



O.S.A.(CAD)No.77 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM:

**THE HON'BLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

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M/s.Just Water (TZ) Ltd.,
A Limited Liability Company registered
under the Corporate Laws of Tanzania,
having its office at P.O.Box 635,
Arusha, Tanzania,
Represented by its Power of Attorney Agent,
Mr.G.Prathik.

... Appellant / Plaintiff

Vs.

1.Canadian Crystalline Water India Ltd.
A company incorporated under the
Indian Companies Act, 1956, having its
registered office at No.7/1B, Erikarai,
Parivakkam Road, Leelavathy Nagar,
Sennerkuppam, Poonamallee, Chennai-600 056.

Also at:
Shivsu Towers, No.149, EVR Lane,
Poonamallee High Road,
Kilpauk, Chennai-600 010.



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2.M/s.Shivsu Canadian Clear Waters Limited.
No.6, B/2, Erikarai, Parivakkam Road,
Leelavathya Nagar, Sennerkuppam,
Poonamallee, Chennai-600 056.

Also at:

Shivsu Towers, No.149, EVR Lane,
Poonamallee High Road,
Kilpauk, Chennai-600 010.

... Respondents / Defendants

PRAYER: Original Side Appeal filed under Section 13 of the Commercial Courts Act, 2015 against the judgment and decree dated 10.03.2021 made in C.S.No.486 of 2016.

For Appellant : Mr.Surya Senthil
for M/s.Surana and Surana

For Respondents : Mr.P.R.Raman, Senior Counsel
for Mr.Gowtham S.Raman
for M/s.Raman and Associates for R1 and R2

JUDGMENT

[Judgment of the Court was made by *R.SUBRAMANIAN, J.*]

The plaintiff in the Civil Suit in C.S.No.486/2016 is on an appeal challenging the judgment and decree made in the suit, dismissing the suit as barred by limitation. The learned Judge has not gone into the other issues, since he took up the issue of limitation as a first issue.



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2. The plaintiff filed the suit for recovery of a sum of Rs.1,10,00,000/- equivalent to 1,62,820 USD consisting of a sum of Rs.32,06,250/-, equivalent to 47,500 USD, being the cost of the undelivered equipment, Rs.5,41,350/- being the pro-rata packaging, forwarding, training, erection and installation charges and the freight charge paid by the plaintiff in respect of the undelivered machinery and a sum of Rs.40,36,500/-, being the interest @ 18% p.a. payable by the defendant in respect of the cost of undelivered equipment and installation charges thereon paid by the plaintiff and a sum of Rs.32,06,250/- being the loss suffered by the plaintiff due to the non-delivery of the equipment.

3. The suit came to be filed in the following backdrop:

3.1. The plaintiff, which is a limited company in Tanzania, placed orders for purchase of various machineries for setting up a water processing unit and a retail packaging unit in Tanzania. Four items of machineries were ordered and they are as follows:

S.No.	Description	Qty	Price In Dollars
1	1000 LPH Mineral Water Processing with Antiscalant Dosing, 2 stage UV and 3 Stage Micron Filter, Final	1 No.	US \$ 7,000.00



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	Ozonator, 1000 Litres Blending Tank, 1000 litres Ozone Contact Tank and 2 Nos. SS forwarding Pump		
2	30 BPM Rotary Filling Machine with Rinser, filler and capper and online built in shrink tunnel for PVC labels	1 No.	US \$ 15,000.00
3	Fully Automated Pet Blowing Machine SSB20 @ 2000 BPH Mould: 300 ml, 500 ml, 1000 ml, 1500 ml Compressor Drier & Chiller	1 No.	Us \$ 47,500.00
4	Multiple Shrink Wrapping Machine for Packing the Pet Bottles	1 No.	US \$ 7,500.00

Remaining three items represent packaging and forwarding charges, training, erection and installation charges, sea freight and container charges. Proforma Invoice was issued by the first defendant on 28.10.2009.

3.2. It is not in dispute that the entire Proforma Invoice amount of 90,000 US\$ was received by the defendants by 11.01.2010, in four tranches. While the defendant supplied the other machineries, the Fully Automatic Pet Blowing Machine, which of a value of Rs.47,500 USD was not supplied.



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3.3. The plaintiff made several complaints through e-mails and there were responses from the defendant and its representative regarding supply of machineries at various points of time. Finally when the plaintiff could not succeed in its attempt to persuade the defendant to supply the machinery, a Lawyer's Notice was issued on 21.05.2015, claiming cost of machinery and damages. A reply was sent to the said notice on 17.06.2015, wherein it was claimed that all the machineries were delivered. This forced the plaintiff to send a rejoinder dated 31.08.2015 and the same was followed up with the institution of the suit on 20.06.2016.

3.4. According to the plaintiff, non-supply of machineries entails them to a judgment and decree for payment of the value of machineries with interest and damages.

3.5. The defendants resisted the suit by contending that the suit is barred by limitation, it had supplied the machineries but the plaintiff had not taken delivery



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of the machineries from the Port, which according to the plaintiff false.

3.6. Before the trial Court, PW1 was examined on the side of the plaintiff and Exs.P1 to P33 were marked. On the side of the defendant, DW1 was examined and Exs.D1 and D2 were marked. The learned Single Judge, upon consideration of the evidence, concluded that the Suit is barred by limitation and mere correspondences between the parties cannot extend the period of limitation. According to the learned Judge, limitation starts running from the second week of December 2009 and there is no extension of time and therefore, according to the learned Judge, the suit is barred by limitation. Upon coming to the conclusion that the suit is barred by limitation, the learned Judge dismissed the suit without going into the other issues. According to the plaintiff, the suit is on time.

4. We have heard Mr.Surya Senthil, learned counsel appearing for the appellant / plaintiff and Mr.P.R.Raman, learned Senior Counsel assisted by Mr.Gowtham S.Raman, learned counsel appearing for the respondents/defendants.



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5. Mr.Surya Senthil, learned counsel for the appellant would submit that the learned Judge erred in considering the e-mail communications as only correspondence and he would draw the attention of this Court to the language of the correspondence and implore us to conclude that those e-mail communications amounts to promises for supply of machineries and therefore, limitation would start only from the last of such promise.

6. Mr.P.R.Raman, learned Senior Counsel for the respondents would submit that none of the e-mail communications would have the effect of extending the time that had already lapsed by 2013.

7. We have considered the rival submissions.

8. We would only refer to few documents to test the correctness of the conclusions of the learned Judge.



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9. The original Proforma Invoice was dated 28.10.2009. It does not prescribe any time limit for supply of machineries. The fact that the entire Proforma Invoice amount of 90,000 USD was paid on 11.01.2010 is admitted.

10. There is a Packing List, which has been marked as Ex.P12. It is claimed by the defendants that the packing list does not contain the machineries which the plaintiff says has not been supplied. We have gone through the Packing List. It does not contain Fully Automatic Pet Blowing Machine, which is described as Item No.3 in the Proforma Invoice dated 28.10.2009. There is only an entry, which is shown as Automatic Bottling Machine and the same is not Automatic Pet Blowing Machine. Therefore, the contention that the Packing List contains the Pet Blowing machine and the same has been taken delivery by the plaintiff cannot be accepted.

11. There are trail of email communications between the parties regarding non-supply of machines, where all the supply of machines stood expressly



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admitted by the representatives of the defendant. The Packing List is dated 05.05.2010. The Managing Director of the Plaintiff company has sent an email dated 01.09.2010, marked as Ex.P13, complaining that the Pet Blowing Machine has not been dispatched. This is followed by another email dated 28.03.2011, which has been marked as Ex.P14, which requires the defendant to prepare for the dispatch of the blow moulding machine. There is another email dated 01.06.2011, which has been marked as Ex.P15. Even here, the plaintiff complains about the non-supply of Pet Blowing Machine.

12. On 07.06.2011, Mr.Sanjay Mandavia, who was the representative of the defendant in Kenya, has written to the plaintiff stating that he has spoken to Mr.Venkatesh and the machine is in production. This is a clear admission on the part of the defendant to the effect that the machine was not supplied atleast till 07.06.2011. The defendant has no case that the machine was supplied thereafter. Therefore, it is clear that the defendant has not supplied the machine to the plaintiff. Subsequently, on 25.05.2012, the plaintiff's representative at Chennai writes to the plaintiff stating that he had made a contact with the defendant's



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representative in Chennai and he has assured that he will check up the status of the machine, which is somewhere in production. There is another e-mail which is attached to the same email stating that the machine is ready to be dispatched. Again on 25.09.2014, the plaintiff writes to Mr.Sanjay Mandavia, representative of the defendant with a copy to Mr.Arul, who is also an employee of the defendant stating that the machine has not been delivered, despite several promises made by the employees/representatives of the defendant. Mr.Sanjay Mandavia responds to the said email on 26.09.2014 stating that he has forwarded the email to Mr.Shiv and Mr.Sathish- DW1 and they will be in a position to respond. Finally on 27.09.2014, marked as Ex.P22, DW1 writes to Mr.Hussain, representative of the plaintiff's company and that email reads as under:

"Dear Mr.Hussein,

With reference to your email regarding pet blowing machine, as you know Mr.Arul was in touch with you and infact is meeting you frequently.

And there are facts need to be discussed and we will Resolve the issue, and as you know the machines were Ready once or twice, which you were not in a position to take delivery.

We will resolve this issue in todays meeting and move further."



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13. Again on 02.12.2014, the Managing Director of the plaintiff writes to Mr.Sanjay Mandavia regarding non-supply. Mr.Sanjay Mandavia replied by email dated 02.12.2014, marked as Ex.P24 and the said e-mail reads as follows:

"Dear Hussein,

Thank you for your email and my sincere apologies for the various delays. I have copied this email to Shiv and Sathish who would be able to respond immediately and sort this issue once and for all."

14. Of-course, DW1 has denied sending the email dated 27.09.2014, which has been marked as Ex.P22, but he would claim that Sanjay Mandavia left the defendant company in 2014. However, in the cross examination on 16.09.2019, DW1 admitted that Sanjay Mandavia had worked in the defendant company till 2015. Therefore, it is clear that DW1 is not speaking the truth regarding the status of Mr.Sanjay Mandavia, as a representative of the defendant in December, 2014. For a specific query that the defendant has not filed any document to prove the alleged delivery of machine, DW1 has answered in the affirmative. Therefore, it is clear that the defendant has not delivered the machine as claimed by it and it is



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only to evade the liability by raking up the question of limitation.

15. No doubt, mere correspondence will not extend the limitation, but promises to deliver during the limitation period will extend the limitation. Within the period of limitation, there are promises extending the limitation till 27.09.2014 and within 3 years, the suit has been filed on 20.06.2016, which is definitely within the period of limitation. Therefore, we are unable to accept the findings of the learned Judge that the present suit is barred by limitation.

16. Therefore, we set aside the findings of the learned Judge that the suit is barred by limitation and the issue of limitation is answered in favour of the plaintiff. Since the learned Judge has not gone into other issues, we are forced to remit the matter for consideration of other issues, except the issue of limitation, which we have concluded against the defendant.

17. The Original Side Appeal stands allowed. The judgment of the learned Single Judge dated 10.03.2021 in C.S.No.486 of 2016 stands set aside. The suit is remitted to the Trial Court for trial to decide the other issues including the



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question of damages. The learned Judge with whom the suit is remitted, shall decide the issues without being influenced by any observations made by us. We desist imposing cost on the defendant, though we find that this case deserves costs. Since we have remitted the suit the appellant will be entitled to refund of the entire court fee paid on the appeal memorandum in terms of Section 67 of the Tamilnadu Court Fees and Suits Valuation Act, 1955.

(R.S.M., J.) (R.S.V., J.)
11.03.2024

Intex : Yes/No
Internet : Yes/No
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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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