interest at 21% per annum from the date of plaint till its realization.

3. Though service was effected on all the defendants, except the second defendant/Company through substituted service, and only the second defendant was represented by counsel and they have filed the written statement.

4. The second defendant/Company, in the written statement denies the various allegations made in the plaint and has stated that though the plaintiff averred the joint liability of all the defendants, the liability of each of the defendants ought to have been specifically mentioned. Therefore, the joint and several liability of the entire suit claim as against the second defendant, cannot be claimed. It is further stated that there is no joint cause of action as against the second defendant. In fact, there were only two transactions between the plaintiff and the second defendant, however, the plaintiff frames the suit as if the second defendant is liable for the entire suit claim along with the other defendants. Admittedly, the second defendant had only acted as an agent, and therefore, as per the provisions of the Indian Contract Act, the vendee is liable and not the agent, for the sum due, if any. Therefore, the suit itself is not maintainable, and as admitted by the plaintiff, the second defendant is only an agent and all the principal purchasers are available. Therefore, the second defendant is not liable for any amount to be paid to the plaintiff and there is no cause of action as against the second defendant. Therefore, the second defendant is no way liable to pay the amount as claimed by the plaintiff, which is also barred by limitation and hence, the second defendant prays for dismissal of the suit.

5. Upon considering the pleadings and the draft issues filed by the plaintiff and the second defendant, the following issues have been framed by this Court on 18.02.2022 :-

> "1. Whether all payments made by the second defendant were given credit to by the plaintiff ?
>
> 2. Whether the plaintiff is entitled to recover the sum of Rs.3,02,77,955.71/- jointly and severally from the defendants ?
>
> 3. Whether the plaintiff is entitled to interest on Rs.1,73,70,645/- at 21% p.a from the date of plaint till the date of realization from the defendants

1 to 23 jointly and severally ? And

4. Whether the parties are entitled to any other relief ?"

6. After framing of issues, during trial, on the side of the plaintiff, one Gautam A.Sreeram was examined as P.W.1 and 84 documents were marked as Exs.P1 to P84. On the side of the second defendant, one T.S.T.R.Premkumaran was examined as D.W.1 and no documentary evidence is produced.

7. Learned counsel for the plaintiff submitted that the plaintiff/Firm had supplied rice products to the defendants, on the strength of the orders placed by defendants 1 and 2 on behalf of themselves and other defendants. Defendants 1 and 2 have acted as "Del Credere Agents".

8. Learned counsel for the plaintiff further submitted that a del credere agent is one who for an extra remuneration, undertakes the liability to guarantee the due performance of the contract by the buyer. By reason of his charging a del credere commission, he assumes the responsibility for the solvency and performance of the contract by the vendees and thus indemnifies his employer against loss. Though a del credere agency may arise by implication, yet the description by a party of himself in a contract as a del credere agent of the other party, does not necessarily make him so. In the event of several agents, where an authority is expressly given to several persons with no stipulation that any one or more of them shall be authorized to act in the name of the whole body, they have a joint authority and therefore, all of them must join in exercising the authority in the absence of a provision that some of them shall form a quorum.

9. In support of his contentions, the learned counsel for the plaintiff placed reliance upon the decision of the Hon'ble Division Bench of this Court reported in ***AIR 1927 Madras*** 1020, wherein it was held that "firm was appointed sole banyan of a company to sell goods manufactured by the company to be responsible to the company for payment by the buyer of the price due to guarantee the performance of the contract by the buyers through them and was to get a certain commission on contracts entered into through them, the firm was the del credere agent of the company..."

10. In the present case, the second defendant/Company itself admitted and acknowledged that they have acted as an agent and that their principals are also arrayed as parties in the present suit, and in such circumstances, being a del credere agent, the second defendant as well as the other defendants are liable to make the payment to the plaintiff.

11. Learned counsel for the plaintiff relied upon yet another judgment of Patna High Court in the case of ***Gurumukh Rai Radha Krishna Vs. The State of Bihar,*** reported in [***(1979) 25 STC 70],*** wherein, it was held that a del credere agent as someone who, in consideration of special remuneration, undertakes that the person with whom he enters into contracts on the principal's behalf, will be in a position to perform their duties. In other words, while acting as an agent or the principal's behalf, he guarantees the performance by the persons with whom he deals on behalf of his principal and makes himself liable as a surety to the extent of any default which may be committed by such persons. The liability of the Del Credere Agents becomes co-extensive with that of the third parties who enter into contract through him. The del credere agent is not the agent of those third parties. Further, this Court in ***Lakshmi Graha Enterprises Vs. Commercial Tax Officer***, **[W.P.Nos.32110 of 2007 and etc., batch, dated 06.02.2020]** has considered the various aspects of being a del credere agent and the financial implications and has held that the liability of the del credere agent is co-extensive and he cannot wriggle out of his liability.

12. In the present suit, defendants 1 and 2 had jointly acted as the del credere agents and though the amounts payable by each defendants are distinct, in view of the separate orders placed by them through defendants 1 and 2, defendants 1 and 2 are jointly with defendants 3 to 23 to make the payments to the plaintiff.

13. Learned counsel for the second defendant submitted that the second defendant/Company never stood or acted as broker, but they are not responsible for the conduct of defendants 3 to 23. Only, the first defendant is the broker of the said contract and the same was proved from invoices filed by the plaintiff. He further submitted that though the plaintiff relied upon the averments in the written statement there were admissions as broker, however, as per the documents, there was no such evidence to show that the second defendant stood as broker for the goods supplied to defendants 3 to 23. It was the statement made during trial that when the purchasers available, who are the real beneficiaries in the suit, the agent was not held responsible. The claim was made on the basis of invoices and statement of accounts.

14. It is settled law that the plaintiff has to prove his case on his own strength and not on the loop-holes in the case of the defendants. All the suit invoices consist of column 'according to your broker', which specifically contains the name of the first defendant and nowhere, the name of the second defendant is mentioned. Therefore without any documentary proof, the plaintiff cannot claim that the second defendant stood as a del credere agent.

15. Learned counsel for the second defendant further submitted Exs.P.35 and P.36 are the letters addressed to the plaintiff by the second defendant, raising issues with regard to the quality of the rice supplied by the plaintiff. Till date, there was no answer from the plaintiff. Hence, the plaintiff, without answering the above documents (Exs.P.35 and P.36), cannot raise any issues on the basis of pleadings alone. He further submitted that except Ex.P.6/Invoice, no invoice contains the name of the second defendant, either purchaser or broker. Hence, the joint liability, either jointly or severally, does not arise. Since the issues raised by the second defendant was not at all answered by the plaintiff, the plaintiff cannot claim anything from the second defendant.

16. Learned counsel for the second defendant further submitted that the suit was framed to attract the jurisdiction of this Court taking advantage of the second defendant having business place at Chennai. He further submitted that now the first defendant/company is no more. Therefore, it is for the plaintiff to verify and carry out necessary amendment in the plaint. Otherwise, if at all any decree is to be passed, it would be only a nullity. The said unconfirmed message was elicited through D.W.1 during his cross examination. Therefore, the second defendant is not at all liable to pay any amount to the plaintiff and there was no cause of action as against the second defendant and the claim is also barred by limitation. He further submitted that there was no written contract to attract the concept of 'Del Credere Agent'. The sale was not at all made through agent. It was a sale made directly to the purchaser and no contract or written instrument was filed for the responsibility of agent, in case of recovery of the price for the goods sold and delivered. Since the suit has been filed as against all the purchasers, there cannot be any responsibility on the side of brokers. As per the documentary evidence, the second defendant never stood as broker for the sales to defendants 3 to 23. Therefore, the suit itself is not maintainable, either in law or on facts and the same is liable to be dismissed *in limine* with costs.

17. Heard Mr.R.Thiagarajan, learned counsel for the plaintiff and Mr.J.Kamaraj, learned counsel for the second defendant and also perused the materials available on record.

18. Defendants 1 and 3 to 23 have already been set *ex-parte* by this Court on 25.11.2021.

19. **Issue No.1 :** Whether all payments made by the second defendant were given credit to by the plaintiff ?

19.1. The specific case of the plaintiff is that, the plaintiff had supplied rice products to the defendants on the strength of the order placed by defendants 1 and 2 on behalf of themselves and other defendants. Defendants 1 and 2 have acted as "Del Credere Agents". Defendants 1 and 2 have not only acted as a mere rice brokers, but they also acted as the agents on behalf of their principals with necessary authority to place the orders with the plaintiff and they had undertaken the responsibility to settle the plaintiff's claim. Thus, the plaintiff has been sending Statement of Accounts to defendants 1 and 2 and also to the respective vendees, viz., defendants 3 to 23, for the supplies made by the plaintiff indicating the quantity supplied, value of the goods and the payments received and they have also sent repeated reminders to the defendants for demanding payment for the value of the goods supplied, together with interest as per the prevailing trade practice. Defendants 1 and 2 had guaranteed the payment of dues by various purchases with the plaintiff, since they placed the orders on behalf of defendants 3 to 23 as well. As such, they are jointly and severally liable to pay Rs.1,73,70,645/- towards principal value of the goods, together with interest at 21% per annum. As such, the plaintiff is entitled to recover Rs.3,02,77,955.71/- till date of the plaint and thereafter Rs.1,73,70,645/- with interest at 21% per annum from the date of plaint till its realization. It is the claim of the plaintiff that the due amount was not paid to the plaintiff till filing of the suit, even after filing of the suit. However, the second defendant/Company has taken a defence that they only acted as an agent and the same was admitted by the plaintiff and as per the provisions of the Indian Contract Act, the vendee is liable and not the agent, for the sum due, if any. As an agent, the second defendant is not liable for any amount to be paid to the plaintiff, when all the principal purchasers are available. There is no cause of action as against the second defendant and hence, the suit itself is not maintainable.

19.2. The defendants have not denied the fact that all the defendants are wholesale dealers and they procured rice from the plaintiff to invoices. According to the plaintiff, the first and second defendants are del credere agents. A Del credere Agent is a combination of a sales person and an insurance firm. A del credere agent only becomes liable to pay the principal, after the buyer defaults on payment. For easy reference, this Court is of the view that a del credere is relating to or guaranteeing performance or payment by third persons to a principal in connection with transactions entered into by an agent for the principal usually in return for higher commissions . The Del Credere Agent guarantees performance of contract for extra remuneration. The Del Credere Agent is one who rendered extra remuneration and undertaken the liability and due performance by the buyer.

19.3. In this case, except the second defendant, all other defendants have not contested the suit. On the side of the plaintiff, one Gautam A.Sreeram, Managing Partner of the Plaintiff/Firm was examined as P.W.1. In the proof affidavit, he has stated that plaintiff/Firm is a registered partnership firm. In the course of business, the proprietor of the first defendant/Company came in contact with the plaintiff and made enquiries with regard to the products manufactured and marketed by the plaintiff. Defendants 1 and 2 introduced themselves as brokers mainly dealing in procurement of rice and used to visit the factory premises of the plaintiff and also inspected the quality of rice manufactured by the plaintiff and would insist for samples being provided to them, so as to enable them to show to their customers, in turn, so as to effect sale of the rice manufactured and marketed by the plaintiff in the State of Tamil Nadu. He further stated that the brokers, who normally act as an intermediary between the manufacturers and wholesale and retail buyers, will negotiate with the Rice Mill Owners on behalf of retail/wholesale dealers, who are interested in procuring rice of different qualities and different quantities from the factory. As requested, after satisfying with the quality of the rice manufactured and produced by the Mill owners, they will place orders for supply of rice according to their requirements. The brokers, who act as intermediaries, will negotiate the final price and after arriving at a conclusion, the brokers would send via SMS, the buyer's name, price agreed TIN No., address, contact numbers and the quality. The brokers will send all the details by SMS. Thereafter, the materials will be dispatched, once the terms are finalised. If the payments are made within a period of 7 to 10 days, then 4% discount will be given and if it is within 25 to 30 days, 3% cash discount is given and if it is made after 45 days, then it shall carry interest at 48% per annum. Normally, the funds will be remitted by RTGS/NEFT or cheques will be collected from the vendees by the first and second defendants, who had acted as intermediary brokers and the same will be remitted by cheques drawn on Corporation Bank, so that the cheques could be deposited into the plaintiff's Account with Corporation Bank in Raichur.

19.4. During the chief examination, P.W.1 has marked all the copies of the invoices for supply made to the defendants as exhibits, which clearly show that the plaintiff supplied rice to the defendants and the same was not denied by the defendants. More particularly, in Exs.P5 to P10/Invoices, the broker's name is mentioned as Sakthi Vinayagaa Agency/1st defendant herein.

19.5. On the side of the defendants, except the second defendant, no one was examined. Mr.T.S.T.R.Premkumaran, who is the proprietor of the second defendant/Company, was examined as D.W.1 and in the proof affidavit has reiterated the averments made in the written statement. During the course of chief examination, D.W.1 has admitted that he is doing rice and pulses business and he is a retail dealer; that he developed acquaintance with the plaintiff from 2006 onwards; that he has purchased rice for himself, however, he denied that he purchased rice for others. Further, D.W.1 admitted that he is aware of the claim of the plaintiff, for which, he has raised certain queries with the plaintiff that the goods supplied to him were inferior in quality vide Ex.P.35/Letter dated 20.03.2014 addressed to the plaintiff by the second defendant. He has admitted that originally, he has contacted the plaintiff through commission agent one Mohan. He has also stated that commission agent would mediate between the supplier and the purchaser and try to resolve the dispute by giving credit to their fresh supplies or adjusting with regard to the disputed quantity and amount and the same was informed under Ex.P.35 to the plaintiff and copy was also sent to the agent and he has also contacted the first defendant through phone, but he could not reach him, since the phone was switched off and he did not contact any other person. Further, he has admitted that he has received rice from the plaintiff, however, he has stated that the rice, which was supplied by the plaintiff, was not white in colour, but the colour was slightly yellow tinged and black. He has also admitted that he has not produced any sample before this Court shown prior to the sale of the goods supplied and subsequent to the sale of the goods. He has accepted the prevailing trade practice that the commission agent has to satisfy the quality of goods supplied and also the supplied so effected should meet the quality samples shown at the first instance and in consideration of the same, both the vendor and vendee shall pay commission to the commission agent.

Further, he admitted that except Ex.P.35, he has not filed any document for denial of their liability. However, he has stated that he can produce the correspondence pertaining to Ex.P.35 and Ex.P36 and ledger entry.

19.6. During the cross examination of D.W.1 on 07.11.2023, he has stated that he searched for the ledger entry, but he could not trace it out. Though D.W.1 has admitted that he has received rice as per Bill No.357 and he has also admitted that he has not paid the amount, though he has stated that goods supplied by the plaintiff is of inferior in quality, but to prove the same, the second defendant has not produced any sample or goods and no other witness was examined in that regard.

19.7. The main defence taken by the second defendant is that they were not acted as broker, however the plaintiff has stated that defendants 1 and 2 were acted as brokers-cum-agents. As the prevailing trade practice, defendants 1 and 2 acted as del-crede agents, for which extra remuneration is being paid by undertaking the liability to guarantee the due performance of the contract of the buyer and all the defendants were introduced to the plaintiff and goods were accordingly supplied by them, based on the assurance given by defendants 1 and 2. Ex.P.3/Print out copy of the SMS shows the messages sent by defendants 1 and 2 to all other defendants and the plaintiff has also marked invoices of all the defendants. From the above, it is clear that supply was not denied by the second defendant. However, the second defendant denied that they had acted only as an agent and not broker or otherwise.

19.8. It is settled preposition of law that an agency can be created in two ways, either express or implied and there is no need that always the agency can be created with written agreement and also there is no need for consideration with regard to creating agency.

19.9. From the oral and documentary evidence, the plaintiff has proved that defendants 1 and 2 have acted as not only agents, but they have also received goods for themselves and also acted as retailers. Therefore, defendants 1 and 2 are jointly and severally liable to pay the amount dues to the plaintiff for the goods supplied to them, as a del credere agent, who are the guarantor of the supply to the other defendants. The second defendant has stated that they have made certain payments and the plaintiff has not credited the same to its account. The second defendant/Company has admitted that they had a transaction with the plaintiff and they have received rice from the plaintiff. The second defendant has stated that they had made certain payments to the plaintiff, but they have not made payment in respect of inferior quality supplied by the plaintiff. However, there is no material to prove the same. Admittedly, except Ex.P.35, the second defendant has not produced any other document to show that the rice supplied by the plaintiff, is of inferior in quality and they had not returned those goods. Therefore, when once the second defendant admitted the supply of goods, it is clear that the plaintiff/Firm has proved the fundamental fact that they have supplied goods, and therefore, onus shifts upon the second defendant to prove that they have made certain payments and they are not liable to pay the amount and the goods supplied to them were of inferior in quality to the sample shown to them. In this case, the second defendant has not proved the same by oral and documentary evidence, and therefore, this

Court is of the opinion that defendants have not proved that they have made certain payments to the plaintiff and the same were not given credit to by the plaintiff. Therefore, Issue No.1 is answered in favour of the plaintiff.

20. Issue No.2 : Whether the plaintiff is entitled to recover the sum of Rs.3,02,77,955.71/- jointly and severally from the defendants ?

20.1. The plaintiff has produced Ex.P.3/Print out copy of the SMS messages between defendants 1 and 2 and other defendants, which clearly shows that the plaintiff supplied goods to the defendants. However, the defendants have not produced any documentary evidence to prove that they have made payments for the supply made by the plaintiff. Therefore, the plaintiff is entitled to recover the sum of Rs.3,02,77,955.71/- jointly and severally from the defendants.

20.2. As per the said contract, after dispatch of the goods, if the payments are made within a period of 7 to 10 days, then 4% discount will be given and if it is within 25 to 30 days, 3% cash discount will be given and if it is made after 45 days, then it shall carry interest at 48% per annum. In the case on hand, the defendants have not made payment within 45 days and they have not proved that they have made payments within 45 days by oral and documentary evidence. Admittedly, the defendants have not purchased the goods for their self purpose and they have admitted that they are all retail and wholesale dealers and they have purchased rice from the plaintiff only for commercial purpose, out of which they have obtained profit. Therefore, it is clear that, as the transaction between the plaintiff and the defendants are commercial in nature, the defendants are liable to pay interest at 21% per annum on Rs.1,73,70,645/- from the date of supply of rice till the date of the plaint. The plaintiff has stated that defendants 1 and 2 have acted as del credere agents and that they have also acted as retailers and they purchased for them and they have also given guarantee to other defendants. Therefore, all the defendants are liable to pay the suit amount jointly and severally.

21. <u>Issue No.3: Whether the plaintiff is entitled to interest on</u>

Rs.1,73,70,645/- at 21% p.a from the date of plaint till the date of realization from the defendants 1 to 23 jointly and severally ?

21.1. Since it is a commercial transaction, pending suit, it is the discretionary power of the Court to fixing the interest, and therefore, the plaintiff is entitled to recover interest at the rate of 12% for principal amount of Rs.1,73,70,645/- from the date of plaint till the date of realization from the defendants 1 to 23 jointly and severally.

22. Issue No.4 : Whether the parties are entitled to any other relief ?

22.1. In the present case, the defendants have failed to prove that they have paid the amount or the goods supplied by the plaintiff are of inferior in quality to the samples shown to them. Further, except the second defendant, no other defendants have contested the suit or came into the witness box to establish their case. The second defendant/Company, which contested the suit by filing written statement and its witness D.W.1, who came to the witness box and has admitted that he has not produced any documents that he has already made payment to the plaintiff, which was not given credit to by the plaintiff and he has also not produced any document to prove that the goods supplied by the plaintiff is of inferior in quality, to the samples already shown to them.

23. In the light of the above facts and circumstances, this Court is of the opinion that the plaintiff is entitled to get a decree and defendants are jointly and severally liable to pay interest @ 12% per annum on Rs.1,73,70,645/- from the date of the plaint till the date of realization.

24. In the result, the suit is decreed as indicated above with costs. Consequently, connected pending applications, if any, are closed.

29.07.2024
(1/2)

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No
ms

List of Witness examined on the side of the plaintiff

Gautam A.Sreeram - PW1

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Photocopy of the Partnership deed of the plaintiff	29.04.2010
2.	P2	Photocopy of the Certificate of registration with enclosures	04.05.2010
3.	P3	Print out copy of SMS messages by defendants 1 and 2 with the defendants (34 orders)	02.01.2013
4.	P4	Copy of statement of account issued by the Corporation Bank, Raichur for the period from 01.01.2013 to 31.03.2013 marked with subject to objection.	
5.	P5	Invoice No.347 along with copy of APMC and e-Sugam form Sl.No.8815644142	21.01.2013
6.	P6	Invoice No.357 along with copy of APMC and e-Sugam form Sl.No.8055875884	24.01.2013
7.	P7	Invoice No.365 along with copy of APMC and e-Sugam form Sl.No.8726166400	30.01.2013
8.	P8	Invoice No.366 along with copy of APMC and e-Sugam form Sl.No.8545390150	04.02.2013
9.	P9	Invoice No.367 along with copy of APMC and e-Sugam form Sl.No.8956419459	04.02.2013
10.	P10	Invoice No.371 along with copy of APMC and e-Sugam form Sl.No.8076539448	06.02.2013

11.	P11	Invoice No.379 along with copy of APMC and e-Sugam form Sl.No.8909579901	08.02.2013
12.	P12	Invoice No.380 along with copy of APMC and e-Sugam form Sl.No.8106745960	10.02.2013
13.	P13	Invoice No.381 along with copy of APMC and e-Sugam form Sl.No.8746840828	12.02.2013
14.	P14	Invoice No.382 along with copy of APMC and e-Sugam form Sl.No.8026848484	12.02.2013
15.	P15	Invoice No.384 along with copy of APMC and e-Sugam form Sl.No.8377059173	15.02.2013
16.	P16	Invoice No.386 along with copy of APMC and e-Sugam form Sl.No.8987127986	17.02.2013
17.	P17	Invoice No.390 along with copy of APMC and e-Sugam form Sl.No.8527313848	21.02.2013
18.	P18	Invoice No.391 along with copy of APMC and e-Sugam form Sl.No.8207358092	
19.	P19	Invoice No.392 along with copy of APMC and e-Sugam form Sl.No.8617368313	22.02.2013
20.	P20	Invoice No.399 along with copy of APMC and e-Sugam form Sl.No.8438013905	05.03.2013
21.	P21	Copy of the statement of account sent by e-mail by the plaintiff to defendants 1 and 2	05.03.2013
22.	P22	Invoice No.406 along with copy of APMC and e-Sugam form Sl.No.10390357294 and Andhra Pradesh Commercial Taxes Department e-Transit pass – TP No.31303131234233	13.03.2013
23.	P23	Invoice No.408 along with copy of	14.03.2013

		APMC and e-Sugam form Sl.No.10310424858	
24.	P24	Invoice No.409 along with copy of APMC and e-Sugam form Sl.No.10390483006	15.03.2013
25.	P25	Invoice No.411 along with copy of APMC and e-Sugam form Sl.No.10070535012	16.03.2013
26.	P26	Invoice No.414 along with copy of APMC and e-Sugam form Sl.No.10781058496	25.03.2013
27.	P27	Invoice No.415 along with copy of APMC and e-Sugam form Sl.No.10361131422	26.03.2013
28.	P28	Invoice No.416 along with copy of APMC and e-Sugam form Sl.No.10361251508	28.03.2013
29.	P29	Copy of the Statement of account issued by the Corporation Bank, Raichur	01.04.2013 to 31.03.2014
30.	P30	Copy of the Statement of account sent by e-mail by the plaintiff to defendants 1 and 2 dated 03.04.2013 marked with subject to objection.	
31.	P31	Invoice No.6 along with copy of APMC and e-Sugam form Sl.No.10811531898	04.04.2013
32.	P32	Copy of the Statement of account sent by e-mail by the plaintiff to defendants 1 and 2	08.04.2013
33.	P33	Invoice No.8 along with copy of APMC and e-Sugam form Sl.No.10741880403	09.04.2013
34.	P34	Invoice No.9 along with copy of APMC and e-Sugam form Sl.No.10291910425	09.04.2013
35.	P35	Original Letter from the second defendant addressed to the plaintiff	20.03.2014
36.	P36	Letter from the second defendant addressed to the plaintiff	10.07.2014
37.	P37	Details of outstanding amount towards principal and interest due by the	20.01.2016

		defendants 3 – 23	
38.	P38	Copy of Statement of account sent by e-mail by the plaintiff to defendants 1 and 2	14.03.2013
39.	P39	Original Professional Courier Receipt bearing No.RCR3049893	03.01.2013
40.	P40	Original Sharada Transport loading slip along with document pertaining Invoice No.347 (5Docs)	21.01.2013
41.	P41	Original Ashok Transport loading slip along with document pertaining Invoice No.357(5 Docs)	24.01.2013
42.	P42	Original Grant logistics Limited loading slip along with document pertaining Invoice No.365 (4Docs)	30.01.2013
43.	P43	Original Weigh bridge serial No.720 pertaining to Invoice No.366	04.02.2013
44.	P44	Original Andhra Roadways Loading Slip along with document pertaining Invoice No.367 (4 Docs)	04.02.2013
45.	P45	Original Grant Logistics Limited loading slip along with document pertaining Invoice No.371 (4 Docs)	06.02.2013
46.	P46	Original Ashok Transport loading slip along with document pertaining Invoice No.379 (4 Docs)	08.02.2013
47.	P47	Original Grant logistics Limited loading slip along with document pertaining Invoice No.380 (4 Docs)	11.02.2013
48.	P48	Original Grant logistics Limited loading slip along with document pertaining Invoice No.381 (4 Docs)	12.02.2013
49.	P49	Original Chandru Transport loading slip along with document pertaining Invoice No.382 (5 Docs)	12.02.2013
50.	P50	Original Ashok Transport loading slip along with document pertaining Invoice No.385 (3 Docs)	15.02.2013
51.	P51	Original Weigh bridge serial No.758	17.02.2013

		pertaining to Invoice No.386	
52.	P52	Original Weigh bridge serial No.762 pertaining to Invoice No.390	21.02.2013
53.	P53	Original Weigh bridge serial No.765 pertaining to Invoice No.391	22.02.2013
54.	P54	Original Weigh bridge serial No.766 pertaining to Invoice No.392	22.02.2013
55.	P55	Original Weigh bridge serial No.774 pertaining to Invoice No.399	05.03.2013
56.	P56	Original Weigh bridge serial No.777 along with E-Transit pass pertaining to Invoice No.406 (2 Docs)	13.03.2013
57.	P57	Original Weigh bridge serial No.778 along with E-Transit pass pertaining to Invoice No.408 (2 Docs)	14.03.2013
58.	P58	Original Weigh bridge serial No.781 pertaining to Invoice No.409	15.03.2013
59.	P59	Original Weigh bridge serial No.783 pertaining to Invoice No.411	16.03.2013
60.	P60	Original Weigh bridge serial No.788 pertaining to Invoice No.414	25.03.2013
61.	P61	Original Weigh bridge serial No.791 pertaining to Invoice No.415	26.03.2013
62.	P62	Original Weigh bridge serial No.794 pertaining to Invoice No.416	28.03.2013
63.	P63	Printout copy of Anandham Traders Ledger account with 65 B certificate	01.04.2013 to 22.08.2013
64.	P64	Printout copy of Bismillah Traders Ledge account	01.03.2013 to 22.08.2014 with 65 B certificate
65.	P65	Printout copy of Shree Hariharan Enterprises Ledger account	01.04.212 to 22.08.2014 with 65 B certificate
66.	P66	Printout copy of Jayam Traders Ledge account	01.04.2012 to 22.08.2012 with 65 B

			certificate
67.	P67	Printout copy of Jayanthi Traders Ledger account	01.04.2012 to 22.08.2014 with 65 B certificate
68.	P68	Printout copy of Kishore Agency Ledger account	01.02.2013 to 22.08.2014 with 65 B certificate
69.	P69	Printout copy of Sri Mahalakshmi Co-Ledger account	01.02.2013 to 22.08.2014 with 65 B certificate
70.	P70	Printout copy of N R Balaji Foods Ledger account	01.04.2013 to 22.08.2014 with 65 B certificate
71.	P71	Printout copy of Rajan Stores Ledger account	01.04.2012 to 22.08.20214 with 65 B certificate
72.	P72	Printout copy of Pavitra Traders Ledger account	01.04.2012 to 22.08.2014 with 65 B certificate
73.	P73	Printout copy of Sree Pethanatchi Store Ledger account	01.03.2013 to 22.08.2014 with 65 B certificate
74.	P74	Printout copy of R.P.S and Co-Ledger account	01.04.2012 to 22.08.2014 with 65 B certificate marked with objection
75.	P75	Printout copy of Shri Lakshmi Traders Ledger account	01.04.2012 to 22.08.2014 with 65 B certificate

76.	P76	Printout copy of Siva Sakthi Stores Ledger account	01.03.2013 to 22.08.2014 with 65 B certificate
77.	P77	Printout copy of S.Sundaresan Co Ledger account	01.04.2012 to 22.08.2014 with 65 B certificate
78.	P78	Printout copy of Sri Vinayaga Traders Ledger account	01.04.2012 to 22.08.2014 with 65 B certificate
79.	P79	Printout copy of Sri Srinivasa Traders Ledger account	01.04.2012 to 22.08.2014 with 65 B certificate
80.	P80	Printout copy of Varshini Traders Ledger account	01.04.2012 to 22.08.2014 with 65 B certificate
81.	P81	Printout copy of S.R.K. Co-ledger account	01.04.2012 to 22.08.2014 with 65 B certificate
82.	P82	Printout copy of Thirumurugan Traders Ledger account	01.03.2013 to 22.08.2014 with 65 B certificate
83.	P83	Printout copy of V G P and Co Ledger account	01.04.2012 to 22.08.2014 with 65 B certificate
84.	P84	Printout copy of Vishnu Ganapath Traders Ledger account	01.02.2013 to 22.08.2014 with 65 B certificate

29.07.2024
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P.VELMURUGAN, J.

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C.S.No.125 of 2016

29.07.2024