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S.A.No.9 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

S.A.No.9 of 2025
and
CMP.No.229 of 2025

M/s.Rajasthan Udyog and Tools Pvt.Ltd.,
rep.by its Managing Director
Arunkumar Agarwal

... Appellant / Defendant

vs.

M/s.Priya Granites (P) Ltd.,
rep.by its Managing Director,
K.Ashok Reddy

... Respondent / Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.23 of 2018, dated 29.02.2014 on the file of Principal District Court, Puducherry confirming the judgment and decree made in O.S.No.114 of 1999 dated 23.12.2014 on the file of the Additional Subordinate Court, Puducherry.

For Appellant : Mr.T.Sathiyamoorthy

For Respondent : Mr.K.M.Mrithunjayan
for M/s.V.Purushothaman



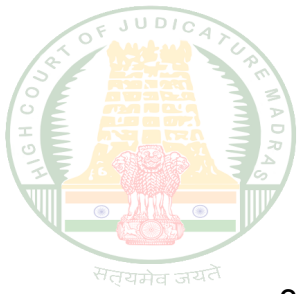
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JUDGMENT

WEB COPY The defendants 1 and 2 had supplied a twin blade granite cutting machine to the plaintiff herein. Against the concurrent findings, in particular against the Judgment and decree dated 29.02.2024 passed in A.S.No.23 of 2018 by the Additional Subordinate Court, Pondicherry the defendants have preferred this Second Appeal.

2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiff, the plaintiff is a private limited company engaged in the manufacturing of granite slabs. In the year 1994, the plaintiff proposed for setting up a second unit at an estimated cost of Rs.32.75 lakhs which was supported by the Pondicherry Industrial Promotion and Development Corporation Limited, (for brevity, hereinafter referred to as "the PIPDIC"). All the three defendants have business dealings with the plaintiff. The defendants offered to supply machinery and tools to the plaintiff. After deliberations with the representative of the defendants, the plaintiff placed an order for a Twin Blade – Sawing Machine - 6/2000 at a cost of Rs.14,50,000/- .



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3.1. The defendants assured production of 500 to 700 sq.ft. (black granite) per day. A machine was supplied by the first defendant accordingly under Invoice No.116 dated 30.06.1995. As per the practice of the Financial Institution /PIPDIC, 90% of the invoice value was paid and 10% of the amount was retained to watch the performance of the machine. Two blades were also supplied through the third plaintiff company for use in the said machine, under Invoice No.606 dated 02.08.1995 for Rs.5,02,320/-.

3.2. Machine supplied by the defendants, did not perform right from day one. The efforts took by the defendants to set right the defects admittedly failed. Only at a later point of time, it was realised that the defendants did not have the expertise to manufacture a Twin Blade Machine and infact they had attempted to convert a single blade machine into a twin blade machine.

3.3. R.K.Agarwal, Director of defendants' group of companies visited the plaintiff's factory on 20.06.1996 along with Tr.Vidhyasagar, accepted the utter failure of performance of the machine and requested for a week time to replace the machine and blades or to take back the machine by



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paying back the bill amount with interest. The plaintiff shocked to receive a fax message from the first defendant dated 29.07.1996, wherein, the failure of the machine was admitted, false claims were made with a suggestion to use the machine with a single blade. Performance of the machine with single blade was highly unsatisfactory, as the blade as defective. The machine itself being defective, the blades are worthless. Defects in the machine and the blades have been pointed out in several communications sent by the plaintiff as well as the PIPDIC to the defendants.

3.4. After independent inspection of the machine and prolonged correspondence, the PIPDIC blacklisted the first defendant. Due to the commissions and omissions of the defendants, the plaintiff's company suffered substantial damage.

3.5. The plaintiff having invested Rs.31,00,000/- on the second unit, which could not take off, due to the supply of defective machine and blades. The plaintiff has suffered loss on the said amount with interest at 18.5% p.a. from 01.09.1995, the date on which, the Plant should have started its operation. The Company suffered loss to the tune of Rs.17,00,000/- per year. It has also suffered damage by way of expenses

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on correspondence, travel, mental agony caused to the Managing Director and thereby loss on these accounts is estimated at Rs.2,00,000/-. The damage and loss in toto comes to the tune of Rs.40,00,000/- . The first defendant, supplier of the defective machine and the second defendant, Marketing Agents are jointly and severally liable to compensate the plaintiff for the aforesated loss. The plaintiff has restricted its claim to Rs.10,00,000/-.

3.6. The plaintiff had been demanding proper recompense for the damage suffered by him,due to the supply of defective machine and blades. To counter this, the third defendant caused issuance of lawyer notice dated 31.03.1998 with false contention. A reply notice was sent by the plaintiff through his lawyer dated 16.05.1998. The plaintiff has filed a separate suit for recovery of Rs.4,24,845.97 with interest and costs from the second and third defendants in respect of the defective blades.

3.7. The third defendant is a proper party to the suit as the blades of the machines were supplied by it. On 16.05.1988, the plaintiff caused issuance of notice calling upon the first and second defendant to pay damages for the aforesated loss sustained due to the supply of defective machine.



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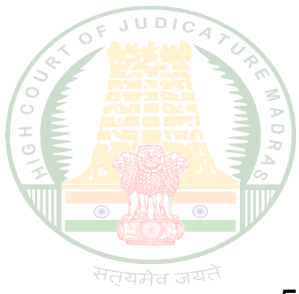
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4. Despite the receipt of notice, the defendants neither replied nor complied with the demands.

5. All the defendants *inter-alia* would contend that the plaintiff has instituted two suits, one for claiming damages (O.S.No.114/1999 and other O.S.No.124/1999) to order to repay the value of twin blades supplied by the third defendant with interest. The invoice under Clause 20 would disclose that “no legal proceedings shall be taken to enforce any claim and no suit arising out of any contract shall be instituted except in court of competent jurisdiction located within the Municipal limits of Jodhpur and no other parts.

5.1. The machine supplied is defective is a falsehood and it was perfectly in order. The plaintiff in his communication dated 28.11.1995 has stated that the machinery design is very good and the machine was running perfectly for two days, after which, there was some problem in cutting. Therefore, the question of supply of defective machine does not arise. The plaintiff is not in a position to utilize the machine with its twin blades and by their own option are using it as a single blade machine and continuing the production by single blade machine.

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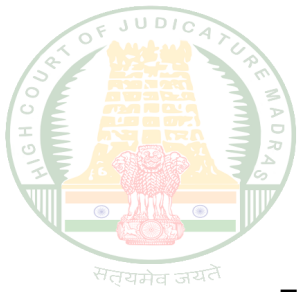
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5.2. All the communications between the parties would show that the machine was excellent, it worked well for initially two days after installation thereafter because of the handling, it developed some minor snags, even that were rectified. The plaintiff has not suffered any damages at all.

5.3. The plaintiff is liable to pay to Rajasthan Tools, a sum of Rs.5,61,614.83 for which the defendants gave legal notice on 31.03.1998. It is only after the issuance of the said notice, the plaintiff started to claim that the machine was not working. The defendant made an offer by their letter dated 29.07.1996 to take back the blades have not required stating that the cost of the said blades would be adjusted in the account. The suit has no basis at all.

6. The Trial Court framed the relevant issues. At trial, to substantiate the plaint details, on the plaintiff's side, two witnesses were examined and twenty nine documents were marked. On the defendants' side, three witnesses were examined and two documents were marked. In X-series, Ex.X1 to Ex.X29 were marked.



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7. Upon consideration of the evidence and after hearing the arguments advanced by either side, the Trial Court concluded that due to the defective machine supplied by the defendants no. 1 and 2, the plaintiff is entitled for the damages and loss for a sum of Rs.10,00,000/- with interest at the rate of 9% p.a.from the date of plaint till the date of decree and thereafter at 6% p.a.

8. Aggrieved, the defendants preferred appeal before the Chief Judge's Court, Pondicherry in A.S.No.23 of 2018. The First Appellate Court upon scrutiny of the entire records and after hearing the arguments advanced by either side and chose to dismiss the appeal by confirming the Judgment and Decree passed by the Trial Court .

9. The crux of the issue is that the plaintiff – Granite Company has laid the suit for damages on the premise that the Granite cutting machine supplied by the defendants No.1 and 2 is defective one and because of the same, the defendants were asked to replace the machine and failure on the part of the defendants no.1 and 2, the suit for damages was laid.



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10. It is the contention of the defendants no.1 and 2 that the machines supplied was in good condition and because of the handling of the machinery by inexperienced men of the plaintiff, that became cause for damage and they accepted all the issues alleged.

11. The defence putforth by the defendants is belied by the contents of the reply notice sent by the defendants dated 29.07.1996 - Ex.A5 and the relevant portion of the Ex.A5 is extracted hereunder :-

“ The subject matter were discussed at length and we are glad to confirm as under :-

“You have been facing problems in running this machine as a twin blade machine and in spite of all the efforts made by us and we have not been able to demonstrate a satisfactory working of the machine as a twin blade machine. As such we suggest you to use the machine as a single blade machine in which there are no technical problems.

In the meantime, we will make improvements at our end and having perfected the working of machine as a twin blade machine. We will once again demonstrate the same to you”.

12. It is relevant to extract the portion of Ex.A8 dated 03.06.1996 communications sent by PIPDIC Ltd which is given hereunder :-

“ We are happy to note that during the discussion Mr.R.K.Agarwal, Director has assured to rectify the defects immediately, Mr.R.K.Agarwal also



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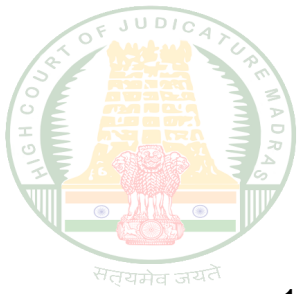


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agreed to replace the machine and tools with a brand new machine with tools, in case they could not rectify the defects”.

13. By perusing the oral and documentary evidence, especially Ex.A3, Ex.A6, Ex.A7 & Ex.A23 for replacement of defective machine. Ex.A8 exemplifies that the Director of defendants' company having undertaken to replace the machine and tool with a brand new machine with tools but turned around and would state that the plaintiff's employees are inexperienced and therefore, the machine has become defective.

14. Ex.A20 is the report submitted by the Engineers attached to the Madras Office to the defendant regarding the condition of the blade and machinery after conducting inspection in the plaintiff's factory. As per ExB2 - acceptance order, cost of machinery is Rs.14,50,000/-. It has been pleaded that the plaintiff invested amount of Rs.31,00,000/- on the second unit, which could not take off, due to the defective machine and blades supplied by the defendants no.1 and 2. P.W.1 would state that the loss, incurred on this account works out to Rs.17,00,000/- . The plaintiff has suffered loss to the tune of Rs.7,00,000/- per year.



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15. Machine was supplied under Invoice No.116 dated 30.06.1995 is not in dispute. The machine with blades was defective is inferable. even from the communications of the defendants No.1 and 2 addressed to the plaintiff's company as mentioned supra.

16. Of course it is somewhat difficult to assess the damages, with certainty or precision. However, that by itself would not disentitle the plaintiff to compensation for the loss suffered. The extent of loss depends upon very many contingencies in determining such matters, the Court has to do its best.

17. My views are strengthened by the observations of the Hon'ble Supreme Court in ***K.Narendra vs. Riviera Apartments Private Limited***, 1995(5) SCC 77 wherein it has been held that it has to be shown that damages claimed must be reasonable. The buyer is entitled to recover the loss in respect of the defects.

18. The Trial Court as well as the First Appellate Court having gone through the oral and documentary evidence have come to the conclusion



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that the plaintiff is entitled for damages of Rs.10,00,000/- payable by the defendants.

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19. This Court does not find any infirmity or perversity in the above said findings of the First Appellate Court and this Court also does not find any good reason to upset the findings of the First Appellate Court. In such view of the matter, no substantial questions of law arise for consideration.

20. Based on the aforesaid observations and discussions, this second appeal stands dismissed. Sequel to this, the Judgment and Decree dated 29.02.2024 in A.S.No.23 of 2018 on the file of the Principal District Court, Puducherry stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

25.07.2025

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
kkd



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WEB COPY **To**

1. The Principal District Court, Puducherry.
2. The Additional Subordinate Court, Puducherry.



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R.KALAIMATHI, J.,
kkd

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