

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2016

PRESENT

THE HON'BLE MR. JUSTICE N KUMAR

AND

THE HON'BLE MR. JUSTICE B VEERAPPA

RFA No.685/2015

BETWEEN:

1. M/S SUNFLAMES FUEL PVT LTD.
NEELKAMAL, NO.1249
CENTRAL AVENUE
NAGPUR – 440 002
REP BY ITS MANAGING DIRECTOR
SRI SHRAWAN KUMAR
 2. SRI SHRAWAN KUMAR
S/O RAMLAL MALU
AGED 55 YEARS
MANAGING DIRECTOR
M/S SUNFLAMES FUEL PVT LTD.
NEELKAMAL, NO.1249
CENTRAL AVENUE
NAGPUR – 440 002
- ... APPELLANTS

(BY SRI:SATISH G RAIKAR, ADV)

AND:

DR.A VENKATESH
S/O ANNAYAPPA
AGED ABOUT 53 YEARS
R/AT NO.624, 13TH CROSS
J P NAGAR, II PHASE
BANGALORE – 560 078

... RESPONDENT

(BY SRI:VINAY T R, ADV FOR SRI:C V SUDHINDRA,
ADV)

THIS RFA IS FILED UNDER SECTION 96(1) OF CPC, 1908 AGAINST THE JUDGMENT AND DECREE DATED 10.04.2015 PASSED IN OS NO.7876/2007 ON THE FILE OF THE XIX ADDL. CITY CIVIL AND SESSIONS JUDGE AT BANGALORE CITY (CCH-18), DECREETING THE SUIT FOR RECOVERY OF MONEY.

THIS RFA IS COMING ON FOR ADMISSION THIS DAY, *N KUMAR, J.*, DELIVERED THE FOLLOWING:

J U D G M E N T

This is a defendants' regular first appeal against the judgment and decree passed by the Trial Court on 10.04.2015 in OS No.7876/2007.

2. For the purpose of convenience, the parties are referred to as they are referred in the original suit.

3. The plaintiff has filed the suit for recovery of Rs.19,14,628/- with current and future interest at the rate of 18% p.a. from the date of suit till realization.

4. The case of the plaintiff is that the first defendant is the private limited company represented by its managing

director – Sharawan Kumar. The plaintiff had imported top quality manganese dioxide from M/s SACEM MORROCCO. After receipt of consignment, the plaintiff had given advertisement in a chemical news bulletin having wide circulation in Bombay regarding said import during 3rd week of August, 2005. The defendant and its directors approached plaintiff few days prior to 26.08.2005 expressing their desire to purchase the entire manganese dioxide imported by plaintiff from MORROCCO. The defendant induced plaintiff to supply the materials on credit basis, but plaintiff did not agree for its persisted requests. Initially defendant induced that it would require 300 to 400 metric tons per month and promised to purchase 100 MT on trial basis. As plaintiff did not agree to supply on credit basis, the defendant revised its order for 20 MT of manganese dioxide of the agreed quality with a cheque of Rs.3,12,000/- being the entire price of said project. The defendant insisted and invited plaintiff to Nagpur assuring that it would pay the entire freight charges and other ancillary expenses to the plaintiff. During the 1st part of 2nd week of September 2005, the plaintiff visited Nagpur and stayed in the hotel arranged by defendant. On 09.09.2005 the

defendant induced plaintiff to agree for its offer to sell all minerals that he imports only to defendant. The plaintiff refused this offer. The defendant then agreed to the terms of plaintiff and accordingly issued cheque for Rs.25,00,000/- on 13.09.2005 and requested sometime to deposit the remaining amount of Rs.14,05,775/-. Accordingly, the plaintiff presented the cheque for encashment on 14.09.2005 and after cheque was encashed, plaintiff dispatched the materials to defendant. The defendant persuaded the plaintiff to send the balance materials also with an assurance that he would make payment on or before 1st week of October, 2005. Since plaintiff had received 2 payments from defendants, and having regard to promise, assurance, representations, dispatched the entire materials. But defendants did not pay the balance amount as promised. He went on postponing it for week, 15 days and ultimately on 15.12.2005 made a false claim that the goods dispatched by plaintiff were defective and not paid the balance amount. The defendant contended that the letter dated 09.09.2005 is an agreement between plaintiff and defendants and plaintiff agreed to the terms mentioned in the said letter and signed the copy and given it

to defendants. However, plaintiff has put his signature on said letter only for receipt of the cheque of Rs.25,00,000/- and the terms mentioned in the said letter cannot be an agreement. That apart, it is stated in the letter that it is the defendant who made purchase of manganese dioxide subject to approval of its customers, is false and absurd. Once the material is delivered to the consignee, consignor lost its control over the materials and thus, in this background, plaintiff persisted that it should be cash and carry business and no sales on credit. There were several letter correspondences between plaintiff and defendants on this point from 15.12.2005 till 27.01.2006. When the plaintiff lost his hopes in getting back the balance sale price, he issued legal notice dated 15.03.2006 calling upon the defendant to pay Rs.14,05,775/- with interest at 18% p.a. from 28.09.2005 till its realization. The defendant has given reply dated 21.03.2005 and offered to settle the matter amicably. The plaintiff has sent a re-joinder to said reply on 12.04.2006. The defendant dishonestly and fraudulently filed OS No.300/2006 before III Addl. Civil Judge (Sr.Dn.) Nagpur against the present plaintiff. He filed the said suit only to

harass the plaintiff, because it was agreed between parties that the disputes was to be subject to Bangalore jurisdiction. Hence, the plaintiff filed the suit for recovery of balance amount with interest.

5. The second defendant filed the written statement denying the plaint averments. He contended that the issues involved in that suit and the present suit is one and the same. Therefore, the present suit is not maintainable and accordingly, it has to be stayed under Section 10 of CPC. He admitted the visit of plaintiff and payment of Rs.25,00,000/- by him. He contended that there was an agreement between him and the plaintiff that the delivery of material would be subject to approval of merchantability and usefulness of its customers. The cheques were encashed and the quality of material were sub standard and his customers rejected the materials. Therefore, the defendant is not liable to pay the amount claimed in the suit.

6. Based on the aforesaid pleadings, the Trial Court framed the following issues:

"1. Whether the plaintiff proves that the defendants are liable to pay Rs.14,05,775/- towards the supply of Manganese dioxide?

2. Whether the plaintiff further proves that the defendants are liable to pay interest at 18% p.a. from 29.09.2005 till 03.10.2007 to the tune of Rs.5,08,853/- and they also liable to pay future interest at 18% p.a.?

3. Whether the defendants prove that the plaintiff had supplied low quality materials and before accepting the said materials by the customer of the plaintiff or verification of quality, the plaintiff has illegally got encashed the cheque given by them to the tune of Rs.25,00,000/- towards the security deposit as against the terms and conditions acknowledged by the plaintiff vide letter dated 09.09.2005?

4. Whether the plaintiff is entitled for the suit claim amount?

5. What order or decree?"

7. The plaintiff to substantiate the claim examined Dr.A Venkatesh as PW1 and produced 42 documents which are marked as Exs.P1 to P42. Plaintiff was cross examined on 04.03.2015. Thereafter, the case was posted for arguments on 12.03.2015. The defendant filed an application to re-open the case and to lead evidence. The said application was not

accompanied by the affidavit of the parties. But it was accompanied by the memorandum of facts filed by the defendants' counsel. On the day, the said application came up for consideration, i.e. on 12.03.2015, the defendants' counsel submitted that he is not ready to lead evidence as the defendant is not in Bengaluru. The Trial Court held that the defendant is not interested in prosecuting the matter and therefore, dismissed the application and posted the matter for arguments on 03.03.2005. By consent of the parties, a plaint and the written statement filed in the Nagpur Court were marked as Ex.P41. After hearing the counsel for plaintiff, the case was posted for reply arguments and thereafter, the suit came to be decreed as prayed for. Aggrieved by the said judgment and decree, the defendants have preferred this appeal.

8. Learned Counsel for the appellants assailing the judgment and decree of the Trial Court contended that the Trial Court was not justified in posting the case for arguments. After the plaintiff's side was closed, he ought to have posted the case for defence evidence. Even when the application is filed to adduce evidence that was not allowed

on the ground that, on that day, the defendant was not in a position to lead evidence. He therefore, submits that as the plaintiff has filed a suit in Nagpur Court, defendant has filed detailed written statement contesting the suit. He cross examined PW1 extensively, but he was prevented from adducing evidence to substantiate his defence. Therefore, the principal of natural justice is violated. Therefore, the judgment and decree requires to be set aside.

9. Per contra, learned Counsel appearing for the respondent pointed out that the order sheet of the lower Court discloses the conduct of defendant throughout the trial in dragging on the proceedings. IA has been filed by the defendant to lead evidence. But the defendant was not ready to lead evidence even on the day when he filed the application seeking permission to lead evidence. Therefore, he contends that no fault could be found in the judgment and decree of the Trial Court.

10. This Court at the stage of admission pointed out to the learned Counsel for the appellants that if the defendant-appellant show his bonafide to deposit the principal amount in the Court, his request for re-opening of case and

permit to lead evidence would be considered. Accordingly, the appellants' Counsel filed a memo undertaking to deposit the money before the Trial Court before he is permitted to adduce evidence.

11. Learned Counsel for the respondent submits that the suit for recovery of money is dragged on for nearly 18 years before the City Civil Court and therefore, opportunity has to be given to the defendants and time frame be fixed, so that suit is disposed of expeditiously.

12. In view of the aforesaid fair submissions made by the learned Counsel for the parties, though no fault could be found with the approach of Trial Court in firmly dealing with parties and proceeding to pass the judgment and decree, we are of the view that as the appellants have shown the bonafide by giving an undertaking to deposit the amount of Rs.19,00,000/-, an opportunity has to be given to lead evidence within time frame fixed by the Court, that would meets the ends of justice.

13. Hence, we pass the following:

O R D E R

(i) *The Appeal is allowed.*

(ii) *The judgment and decree of the Trial Court is hereby set aside. The matter is remanded back to the Trial Court for enabling the defendants to adduce evidence.*

(iii) *Parties shall appear before the Trial Court on 06.06.2016. The Trial Court shall take up this matter and permit the defendants to adduce evidence and trial shall go on day to day basis and judgment shall be delivered on or before 30.06.2016. No application in between shall be entertained.*

(iv) *After the completion of defendants adducing evidence, the plaintiff should be given an opportunity to cross examine the witnesses and the Trial Court shall proceed and dispose of the suit on or before 30.06.2016.*

(v) All these concessions the defendants would be entitled to provided, they shall deposit Rs.19,00,000/- within a week from today in the Court below.

Sd/-
JUDGE

Sd/-
JUDGE

*bgn/-