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Appeal (CAD) No.24 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Appeal (CAD) No.24 of 2023

1.Print and Pack,
rep. by its Proprietor M.Manoharan.

2.M.Manoharan,
Proprietor Print and Pack
Both at No.62, Balaji Villa,
No.110, Sri Venkateshwara Nagar,
Valayankadu, Tiruppur-2.

.. Appellants

Vs

Papapalaniappan,
Proprietor Pandian Meena Paper Company,
Having its Head Office at
142, Oppanakara Street,
Coimbatore,
And Branch office at
No.28/31, Ram Nagar 2nd Street,
Tiruppur-2.
rep. through Power of Attorney V.Muthukumar
Working as Tiruppur Branch Manager,
having office at Branch office at No.28/31,
Ram Nagar 2nd Street,
Tiruppur-2.

.. Respondent



Appeal (CAD) No.24 of 2023

Prayer : Appeal under Section 96 read with Order 41, Rule 1 CPC read with Section 13(1)(A) of the Commercial Courts Act against the judgment and decree dated 05.07.2023 made in C.O.S.No.82 of 2022 on the file of the Principal District Court, Tiruppur.

For Appellants : Mr.N.Manoharan
for Mr.N.Ponraj

For Respondent : Mr.Inion R
for M/s.K.Govi Ganesan

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Appellants impugn an order and judgment dated 5th July, 2023 passed by the Principal District Judge, Tiruppur, decreeing a suit that was filed by respondent.

2. Respondent had filed a commercial suit seeking a decree in the sum of Rs.62,97,839/- as unpaid vendor and for interest at 18% per annum on the principal sum of Rs.31,99,741/- from the date of the suit till realisation with costs.



WEB COPY



Appeal (CAD) No.24 of 2023

3. Respondent is a widow of one Palaniappan, who was carrying on business as sole proprietor in the name and style of “Pandiyan Meena Paper Company”. After the said Palaniappan died, his wife Papa Palaniappan, who is plaintiff, took over the reins of the business. During the course of business, plaintiff's husband had supplied paper boards on credit to defendants. Statement of account was maintained by plaintiff and, as per the accounts maintained by plaintiff, defendants have to pay a sum of Rs.62,97,839/-, of which, Rs.31,99,741/- is the principal amount and Rs.30,98,098/- is interest.

4. Towards discharging their liability, defendants issued six cheques, three of them were dated 5th August, 2013; two dated 12th August 2013 and one was dated 22nd January, 2014. All the cheques were dishonoured due to insufficiency of funds.

5. During the course of business, books of accounts were maintained



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and plaintiff issued a balance confirmation letter dated 31st March, 2015, which was served on 11th April, 2015. The said document has also been received in evidence and exhibited.

6. Plaintiff had also issued a legal notice dated 30th May, 2015 calling upon defendants to settle the entire amount due with interest as per the books of accounts. One of the cheques dated 22nd January, 2014, which was for a sum of Rs.48,435/-, also came to be dishonoured on 30th January, 2014. The suit came to be lodged on 27th January, 2017.

7. The preliminary defence taken by defendants was the suit was barred by limitation. The other stand taken was the cheques were taken by coercion and force and, therefore, the cheques would not amount to acknowledgment of liability.

8. Issues were framed and evidence was recorded. Plaintiff led evidence of one witness and defendant led evidence of one witness. Documents were also exhibited.



WEB COPY



Appeal (CAD) No.24 of 2023

9. After considering the evidence, the trial Court came to a finding that during the cross-examination, defendants admitted that the cheques were issued voluntarily for the amount due and they were not issued under coercion. The trial Court also rightly observed that no complaint was given by defendants making allegation against plaintiff that the cheques were obtained under coercion. Defendants also admitted that no instructions were given to the bank to stop payment on the ground that the cheques were issued under coercion. In those facts and circumstances, the trial Court rightly concluded that the cheques were voluntarily given.

10. On the issue of acknowledgment of liability, the trial Court proceeded on the basis that the confirmation letter dated 31st March, 2015 was received by defendants, but defendants did not reply challenging the confirmation of accounts. Therefore, the defence raised in the written statement was nothing but afterthought and, consequently, decreed the suit.



WEB COPY

11. Having considered the evidence which has been filed in the form of additional typed-set, as also copy of the documents filed, we are also satisfied that (a) there was acknowledgment of debt; (b) the claim was not barred by limitation; and, (c) the defence taken was nothing but moonshine. Moreover, the fact that the goods were supplied has not been disputed. The suggestion of defendants that payments were made in cash has been denied and there is no counter evidence to prove that cash was paid.

12. We shall also note that on 27th November, 2023, this Court was pleased to grant interim stay on condition that appellants deposit 25% of the decree amount to the credit of the suit before the Principal District Court, Tiruppur, within a period of eight weeks from the date of receipt of the copy of the order. On 27th February, 2024, this Court recorded that the conditional interim order granted has not been complied with and, consequently, not only vacated the stay, but also dismissed C.M.P.No.25997 of 2023.



Appeal (CAD) No.24 of 2023

In the result, the appeal is dismissed with costs in the sum of
Rs.50,000/- (Rupees Fifty Thousand).

(K.R.SHRIRAM, C.J.)

(SENTHILKUMAR RAMAMOORTHY, J.)

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Index : Yes/No
NC : Yes/No
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WEB COPY



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