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A.S.Nos.963 and 4 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

A.S.Nos.963 & 4 of 2015

M/s.Aurosimon Division of M/s.Aurofood Limited,
Represented by its Accountant A.Selvamani
T.C.Balam-605 111, Vanur Taluk,
Villupuram District.

... Appellant
in A.S.No.963 of 2015

M/s.R.T.Exports Ltd.,
Represented by its Managing Director,
Tulsi Bhimiyani, No.508, Dalammal House,
Jamanlal Bajaj Road, Nariman Point,
Mumbai – 400 021.

... Appellant
in A.S.No.4 of 2015

Vs.

M/s.R.T.Exports Ltd., by its Managing Director,
Tulsi Bhimiyani at No.508, Dalammal House,
Jamanlal Bajaj Road, Nariman Point,
Mumbai – 400 021.

... Respondent
in A.S.No.963 of 2015



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M/s.Aurosimon Division of M/s.Auro Food Limited,
Represented by its Accountant
G.Ramkumar (died) A.Selvamani,
T.C.Balam, Vanur Taluk,
Villupuram District.

... Respondent
in A.S.No.4 of 2015

Prayer in A.S.No.963 of 2015 : Appeal Suit filed under Section 96 of Code of Civil Procedure against part of the judgment and decree dated 11.06.2014 in O.S.No.2 of 2011 on the file of the II Additional District Court, Tindivanam, disallowing interest to the suit claim from the date of plaint till the date of decree and quantum of interest awarded at the rate of 6% p.a. interest instead of 9% p.a. from the date of decree till date of realization.

Prayer in A.S.No.4 of 2015 : Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 11.06.2014 in O.S.No.2 of 2011 (District Court O.S.No.4 of 2005) on the file of the II Additional District Court, Tindivanam.

For Appellant : Mr.D.Nelliappan
in A.S.No.963 of 2015
: Mr.P.Elaya Rajkumar
for M/s.Ramalingam and Associates
in A.S.No.4 of 2015



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For Respondent : Mr.P.Elaya Rajkumar
for M/s.Ramalingam and Associates
in A.S.No.963 of 2015

: Mr.D.Nelliappan
in A.S.No.4 of 2015

COMMON JUDGMENT

(Judgment was delivered by **S.S. SUNDAR, J.**)

The plaintiff in the suit in O.S.No.2 of 2011 on the file of the II Additional District Court, Tindivanam, is the appellant in A.S.No.963 of 2015 and the defendant in the suit is the appellant in A.S.No.4 of 2015. Since both these appeals arise out of a common judgment, both the appeals are taken up together and disposed of by this common judgment.

2.Brief facts that are necessary for the disposal of these appeals are as follows :

2.1.The plaintiff/respondent in A.S.No.4 of 2015 filed the suit in O.S.No.2 of 2011 for recovery of a sum of Rs.16,48,096.72 towards supply of machineries to the defendant/appellant in A.S.No.4 of 2015 with interest at the rate of 18% p.a. as on 31.03.1999. Therefore, the total suit claim is



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Rs.25,13,296.72.

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2.2.It is the case of the plaintiff that defendant entered into an agreement with the plaintiff for supply of required machineries to the defendant for setting up three rice mills in his factory at Kundli in the State of Haryana and that the defendant also agreed to pay the bill for machineries after installation of the rice mill. It is admitted that the plaintiff agreed to make good any part of machinery or plant, which under proper use fail owing to the defective material or design within 6 months after the installation.

2.3.It is the further case of plaintiff that the defendant placed work order on three occasions. On the first occasion, i.e., on 21.02.1994, the defendant wanted supply of machineries for setting up a rice mill with a capacity of 5 Tons of paddy line and the second work order was placed on 22.09.1995 for supply of machineries to install a rice mill with a capacity of 8 Tons of paddy line and the 3rd purchase order was on 26.02.1996 for supply of machineries to set up a rice mill with a capacity of 25 Tons of paddy line. It is admitted that all the three rice mills were installed in the defendant's factory at Kundli in the State of Haryana.



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2.4.It is the case of plaintiff that there was a running account between the plaintiff and defendant and after supply of machineries, there was a heavy balance due from the defendant and that the plaintiff was repeatedly asking the defendant to remit the balance and clear the outstanding as per the statement of accounts from the plaintiff. Despite receipt of the accounts sent by the plaintiff, it is stated by the plaintiff that the defendant had sent a cheque only for a sum of Rs.1,50,000/- towards part payment by a letter dated 21.02.1997. Thereafter, the plaintiff sent another letter dated 20.06.1997 by registered post asking the defendant to clear the outstanding balance amount which is Rs.12,97,373.72.

2.5.After issuing notice once again for recovery of Rs.12,97,373.72 along with a sum of Rs.3,50,723/- towards “C” Form, the plaintiff filed the suit.

2.6.In the plaint, the plaintiff also stated that defendant had not complained about any defect in the machineries till the plaintiff's money claim was raised against the defendant and that the machineries were successfully erected by the plaintiff which was acknowledged by the defendant.



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3.The suit was contested by the defendant/appellant in A.S.No.4 of 2015 on various contentions. A preliminary objection was raised by the defendant questioning the jurisdiction of the trial Court to entertain the suit on the ground that no part of cause of action had arisen within the jurisdiction of II Additional District Court, Tindivanam. It is specifically contended by the defendant that the defendant placed purchase orders with the plaintiff at Kundli District in the State of Haryana and that the plaintiff had agreed specifically to supply and erect three rice mill plants at defendant's premises. In the written statement, it is also stated that no payments were made at Tindivanam, and therefore, no part of cause of action arose at Tindivanam, stating that the evidence both oral and documentary is available only at Kundli District, in Harayana State, it is contended that the defendant will be put to grave prejudice and irretrievable injustice if they are made to defend their case in Tindivanam.

4.An application was filed by defendant in I.A.No.371 of 2009 to decide the preliminary objection as a preliminary issue. It is seen that the



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trial Court dismissed the Interlocutory Application by holding that the Court in which the suit is laid has jurisdiction to decide the suit, after recording the fact that payments were received by way of cheques at the place of plaintiff and that the plaintiff has gone to the defendant's place only for erection of three rice mills. Though the Interlocutory Application filed by the defendant in I.A.No.371 of 2009 was dismissed by trial Court, no revision petition is filed by the defendant questioning the decision of the trial Court on the preliminary issue.

5.On merits, the defendant contended that the machineries supplied by plaintiff were defective and that the defendant suffered loss and extreme hardships because of the fact that the supply was not in accordance with the agreement. A few defects in the machineries were specifically referred to in the written statement and it is stated that the defendants had spent substantial amount to make the machineries and equipments supplied by the plaintiff meet the requirements and the assured capacity. The defendant also raised a plea that the suit itself is barred by limitation, as the suit has been laid three years after the cause of action arose for recovery of money



towards goods supplied by plaintiff to the defendant.

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6.Though there are other grounds raised in the written statement, except the three grounds as stated above, learned counsel for the defendant/appellant in A.S.No.4 of 2015 has not argued anything else. Therefore, we do not propose to extract the other defence raised by the defendant in the written statement.

7.Before the trial Court, plaintiff examined one Mr.Selvamani, the Proprietor of plaintiff concern, as P.W.1. On behalf of defendant, one Mr.P.M.Mohan was examined as D.W.1. Exs.A1 to A70 were marked on the side of the plaintiff and Exs.B1 to B5 were marked on the side of the defendant.

8.The trial Court framed the following issues :

- i. *Whether defendant is liable to pay a sum of Rs.25,13,296.72 towards the erection of rice mill machineries, 'C' form and interest ?*
- ii. *Whether suit is liable to be rejected on the ground that this*



Court has no jurisdiction ?

- iii. Whether there was any defect in the machineries such as wells elevators etc., during the erection of rice mills ?*
- iv. Whether plaintiff is entitled to the relief as sought for in the plaint ?*

9. On the issue whether the defendant is liable to pay the amount towards erection of rice mill machineries, “C” Form and interest, the trial Court held that the defendant is liable to pay the balance amount of Rs.12,97,373.72 and a further sum of Rs.3,50,723/- towards “C” Form, in all, a sum of Rs.16,48,096.72. However, the trial Court held that there is no agreement for payment of interest and therefore, as per Section 61(2) of Sale of Goods Act, 1930, Court may award interest at such rate, and held that the plaintiff is entitled to interest at the rate of 12% p.a. From the date of installation of machineries, i.e., 01.12.1996 till the date of plaint, i.e., 07.06.1999. However, on the ground that the plaintiff as well as defendant did not show any interest in conducting the trial of the case for long time, the trial Court held that the plaintiff is not entitled to any interest from the date of plaint till the date of decree, as both of them have jointly dragged the



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proceedings for 15 years. However, the trial Court granted interest at the rate of 6% p.a. from the date of decree till date of realization. Since the issue relating to jurisdiction has already been decided by the trial Court, the trial Court, while disposing of the suit on all other issues, did not consider the issue regarding jurisdiction raised by the defendant. The trial Court then found that the defendant has not filed any document to establish that the defendant suffered heavy loss or expenses towards purchase of spares or due to the defects in the machineries supplied by the plaintiff. Holding that the defendant has not even given the details of defects found in the machineries supplied by plaintiff during evidence, the trial Court decided the issue in favour of plaintiff.

10. Aggrieved by the judgment and decree of the trial Court, the defendant preferred the appeal in A.S.No.4 of 2015 and the plaintiff has preferred the appeal in A.S.No.963 of 2015.

11. Learned counsel appearing for the appellant in A.S.No.4 of 2015/defendant submitted that the trial Court failed to appreciate the



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evidence of D.W.1 regarding the defective and faulty machineries supplied by respondent/plaintiff who is the appellant in A.S.No.963 of 2015. Stating that a sum of Rs.1,50,000/- was accepted by plaintiff as a final payment towards the entire claim towards purchase of machineries, the learned counsel submitted that the trial Court failed to consider the letter dated 21.02.1997, which is marked as Ex.A23.

12.Learned counsel then submitted that the suit itself is liable to be dismissed on the ground of limitation. Though the trial Court has rejected the plea with regard to the jurisdiction to entertain the suit, the learned counsel appearing for the appellant in A.S.No.4 of 2015 submitted that the goods were sold and delivered at Haryana and that therefore, the plaintiff cannot file a suit either for goods supplied at Haryana or services rendered at Haryana. Pointing out that the defendant is carrying on business at Mumbai and Haryana States and the Court at Tindivanam has no territorial jurisdiction, the learned counsel also submitted that the suit for recovery of money filed at Tindivanam, is not maintainable. Having regard to the entire evidence on record, it is contended that the plaintiff, who has filed the suit



on the basis of a running account, cannot recover money without producing the entire statement of accounts which is prepared in the usual course of business.

13. Having regard to the submissions made by the learned counsel appearing for the appellant in A.S.No.4 of 2015, this Court finds that the following points arise for determination in these appeals :

- i. *Whether the defendant/appellant is liable to pay the suit claim towards supply of machineries and erection of rice mill and “C” Form ?*
- ii. *Whether the suit is liable to be rejected on the ground that the Court at Tindivanam has no jurisdiction ?*
- iii. *Whether the suit is barred by limitation ?*
- iv. *Whether the defendant has proved that the machineries supplied by plaintiff to defendant are defective and that the defendant has incurred a heavy loss and hence, entitled to adjust the whole amount payable by defendant towards supply of machineries and erection of rice mill pursuant to the contract between the plaintiff and the defendant ?*



WEB COPY **Point Nos.(i) and (iv) :**

14. There is no dispute with regard to the supply of machineries and the erection of rice mills by plaintiff at the request of defendant and as per the agreement, in the State of Haryana. The specifications with regard to supply and erection of rice mill are not even disputed in the written statement. From the correspondence, it is seen that a sum of Rs.12,97,373.72 is the amount that was acknowledged to be the sum which is payable by the defendant to the plaintiff as per the contract of supply and erection. It is further admitted that a sum of Rs.3,50,723 is payable by plaintiff towards “C” Form, as the supply and erection of machineries was in the State of Haryana. Therefore, the entire sum of Rs.16,48,096.72 is the amount the defendant has acknowledged to be payable towards supply and erection of machineries by plaintiff.

15. However, the defendant has been contending that some of the spares and machineries supplied by the plaintiff were defective and that therefore, the defendant had to incur substantial amount towards purchase



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of spares and additional equipments so as to make the rice mill work to get the expected capacity as per agreement. It is also alleged that, due to malfunction or poor performance, the rice mill which was installed for the desired capacity could not be exploited as it was meant for or promised by the plaintiff.

16.It is to be noted that the issue regarding defects in the materials supplied by plaintiff was questioned only after the suit notice was issued. The defendant has not asked for any counter claim in the written statement and therefore, the claim which is based on a subsequent cause of action cannot be sustained. It is the specific case of plaintiff that the plaintiff has only undertaken to make good any part of the machinery or plant, which under proper use, failed owing to the defective material workmanship or design within six months after delivery. Though counter claim is permissible, no such claim is made by the defendant. It is seen from the evidence that the defendant are supposed to point out any defect in the machineries within six months. None of the correspondence indicates a specific demand from the defendant either for rectification or for change of



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spares or to replace the material supplied by plaintiff. In the absence of any evidence on the first place, Court cannot be expected to presume in favour of the defendant who seeks adjustment.

17.The only other plea that was raised by the defendant is that the plaintiff have agreed to accept a sum of Rs.1,50,000/- as a final payment taking note of the defects and other malfunction of the machineries supplied by the plaintiff. The documents produced by the plaintiff indicate that the machineries were supplied promptly by the plaintiff to the defendant and the delivery of machineries and the statement of accounts produced by the plaintiff would amply prove the suit claim. The letter, dated 21.02.1997, is marked as Ex.A23. The letter only indicates the payment of a sum of Rs.1,50,000/- by cheque, dated 10.02.1997, towards credit in the account of the plaintiff. There is no indication as it was suggested by the defendant in their pleading. Therefore, the defendant have miserably failed to probabilise their case by sufficient evidence to the satisfaction of the Court. The defendant in Para No.16 of the written statement referred to loss due to replacement of buckets, belts etc., and towards purchase of elevators from



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other suppliers in order to achieve the designed capacity. The defendant referred to replacement of paddy pre-cleaner and pneumatic conveying system resulting in additional expenses. However, no document or evidence is let in to prove the case of defendant.

18.As pointed out earlier, the defendant, who has failed to prove any defect or raise even a counter claim or to seek adjournment before the lower Court, cannot now contend that the plaintiff is not entitled to recover the amount due as per the invoices and delivery of machineries supplied by plaintiff to the defendant.

19.This Court, therefore, holds that the plaintiff have proved the suit claim in the manner known to law and the defendant have not proved their case that the plaintiff is not entitled to recover any money in view of the defects in the machineries supplied by the plaintiff or on the ground that the defendant had incurred heavy loss in view of the malfunctioning of the machineries or other major defects pointed out by the defendant in the written statement.



Point No.(iii) :

20.This Court has already held that the defendant have not raised a specific plea of limitation. It is noticed that no issue was framed regarding limitation. From the cause of action paragraph, it is seen that the invoices relating to the suit transaction are not beyond the period of three years. As a matter of fact, invoices that were acknowledged by the defendant would show that the suit is well within time. Finally, the defendant has produced the letter, dated 21.02.2017, which is marked as Ex.A23, indicating the payment by cheque, acknowledging the liability as on 21.02.2017. Therefore, this Court is unable to find any merit in the statement of learned counsel for the appellant in A.S.No.4 of 2015 regarding limitation.

Point No.(ii) :

21.In the present case, the specific case of the plaintiff is that the contract was entered into between the parties based on offer and acceptance and orders were placed at plaintiff's place. It is further agreed that all the payments were made by cheques or Demand Drafts addressed to the plaintiff's registered office. Though the defendant reside in another State, the



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fact that a part of cause of action lies within the jurisdiction of District Court at Tindivanam, cannot be disputed. No material is produced to show that the District Court, Tindivanam, has no territorial jurisdiction to try the suit. Since the trial Court has already decided the issue regarding jurisdiction as a preliminary issue and the order of trial Court was not challenged by a revision or appeal, this Court is unable to countenance the argument of the learned counsel for the appellant in A.S.No.4 of 2015, without an argument how the issue is wrongly decided by the lower Court earlier based on available materials.

22.The suit is based on a contract in relation to the supply of machineries. The suit is filed by the plaintiff for recovery of a sum which was payable by the defendant to the plaintiff towards supply of machineries and erection of machineries. Even though there is a possibility, on the basis of agreement or any other subsequent transaction, to infer jurisdiction either in a place in Harayana or in Tindivanam, the fact that part of cause of action arose before the Court in which the suit had been laid cannot be disputed. Having suffered a decision in the preliminary objection raised by the



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defendant by framing a preliminary issue, this Court cannot decide it otherwise without any material or an acceptable argument.

23.For all the above reasons, this Court finds no merit in the appeal in A.S.No.4 of 2015. Therefore, A.S.No.4 of 2015 filed by the defendant in the suit is liable to be dismissed.

24.As regards A.S.No.963 of 2015 filed by the plaintiff, though the trial Court held that the plaintiff is entitled to interest at the rate of 12% p.a. from 01.12.1996 till the date of plaint, i.e., 07.06.1999 and future interest at the rate of 6% p.a. from the date of decree till realization, this Court finds that the reasoning of the trial Court denying interest from the date of plaint, i.e., 07.06.1999 till date of decree, i.e., 11.06.2014, appears to be wrong. Therefore, this Court holds that the plaintiff is entitled to interest at the rate of 12% p.a. from 01.12.1996 till date of decree, i.e., 11.06.2014 and future interest at the rate of 6% p.a. from the date of decree till realization, as ordered by the trial Court. Accordingly, the judgment and decree of the trial Court is modified.



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No costs.

(S.S.S.R., J.) (A.A.N., J.)
06.02.2023

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Internet : Yes

Index : Yes / No

To

1. The II Additional District Judge,
Tindivanam.

2. The Section Officer,
VR Section, High Court,
Chennai.



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S.S. SUNDAR, J.
and
A.A.NAKKIRAN, J.

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