(2012) 03 MAD CK 0116

In the Madras High Court

Case No : Second Appeal (MD) No.283 of 2006

M/s. Jothi Chemicals APPELLANT

Vs

M/s. Madura Sugars Ltd. Pandiarajapuram 624 209 Madurai District RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Citation : (2012) 03 MAD CK 0116

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Advocate : V. Meenakshisundaram for Mr. A. Sankarasubramanian, for the Appellant; S. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice P. Devadass

1. The plaintiff in O.S.No.146 of 2003 on the file of Sub-Court, Tuticorin is the appellant. As per Ex.B.3 tender, plaintiff firm (appellant) supplied burnt lime to the defendant Sugar Mills (respondent). The transactions were entered and payments were recorded in the books of accounts. Subsequently, plaintiff firm was dissolved and P.W.1 Nagoor Mohideen, became its sole proprietor owner (See Ex.A.1 release deed). Sailanathan, Manager, plaintiff''s firm, due to his misappropriation was sacked. On 18/6/1999, plaintiff sent Ex.A.9 letter and Ex.A.10 telegram to the defendant that hereafter not to pay any amount to Sailanathan. The receipt was acknowledged by the defendant under postal acknowledgment. On verification of the statement of accounts, Rs.1,04,412.86 and Rs.83,874.16 were shown to have been paid, but not created into plaintiff''s bank account. Further, as per the statement of accounts, as on 27.8.1999, Rs.13,802.40 is also due, thus, totally, Rs.2,02,089.42 is due. Ex.A.7 Lawyer''s notice was issued demanding the amount. It was received under postal acknowledgment. But, the amount remained unpaid. In the circumstances, plaintiff sued the defendant for the said amount with 12% interest p.a from the

date of suit notice, namely, 23.12.2000 till the date of the suit, totalling Rs.2,42,018/-.

2. Defendant filed written statement resisting the claim that the payments due to the plaintiff have been paid through the Bank account of the plaintiff, only Rs.13,530.90 towards supply of lime and Rs.20,000/- towards Earnest Money Deposit, totalling Rs.33,530.90 is due.

3. The trial Court framed the necessary issues, tried the suit. During the trial, plaintiff Nagoor Mohideen examined himself as P.W.1 and marked Exs.A.1 to A.10, while the defendant examined its Accounts Assistant Suresh Pandian as D.W.1 and marked Exs.B.1 to B.4.

4. Appreciating the arguments of both sides and analysing the evidence, the trial Court came to the conclusion that by proper evidence and accounts, plaintiff had not established its entitlement to the suit claim and there was no contract to pay interest, however, it found that the defendant is liable to pay Rs.33,530.90, thus decreed the suit partly with pro-costs.

5. Aggrieved, plaintiff appealed to the Principal District Court, Tuticorin in A.S.No.35 of 2005. The Appellate Court, after analysing the evidence, concurred with the findings of the trial Court. As against the said concurrent findings, the plaintiff had directed this Second Appeal.

6. At the time of admission of the Second Appeal, the following substantial question of law was formulated for consideration:-

Whether the Courts below are correct in denying the claim of the plaintiff, when evidence was very well available, even from adduced by the defendant and allowing the defence plea of discharge in the absence of any plea in the written statement and there is nothing to establish the same also?

7. According to the learned counsel for the appellant, the trial Court not properly appreciated Exs.A.9 and A.10 plaintiff''s notice and telegram. Without any pleading during the trial, pleaded that the amount was paid through Nambirajan, a staff of plaintiff. Not even a suggestion to that effect was put to P.W.1. Defendant has not established its plea of discharge. In this view of the matter, the learned counsel would find fault with the concurrent findings of the Courts below.

8. On the other hand, the learned counsel for the respondent contended that the plaintiff is the suitor. He claims the suit amount. The initial burden of proving his claim is upon him. He did not produce his ledger account nor the Bank account nor examine Sailanathan, when especially there was no strained relationship between them. Therefore, the Courts below have correctly rendered their findings, thus, in the circumstances, no interference is called for.

9. Admittedly, there was transaction between the plaintiff and the defendant in the matter of supply of burnt lime. Admittedly, the transactions were recorded on

ledger accounts. The plaintiff is maintaining the ledger accounts. Defendant is a Government Company maintains true and fair accounts. Admittedly, the plaintiff is maintaining Bank account in State Bank of India, Kovilpatti branch. The plaintiff sent payments through account payee cheques.

10. Plaintiff came forward with the suit with a definite case that the defendant has to pay Rs.2,02,089.42. Its claim is based on accounts. The firm''s affair have been dealt with by Sailanathan, the Manager of plaintiff. Thus, as a plaintiff, as a claimant, as a suitor, it is incumbent upon the plaintiff to show how and on what basis, plaintiff is entitle to the suit amount. This is a primary task. This has to be discharged by the plaintiff alone. To establish this, plaintiff cannot walk on the shoulders of the defendant nor pick out loop holes either in the pleadings or in the evidences of defendant. He must succeed or fail on his whole pleadings and evidence.

11. The plaintiff has not produced its audited accounts. He did not produce recorded evidence to show how he is entitled to the said amount. Of course, there was no love last between the plaintiff and Sailanathan, Manager, for some time. Subsequently, it was patched up. Under Ex.B.3 dated 12/6/2000 plaintiff wrote to the defendant that as between the plaintiff and Sailanathan there was compromise, amounts due to the plaintiff can be paid to him by way of account payee cheques. So, Sailanathan is with the plaintiff. He is the person who handled the accounts. Plaintiff can very well examine him to speak to the fact that the amount claimed has not been received from the defendant. The grievance of the plaintiff is that the amounts shown as paid to the plaintiff in the statement of accounts of defendant were not credited in his bank account. In such circumstances, he must prove it by way of his Bank Reconciliation Statement. But, he did not do so.

12. On the other hand, Exs.B.1 and B.2 would show the payments were made by the defendant to the plaintiff through account payee cheques and they were recorded. As to this, its Account Assistant D.W.1 also elaborately stated in his evidence.

13. In his evidence, D.W.1 had stated that one Nambirajan of plaintiff received the cheques. Of course, this aspect has not been stated in his written statement. Basic pleadings has to be stated in the written statement. It is not necessary to state the evidence also in the written statement. Even then the plea of defendant that the payments were made by way of cheques was not denied to by the plaintiff. In such circumstances, as stated earlier, plaintiff should have filed the statement of accounts maintained in his office as well as the Bank Reconciliation Statement. But, he did not do so. In this view of the matter, the defendant having not mentioned about Nambirajan in the written statement by itself would not establish that the plaintiff''s claim is proved.

14. In its written statement, defendant had stated that Rs.13,530.90 towards lime cost and Rs.20,000/- towards Earnest Money Deposit, totalling,

Rs.33,530.90 is due to the plaintiff. This has been suggested to P.W.1 during his cross-examination and this also has been reiterated by D.W.1 in his evidence. In the circumstances, based on the pleadings and the evidence let in, the trial Court as well as the First Appellate Court have rightly decreed the suit partly for the said admitted amount with pro-costs. In the circumstances, the substantial question of law is answered against the plaintiff. In the result, this Second Appeal is dismissed with costs, confirming the concurrent judgments and decrees of the Sub-Court, Tuticorin in O.S.No.146 of 2003 and the Principal District Court, Tuticorin in A.S.No.35 of 2005.