(2012) 03 MAD CK 0199

In the Madras High Court

Case No : A.S. No. 622 of 2008

M/s. C.B. Muthuswamy Chettiar and Son a HUF, rep. by its Kartha Mr. C.M. Ramraj and Mr. C.M. Ramraj — APPELLANT

Vs

M/s. Karnataka Soaps and Detergents Ltd. — RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (2012) 03 MAD CK 0199

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : P. Muthukrishnan, for the Appellant; S.D. Venkateswaran, for the Respondent

Judgement

Honorable Mr. Justice G. Rajasuria

1. This appeal is focused at the instance of the defendants as against the judgment and decree dated 20.11.2003 passed by the learned Additional District Judge (Fast Track Court No. V), Chennai in O.S. No. 862 of 2002, which was filed by the plaintiff for recovery of money.

2. The parties, for convenience sake, are referred to here under according to their litigative status and ranking before the trial Court.

3. A summation and summarization of the relevant facts, which are absolutely necessary and germane for the disposal of this appeal would run thus:

a] The plaintiff filed the suit for recovery of money with the following prayer:

- to pass a judgment and decree against the defendants to pay jointly and severally a sum of Rs. 5,96,979.62 ps together with interest on Rs. 4,07,494.63 ps at 18% per annum payable from the date of plaint till the date of realization. (extracted as such)

b] The defendants filed the written statement resisting the suit.

c] Whereupon, the trial court framed the relevant issues.

d] During trial, on the side of the plaintiff, one S. Muthaiyan was examined as P.W.1 and marked Exs.A1 to A10. On the side of the defendants, one Srinivasan was examined as DW1 and Exs.B1 to B10 were marked.

e] Ultimately, the trial court decreed the suit.

4. Being aggrieved by and dissatisfied with the same, the defendants have preferred this appeal on various grounds.

5. The learned counsel for the appellants/defendants, placing reliance on the grounds of appeal would develop his arguments that the accounts relied on by the plaintiff was faulty, because, as found exemplified in Exs.B5 to B9 certain items sent by the plaintiff to the defendants were not utilized by them and on the instruction of the plaintiff those consignments were transferred to one Dhanalakshmi Agencies and to one Sampath Agencies. Absolutely, there is no deduction from the accounts relating to those consignments and the trial court failed to take note of the same.

6. Whereas the learned counsel for the respondent/plaintiff would submit that absolutely, there is no pleading at all to the effect and a new case cannot be put forth by the defendants and thereby try to wriggle out of their liability. There are certain well-defined procedures for making claims in case of damaged goods supplied by the plaintiff to the defendants; but no such procedure was adhered to by the latter. In the written statement also, they reserved their right to make such claims. In such a case, for the first time, the defendants cannot raise certain untenable pleas and try to thwart the execution of the decree.

7. Heard both sides.

8. The points for consideration are as under:

1. Whether the trial court failed to analyze the accounts produced by the plaintiff and gave its finding on its correctness, even though the defendants disputed the accounts in the written statement?

2. Whether the trial court did not take into account Exs.B5 to B9 in deciding the lies?

3. Whether there is any perversity or illegality in the judgment and decree of the trial court?

9. The indubitable and indisputable or at least the undeniable facts would run thus:

The plaintiff, being the Government corporation, supplied sandal wood soaps and other items to the defendants on credit basis. It so happened that every now and then, the defendants were also in the habit of paying the dues. The fact remains that Exs.B5 and Ex.B7 are the communications sent by the plaintiff to the defendants instructing them to divert certain consignment to one Dhanalakshmi

Agencies and Sampath Agencies respectively. The precise contention of the defendants is that in the accounts, appropriate deductions were not effected concerning those consignments, which were instructed to be diverted to those agencies by the plaintiff.

10. A mere poring over and perusal of the judgment of the trial court would indicate and exemplify that the Exs.B5 to B9 were not given due importance in the manner it ought to have been given.

11. The learned counsel for the plaintiff would contend that any amount of evidence without the back up of the pleadings should be eschewed. The defendants did not choose to plead specifically the alleged mistakes in the account. Whereas the learned counsel for the defendants would contend that it is the duty of the plaintiff to prove the genuineness of the accounts and they cannot simply call upon the defendants to prove the negative. At this juncture, I re-collect and call-up the following maxims:

(i) Affirmantis est probare [He who affirms must prove]

(ii) Affirmanti non neganti incumbit probatio: The burden of proof lies upon him who asserts and not upon him who denies.

These two maxims would clearly display and demonstrate that the initial burden is on the plaintiff to prove what they assert. But for Exs.B5 and B7, the argument as put forth by the learned counsel for the plaintiff should be accepted and the appeal should be dismissed in limini and there could be no second thought over it. But the factual matrix is different here. This is a suit based on accounts. The defendants did not accept the genuineness of the accounts.

12. My mind is reminiscent and redolent of the following maxim:

Judicis est judicare secundum allegata et probata'' # It is the duty of a judge to decide according to facts alleged and proved. Whether this maxim can blindly be applied in the facts and circumstances of this case, is the crucial question. The defendants in the written statement explicitly placed reliance on Exs.B5 to B9, in disputing the accounts, however, without detailing and delineating the relevant calculation as to how much amount ought to have been adjusted by the plaintiff.

13. The core question arises as to whether such absence of furnishing of calculation precisely by the defendants would endure to the benefit of the plaintiff. Once the defendants can prima facie establish that all is not well with the accounts and there are certain factors, which are expected to be proved by the plaintiff, then the onus probandi is on the plaintiff to establish and prove as to how in consonance or in concinnity with Exs.B5 and B7, they arrived at the suit amount.

14. The learned counsel for the plaintiff would vehemently argue that unless the defendants adhered to the procedures of the plaintiff-Corporation for adjusting certain dues payable in respect of damaged consignments, the question of

considering those exhibits would not arise. Over and above, he would also incidentally point out that in the statement of accounts, there are two entries as under:

KARNATAKA SOAPS & DETERGENTS LTD. No. A80, 2ND FLOOR III AVENUE, ANNA NAGAR EAST CHENNAI 600102 C.B.MUTHUSAMY CHETTIYAR COIMBATORE LEDGER ACCOUNT 1-Apr-2000 to 31-Mar-2001

Date

Particulars

Vch type

Vch No.

Debit 1.4.2000

Credit To Opening Balance 6,36,498.87

28.11.2000

By Sales Promotion & Distribution Chennai Expenses

Credit Notes

1957

19,800.00

30.11.2000

By Sales Promotion & Distribution Chennai Expenses

Credit Notes

2180

137,376.68

By Closing Balance

6,36,498.87

157,176.68

479,322.19

6,36,498.87

636,498.87

For KARNATAKA SOAPS & DETERGENTS LTD. SD/- XXXXXSYED ILYAS BRANCH ACCOUNTANT

TRUE EXTRACT OF THE LEDGER

KARNATAKA SOAPS & DETERGENTS LTD. No. A80, 2ND FLOOR III AVENUE, ANNA NAGAR EAST CHENNAI 600102 C.B.MUTHUSAMY CHETTIYAR COIMBATORE LEDGER ACCOUNT 1-Apr-2001 to 30-Oct-2001

Date

Particulars

Vch type

Vch No.

Debit 1.4.2001

Credit To Opening Balance 4,79,322.19

31.05.2001

By Sales Promotion & Distribution Chennai Expenses

Credit Notes

318

71,827.56

By Closing Balance

4,79,322.19

71,827.56

407,494.63

4,79,322.19

479,322.19

For KARNATAKA SOAPS & DETERGENTS LTD. SD/- XXXXXSYED ILYAS BRANCH ACCOUNTANT

TRUE EXTRACT OF THE LEDGER

A plain reading of the judgment of the lower court would no way touch upon those details.

15. The learned counsel for the defendants inviting the attention of this court to Exs.B5 to B9 would contend that two consignments were handed over to the respective agencies, viz., Dhanalakshmi Agencies and Sampath Agencies. The products as mentioned in Ex.B6, which is extracted here under for ready reference were handed over to Dhanalakshmi Agencies in the presence of one Sri. N. Shanmughavel, the Assistant Sales Officer of the plaintiff''s corporation and the acknowledgements of Dhanalakshmi Agencies are found in Ex.B6, which comprised of two sheets dated 27.06.2000.

Ex.B6- page No. 1

C.B.MUTHUSAWMY CHETTIAR & SON Dealers and Manufacturers Representatives 384, Raja Street, Coimbatore 641001 27.06.2000

To M/s. Dhanalakshmi Agencies, 23/62, Thomas Street Coimbatore-1

5.10 p.m.

DELIVERY NOTE

1. Mysore Sandal Talcum 140 gm (1 c/s = 36 units)

4 c/s

2. Mysore< Sandal Talcum 640 gm (1 c/s =100 pc)

29 c/s

3. Mysore Sandal Baby Powder (1 c/s = 24 pc)

7 c/s

40 c/s

4. Mysore Sandal Gold soap (1 c/s = 36 pc)

12 c/s

Total

52 c/s (Fifty two cases)

Delivered in the presence of

sd/- xxxxx 27/06/2000

STOCK RECEIVED sd/- xxxxx Dhanalakshmi Agencies Upstairs 23/62, Thomas Street Coimbatore-1

Page: 2

27.06.2000

To M/s. Dhanalakshmi Agencies, 23/62, Thomas Street Coimbatore-1

1.15 p.m.

DELIVERY NOTE

1. Mysore Sandal Talcum 300 gm (1 c/s = 24 units)

53 c/s

Delivered in the presence of

sd/- xxxxx 27/06/2000

Certified

STOCK RECEIVED sd/- xxxxx Dhanalakshmi Agencies Upstairs 23/62, Thomas Street Coimbatore-1

16. According to him those two sheets in Ex.B6 would refer to 105 carton boxes, which were diverted to M/s. Dhanalakshmi Agencies and Ex.B8 would reveal that 75 carton boxes were diverted through Southern Roadways Limited, Madurai to M/s. Sampath Agencies as per the instruction of the plaintiff. Precisely, there is nothing to indicate that the plaintiff''s commitment as found exemplified in those documents were satisfied, even though the learned counsel for the plaintiff would place reliance on the aforesaid two entries in the account; no correlation can be made out as of now from the available records.

17. As such, I am of the view that once the defendants have succeeded in placing before the court, the prima facie proof that the plaintiff is bound to explain some of the entries in the accounts, then the court should have necessarily put the plaintiff under strict proof in proving the accounts; and the plaintiff also should have explained explicitly as to whether relating to those consignments referred to in Ex.B5 and B7, due deductions were given. While holding so, I do not in any way hold that whatever be the claim of the defendants, the same should be upheld. But what I would like to point out is that the court should necessarily probe further into those aspects and render its finding after giving due opportunity to both sides to adduce both oral and documentary as well and in respect of the rest of the claim of the plaintiff is concerned, the defendants are having absolutely no ground of resistance.

18. Even though in the grounds of appeal, jurisdiction point was raised that was not found fortified by the evidence on record. It is an admitted fact that goods were dispatched from Madras to Coimbatore only and payments were also made by the defendants at the Chennai office. As such, even by phantasmagorical thoughts in the wake of Section 20 of the Code of Civil Procedure, the civil court cannot be held to be having no jurisdiction. As such, the jurisdiction point raised by the defendants was rightly rejected by the trial court.

19. The learned counsel for the plaintiff would convincingly submit that the Government corporation, which is dealing with public money should not be left high and dry; successfully, the defendants delayed the payments uptill now, so to say, ever since 1999 and precisely the quantum of amount and the actual deduction if any, should be given under Exs.B5 to B9 cannot be found out. Hence, in these circumstances, a balance has to be struck so as to protect the interest of both sides.

20. According to the learned counsel for the plaintiff, as on date, the amount due payable under the decree of the trial court is Rupees eight lakhs and fifty thousand and the defendants should be ordered to deposit the entire amount subject to the outcome of the further probe that would be undertaken by the trial court as per the direction of this court. Whereas the learned counsel for the

defendants would submit that if the entire dues under the decree of the trial court are ordered to be paid then certainly, the defendants would not be able to proceed with the further probe effectively.

21. As such, I am of the considered view that taking into account the fact that amounts due payable in respect of 180 carton boxes are in dispute, I am of the view that out of the tentative sum of Rs. 8.5 lakhs, the defendants should be directed to pay to the plaintiff a sum of Rs. 6.5 lakhs (Rupees six lakhs and fifty thousand only) without prejudice, as a condition precedent for availing the opportunity to participate further in the proceedings before the lower court relating to the transaction involved under Exs.B5 to B9.

22. The learned counsel for the defendants by producing photo copy of the challans bearing Nos. 242 and 243 dated 26.10.2009 would submit that as per the order of this court a sum of Rs. 1,93,250/- (Rupees one lakh ninety three thousand two hundred and fifty only) and a sum of Rs. 59,900/- (Rupees fifty nine thousand and nine hundred only) towards lower court costs respectively were deposited in the lower court. As such, out of the aforesaid Rs. 6,50,000/- (Rupees six lakhs and fifty thousand only), after deducting the amount of Rs. 1,93,250/- (Rupees one lakh ninety three thousand two hundred and fifty only) already deposited into the trial court cited supra, the defendants shall pay the remaining amount of Rs. 4,56,750/- (Rupees four lakhs fifty six thousand seven hundred and fifty only) to the plaintiff directly by way of cheque/Demand Draft, under due acknowledgement within one month from the date of receipt of a copy of this order. The plaintiff is also permitted to withdraw the amount of the said amounts of Rs. 59,900/- (Rupees fifty nine thousand and nine hundred only) and Rs. 1,93,250/- (Rupees one lakh ninety three thousand two hundred and fifty only) already deposited in the trial court. On payment of the amount of Rs. 4,56,750/- (Rupees four lakhs fifty six thousand seven hundred and fifty only) now ordered by this court within one month from the date of receipt of a copy of this order by the defendants to the plaintiff, the trial court shall take up the matter to probe further in regard to the controversy relating to Exs.B5 to B9 only, after entertaining both oral and documentary evidence, as to whether the defendants should pay the remaining amount of the suit claim to the plaintiff or not and accordingly decide the issue as per law.

23. If the court finds that the amount already paid itself is in excess, the defendants will be at liberty to recover from the plaintiff and court could order so, on the contrary, if the court decides that the defendants are yet to pay more than what so far paid by the defendants the same shall be ordered to be paid to the plaintiff.

24. Accordingly, the judgment and decree of the trial court are set aside and the matter is remitted back to the trial court for probing further the matter as stated supra. The trial court is expected to dispose of the matter within a period of three months from the date of receipt of a copy of this order.

25. With the above direction, the matter is disposed of. However, there shall be no order as to costs in this appeal.

