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A.S.No.52 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-06-2025

CORAM

THE HONOURABLE MR JUSTICE M.JOTHIRAMAN

A.S.No.52 of 2018

International Trading Company
No. 32, (New No. 8) Karpooora Street
Periamet, Chennai 600 003

Appellant(s)/Defendant(s)

Vs

ICA (Madras) Private Limited
having registered office at
Old No. 99, New No. 186, Royapettah High Road,
Mylapore, Chennai 600 004,
represented by its Director S.Natarajan

Respondent(s)/Plaintiff(s)

First Appeal filed under Section 96 CPC to set aside the judgment and
decree dated 31.03.2016 passed in O.S.No.10300 of 2010 on the file of the
VI Additional City Civil Court, Chennai.

For Appellant(s): Mr.K. Kuppusamy

For Respondent(s): Mr.V.Kubendran



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JUDGMENT

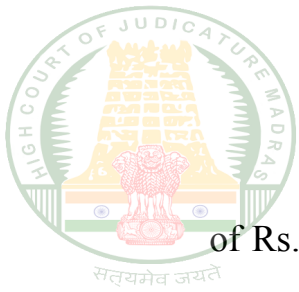
Unsuccessful defendant has preferred the present appeal against the judgment and decree dated 31.03.2016 passed in O.S.No.10300 of 2010 on the file of the VI Additional City Civil Court, Chennai.

2. The parties are referred to as per rankings in the trial Court.

3. Suit is filed for recovery of a sum of Rs.10,20,000/- with interest at 12% per annum for Rs.7,50,000/- from the date of filing the suit till the date of realization. The Court below decreed the suit as prayed for with costs.

4. **The brief case of the plaintiff is as follows:**

The plaintiff is dealing in refined edible oils. On 06.01.2003, the plaintiff placed orders on the defendant for supply of five thousand tins of 15 kgs NETT each of “Sundew” brand super refined sunflower oil. The goods were to be delivered at the site of the plaintiff free of costs. The delivery of goods was to be effected on or before 31.03.2003. The plaintiff paid a sum



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of Rs.7,50,000/- as advance by a pay order and the balance of Rs.7,50,000/-

was to be paid upon delivery of goods. In the event if the defendant fails to effect delivery of goods within the time stipulated, the unadjusted advance was to be returned in full to the plaintiff. The defendant accepted the terms of the purchase order and subsequently encashed the said pay order. However, the defendant failed and neglected to supply the goods to the plaintiff. The requests of the plaintiff to supply goods or to return the payment, were of no avail. Hence, the plaintiff is entitled to a simple interest at the rate of 12% per annum on the sum of Rs.7,50,000/- as the contract is commercial in nature. The defendant has neither paid the principal nor interest. Several personal contacts and reminders have not yielded any result. Hence, the suit.

5. The brief case of the defendant is as follows:

5.1 Based on the assurance and promise of the plaintiff, the defendant had invested money, procured the goods and made it available for the plaintiff, but, the plaintiff, for the reasons best known to them, suddenly started postponing in taking delivery of the goods under one pretext or the



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other stating that they had internal difficulties. Believing the plaintiff to be true and genuine, the defendant kept waiting only to find that the plaintiff had delayed only to see that the agreement period lapses and to cancel and refuse to take the order. Due to the act of the plaintiff, the defendant parted with his money and procured goods, but, after refusal of the plaintiff, had incurred huge loss in trying to dispose of the same elsewhere. The defendant was always ready to supply the goods as per the purchase order within the stipulated time.

5.2 The defendant filed additional written statement wherein, it has been stated that based on the contract dated 15.01.2003, the defendant agreed and entered into a contract with a Chinese Company “Dalian Oil Food Stuff Import and Export Corporation”. The Chinese supplier had informed the defendant through letter dated 22.01.2003 that the shipping material will be ready by 27.02.2003 and the defendant had received the invoice from the Chinese supplier on 18.02.2003. on 19.02.2003, the defendant sent a letter to the plaintiff to make the balance payment of Rs.7,50,000/- against the order immediately to meet the delivery schedule. On 27.02.2003 the Chinese supplier had sent another letter to the defendant



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and asked to remit USD 28,000/- immediately to facilitate shipping the consignment. Since the defendant had not responded, the Chinese supplier warned the defendant that the consignment is pending dispatch at his risk and costs and also asked the defendant to remit USD 28,000/- immediately on or before 14.03.2003, failing which, they would be liable to bear the warehousing charges. On 03.04.2003, the defendant sent a detailed letter to the plaintiff stating that the defendant cannot take the risk of goods worth Rs.25,00,000/- and it is not a safe trade practice, whereas, the plaintiff was not interested in performance of contract for the reasons best known to them. Hence, prayed to dismiss the suit.

6. On the basis of the above pleadings, the trial Court has framed the following issues:

- (1) Whether the plaintiff is entitled to get a decree for Rs.10,20,000/- with further interest 12% per annum on the principal amount of Rs.7,50,000/- as prayed for?
- (2) Whether the suit is maintainable?
- (3) To what relief the plaintiff is entitled?



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7. On the side of the plaintiff, one Natarajan was examined as

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PW1 and Exs.P1 to P4 were marked. On the side of the defendant, one V.Murali was examined as DW1 and Exs.B1 to B12 were marked.

8. Findings of the trial Court:

The plaintiff had placed a purchase order with the defendant and the delivery of goods is time bound and the same is admitted by the defendant. As per the terms of contract mentioned in Ex.P2, it shows that Rs.7,50,000/- as advance with order and balance payable upon delivery. The defendant *vide* Ex.P4 acknowledged the receipt of the advance amount and also accepted all the terms and conditions contained in the order and agreed to comply the same in full. Exs.B2 to B12 relate to the contract entered into between the defendant and the Chinese company and thus, those documents have no relevance to the contract in the present suit and the plaintiff is not a party. The version of the defendant is contrary to the terms of the contract agreed by him. The plaintiff is entitled for refund of the advance amount as per the terms of the contract.

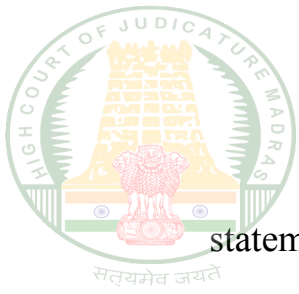


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9. The point for determination that arises in this appeal whether the plaintiff is entitled to the suit amount as claimed for?

10. The learned counsel appearing for the appellant/defendant would submit that the trial Court failed to consider Ex.B2 dated 15.01.2003, which is the contract between the Chinese supplier and the defendant and the contract price fixed between the defendant and the Chinese supplier was at the rate of USD 28,000/-. He would further submit that the Court below ought to have dismissed the claim of Rs.10,20,000/- by the plaintiff when the purchase order in Ex.P2 was silent with regard to the interest towards the return of advance amount and that apart, the purchase order is a photocopy and therefore, the same cannot be taken into consideration to prove their case. The plaintiff has not proved the readiness on their part in performance of contract after receipt of the letters *vide* Exs.B5, B7, B9 & B11 and therefore, he prayed to allow the appeal.

11. *Per contra*, the learned counsel appearing for the respondent/plaintiff would submit that the additional written statement filed by the defendant is completely inconsistent with the earlier written



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statement. The purchase order under Ex.P2 dated 06.01.2003 was agreed by the defendant that the delivery of goods to be effected on or before 31.03.2003 at the office of the plaintiff at the costs of the defendant. With respect to the contract, the plaintiff had paid a sum of Rs.7,50,000/- as advance by way of pay order and it was agreed that the balance of Rs.7,50,000/- to be paid upon the delivery of goods. It is his further submission that in the event of the defendant failing to effect delivery of goods within the time stipulated, then, the unadjusted advance has to be returned in full to the defendant, but, the defendant after accepting the terms of the purchase order and encashing the said pay order, failed and neglected to supply the goods to the plaintiff and also failed to refund the advance amount as agreed and therefore, the plaintiff is entitled to get recovery of amount as prayed for in the suit.

12. This Court has considered the submissions made on either side and perused the materials on record.

13. Ex.P1 is the extract from the minutes dated 29.03.2006 of the Board of Directors meeting, Ex.P2 is the purchase order dated 06.01.2003.



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As per the purchase order in Ex.P2, the plaintiff had placed an order with the defendant with respect to the supply of five thousand tins of 15 kgs NETT each of “Sundew” brand super refined sunflower oil and the rate was fixed at Rs.500/- per tin and was agreed that the delivery of goods to be effected on or before 31.03.2003 at the office of the plaintiff at the costs of the defendant. It also shows that the plaintiff had paid a sum of Rs.7,50,000/- as advance by way of pay order and it was also agreed that the balance of Rs.7,50,000/- to be paid upon the delivery of goods. Further, wherein it has been stated in the purchase order in Ex.P2, in the event if the defendant fails to effect the delivery of goods within the stipulated time *i.e.* or or before 31.03.2003, then, the unadjusted advance has to be returned in full to the plaintiff and the delivery of goods is time bound and the same is admitted by the defendant. As per the time stipulated in clause 4 of the contract the unadjusted advance to be refunded in full if the delivery is not completed. As per Ex.P4, the defendant acknowledged the receipt of the advance amount and also accepted the terms and conditions contained in the purchase order in Ex.P2.

14. According to the defendant, the plaintiff placed a purchase



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order in Ex.P2 dated 06.01.2003 and based on that, the defendant placed an order dated 15.01.2003 on a Chinese supplier viz. “Chinese Dalian Food Stuff Import and Export Corporation” and delivery of the same was expected within 30 days from the date of payment in full under Ex.B2. The said Chinese supplier had informed under Exs.B3, B4, B6, B8 and B10 that the consignment will be ready for shipping by 27.02.2003 subject to the payment of the said invoice amount and raised their invoice along with the packing list in favor of the defendant. This was informed to the plaintiff under Ex.B5, B7, B9 and B11, but, the defendant did not receive any further funds from the plaintiff in spite of sending information for the order placed and therefore, the defendant was not in a position to make payment to the Chinese supplier to ship the said consignment. Due to the attitude of the plaintiff, the defendant was unable to effect delivery of the edible oil as per the delivery schedule. In order to prove the above said facts, the defendant relied on Exs.B2 to B12 and the said documents is found to have no relevance to the contract entered into between the plaintiff and the defendant under the purchase order. The plaintiff is not a party to the contract under Ex.B2 entered between the defendant and the Chinese company. The burden of proof lies on the plaintiff was discharged inasmuch as the defendant failed



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to supply the goods. The burden of proof shifts on the defendant to prove the relevance of the contract under Ex.B2 with that of the contract of the plaintiff. As per the terms agreed under the purchase order, the defendant was bound to deliver the goods and receive the balance amount, as the said terms were accepted by the defendant unconditionally under Ex.P4. The defendant failed to establish his case that he had invested money to procure the goods and made it available to the plaintiff and it is only on the plaintiff who failed to take delivery.

15. Taking into consideration the foregoing discussions, this Court is of the view that the plaintiff is entitled for all the advance amount as per the terms of the contract agreed by the defendant. The transactions between the plaintiff and defendant is commercial in nature and upon considering the evidences adduced on both sides the Court below awarded the rate of interest at 12% per annum for Rs.7,50,000/- from the date of filing of the suit till the date of realization.

16. Another point for determination that arises in this appeal is whether the rate of interest awarded by the Court below has to be modified



or not? The plaintiffs claimed interest on the principal amount and it is to be

noted that there is a contract to substantiate the claim. At his juncture, it is

relevant to refer Section 3 of Interest Act, 1978:

Section 3 of the Interest Act, 1978:

“3. Power of court to allow interest.- (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,-

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in sub-section (1),-

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period, from the date mentioned in the notice to the date of institution of the



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proceedings, unless the Court is satisfied that there are special reasons why no interest should be given in respect of those damages.”

17. It is apposite to mention that, from the above section, it is very clear that for claiming interest, demand shall be made by the party concerned. In this regard it useful to refer Section 34 of CPC, which reads as follows:

“34. Interest - (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :
[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I. - In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II. - For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]



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(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.”

18. It is germane to mention that *proviso* to Section 34 CPC provides that in respect of the liability in relation to the sum adjudged, which had arisen out of a commercial transaction, the rate of such further interest may exceed 6% per annum, but, shall not exceed the contractual rate of interest. It is further provided that if there is no contractual rate that the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions for such further interest is to be granted.

19. In the present case, admittedly, the liability has arisen out of commercial transactions and there was a contract *inter se* the parties and therefore, the rate of interest at 12% per annum granted by the Court below from the date of plaint till the date of realization on the principal amount of Rs.7,50,000/- is unsustainable in law. By invoking Section 34 of CPC, this Court is inclined to modify the rate of interest awarded by the Court below,



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in that, 12% per annum from the date of plaint till the date of decree and thereafter 6% per annum from the date of decree till the date of realization.

The point is answered accordingly.

20. In the result, the First Appeal is partly allowed. No costs. The decree passed by the Court below is modified as follows:

“The defendant is directed to pay the plaintiff a sum of Rs.10,20,000/- and further interest at the rate of 12% per annum on the principal amount of Rs.7,50,000/- from the date of plaint till the date of decree and thereafter, interest at the rate of 6% per annum from the date of decree till the date of realization.

The other aspects of the decree passed by the Court below is confirmed.”

27.06.2025

nsd
Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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The VI Additional Judge,
City Civil Court, Chennai.

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M.JOTHIRAMAN, J.

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