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O.S.A.No.103 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM :

THE HON'BLE MR.JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

O.S.A.No.103 of 2019

R.Sathyamoorthy
Proprietor, M/s R.S.Enterprises
No.23, Gandhi Street
Athipattu, Chennai 600 120 .. Appellant

v.

Vijaykumar Sharma
Proprietor, M/s Pradeep Suppliers
No.162, Broadway
Chennai 600 108 .. Respondent

Memorandum of Grounds of Original Side Appeal under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, against the judgment and decree of the learned single Judge dated 12.07.2017 passed in C.S.No.537 of 2014 on the file of this Court.

For Appellant :: Mr.AR.Karthik Lakshmanan
for Mr.L.Palanimuthu

For Respondent :: Mr.V.P.Sreedharan

JUDGMENT



O.S.A.No.103 of 2019

(Judgment of the Court was made by S.S.SUNDAR,J.)

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This original side appeal is directed against the judgment and decree of the learned single Judge in the suit in C.S.No.537 of 2014 dated 12.07.2017.

2. The appellant is the sole defendant in the suit in C.S.No.537 of 2014, which was filed by the respondent for recovery of a sum of Rs.44,24,965/- along with interest at 18% per annum from the date of plaint till the date of payment.

3. The case of the plaintiff is that the plaintiff is the authorised dealer of welding accessories, lifting tackles, safety items and other related tools and accessories and is carrying on business at No.162, Broadway, Chennai. The defendant is admittedly one of the customers of the plaintiff. The defendant used to place orders with the plaintiff for supply of materials and the same were supplied on credit basis to the defendant from 2010 onwards. It is the case of plaintiff that the plaintiff supplied materials to the tune of



O.S.A.No.103 of 2019

Rs.66,24,965/- as per the running account maintained by the defendant with the plaintiff and that the defendant, though paid a sum of Rs.22,00,000/- on various occasions, has to pay the balance of Rs.44,24,965/-. The last payment made by the defendant was on 26.07.2011 towards the running account maintained with the plaintiff.

4. The appellant filed a detailed written statement admitting the supplies made as per the invoices. However, the appellant contended that the few amounts paid by the defendant in cash were not credited by the plaintiff and that therefore the suit claim without giving credit to the amounts paid is not sustainable. The appellant then set up the plea of limitation. The third ground on which the suit was resisted is that the supplies made by the plaintiff are defective and that therefore, the plaintiff is not entitled to the claim as per the invoices.

5. The learned single Judge, after elaborately discussing all the issues, came to the conclusion that the suit is not barred by limitation, as the last supply was on 26.07.2011 and the defendant has also given a letter dated



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16.07.2012 acknowledging the liability. The learned Judge found that the last cheque issued by the defendant in favour of plaintiff at Ex.P5 was dated 23.02.2012 drawn on Axis Bank, T.Nagar branch. Therefore, the learned Judge found that the suit, which was filed on 23.04.2014 within a period of three years, is not barred by limitation. The issue whether the plaintiff failed to acknowledge a few receipts by cash from the defendant was also considered by the learned Judge. After going through the entire evidence, the learned Judge has rendered a finding that the appellant/defendant has not proved that the amounts due were settled by way of cash payment.

6. It is to be noted that all the payments were made through cheques. However, the three cheques dated 26.11.2011, 30.11.2011 and 23.02.2012 were returned as the defendant failed to honour them. The contention of the defendant is that he has reimbursed the amount which was not honoured by cheques. This Court is unable to find proper pleading or material evidence to sustain the case of the defendant that the entire amount due from the defendant as per the invoices were settled by way of cash payment. No receipt had been produced by the defendant at any point of time. The source



O.S.A.No.103 of 2019

for making the payment and the actual mode of payment and time has not been established by the defendant by leading cogent evidence. Therefore, the said contention also cannot be accepted and this Court finds no reason to interfere with the findings of the learned single Judge on the issues of limitation and cash payment.

7. One of the contentions of the defendant in the written statement is that the machineries supplied by the plaintiff were not in usable condition because of their inferior quality and that most of the machineries were damaged and the problems having been informed to the plaintiff, was never attended. This Court is unable to find any evidence suggesting that the defendant had ever complained about the quality of the materials supplied. When the defendant had used the goods for the purpose of his business, the presumption is that the goods received by the defendant were in good condition. The defendant did not issue any notice or a complaint at the relevant point of time when the delivery of goods by the plaintiff was acknowledged. In the absence of any intimation to the plaintiff at any point of time complaining about the quality of goods, the contention raised only



O.S.A.No.103 of 2019

WEB COPY

for the first time in the written statement cannot be countenanced.

8. For all the aforementioned reasons, this Court finds no reason to interfere with the judgment and decree of the learned single Judge. Accordingly, the original side appeal stands dismissed. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (K.R.S.,J.)
07.08.2024

SS

To

The Sub Assistant Registrar (O.S.)
High Court, Madras



WEB COPY



O.S.A.No.103 of 2019

S.S.SUNDAR, J.
AND
K.RAJASEKAR, J.

SS

O.S.A.No.103 of 2019

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