IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2025
PRONOUNCED ON : 11.06.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. Nos. 386 & 481 of 2021

A.S.No.386 of 2021:

Tamil Nadu Medical Services Corporation Ltd.,
Mamtha Complex, 3rd Floor,
No.13, Whites Road,
Royapettah, Chennai – 600 014.

Now Having Its Registered Office At
No.417, Pantheon Road,
II Floor, Egmore,
Chennai – 600 008. ...Appellant

Vs.

Troikaa Pharmaceuticals Ltd.,
Represented By Its Managing Director
And Authorized Signatory,
Shri Ketan Patel. ...Respondent

PRAYER: Appeal Suit filed under Section 96 read with Order 41 Rule 1 of the Civil Procedure Code praying to allow the appeal by reversing and setting aside the Judgment and Decree dated 31.01.2020 passed in O.S.No.12007 of 2010 on the file of the First Additional Court, Chennai with costs and pass such further or other order or relief as this Court may deem fit, just and proper in the circumstances of the case and thus render justice.

For Appellant : Mr.K.Balamurali, Advocate.
Mr.Shivakumar and Suresh, Advocates.

For Respondent: Mr.Ramesh Kumar, Advocate.

A.S.No.481 of 2021:

Troikaa Pharmaceuticals Ltd.,
Represented By Its Manager (Legal)
And Authorized Signatory,
Shri Utpal Dixit,
Om Towers,
Jodpur Tekra,
Ahmedabar, Gujarat – 380 015. ...Appellant

Vs.

Tamil Nadu Medical Services Corporation Ltd.,
No.417, 2nd Floor,
Pantheon Road, Egmore,
Chennai, Tamil Nadu – 600 008. ...Respondent

PRAYER: Appeal Suit filed under Section 96 read with Order 41 Rule 1 of the Civil Procedure Code against the Judgment and decree dated 31.01.2020 in O.S.No.12007 of 2010 on the file of the 1st Additional City Civil Court, Chennai.

For Appellant : Mr.Ramesh Kumar, Advocate.

For Respondent: Mr.K.Balamurali, Advocate.
Mr.Shivakumar and Suresh, Advocates.

COMMON JUDGMENT

These appeals arise out of the judgment and decree dated 31.01.2020 passed in O.S.No.12007 of 2010 on the file of the learned I Additional Judge, City Civil Court, Chennai. A.S.No.386 of 2021 has been filed by the defendant, whereas A.S.No.481 of 2021 has been filed by the plaintiff. Since both appeals arise from the same judgment and decree, they were heard together and are disposed of by this common judgment.

2. For the sake of convenience, the parties are referred to as they were arrayed in the suit.

3. The brief averments in the plaint are as follows: The plaintiff is engaged in the manufacture of drugs and medicinal products. The tender submitted by the plaintiff for the period 1994 to 1998 was accepted by the defendant, pursuant to which four separate agreements were entered into between the plaintiff and the defendant. According to the plaintiff, it duly completed all supplies in terms of the said agreements.

4. The plaintiff had deposited a sum of Rs.1,00,000/- towards earnest money and security deposit for the said tender period. In addition, the plaintiff deposited further sums of Rs.25,000/- and Rs.35,000/- as earnest money for the tender period 1996-1997, 1997–1998. The security deposit made during the years 1995–1996 was continued and renewed up to the tender year 1997–1998. The plaintiff states that all the aforesaid amounts

became refundable in the year 1996. However, despite the plaintiff having fully performed its contractual obligations, the defendant failed to refund the said amounts.

5. It is further stated that the defendant is liable to pay a sum of Rs.32,760/- towards supply of medicines for the tender year 1996–1997 and a sum of Rs.2,19,492/- towards supply of medicines for the tender period 1997–1998. The plaintiff also supplied pethidine injections to the defendant through its agent, M/s. EPCIL Distributors, to the value of Rs.52,464/-.

6. Thus, according to the plaintiff, a total sum of Rs.3,04,716/- is due and payable by the defendant towards the principal amount. Besides the said amount, the defendant is also liable to pay a sum of Rs.12,130/- towards delayed payment charges. It is further stated that a sum of Rs.2,22,394/- is due towards interest as on 30.04.1999, calculated at the rate of 19% per annum on the outstanding invoices.

7. In the year 1996, the defendant returned medicines supplied in the year 1994, valued at Rs.3,18,443/-, on the ground that they constituted excess stock and had expired, thereby rendering them unusable. The said medicines

were packed in cartons bearing the printed name of the defendant. The defendant also returned Dopamine injections valued at Rs.3,23,637/-.

8. On account of such returns, the plaintiff was constrained to incur a sum of Rs.1,65,852/- towards reprocessing the said medicines. However, without any contractual or legal justification, the defendant arbitrarily deducted the value of the returned medicines from the amounts otherwise payable to the plaintiff.

9. It is stated that the supplies were effected strictly in accordance with the specific purchase orders placed by the defendant. Therefore, according to the plaintiff, it cannot be held responsible for any alleged excess supply. The defendant is consequently liable to refund the amounts deducted towards the returned medicines.

10. It is further stated that the defendant unilaterally deducted amounts towards alleged delay in supply. As per the tender conditions, supply was to commence within 21 days from the date of the order and had to be completed within 45 days. According to the plaintiff, these conditions were impracticable, particularly as the plaintiff is based in Gujarat and the supplies

involved inter-State transportation and possible transhipment delays.

11. It is further stated that the plaintiff could not maintain ready inventory, since the defendant required the medicines to be supplied in special packaging bearing its logo, which necessitated manufacture only upon receipt of specific orders. Despite being fully aware of these constraints, the defendant deducted a sum of Rs.2,55,088/- towards liquidated damages, calculated at rates ranging from 3% to 27% for the alleged delay in supply.

12. According to the plaintiff, the said deduction is arbitrary, unreasonable and contrary to the terms of the contract. The defendant is, therefore, liable to refund the said sum of Rs.2,55,088/- to the plaintiff.

13. It is further stated that the defendant is liable to pay interest on the outstanding amounts for delayed payments. According to the plaintiff, it had duly performed all its obligations under the tender and supply agreements.

14. It is further stated that the defendant failed to revalidate the purchase order for Ketamine injections, despite assurances. It is also stated that, based on the oral instructions of the Managing Director of the defendant, the

plaintiff did not supply Pethidine injections, which is a narcotic product. Nevertheless, the defendant failed to settle the bill for a sum of Rs.52,464/- towards the supply of Pethidine injections already effected.

15. It is further stated that the plaintiff's sister concern, M/s. Troikaa Laboratories Pvt. Ltd. (TLPL), has since been amalgamated with the plaintiff company. Prior to such amalgamation, the said sister concern had supplied medicines to the defendant. A sum of Rs.41,756/- was due towards supplies made for the year ending 31.03.1997, and a further sum of Rs.1,44,560/- was due towards supplies made for the year ending 31.03.1998. Thus, a total sum of Rs.1,86,316/- was due and payable by the defendant to the said sister concern.

16. In addition thereto, a sum of Rs.1,494/- is due towards liquidated damages in respect of the said supplies. A further sum of Rs.34,555/- is due towards delayed payment charges for invoices belatedly settled. The defendant is also liable to pay a sum of Rs.91,339/- towards interest on unpaid invoices, calculated up to 15.06.1999.

17. It is further stated that the defendant is liable to refund a sum of Rs.45,000/- towards earnest money deposit, together with interest of Rs.14,052/-, calculated at the rate of 19% per annum.

18. Thus, according to the plaintiff, a total sum of Rs.3,72,756/- is due and payable by the defendant to the plaintiff's sister concern.

19. It is further stated that M/s. Troikaa Laboratories Pvt. Ltd., by deed of assignment dated 23.04.1999, assigned its actionable claim against the defendant, quantified at Rs.2,93,969.40/-, together with interest at 19% per annum, in favour of the plaintiff. Accordingly, the plaintiff claims entitlement to recover the said assigned amount from the defendant.

20. Therefore, the plaintiff claims a sum of Rs.14,75,061/- towards its own dues and a further sum of Rs.3,72,756/- towards the assigned actionable claim, together with interest and costs.

21. The brief averments in the written statement are as follows: The defendant is a nodal agency established by the Government of Tamil Nadu for procurement of medicines and medical equipment for the Government

sector. It is responsible for procurement and distribution of medicines to about 2,000 medical institutions throughout Tamil Nadu.

22. The defendant denies that the plaintiff completed all supplies up to the last tender dated 19.09.1997. While admitting that the plaintiff had deposited a sum of Rs.1.60 lakhs towards Earnest Money Deposit (EMD) and Security Deposit in respect of various tenders, the defendant denies that all the said amounts became refundable in the year 1998. The defendant further denies that the plaintiff had complied with all tender obligations.

23. According to the defendant, the EMD and security deposit were not returned since the plaintiff failed to fulfill its contractual obligations under the tender conditions. The defendant, therefore, claims entitlement to adjust the said amounts in accordance with the terms of the tender agreements. It is further contended that each tender gives rise to a separate cause of action and that the plaintiff cannot combine all claims in a single suit. The defendant also relies upon the clauses in the tender agreements permitting recovery of differential costs and other losses from the security deposit.

24. The defendant specifically denies the plaintiff's claim that a sum of Rs.1,60,000/-, together with interest of Rs.36,438/-, is payable. It is further contended that the claims made by the plaintiff are barred by limitation.

25. The defendant also denies the plaintiff's claim that a sum of Rs.2,19,492/- is payable towards supply of medicines during the period 1997–1998. Likewise, the defendant does not admit that the plaintiff supplied Pethidine injections valued at Rs.52,464/- through M/s.EPCIL Distributor. Consequently, the defendant denies its liability to pay the sum of Rs.3,04,716/- claimed towards supply of medicines and puts the plaintiff to strict proof of the averments made in the plaint.

26. With regard to the plaintiff's claim for the value of returned medicines amounting to Rs.3,18,443/-, the defendant contends that, even according to the plaintiff's own averments, the medicines were returned in the year 1996 and, therefore, the said claim is barred by limitation. It is further stated that, under the terms of the tender agreement, medicines which failed to satisfy the prescribed laboratory quality standards were liable to be rejected. The agreement also provides that, if the supplier failed to take back such rejected

goods within the prescribed time, the defendant would be entitled to destroy them.

27. The trial Court has framed the following issues viz.,

(i) Whether the suit is bad for misjoinder of parties and cause of action?

(ii) Whether the suit is barred by limitation?

(iii) Whether the tender conditions constitute an "adhesion contract" and therefore, contrary to public policy?

(iv) Whether the defendant is justified in forfeiting the earnest money deposit?

(v) Whether the plaintiff is entitled for the reliefs sought for?

(vi) To what relief?

28. On the side of the plaintiff, P.W.1 was examined and Exs.P1 to P105 were marked. On the side of the defendant, no oral or documentary evidence was adduced. The suit was decreed in part for a sum of Rs.11,80,330/-, while the remaining claim was rejected. Aggrieved by the said judgment and decree, both the plaintiff and the defendant have preferred separate appeals in A.S.No.481 of 2021 and A.S.No.386 of 2021, respectively, on the following grounds.

29. The grounds raised by the defendant/appellant in A.S.No.386 of 2021 are as follows: According to the defendant, the trial Court failed to consider that, under the terms of the tender agreements, supply would be treated as complete only upon receipt of quality clearance certificates from the laboratories and that, where the samples failed to satisfy the prescribed standards, the respective batches were liable to be rejected.

30. It is further contended that the suit was liable to be dismissed for misjoinder of causes of action, since each tender agreement constituted a separate and independent contract. According to the defendant, the trial Court failed to appreciate the admission of P.W.1 that each agreement was distinct and independent and had no bearing on the others. Despite such admission, the plaintiff had combined various independent claims arising out of separate transactions in a single suit, though the transactions did not constitute a continuous cause of action.

31. The defendant further contends that the trial Court failed to properly decide Issue No.4 relating to the defendant's entitlement to deduct amounts from the Security Deposit in terms of the contractual conditions. According to the appellant, the plaintiff had itself admitted delay in the supply of

medicines and, therefore, the defendant was justified in making deductions as per the tender conditions.

32. It is also contended that the burden of proof lay upon the plaintiff to establish its claim and that the plaintiff failed to prove that the medicines supplied by it satisfied the prescribed quality standards and retained the required potency throughout the shelf-life period. The appellant further submits that the plaintiff had not produced any contra evidence to disprove the defendant's case regarding defective or substandard supplies.

33. It is further contended that the trial Court failed to properly consider the plea of limitation, which, according to the defendant, is a pure question of law, and ought to have dismissed the suit as barred by limitation.

34. Lastly, the appellant challenges the award of interest at 12% per annum on the suit claim, contending that there was no contractual clause providing for payment of interest. It is stated that P.W.1 himself admitted in cross-examination that the agreements did not contain any such stipulation. Hence, according to the defendant, the grant of interest by the trial Court is unsustainable in law.

35. The grounds raised by the plaintiff/appellant in A.S.No.481 of 2021 are as follows: According to the plaintiff, the trial Court ought to have decreed the suit in its entirety, particularly when the defendant had neither adduced oral evidence nor examined any witness in support of its defence. It is contended that the defendant failed to substantiate the alleged breaches, deductions, penalties and claims towards liquidated damages.

36. The plaintiff further contends that the tender conditions relied upon by the defendant were one-sided and unconscionable, being in the nature of adhesion contracts, and conferred arbitrary and unilateral powers on the defendant to impose deductions, penalties and alleged liquidated damages at its discretion.

37. The plaintiff specifically challenges the deduction of a sum of Rs.2,55,088/- towards alleged liquidated damages, contending that the delay in supply occurred only on account of the defendant's irregular and delayed payments for earlier supplies. It is submitted that the plaintiff, being a Small Scale Industrial (SSI) Unit, was financially dependent upon timely payments from the defendant for continuing the manufacture and supply of medicines.

38. The plaintiff further contends that the defendant neither pleaded nor established any actual loss or damage suffered by it and, therefore, the deduction towards liquidated damages is contrary to Sections 73 and 74 of the Indian Contract Act, 1872.

39. The appellant also assails the rejection of its claims towards interest on delayed payments, unpaid invoice amounts, Earnest Money Deposit (EMD) and Security Deposit, including the claims relating to the sums of Rs.2,70,962/- and Rs.1,39,946/-. According to the plaintiff, the trial Court failed to properly appreciate the documentary evidence, particularly the invoices and Ex.P79 dated 17.10.1996.

40. The plaintiff further contends that the interest awarded by the trial Court is wholly inadequate and not commensurate with the commercial nature of the transactions between the parties. Accordingly, the plaintiff seeks award of compound interest at 19% per annum, with yearly rests, on the amounts found due.

41. The Points for consideration for disposal of Appeals are:

1. Whether the suit is hit by misjoinder of cause of action?
2. Whether the suit is hit by Limitation?
3. Whether the plaintiff is entitled for refund of Rs.1,60,000/- as Security Deposit and EMD?
4. Whether the plaintiff is entitled for amount of Rs.3,04,716/- towards the medicine supplied?
5. Whether the plaintiff is entitled for amount of Rs.3,18,443/- for the returned medicines?
6. Whether the plaintiff is entitled for an amount of Rs.1,86,316/- as an assignee of Troikka Laboratories Private Limited? And Earnest money deposit amount of Rs.45,000/-?
7. Whether the plaintiff is entitled of Rs. 1,65,852/- towards Reprocessing charges for Dopamine Injection?
8. Whether the plaintiff is entitled for Liquidated damages deducted by the defendant and interest on delayed payments?
9. Whether the Judgment and decree of the trial court is liable to be set aside?
10. For what reliefs the plaintiff is entitled?

42. The plaintiff is engaged in the manufacture of drugs and medicinal products. The defendant invited tenders for supply of medicines, and the plaintiff was declared the successful tenderer for the period from 1994 to 1998. Pursuant thereto, four separate agreements were entered into between the plaintiff and the defendant. According to the plaintiff, it deposited the Earnest Money Deposit and Security Deposit amounts in terms of the tender conditions and duly completed all supplies in accordance with the agreements.

43. The grievance of the plaintiff is that, despite completion of its contractual obligations, the defendant failed to refund the Security Deposit and Earnest Money Deposit. It is further alleged that the defendant failed to pay the amounts due towards medicines supplied and wrongfully deducted certain sums towards alleged delayed supply, return of overstocked medicines and other charges. Hence, the plaintiff filed the suit seeking refund of the Security Deposit and Earnest Money Deposit, interest for delayed payment, amounts due towards medicines supplied, value of returned medicines, and costs.

44. While admitting the commercial transactions between the parties, the defendant denied its liability as claimed by the plaintiff. According to the defendant, the plaintiff supplied medicines belatedly, failed to satisfy the prescribed laboratory quality tests, and supplied medicines in excess quantity, resulting in overstock. Therefore, in terms of the tender agreements, the defendant adjusted the amounts payable by the plaintiff from out of the plaintiff's Security Deposit.

45. The plaintiff claims a total sum of Rs. 18,47,818/- under the following heads:

(i) Refund of Earnest Money Deposit and Security Deposit Rs.1,60,000/

(ii) Amount payable towards supply of medicines … Rs.3,04,716/-

(iii) Value of expired goods returned by the defendant …Rs.3,18,443/-

(iv) Claim amount under the assignment of actionable claim executed by TLPL... Rs.1,86,316/- and of EMD Rs.45,000/-

(v) Reprocessing charges for Dopamine Injection … Rs.1,65,852/-

(vi) Refund of Liquidated damages deducted by the defendant Rs.2,55,088/-

(vii) Overdue interest on invoices paid Rs.12,130/-

(viii) Overdue interest on invoices not paid till 30.04.1999 Rs.2,22,394/-

(ix) Interest on EMD and security deposit amount Rs.36,438/-

(x) Overdue interest on invoice paid to assigned amount/actionable claim amount Rs.34,555/-

(xi) Overdue interest on invoices not paid till 30.4.99 Rs.91,339/-

(xii) Interest on EMD and security deposit Rs. 14,052/-

Point No.1:

46. In the present case, the plaintiff was the successful tenderer for the years 1994 to 1998, and separate agreements were entered into between the plaintiff and the defendant for each year. The plaintiff filed a consolidated suit claiming refund of Earnest Money Deposit and Security Deposit after expiry of the tender period, recovery of amounts due towards medicines supplied, amounts relating to returned stocks, interest on delayed payments and other consequential reliefs. In addition, the plaintiff also claimed the assigned dues of M/s. Troikaa Laboratories Pvt. Ltd. under an assignment deed.

47. The objection of the defendant is that each tender agreement constituted a separate and independent contract and, therefore, each claim gave rise to a distinct cause of action. According to the defendant, clubbing all such claims in a single suit amounts to misjoinder of causes of action.

48. The mere existence of separate agreements does not, by itself, automatically bar joinder of causes of action where the parties are the same. The relevant considerations are whether the transactions are interconnected or arise out of a continuing commercial relationship, whether common questions of fact and law arise, and whether any prejudice is caused to the defendant.

49. In the present suit, the plaintiff and the defendant are the same parties. The transactions arise out of a continuous course of yearly tender arrangements for supply of medicines. The defence is also substantially common, namely, delay in supply, defective supply, deductions, limitation and adjustment from the security deposit.

50. Therefore, the joinder of causes of action is permissible under Order II Rule 3 CPC. The inclusion of the assigned claim of M/s. Troikaa Laboratories Pvt. Ltd. also does not render the suit defective, since the claim is against the same defendant and all the disputes can conveniently be tried together. The assignee steps into the shoes of the assignor and is entitled to maintain the action in its own name. In these circumstances, it is held that the suit is not hit by misjoinder of causes of action. Accordingly, this point is answered.

Point No.2:

51. The legal plea raised by the defendant is that the suit claims are barred by limitation. Though the said plea was repeatedly raised on behalf of the defendant, no specific explanation has been offered as to how the claims are barred by limitation. The transactions in question commenced on 12.09.1994 and continued till the year 1998. The suit was filed on 16.06.1999.

52. Insofar as the claims relating to refund of Security Deposit and Earnest Money Deposit are concerned, the right to seek refund would arise only upon expiry of the tender period. Admittedly, the tender period expired in the year 1998. Therefore, the suit filed in the year 1999 seeking refund of the said deposits is well within the period of limitation.

53. With regard to the amounts claimed towards supply of medicines, the defendant contends that the claim relating to medicines supplied during the tender year 1996–1997, valued at Rs.2,19,492/-, is barred by limitation. Ex.P16 is the invoice relating to the said supply and is dated 25.06.1996. Since the suit was instituted on 16.06.1999, within three years from the date of the invoice, the said claim is clearly within time.

54. In respect of the claim relating to the value of returned medicines treated as excess stock, though the medicines were originally supplied in the year 1994, they were returned only during 1996–1997. Therefore, the cause of action for claiming the value of the returned medicines arose only on the date of such return. Hence, the suit filed in the year 1999, in respect of medicines returned in the year 1997, is also within limitation.

55. Insofar as the actionable claim is concerned, M/s. Troikaa Laboratories Pvt. Ltd. had entered into tender transactions for the periods 1995–1996 and 1997–1998. The medicines were supplied continuously from 08.01.1996 to 14.04.1997. The amount payable towards the medicines supplied by M/s. Troikaa Laboratories Pvt. Ltd. became due from the last date of supply. Since the supplies were made in a continuous course of transactions, the claim made by the plaintiff, as assignee of M/s. Troikaa Laboratories Pvt. Ltd., is also within the prescribed period of limitation.

56. Similarly, the claim for refund of Security Deposit and Earnest Money Deposit amounting to Rs.45,000/- paid by M/s. Troikaa Laboratories Pvt. Ltd. is also within time, since the tender period itself expired only in the year

1998. Therefore, the plea of limitation raised by the defendant is unsustainable and is liable to be rejected. Accordingly, this point is answered.

Point No.3:

57. The plaintiff, being the successful tenderer for four years, claims refund of the Security Deposit and Earnest Money Deposit directly from the defendant. There is no dispute regarding the payment of the Earnest Money Deposit and Security Deposit by the plaintiff to the defendant. It is also not in dispute that the tender period had come to an end.

58. According to the plaintiff, since it had complied with all its obligations under the tender agreements, the defendant ought to have refunded the said sum of Rs.1,60,000/-. However, the defendant, under untenable and unreasonable pretexts, failed to refund the said amount and unlawfully retained the same. Hence, the plaintiff claims a sum of Rs.1,60,000/- together with interest of Rs. 14,052/-.

59. On the side of the defendant, receipt of the Earnest Money Deposit and Security Deposit was admitted. However, the defendant contends that, since the plaintiff failed to comply with the tender conditions, the amounts payable

by the plaintiff towards delayed supply of medicines and return of stocks were appropriated from the said Earnest Money Deposit and Security Deposit, in accordance with the terms of the tender agreements. Therefore, according to the defendant, no amount remains due and payable to the plaintiff under the head of Earnest Money Deposit and Security Deposit.

60. The defendant has taken the stand that the Earnest Money Deposit and Security Deposit were appropriated towards the plaintiff's alleged non-compliance with the tender conditions. Under the terms and conditions of the tender, if the tenderer/plaintiff committed any default in the supply of medicines, the defendant was entitled to procure the medicines from the open market and recover the differential cost and other consequential charges from out of the security deposit furnished by the plaintiff.

61. However, the defendant has neither furnished particulars nor explained any specific instance, calculation or basis as to how the said amounts were appropriated or forfeited. In the absence of any material particulars in this regard, the defendant's refusal to refund the Earnest Money Deposit and Security Deposit, even after expiry of the tender period, is unsustainable.

62. The defendant has also not furnished particulars regarding the alleged return of stocks, such as the details of the returned medicines, their value, the date and manner of return, any notice issued to the plaintiff in that regard, or the particulars of the amount allegedly forfeited or adjusted. In the absence of such details and supporting records, the defendant's contenqtion regarding return of stocks and consequent forfeiture or adjustment cannot be accepted.

63. The plaintiff claims refund of the security amount with interest. However, on the plaintiff's side, it was admitted that there was no provision in the tender agreement for payment of interest in the event of delay in refund of the Earnest Money Deposit and Security amount. In these circumstances, the finding of the trial Court directing refund of the Earnest Money Deposit and Security Deposit, without interest, is found to be valid and correct. Accordingly, this point is answered.

Point No.4:

64. The plaintiff claims various amounts towards medicines supplied to the defendant. According to the plaintiff, a sum of Rs.32,760/- is due towards medicines supplied during the tender period 1996–1997; a sum of

Rs.2,19,492/- is due towards medicines supplied during the tender period 1997–1998; and a sum of Rs.52,464/- is due towards supply of Pethidine injections through the plaintiff's distributor, M/s. Epcil. Thus, the plaintiff claims a total sum of Rs.3,04,716/- towards medicines supplied during different tender periods.

65. On the side of the defendant, liability to pay the said amount was denied and a plea of limitation was also raised. The plaintiff has established the supply of medicines during the tender period 1996–1997, valued at Rs.32,760/-, through Invoice No.0026 dated 25.06.1996. The said transaction is also reflected in Ex.P53, statement of accounts.

66. On the side of the defendant, only a bald denial was made regarding liability, while the actual supply of medicines was not specifically denied. Once the supply of medicines is established, the burden shifts upon the defendant to prove that payment had already been made or that the liability had otherwise been discharged. In the present case, the defendant has failed to discharge such burden.

67. Further, Ex.P16 invoice is dated 25.06.1996 and the suit was filed on 16.06.1999, within a period of three years. Hence, the claim is not barred by limitation.

68. Similarly, with regard to the claim for medicines supplied during the tender period 1997–1998, valued at Rs.2,19,492/-, the plaintiff relied upon several purchase orders and invoices.

69. Under P.O.No.F1655, Bill No.0035 dated 17.03.1998 relates to Ex.P40 invoice for a sum of Rs.11,700/-. Under P.O.No.F0986, Bill No.0011 dated 01.12.1997, Ex.P36 invoice was raised for a sum of Rs.30,784/-. Under P.O.No.F1157, Bill No.0024 dated 29.12.1997, Ex.P37 invoice was raised for a sum of Rs.15,392/-. Further, under P.O.No.F1368, Bill No.0003 dated 14.04.1997, medicines were supplied to the value of Rs.3,32,280/-.

70. Thus, the total value of medicines supplied under the above purchase orders comes to Rs.4,35,916/-. Out of the said amount, credit was given for a sum of Rs.2,22,975.70/- towards part payment made by the defendant through Cheque No.98017 drawn on Canara Bank, leaving a balance of Rs.2,12,940/- due under the said purchase orders.

71. Apart from the above, the plaintiff also supplied medicines under P.O.No.A1336 through Bill No.0045 dated 18.03.1997 for a sum of Rs.2,912/- and Bill No.0046 dated 18.03.1997 for a sum of Rs.3,640/-. Thus, the total amount due towards medicines supplied comes to Rs.2,19,492/-.

72. P.W.1 has reiterated the said claim in his oral evidence. There is no rebuttal evidence on the side of the defendant. In such circumstances, it stands proved that the defendant is liable to pay a sum of Rs.2,19,492/- towards medicines supplied by the plaintiff.

73. Insofar as the claim of Rs.52,464/- towards supply of Pethidine injections through the plaintiff's distributor, M/s. EPCIL, is concerned, the plaintiff relied upon Exs.P38, P41, P42, P43, P45 and P46, namely Invoice Nos.51, 1, 3, 5, 30 and 33 dated 07.01.1998, 16.04.1998, 09.05.1998, 13.05.1998, 25.05.1998 and 02.06.1998 respectively. The said amount is also reflected in Ex.P53, statement of accounts.

74. The supply of medicines through M/s. Epcil has not been denied by the defendant. Further, there is no independent claim by M/s. Epcil against the defendant for payment.

75. The question that arises is whether the plaintiff was permitted to effect supply through a distributor. No clause in the tender conditions has been produced before this Court prohibiting the tenderer from supplying medicines through a distributor. On the contrary, the defendant accepted the medicines supplied through M/s. EPCIL without raising any objection and admittedly utilised the same.

76. Once the medicines supplied through the distributor were accepted and utilised by the defendant, the defendant cannot avoid its liability to pay the value thereof merely on the ground that the supply was effected through a distributor. In such circumstances, this Court holds that the defendant is liable to pay a sum of Rs.3,04,716/- towards the medicines supplied. Accordingly, this point is answered.

Point No.5:

77. The plaintiff claims a sum of Rs.3,18,443/- towards the value of medicines returned by the defendant after an inordinate delay. According to the plaintiff, pursuant to the tender conditions, the plaintiff had supplied medicines such as Injection Sodium Nitroprusside, Injection 2 PAM,

Injection Succinylcholine Chloride, Injection 5 Fluorouracil, Injection Hydrocortisone Sodium Succinate and Injection Dopamine.

78. The said supplies were admittedly made in the year 1994, whereas the medicines were returned only during 1996–1997 and 1997–1998. Ex.P51 sets out the details of the medicines returned for the period 1996–1997.

79. There is no dispute that the defendant had the right to reject or return medicines if they failed to satisfy the prescribed laboratory standards or quality tests. However, such right cannot be exercised arbitrarily or after an inordinate and unexplained delay, particularly after the expiry of the medicines supplied.

80. In the present case, though the defendant reiterated its right to reject defective medicines, no particulars have been furnished regarding the alleged defects in the medicines supplied. No laboratory test report or other supporting material has been produced on the side of the defendant to establish that the medicines supplied by the plaintiff were defective or unfit for use.

81. Admittedly, the medicines were supplied in the year 1994 and were returned only during the years 1997 and 1998. No explanation has been offered on the side of the defendant for such extraordinary delay in returning the medicines. In the absence of any material to show that the medicines were defective, and in the absence of any justification for the delayed return, the conduct of the defendant in returning the medicines after several years cannot be sustained.

82. The contention of the defendant that the claim is barred by limitation is also unsustainable. The cause of action for claiming the value of the returned medicines arose only when the defendant returned the medicines during the years 1997 and 1998. Since the suit was filed in the year 1999, the claim is clearly within the period of limitation.

83. In such circumstances, this Court finds that the plaintiff has established the said claim. Accordingly, the defendant is liable to pay a sum of Rs.3,18,443/- towards the value of the medicines returned after inordinate delay. Accordingly, this point is answered.

Point No.6:

84. The case of the plaintiff is that M/s. Troikaa Laboratories Pvt. Ltd., its sister concern, had also supplied medicines to the defendant to the value of Rs.1,86,316/- and had deposited a sum of Rs.45,000/- towards security deposit. It is contended that, even after expiry of the tender period, the defendant failed to refund the security deposit and to pay the amount due towards the medicines supplied.

85. On the side of the plaintiff, the said amount payable to M/s. Troikaa Laboratories Pvt. Ltd. is claimed on the ground that the said company was subsequently amalgamated with the plaintiff company and also on the basis of the deed of assignment marked as Ex.P49.

86. It is evident that the same claim cannot be simultaneously rested both on amalgamation and on assignment. The suit was filed on 16.10.1999. Ex.P49, deed of assignment, is dated 24.04.1999, whereas the order of amalgamation is dated 17.09.1999. From the above dates, it appears that the plaintiff had made the claim even prior to the order of amalgamation, and therefore, the claim was probably founded on the deed of assignment.

87. It is, therefore, necessary to consider whether the claim made on the basis of Ex.P49, deed of assignment, is valid.

88. Ex.P49 is an "Agreement of Assignment", whereby M/s. Troikaa Laboratories Pvt. Ltd., (assignor/second party) assigned its actionable claim against Tamil Nadu Medical Services Corporation Ltd. (TNMSCL) in favour of Troikaa Parenteral Pvt. Ltd., (assignee/first party), for a consideration of Rs.2,50,000/-. The assigned claim is stated to be Rs.2,93,969.40, together with interest at 19% per annum.

89. Prima facie, the said assignment is legally recognisable as an assignment of an actionable claim under Section 130 of the Transfer of Property Act, 1882.

90. The claim of the assignor towards amounts payable by the defendant for medicines supplied and refund of security deposit has been established on the side of the plaintiff as follows: With regard to the Earnest Money Deposit, a sum of Rs.5,000/- was deposited by the assignor by demand draft dated 01.03.1996; a further sum of Rs.20,000/- was deposited by demand draft dated 13.03.1996; and another sum of Rs.20,000/- was deposited by demand

draft dated 05.04.1997. Thus, the plaintiff has proved that the assignor had deposited a total sum of Rs.45,000/- towards Earnest Money Deposit.

91. When the payment of the said deposit amount by the assignor stands proved, and when the defendant has not shown any valid or substantial reason for withholding the same, the defendant is liable to refund the said amount to the plaintiff/assignee.

92. On the side of the defendant, it is stated that a sum of Rs.1,494/- was deducted from the Earnest Money Deposit towards delayed supply of medicines. Though the plaintiff questioned the said deduction, it admitted that there was a slight delay in supplying the medicines.

93. Once delay in supply is admitted, the deduction of Rs.1,494/- towards liquidated damages is justifiable. Hence, the plaintiff is not entitled to refund of the said sum of Rs.1,494/-.

94. In respect of the sum of Rs.1,86,316/- claimed as payable by the defendant to the assignor towards medicines supplied, the plaintiff has produced Ex.P17, Invoice No.0467 dated 08.01.1996, which shows that M/s.

Troikaa Laboratories Pvt. Ltd. supplied medicines to the defendant for a sum of Rs.41,756/-. Further, under Ex.P28, Invoice No.0001 dated 14.04.1997, medicines were supplied to the value of Rs.60,715/-, and under Invoice No.0006 dated 14.04.1997, medicines were supplied to the value of Rs.83,845/-.

95. Thus, the total value of medicines supplied by M/s. Troikaa Laboratories Pvt. Ltd. comes to Rs.1,86,316/-, and the supply of medicines stands proved. On the side of the defendant, receipt of the medicines has not been denied, nor has it been proved that the said liability was discharged. In these circumstances, the plaintiff, as assignee, is entitled to recover the said sum of Rs.1,86,316/-. Accordingly, this point is answered.

Point No.7:

96. The plaintiff states that it had supplied Dopamine injections, as per the orders placed by the defendant, to the value of Rs.3,23,637/-. The said medicines were supplied in cartons exclusively designed for the defendant, bearing its name and logo. Subsequently, the defendant returned the said medicines on the ground that they constituted overstock or excess supply pursuant to extra orders placed by it. For reusing the returned stock, the

plaintiff claims to have incurred a sum of Rs.1,65,852/- towards reprocessing charges and has claimed the said amount from the defendant.

97. On the side of the defendant, the return of the said medicines is admitted. However, it is stated that the medicines were returned as they did not satisfy the required quality standards. It is further contended that, under the terms of the tender, the medicines supplied would be subjected to laboratory quality tests and would be treated as duly supplied only upon passing such tests. Thus, according to the defendant, the stocks were returned on account of defective supply by the plaintiff and not on account of any excess order placed by the defendant.

98. In these circumstances, it is for the plaintiff to establish, by acceptable evidence, that the Dopamine injections supplied by it were returned by the defendant on the ground that excess orders had been placed. Admittedly, no documentary material has been produced on the side of the plaintiff in this regard. Except the oral testimony of P.W.1, there is no evidence available on record to prove that the Dopamine injections were returned as excess stock ordered by the defendant.

99. On the contrary, the defendant has specifically denied the said contention and pleaded that the medicines were returned as they did not satisfy the required quality standards. In this regard, P.W.1 was also subjected to cross-examination, but nothing useful was elicited to establish the plaintiff's case.

100. As per the terms and conditions of the tender, if the medicines were returned on account of defective quality or failure to satisfy the prescribed quality standards, the supplier would not be entitled to claim any amount incurred in connection with such supply, including expenses towards special packing, separate cartons, transportation or reprocessing charges.

101. On the other hand, if the medicines had in fact been returned only on account of excess stock or over-ordering by the defendant, the plaintiff would be entitled to claim the expenses incurred in that regard. Therefore, the very foundation for claiming reprocessing charges depends upon the plaintiff proving that the return of Dopamine injections was due to excess stock and not due to defective quality.

102. In the present case, the plaintiff has failed to establish the said foundational fact. No correspondence, return memo, acknowledgment, stock statement, internal communication or other supporting record has been produced to show that the medicines were returned as excess stock. Equally, no independent or technical evidence has been adduced to substantiate the plaintiff's plea.

103. The trial Court observed that the defendant had not produced any document or material to establish that the medicines returned by it were defective in quality. On that basis, the trial Court inferred that the medicines were returned as overstock and not on account of defective quality. The trial Court further observed that, if the medicines were really defective in quality, they could not have been reprocessed and resold in the open market. On such reasoning, the trial Court decreed the claim relating to reprocessing charges.

104. However, the approach adopted by the trial Court is legally unsustainable. It is a settled principle of law that the initial burden of proof lies upon the plaintiff to establish its claim by adducing acceptable oral and documentary evidence. The plaintiff cannot succeed merely on the weakness of the defence or on the failure of the defendant to produce certain records.

105. In the present case, the plaintiff claimed reprocessing charges for Dopamine injections on the premise that the medicines were returned as overstock. The defendant, on the other hand, consistently pleaded that the medicines were returned because they were defective and had not satisfied the required quality tests. Therefore, the burden squarely rested upon the plaintiff to establish, by satisfactory evidence, that the medicines were returned as overstock and not on account of defective quality.

106. Except making a bald assertion, the plaintiff has not produced any records, expert evidence, laboratory reports, manufacturing records, accounts or other acceptable material to prove that the medicines were returned on account of excess stock. Likewise, no reliable evidence has been adduced to establish that the medicines were, in fact, reprocessed and thereafter resold in the open market.

107. Further, the observation of the trial Court that medicines returned on the ground of defect could not have been reprocessed for resale is not based on any evidence available on record. The said conclusion appears to have been arrived at purely on assumptions and surmises, without any supporting expert or technical evidence. Courts cannot substitute conjectures for proof, particularly in matters involving technical and pharmaceutical issues.

108. Therefore, this Appellate Court is of the considered view that the finding of the trial Court granting a sum of Rs.1,65,852/- towards reprocessing charges for Dopamine injections suffers from lack of evidence and erroneous shifting of the burden of proof upon the defendant. Consequently, the said finding of the trial Court is liable to be interfered with and set aside. In such circumstances, the plaintiff is not entitled to any relief in respect of the claim relating to reprocessing charges for Dopamine injections. Accordingly, this point is answered.

Point No.8:

109. The plaintiff claims a sum of Rs.2,55,088/- towards liquidated damages deducted by the defendant for delayed supply. P.W.1, in his evidence, admitted that the tender agreement contained a clause enabling the defendant, in the event of delay in supply of medicines, either to cancel the contract or to make deductions from the amounts payable.

110. When there is a specific contractual clause authorising the defendant to deduct amounts for delayed supply, and when the plaintiff had acted under

the said tender conditions, the plaintiff cannot seek reimbursement of the amount so deducted.

111. The plaintiff also claims interest on delayed payments and on the amounts allegedly payable by the defendant. However, P.W.1 admitted in evidence that there is no clause in the tender agreement providing for payment of interest on delayed payments. In the absence of any contractual provision entitling the plaintiff to claim such interest, the said claim cannot be sustained.

112. The same reasoning applies to the claim made by the plaintiff as assignee of M/s. Troikaa Laboratories Pvt. Ltd. Accordingly, this point is answered by holding that the plaintiff is not entitled to refund of the liquidated damages deducted by the defendant or to interest on delayed payments.

Point Nos.9 and 10:

113. The trial Court, by the impugned judgment, granted relief in respect of Point Nos.1 to 8 and decreed the suit for a sum of Rs.11,80,330/- under the heads referred to in paragraphs (i) to (v).

114. In respect of Point No.7, namely Claim No.(v) relating to reprocessing charges for Dopamine injections for a sum of Rs.1,65,852/-, the trial Court granted the said claim. However, for the reasons stated above, the said finding of the trial Court is set aside.

115. Consequently, the suit is decreed for a sum of Rs.10,14,478/- out of the total plaint claim of Rs.18,47,818/-.

116. The defendant has also contended that the award of interest at 12% per annum by the trial Court is excessive and unsustainable. The said contention cannot be accepted.

117. The transaction between the parties is admittedly a commercial transaction arising out of supply of medicines pursuant to tender agreements. Therefore, the proviso to Section 34 of the Code of Civil Procedure is attracted. Under the said proviso, in commercial transactions, the Court is empowered to award interest exceeding 6% per annum, subject to the contractual rate of interest, or, in the absence of such contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

118. In the present case, the amount due to the plaintiff was withheld for a considerable length of time. The defendant retained the amounts payable to the plaintiff despite supply of medicines under the tender contracts. Such prolonged withholding of money in a commercial transaction would necessarily cause financial hardship and loss to the supplier. Therefore, reasonable commercial interest is liable to be awarded.

119. The trial Court, taking into consideration the nature of the transaction and the long delay in settlement of dues, awarded interest at 12% per annum. The said rate cannot be termed either exorbitant or arbitrary. It is well within the range of commercial lending rates charged by nationalised banks in respect of commercial transactions during the relevant period.

120. It is also relevant to note that, in commercial matters, Courts have consistently upheld the award of interest between 9% and 12% per annum, depending upon the facts and circumstances of each case. Compared to the statutory rate of interest contemplated under the MSMED Act (Micro, Small and Medium Enterprises Development Act, 2006) for delayed payments, the interest awarded in the present case is moderate and reasonable. Therefore, the defendant's contention that the grant of interest at 12% per annum is

excessive or contrary to Section 34 CPC is devoid of merit and is liable to be rejected.

121. In fine, the defendant is directed to pay a sum of Rs.10,14,478/- with interest at the rate of 12% per annum from the date of plaint till the date of decree, and thereafter at the rate of 6% per annum on the decretal amount of Rs.10,14,478/- from the date of decree till the date of realisation.

122. Accordingly, the appeal filed by the plaintiff in A.S.No.481 of 2021 stands dismissed. The appeal filed by the defendant in A.S.No.386 of 2021 is partly allowed, to the extent that the amount decreed by the trial Court is modified and reduced from Rs.11,80,330/- to Rs.10,14,478/-. The rate of interest granted by the trial Court is confirmed. In the circumstances of the case, there shall be no order as to costs in both the appeals. Consequently, connected Civil Miscellaneous Petitions, if any, are closed.

11.06.2026

ay

Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation: Yes / No

To

1.The I Additional Judge,
City Civil Court,
Chennai.

2.The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

DR. A.D. MARIA CLETE, J

ay

A.S. Nos. 386 & 481 of 2021

11.06.2026