



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.07.2024

Pronounced on: 12.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI**C.S.No.941 of 2017**

M/s.Mars Consortium Infra (P) Limited,
Rep by its Director Maran Mani,
No.9, Shanthi Street,
Dr.Seethapathy Nagar,
Velachery, Chennai – 600 042.

...Plaintiff

Vs.

1.M/s.Gangotri Enterprises Limited,
Rep. by its Managing Director,
Mr.Vinay Shanker Tewari.

2.Mr.Vinay Shanker Tewari

3.Mr.Ajit Pandey

4.Mr.Atul Tripathi

5.Mrs.Reeta Tripathi

6.Mr.Ganesh Gosangi

7.Mr.Jitender Tiwari

...Defendants

PRAYER: Complaint filed under Order XXXVII Rules 1 & 2 as amended by the Act 104 of 1976, praying to pass judgment in favour of the plaintiff against the defendant, by directing the defendants to pay a sum of Rs.3,55,60,509/- together with further interest @ 18% per annum on Rs.2,40,27,371/- from the date of complaint till the date of realization and



directing the defendant to pay the costs of this suit including counsel fee.

WEB COPY

For Plaintiff : Mr.N.Baaskaran

For Defendants : Exparte

- - - - -

J U D G M E N T

The plaintiff has filed a Summary Suit under Order XXXVII Rules 1 for recovering of Rs.3,55,60,509/- together with further interest @ 18% per annum on Rs.2,40,27,371/- from the date of plaint till the date of realisation.

2. The brief case of the plaintiff is as follows:

The plaintiff is in the business of supply of fine sand to various customers and as per the order the defendants, the plaintiff has supplied fine sand at Vallur Thermal Power Plant site, Chennai on various occasions and raised invoices for the same. The plaintiff further states that the 6th and 7th defendants are taking care and responsible for the day to day affairs and business transactions of the first defendant at Chennai. The plaintiff has also states that the account between the plaintiff and the first defendant is a running account.



WEB COPY

3. The plaintiff's case is that as on 31.08.2013, the total outstanding of Rs.2,40,27,317/- was payable by the defendants under various invoices and that despite several requests and reminders, the defendants have not come forward to pay the same and the plaintiff caused a lawyer's notice on 06.05.2016, which was duly acknowledged by the defendants. According to the plaintiff, the defendants have acknowledged the debt on 24.08.2013 and failed to come forward to pay the amount duly payable to the plaintiff. The defendants have issued two cheques, on 30.06.2013, for a sum of Rs.50,00,000/- and on 15.08.2013, for a sum of Rs.60,00,000/-, in total of Rs.1,10,00,000/- signed by the 3rd defendant to discharge the part liability of the plaintiff, however, the same were dishonored on presentation with the endorsement "funds insufficient". Hence, the plaintiff has initiated Criminal Proceedings under Section 138 of the Negotiable Instruments Act, 1881 in C.C. No.900 of 2014 on the file of the III Fast Track Court, Saidapet, Chennai and pending the same, the defendants have transferred a sum of Rs.15,00,000/- through RTGS on 09.01.2014 to the account of the plaintiff's wife towards discharge of their part liability.

<https://www.mhc.tn.gov.in/judis> 4. The plaintiff caused a lawyer's notice on 06.05.2016 to the



defendants, demanding the amounts due and the defendants 1 to 5 also received the same. The defendants 6 and 7, returned the notice on 09.05.2016. Despite receipt of the said notice, the defendants did not come forward to pay any amount and hence the plaintiff filed the suit for recovery of Rs.3,55,60,509/- alongwith the following documents:-

<i>Sl.No.</i>	<i>Date of Document</i>	<i>Description of Document</i>	<i>Nature of document</i>
1	-	Invoices	Copy
2	29.08.2013	Debt Acknowledgment	Original
3	30.06.2013	Cheque	Xerox
4	17.08.2013	Return Memo	Xerox
5	15.08.2013	Cheque	Xerox
6	17.08.2013	Return Memo	Xerox
7	--	Statement of Account	Original
8	06.05.2016	Legal Notice	Copy
9	--	Acknowledgement Card (5 Nos.)	Original
10	09.05.2016	Postal Return Cover (2 Nos)	Original

5. I have heard the learned counsel for the plaintiff. Though the defendants 1 to 5 were served through summons and service was completed as early as on 12.11.2019, the suit was pending for want of service of the defendants 6 and 7 and service on them was completed before the learned Master on 08.07.2023.

6.The suit is in the nature of a Summary Suit. The defendants have



not come forward to file a leave to defend Application despite service of suit summons and hence the suit has been listed before Court 'for orders'.

As per the Madras High Court Original Side Rules, Order VII Rule 1 as follows:-

“R.1.A suit to recover a debt or a liquidated demand in money, evidenced by a document, or any money payable by the defendant with or without interest, arising on a negotiable instrument or on a bond or a contract for payment of a liquidated amount of money evidenced by a document, or on a guarantee where the claim arises against the principal in the manner aforesaid, may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed.”

Under Order VII Rule 1 of the Madras High Court Original Side Rules, when the suit is filed to recover a debt or liquidated demand in money, evidenced by a document, or any money payable by the defendant with or without interest, the plaintiff has an option to proceed to institute the suit under the prescribed Form. When such a suit is instituted the defendants have to take leave of the Court to even contest the suit. Admittedly, the defendants have not come forward to file any Application for leave to defend the suit and there is also no representation on the side of the defendants. The defendants are called and set exparte.

7. A document dated 29.08.2017, acknowledgment of Debt and invoices have been filed on the side of the plaintiff. Despite a lawyer's notice sent by the plaintiff, the defendants have not replied to the same.



covers (2 Nos). The defendants have also not come forward to obtain the leave of this Court to defend the suit as per the Madras High Court Original Side Rules. Therefore, in this circumstances, the plaintiff is entitled to get decree under Order VII Rule 2 of the Original Side Rules.

8. In fine, the suit is decreed as prayed for by the plaintiff and the defendants shall pay a sum of Rs.3,55,60,509/- together with interest at the rate of 18% per annum on Rs.2,40,27,371 from the date of the plaint till the date of decree and 6% per annum from the date of decree till the date of payment, together with costs.

12.07.2024

Index : Yes/No
Speaking/Non-speaking order
rkp

P.B.BALAJI,J.
rkp



WEB COPY



C.S.No.941 of 2017

12.07.2024