

(2010) 10 MAD CK 0120
In the Madras High Court
Case No : Appeal Suit No. 104 of 2001

Vijaykumar and Co., (Jute) Private Limited	APPELLANT
Vs	
Tamil Nadu Co-operative Sugar Federation Limited	RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Sales of Goods Act, 1930 — Section 61(2)

Citation : (2010) 10 MAD CK 0120

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; M.R. Narasimhan, for the Respondent

Judgement

M. Venugopal, J.—The Appellant/Defendant has projected this Appeal as against the Judgment and Decree dated 20.04.2000 in O.S. No.

4773 of 1996 passed by the Learned V. Additional Judge, City Civil Court, Chennai.

2. On an appreciation of oral and documentary evidence available on record, the trial Court viz., the Learned V. Additional Judge, City Civil

Court, Chennai, while passing the Judgment in O.S. No. 4773 of 1996 on 20.04.2000, has among other things observed that "the Respondent

/Plaintiff is entitled to claim the suit amount with interest and accordingly, decreed the suit as prayed for with costs and further has granted future

interest at the rate of 6% per annum."

3. Before the trial Court, 1 to 5 issues have been framed for adjudication in the main case. On the side of Respondent/Plaintiff, witness P.W.1 has

been examined and Exs.A1 to A71 have been marked. On the side of the

Appellant/Defendant, witness D.W.1 has been examined and Exs.B1 to B14 have been marked.

4. Being dissatisfied with the Judgment and Decree passed by the trial Court in O.S. No. 4773 of 1996, the Appellant /Defendant has preferred this Appeal before this Court.

5. The points that arise for determination in this Appeal are:

(I) Whether the trial Court has jurisdiction to try the suit O.S. No. 4773 of 1996 filed by the Respondent/Plaintiff?

(ii) Whether the Respondent/ Plaintiff is entitled to claim the suit amount of Rs. 4,08,299.40 with future interest at 18% per annum till the date of payment?

The Contentions, Discussions and Findings on Point No. 1:

6. According to the Learned Counsel for the Appellant /Defendant, the trial Court has no jurisdiction to try the main suit O.S. No. 4773 of 1996

because of the fact that the Appellant/Defendant is carrying on Business at Calcutta and moreover the supplies of gunny bags have been effected

for the benefit of the Members of the Respondent /Plaintiff Federation and admittedly, they are not carrying out Business at Madras, but the trial

Court has simply relied upon Clause 18 (1) of Ex.A1 Agreement dated 29.09.1983 entered into between the Respondent /Plaintiff and the

Representative of the Appellant/Defendant and has come to the conclusion that the trial Court has jurisdiction to try the suit and has answered in

favour of Respondent/Plaintiff, which is not Per Se correct in the eye of law.

7. Per contra, it is the submission of the Learned Counsel for the Respondent/Plaintiff that the Respondent/Plaintiff is an Apex Body called Tamil

Nadu Co-operative Sugar Federation and the same is registered under the Tamil Nadu Co-operative Societies Act, 1961 and as per Ex.A1

Agreement dated 29.09.1983 entered into between the Respondent /Plaintiff and the Representative of the Appellant/Defendant, Clause 18.1

deals with jurisdiction which refers to "Any dispute arising out of this contract shall be deemed to have arisen within the jurisdiction of the Courts in

Madras City only." and further Ex.A1 Agreement has been entered into at Madras, wherein the Registered Office of the Respondent/ Plaintiff's

Federation is situated at Madras and even though the constituents namely Sugar

Co-operative Societies are situated in different parts of Tamil

Nadu State yet, the Respondent/Plaintiff being the Federation is empowered to file a suit on behalf of the constituents at Madras and apart from

that since the Registered Office of the Respondent/Plaintiff is situated at Madras, and therefore the suit filed by the Respondent/ Plaintiff on the file

of the Learned V. Additional Judge, City Civil Court, Chennai is maintainable in law.

8. At this stage, the Learned Counsel for the Respondent /Plaintiff submits that the Principle of dominus litus is limited to the cause of action coming

u/s 15 to 18 of the CPC and it has no application where Section 20 of the CPC is to be invoked and in reality the Respondent/Plaintiff has to file

the suit in accordance with the ingredients of CPC and to lend support to his contention he relies on the decision of the Hon"ble Supreme Court

Mohanna Kumaran Nair v. Vijayakumaran Nair in (2007) 14 SCC 426 wherein it is laid down as follows:

Application of doctrine of dominus litus is confined only to the cause of action which would fall within Sections 15 to 18 CPC. It will have no

application in a case where the provision of Section 20 thereof is sought to be invoked. It is one thing to say that the parties had their residences in

India but the same would not mean that a suit could be filed at any of the places where the defendant resides. At all material times, the parties were

at Saudi Arabia. They were residing there only. They had been working for gain in that country. It is also not a case where under the promissory

note the amount was to be paid in India. There is nothing on record to show that any demand was made within the State of Kerala and the

defendant was under any contractual obligation to pay the said amount in Kerala where the demand has been communicated.

9. He also cites the decision of the Hon"ble Supreme Court Harshad Chiman Lal Modi Vs. DLF Universal and Another, wherein it is inter-alia

held that

... Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it

cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity Etc.

10. It is to be pointed out that Section 15 of the CPC speaks of a suit triable by a

Court of lower grade competent to try it. Admittedly, Section 15 of CPC is a Rule of Procedure.

11. As a matter of fact Section 20 of the CPC refers to "other suits" to be instituted where Defendants reside or cause of action arises. Section 20 of the CPC enacts to the rule as to the forum in all cases not coming under the purview of Section 15 to 19 of Code of Civil Procedure, as it is made clear by the words "Subject to the limitations aforesaid" appearing in Section 20 as per decision *Ranjana Nagpal alias Ranjana Malik Vs. Devi Ram and Others*, .

12. The term "carries on business" relates to a business in which an individual may contract debts and is liable to be sued by individuals having business dealings with him. To put it precisely the term "carries on business" has the meaning of permanence or regularity in order to differentiate from an isolated act.

13. It is an axiomatic principle in law that if the cause of action has arisen partly or in entirety within the jurisdiction of a Court concerned, then it is open to the party to file a suit within the jurisdiction of a Court where the part of cause of action has arisen. It is true that parties cannot confirm the jurisdiction in a Court whose territorial jurisdiction no cause of action has arisen at all.

14. As per Clause (c) of Section 20 of Code of Civil Procedure, a suit can also be instituted in a Court within the limits of whose Jurisdiction the cause of action wholly or in part arises as per decision *Nailesh H. Doshi v. G.P. Pharma and Ors.* 2003 A I H C 1913, .

15. In the decision *M/s. Angile Insulations Vs. M/s. Davy Ashmore India Ltd.* and another, it is held that "normally a territorial jurisdiction of a Court lies where the cause of action has arisen subject to the terms of a valid contract between the parties."

16. The cause of action refers to the infraction of a right or immediate occasion for action. In a larger sense it refers to the necessary conditions for the maintenance of the suit, including not only the infraction of right, but the infraction coupled with the right itself.

17. A suit on a contract can be filed at the place where it is made as per decision *Salig Ram v. Chacha Mal* ILR (1912) All 49.

18. As far as the present case is concerned, the Respondent/Plaintiff in the cause

of action paragraph of the Complaint at Para-8 has categorically mentioned that "The cause of action for the suit has arisen on 29.09.1983 at Madras, where the Agreement has been entered into and in view of the Agreement under Clause 18 of the Contract, vesting the jurisdiction of trying dispute in Court at Madras City only etc".

19. Added further, the Respondent /Plaintiff in the cause of action para - 8 of the Complaint has also among other things observed as follows:

...Where the nature of the goods are reported and found and where from the goods are being distributed to the various sugar mills as per the directions of the plaintiff and where agent of the plaintiff M/s. Binny & Co., is carrying on business subsequently when the time for supply extended and on various dates till 17.08.1985 when the last consignment of supply was made. Subsequently when the plaintiff demanded replacement or repayment or loss and when the defendant failed to comply with such demand and thereafter.

20. It is not in dispute that the Respondent/ Plaintiff has entered into Ex.A1 Agreement dated 29.09.1983 with the Appellant/Defendant for the supply of 6,96,000 pieces of "A" Twill Gunnies standard I.S.I. Specifications i.e. 112 cms x 67.5 cms x 1190 grams on behalf of the Member

Co-operative Sugar Mills. A close scrutiny of the Ex.A1 Agreement dated 29.09.1983 reveals that it contains clauses in regard to Specification,

Source of supply, Price, Delivery period, Packing, Marking, etc. Moreover there is a clause in respect of Liquidated Damages and Penalty. On

behalf of the Appellant /Defendant Company, the Director VijayKumar Shroff has signed in Ex.A1 Agreement dated 29.09.1983, there are two

witnesses (1) A.K.N. Sharma and (2) H.P. Gandhi. Both of them have given their address at Calcutta. Notwithstanding the fact that the

Appellant/Defendant is carrying on business at Calcutta, since the Respondent/ Plaintiff is having the Registered Office at No. 2, Maharaja Surya

Road, Madras - 600 018 and that apart the Respondent/Plaintiff being a Co-operative Sugar Federation, a Co-operative institution registered and

coming under the purview of Tamil Nadu Co-operative Societies Act which has entered into the Ex.A1 Agreement for the supply of 6,96,000

pieces of "A" Twill gunnies on behalf of the Member Co-operative Sugar Mills that the Appellant/Defendant and even though the

Respondent/Plaintiff's constituency namely the Member Co-operative Sugar Mills are situated in different places of Tamil Nadu state yet the suit

filed by the Respondent/Plaintiff at Madras where a part of the cause of action has arisen is perfectly maintainable in law and the point is answered

against the Appellant/Defendant and in favour of the Respondent/Plaintiff.

The Contentions, Discussions and Findings on Point No.: 2:

21. The Respondent/Plaintiff has filed the suit for recovery of a sum of Rs. 4,08,299.40 with future interest at 18% per annum till date of payment

to be paid by the Appellant/ Defendant. The stand of the Respondent/Plaintiff is that the Appellant/Defendant has completed its supply of the gunny

bags under the contract on 17.08.1985 to various member Mills has the obligation to pay the loss of 31,113 pieces of defective gunny bags with

interest and other charges amounting to Rs. 4,08,299.40.

22. In the Plaint at Para - 6, the Respondent /Plaintiff has stated the following:

...Out of the supplies made to the various Member Mills there were 31,113 pieces of defective and damaged gunnies as per particulars given

hereunder:

1. Arignar Anna Co-op. Sugar Mills: Quantity of rejected gunnies was 1714 and the value of the same is Rs. 16,283.00. Interest payable for the

said amount is Rs. 7,552.40. The total amount due by the Defendant in respect of the aforesaid supply is Rs. 23,835.40.

2. Madurantakam Co-op. Sugar Mills: Defective gunnies 8167 pieces of the value of Rs. 77,589.36. Interest payable is Rs. 40,702.53. The total

amount due by the Defendant in respect of the aforesaid supply is Rs. 1,18,291.89.

3. Amaravathi Co-op. Sugar Mills: Defective gunnies 3777 of the value of Rs. 36,404.15. Interest payable is Rs. 19,479.68. The total due by the

Defendant in respect of the said supply is Rs. 55,883.83.

4. Perambalur Co-op. Sugar Mills: Defective supply of gunnies 2047 of the value of Rs. 19,456.96. Interest payable is Rs. 8137.62. A sum of Rs.

408.23 is due towards mending charges. Total due by the Defendant in respect of the said supply is Rs. 28,002.81.

5. National Co-op. Sugar Mills: Defective supply of gunnies 217 pieces of the value of Rs. 2,031.39. Interest payable is Rs. 797.08. The total due

by the Defendant in respect of the aforesaid supply is Rs. 2,828.47.

6. Chengalrayan Co-op. Sugar Mills: Defective supply of gunnies 1750. The cost of defective gunnies is Rs. 16,380/-Interest at 18% from

25.04.1985 to 10.06.1987 is Rs. 6,388.20. Total Rs. 22,768.20 deducting the cost of 1750 defective gunnies sold by the Mills on 20.06.1987 at

the risk of the defendant at Rs. 9/- per piece amounting to Rs. 15,750/-The balance due for the defective gunnies is Rs. 7,080.20 and interest due

thereon is Rs. 733.23. The total claim is Rs. 7,813.43.

7. Vellore Co-op. Sugar Mills: Defective supply of gunnies 7581 of the value of Rs. 70,540.45. Interest payable is Rs. 53,385.00. The total due

by the Defendant in respect of the said supply is Rs. 1,23,925.45.

8. Dharmapuri Co-op. Sugar Mills: Defective supply of gunnies 2633 pieces of the value of Rs. 25,384.27. Interest payable is Rs. 12,022.44. The

total due by the Defendant in respect of the said supply is Rs. 37,406.71.

9. Salem Co-op. Sugar Mills: Defective supply of gunnies 274 of the value of Rs. 2603.00. Interest payable is Rs. 896.53. There was also

damaged pieces of 2951 of wet/damaged bags the value (after deducting salvage) of which is Rs. 5,277.36 and the interest due thereon is Rs.

2,069.01 totaling in all Rs. 10,311.91.

It will be seen that the defendant who had completed its supply under the contract on 17.09.1985 to various Member Mills was under the

obligation to pay the loss of 31,113 pieces of defective or damaged gunnies supplied together with interest and other charges amount to Rs.

4,08,299.40. In respect of some of the claims requested to be made to the Insurance Company, as it was not for the Plaintiff to approach the

Insurance Company and it was only the Defendant under the contract to compensate the Plaintiff, the Plaintiff was not obliged to act according to

the dictate of the Defendant.

23. The gist of the case of the Respondent/Plaintiff is that the Appellant/Defendant has been evading the payment of loss sustained by the

Respondent/Plaintiff in respect of supply of damaged goods namely the gunnies and therefore it has filed the suit for recovery of Rs. 4,08,299.40

along with future interest at 18% per annum since the transaction is a commercial one.

24. However, the Learned Counsel for the Appellant/Defendant submits that the Respondent/Plaintiff has failed to give effect to the norms of 2%

defective condition in the Agreement and in short the 2% norms in the defectives in the gunnies has been given a go-bye and the entire supply have

been completed by 17.08.1985 and that the total quantum of defective supplies namely 38,304 pieces has been denied by the

Appellant/Defendant and further the Appellant/Defendant has not been advised about the exact damage or nature of defect in each of the gunny

bags. In the absence of the same, the Respondent/Plaintiff is not entitled to maintain the suit. Further, it is the stand of the Appellant/Defendant that

2% norms has been fixed only for the defectives in which the provisions of Ex.A1 Agreement will apply, but in respect of the alleged damages to

the gunnies, Insurance Cover has been effected which ought to be invoked and necessary claims made on the Insurance Company and moreover

the Respondent/Plaintiff has not established its representation and therefore the Respondent/Plaintiff cannot maintain the suit.

25. It is relevant for this Court to refer to the evidence of P.W.1 (Administrative Officer of the Respondent /Plaintiff) and the evidence of D.W.1

(on behalf of the Appellant/Defendant) for better appreciation of the case in a proper manner.

26. It is the evidence of P.W.1 (Administrative Officer of the Respondent/Plaintiff) that the Respondent /Plaintiff's management has requested the

Appellant/Defendant to send them the gunny bags valued at a sum of Rs. 4,00,000/- and the Agreement is Ex.A1 and as per the Clauses of the

said Agreement, the Appellant/Defendant has to supply the gunnies and as per Agreement they have paid the amount through bank for the supply

of gunny bags and that they have received the gunny bags and in the gunny bags the manufacturing defects have been found out and the

Appellant/Defendant has been duly informed and further that M/s. Binny & Co., at Chennai has acted as an agent for the Appellant/Defendant and

that the Appellant/Defendant has not replaced the gunny bags and they have also not returned the money paid by the Respondent/Plaintiff.

27. It is the evidence of P.W.1 (in cross-examination) that he has served as an Administrative Officer from 10.02.1994 in the

Respondent/Plaintiff's Federation and that for the gunny bags as per I.S.I. Rules they have not claimed damages and in respect of the damaged

gunnies a survey has been conducted and the Appellant and Defendant has been informed to take back the damaged gunnies, but they have not taken it back.

28. D.W.1 in his evidence has deposed that he knows about the subject of jute very well and the stock documents sent by the Respondent/Plaintiff

have come through the bank and that the Appellant/Defendant has distributed the gunnies after purchasing the same from the manufacturing place

and if there is defect of 2% in a bag then it is not necessary to return back the entire stock, but the defects will have to be informed to the

Appellant/ Defendant. If the defects are informed to the Appellant /Defendant then it is the practice of the Appellant/Defendant to rectify the same.

The defects pointed out by the respective mills have been informed now and then.

29. In Ex.A1 Agreement dated 29.09.1983, Clause 16.1 speaks of replacement and the same is as follows:

Replacement: Rejected gunnies will be left at the risk and responsibility of the sellers concerned and the purchaser or the sugar mills will not accept

any responsibility for the loss, damage or deterioration etc., while in their premises after rejection. The defective/damaged gunnies should not

exceed more than 2% of the number of gunnies in each consignment supplied to a factory the Sugar Mill shall report the details of

defective/damaged gunnies to the sellers within the validity period of the Bank Guarantee executed by the sellers. Even the 2% defective /damaged

gunnies should be replaced by the sellers within a period of 30 days from the date of receipt of intimation from the mills. If the percentage of

defective/damaged gunnies exceed more than 2 percent the purchaser has got every right to return the entire consignment. In case of any dispute as

to whether a gunny is defective /damaged or not, the decision of the Tamil Nadu co-op. Sugar Federation shall be final and binding on both the

parties.

30. Besides the above, Clause 16.2 in Ex.A2 Agreement dated 29.09.1983 enjoins as follows:

In the event of non-removal of damaged /defective bags by the sellers as aforesaid within thirty days after notice has been received by them of such

rejection, it shall be lawful for the purchaser or the sugar mills concerned to dispose sellers shall be credited with the sale proceeds thereof after

deducting the payments already made for those goods and incidental expenses incurred. The sellers will not be entitled to claim any loss or damage

occasioned by such sale. The decision of the purchaser, shall be final and binding in all such cases. If any amount is left to be recovered after the

above adjustment, the same will be recovered from the sellers.

31. The Learned Counsel for the Appellant/Defendant urges that the Respondent/Plaintiff has not furnished the accounts in respect of the

purported defective gunnies and also in regard to the alleged sale of the same and as such the Respondent/Plaintiff is dis-entitled to claim the suit

amount as prayed for in the Plaint. In para-6 of the Plaint the Respondent / Plaintiff has stated that

... Out of the supplies made to the various Member Mills there were 31,113 pieces of defective and damaged gunnies as per particulars given

there to: The Respondent / Plaintiff in para-6 of the Plaint has mentioned that the defective gunny bags in Arignar Anna Co-op. Sugar Mills comes

to 1714 pieces and the value of the same is Rs. 16,283.00, in respect of Madurantakam Co-op. Sugar Mills the defective gunnies comes to 8167

pieces, of the value of Rs. 77,589.36. In regard to Amaravathi Co-op. Sugar Mills, the defective gunnies are 3,777 pieces, valued to Rs.

36,404.15. In respect of Perambalur Co-op. Sugar Mills the defective supply of gunnies comes to 2047 pieces, of the value of Rs. 19,456.96. In

regard to National Co-op. Sugar Mills the defective supply of gunnies has been mentioned as 217 pieces, of the value of Rs. 2,031.39. In respect

of Chengalrayan Co-op. Sugar Mills, the defective supply of gunnies are 1750 pieces and the cost of defective gunnies is Rs. 16,380/- In regard to

Vellore Co-op. Sugar Mills, the defective supply of gunnies are 7581 pieces, of the value of Rs. 70,540.45. In respect of Dharmapuri Co-op.

Sugar Mills, the defective supply of gunnies are 2633 pieces, valued to Rs. 25,384.27. In regard to the Salem Co-op. Sugar Mills, the defective

supply of gunnies are 274 pieces, of the value of Rs. 2603.00.

32. Added to the value of the defective gunnies, the interest payable has also been mentioned in para-6 of the Plaint in Serial Nos. 1 to 9 and

lastly, the Respondent/Plaintiff has arrived at a sum of Rs. 4,08,299.40 to be paid by the Appellant/Defendant along with future interest at 18% per

annum, based on commercial transactions.

33. The Learned Counsel for the Appellant/Defendant submits that P.W.1 (Administrative Officer of the Respondent/ Plaintiff) is not acquainted

with the suit transactions personally and therefore much importance on his evidence need not be given by this Court.

34. Accounting the submission of the Learned Counsel for the Appellant/ Defendant it is the contention of the Learned Counsel for the Respondent

/Plaintiff that admittedly D.W.1 is not an employee of the Appellant/Defendant and he has been working in M/s. Binny Co., Mills and infact he is a

business consultant and not an Officer of the Appellant /Defendant Company and the Appellant /Defendant never disputed the

Respondent/Plaintiff's liability and indeed, the Appellant/Defendant have not replaced the defective gunny bags because at that point of time the

price of the gunny bags have gone up and hence the Appellant/Defendant is left with no option but to pay the suit claim made by the

Respondent/Plaintiff.

35. The Learned Counsel for the Appellant/Defendant submits that the Respondent/Plaintiff has claimed interest for the suit amount of Rs.

4,08,299.40 together with interest at 18% per annum and in the instant case there is no Agreement between the Parties to pay 18% interest per

annum and even Ex.A1 Agreement dated 29.09.1983 is silent about it and therefore in the absence of the same, the Respondent /Plaintiff is not

entitled to claim 18% interest per annum for the suit amount.

36. Conversely, it is the submission of the Learned Counsel for the Respondent/ Plaintiff even though Ex.A1 Agreement dated 29.09.1983 does

not expressly refer to the quantum of interest agreed to between the Parties, yet the suit transactions being a commercial one, the

Respondent/Plaintiff is entitled to claim interest for the suit amount at 18% per annum which is a reasonable and a fair one and that the trial Court

has rightly granted the same, which need not be disturbed by this Court at the Appellate stage.

37. The Learned Counsel for the Respondent/Plaintiff submits that as per Section 61(2) of the Sale of Goods Act, 1930, a Court of law in the

absence of contract to the contrary may grant interest at a certain percentage at its discretion to the Respondent/Plaintiff and therefore the award of

interest for the suit claim at 18% per annum by the trial Court is proper and

valid one in the eye of law.

38. Contending contra, it is the contention of the Learned Counsel for the Appellant/Defendant that Section 61(2) of the Sale of Goods Act, 1930

speaks of interest by way of damages and special damages in the absence of a consensus between the parties to pay a particular rate of interest

per annum, it is not open to the Respondent/Plaintiff to claim a sum at 18% per annum in respect of the suit amount.

39. It is to be pointed out that as per Section 34 of the Code of Civil Procedure, a Court of law can award interest at such rate as deems fit and

proper to be paid on the principal amount so judged. In the instant case even though Ex.A1 Agreement dated 29.09.1983 does not expressly or

impliedly refers to the quantum of interest at a particular rate per annum, since it is for the supply of 6,96,000 pieces "A" Twill Gunny bags

conforming to the standard I.S.I. Specifications i.e. 112 cms x 67.5 cms x 1190 gms on behalf of the Member Co-operative Sugar Mills, this

Court exercising its judicial discretion awards a reasonable rate of interest at 12% per annum for the suit amount claimed in the Plaint.

40. Also, in as much as the Appellant/Defendant has not paid the suit amount of Rs. 4,08,299.40 and notwithstanding the fact that the

Respondent/Plaintiff has informed the Appellant/Defendant that some of the gunny bags are defective and the same must be replaced within 30

days as per Ex.A1 Agreement dated 29.09.1983 and because of the fact that the Appellant/ Defendant has not replaced the defective gunny bags,

it is candidly very clear that the Appellant/ Defendant has not acted in pursuance of the various covenants/clauses of Ex.A1 Agreement dated

29.09.1983 which has perforced the Respondent/Plaintiff Sugar Federation to approach the Court for recovery of the amount due, on an overall

consideration of the oral and documentary evidence available on record coupled with the facts and circumstances of the case in a cumulative

fashion, this Court directs the Appellant/Defendant to pay the Respondent/Plaintiff to pay the suit amount of Rs. 4,08,299.40 together with interest

at 12% per annum from the date of Plaint till date of decree and thereafter to pay interest at 6% per annum from the date of decree till date of

realisation in respect of the suit amount together with proportionate costs and accordingly, the point is so answered and the Appeal is allowed in

part in furtherance of substantial cause of justice.

41. In the result, the Appeal is allowed in part, leaving the parties to bear their own costs. Resultantly, the Judgment and Decree of the trial Court

in O.S. No. 4773 of 1996 dated 20.04.2000 stands modified. The Appellant/Defendant is directed to pay the suit amount of Rs. 4,08,299.40

along with the interest at 12% per annum from the date of Complaint till date of decree and further directed to pay 6% interest per annum from the date

of decree till date of realisation together with proportionate costs. Three months' time is granted to the Appellant/Defendant to make payment.