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A.S.No.326 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.326 of 2022

I PRO Coating & Services
Rep. by its Proprietor,
S.Muralidharan
S/o.V.Sivaraj
No.49, First Floor,
Sri Thirumal Nagar,
Korattur Village,
Chennai-600 053.

... Appellant/Respondent/Plaintiff

-vs-

Mr.Luis Alfonso Zapico Mortera
Country Head
Felguera Gruas India Private Limited,
4th Floor, No.10-50-24/A,
Sravya Manor, Sripuram,
Visakhapatnam-530 003.
Andhra Pradesh, India

... Respondent/Petitioner/Defendant

Prayer: Appeal Suit is filed under Order 41 Rule 1 and Section 96 of CPC to set aside the order passed in I.A.No.3 of 2019 in O.S.No.99 of 2019 on the file of Principal District Judge at Thiruvallur by allowing this appeal.

For Appellant : Mr.D.Gopinathan
For Mr.B.Govindaprabu

For Respondent : No Appearance



A.S.No.326 of 2022

J U D G M E N T

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Challenging the order of the Trial Court, rejecting the suit on the ground of limitation, the present appeal has been filed.

2. A suit in O.S.No.99 of 2019 was filed by the plaintiff for recovery of money, viz., to direct the defendant to pay the plaintiff a sum of Rs.15,86,547/- together with accrued interest at the rate of 24% p.a. on Rs.8,26,327/- from the date of plaint till date of realization and to pay the cost of the suit.

3. The plaint proceeded on the basis that the defendant had placed a work order dated 05.02.2015 to carry on Touch painting works at site for Gangavaram project under Project Ref-192-60-005 Ref-2015-02-06-01, pursuant to which, the plaintiff started to carry out the job in terms of the work order. The plaintiff raised three invoices dated 17.02.2015, 24.04.2015 and 04.05.2015 and the total amount due as on 04.12.2015 was Rs.8,26,327/-. The plaintiff averred that on 04.02.2018, an email was sent regarding the outstanding due and a legal notice was also issued.



A.S.No.326 of 2022

WEB COPY

4. While so, an application has been taken out by the defendant, stating that the suit is barred by limitation, as the same has not been filed within three years from the due date. The Trial Court has allowed the application and rejected the plaint on the ground that the suit was filed in the year 2019 for the invoice raised on 04.05.2015 and therefore, held that the suit is barred by limitation.

5. Despite the name printed in the cause list, none appeared on behalf of the defendant.

6. Learned counsel for the appellant submitted that the issue of limitation is a mixed question of law and facts and evidence and it can be seen at the time of trial. The plaint documents, more particularly, Doc.Nos.6 & 7 (correspondence between the parties) clearly fall within the ambit of acknowledgment with regard to the debt payable by the defendant, which has not been considered by the Trial Court.



A.S.No.326 of 2022

7. In the light of the above, the point for consideration in this case is as to whether the Trial Court is right in rejecting the suit without even perusing the documents?

8. It is relevant to note that a suit can be rejected on any of the grounds set out in Order VII Rule 11. Only when the right is extinguished, the remedy is barred by a operation of law, i.e., limitation and the suit should be rejected. Whereas the question of limitation is a mixed question of law and evidence and a suit cannot be rejected.

9. In the given case, communications dated 22.04.2016 to 12.07.2017 filed along with the plaint make it very clear that communication has been addressed by the plaintiff on 22.04.2016 for settling the payment due, which has been replied to by email dated 30.04.2016, wherein the defendant has admitted to fix further date. When the admission has not been denied, whether such reply to fix further date will amount to acknowledgement or not is a matter of evidence. It is useful to refer to Section 18 of the Limitation Act, more so, the explanation, which reads as follows:



WEB COPY



A.S.No.326 of 2022

“(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right..”

10. This Court is of the view that the correspondence between the parties will come within the ambit of acknowledgment and is a matter of evidence and can be looked into during trial. Therefore, the order of the Trial Court in rejecting the suit at the threshold is not valid in the eye of law and the same is liable to be set aside.

11. Accordingly, the present Appeal Suit is allowed and the order dated 07.04.2022 passed in I.A.No.3 of 2019 in O.S.No.99 of 2019 by the Principal District Judge, Thiruvallur is hereby set aside. Trial Court is directed to proceed with the suit by giving an opportunity to the parties and decide the same on its own merits in the manner known to law. No costs.

13.02.2025

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Internet: Yes / No
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5/6



WEB COPY



A.S.No.326 of 2022

N.SATHISH KUMAR,J.,
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To:

The Principal District Judge
Thiruvallur.

A.S.No.326 of 2022

13.02.2025

6/6