

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

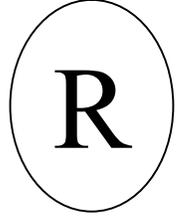
DATED THIS THE 23RD DAY OF AUGUST, 2023

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE T.G. SHIVASHANKARE GOWDA



R.F.A NO.844 OF 2010 (MON)

BETWEEN:

M/S. STOVE KRAFT PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
PRESENTLY HAVING ITS
REGISTERED OFFICE AT
SY NO.81/1, MEDAMARANAHALLI VILLAGE
HAROHALLI HOBLI
KANAKAPURA TALUK
RAMANAGARA DISTRICT
PIN-562 112

...APPELLANT

(BY SHRI. H.R. ANANTHA KRISHNA MURTHY, ADVOCATE)

AND:

M/S. PRADEEP STAINLESS STEEL
INDIA PVT. LTD.,
A PRIVATE LIMITED COMPANY
REGISTERED UNDER THE
COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE
AT PLOT NO.C3, PHASE 11, MEPZ
TAMBARAM, CHENNAI-600 045
REPRESENTED BY ITS
M.D. SRI. B. VIJAYARAJ
HAVING TAKEN OVER ASSETS &
LIABILITIES OF THE DISSOLVED

PARTNERSHIP FIRM BY NAME
M/S. PRADEEP INTERNATIONAL
HITHER TO HAVING ITS OFFICE AT
PLOT NO.C-3, PHASE 11 MEPZ
TAMBARAM, CHENNAI-600 045
REPRESENTED BY ITS
M.D. SRI. B. VIJAYARAJ

...RESPONDENT

(BY SHRI. G.P. JAGADEESH ADVOCATE FOR
SHRI. PARAS JAIN, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGEMENT AND DECREE DATED 25.01.2010 PASSED IN O.S.NO.15450/2005 ON THE FILE OF XXVI ADDITIONAL CITY CIVIL & SESSIONS JUDGE, BANGALORE, DECREERING THE SUIT FILED U/ORDER 37 RULE 3(6)(a) FOR RECOVERY OF MONEY.

THIS RFA, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.07.2023 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **P.S. DINESH KUMAR, J.**, PRONOUNCED THE FOLLOWING:-

JUDGMENT

This appeal by the defendant is directed against judgment and decree dated January 25, 2010 in O.S. No. 15450/2005 passed XXVI Addl. City Civil and Sessions Judge, Bangalore, decreeing the suit and directing the defendant to pay a sum of Rs. 25,67,000/- with interest at 12% p.a.

2. We have heard Shri. H.R. Anantha Krishna Murthy, learned Advocate for the appellant/defendant and

Shri. Paras Jain and Shri. G.P.Jagadeesh, learned Advocate for the respondent/plaintiff.

3. For the sake of convenience, parties shall be referred as per their ranking in the Trial Court.

4. Brief facts of the case are, plaintiff is a Private Limited Company. It imports stainless steel and other commodities. Defendant entered into two separate 'High Sea' Sale agreements dated 15.07.2002 to purchase steel coils weighing 20.788 MT and 20.478 MT having CIF¹ value of USD 27959.86 and 27542.91. The stainless steel was to be imported from Rio-De-Janeiro, Brazil to Chennai Port. As per the Contract, defendant was required to pay the value of goods within thirty days from the date of invoice. Plaintiff raised a debit note (bearing No.001 dated 07.10.2002) for Rs.13,77,648-59 ps. and another debit note (bearing No.002 dated 07.10.2002) for Rs.13,89,398-28ps, aggregating to Rs.27,67,046-87ps. Plaintiff demanded the payment and

¹ Cost, Insurance, and Freight

defendant failed to respond to plaintiff's communications. Subsequently, under letter 24.01.2003, defendant sent a demand draft for Rs. 10 lakhs. Plaintiff got issued a legal notice for remaining amount. On receipt of the notice, defendant approached plaintiff's Advocate for settlement but the settlement did not go through. With these averments, plaintiff has brought the instant summary suit under Order XXXVII Rule 1 of the Code of Civil Procedure, 1908² for recovery of Rs.25,67,000/-.

5. Defendant sought leave to defend the suit, contending *inter alia* that the suit was not maintainable; that the suit cannot be tried under Order XXXVII Rule 1 of CPC; that the plaintiff is stranger to the defendant; that plaintiff's claim that it has taken over the assets and liabilities of the dissolved partnership firm is false; that there is no privity of contract between the plaintiff and the defendant.

6. Based on the pleadings, the learned Trial Court has framed following points for consideration:

² 'the CPC' for short

- "1. Whether the present suit is maintainable under Order 37 of C.P.C.?*
- 2. If so, whether plaintiff is entitled for decree under Order 37 Rule 3(6)(a) of C.P.C.?*
- 3. What Order? "*

7. Answering points No.1 and 2 in the affirmative, the Trial Court has decreed the suit.

8. Shri. Anatha Krishna Murthy, learned Advocate for the defendant/appellant, praying to allow the appeal submitted that:

- the Trial Court has erred in holding that the instant suit is maintainable under Order XXXVII of the CPC;
- plaintiff has mentioned in the cause title of the plaint that it has taken over the assets and liabilities of the dissolved partnership firm named 'M/s. Pradeep International'. This fact is not pleaded in the plaint and no document is

produced in that behalf. The Trial Court has not recorded any finding on this aspect;

- the question whether there is an assignment of debt or not, requires consideration;
- the suit is filed on the basis of two distinct contracts dated 15-07-2002. The agreements are entered between the defendant and M/s. Pradeep International (a Partnership firm). Plaintiff is a Private Limited Company. Therefore, there is no privity of contract between the plaintiff and defendant;
- the Trial Court has erred in holding that the agreement provides for payment of interest;
- the Trial Court has failed to consider that out of two agreements the Managing Director of the defendant Company has signed only one agreement in respect of 20.788 MT stainless-steel coils;

- the Trial Court has erred in decreeing the suit only on the basis of the debit notes and invoices;
- there is no written contract between plaintiff and the plaintiff is a Private Limited Company with regard to the alleged supply of goods and therefore, the provisions of Order XXXVII Rule 1 of CPC could not be invoked.

9. Shri. Paras Jain and Shri. Jagadeesh, learned Advocate for the plaintiff/respondent supporting the impugned judgment and decree, submitted that:

- the transactions between the plaintiff and defendant are commercial in nature;
- the plaintiff Company has taken over the running business of Partnership Firm M/s. Pradeep International;
- as per the High Sea Sales Agreements, the defendant had agreed to pay the value of goods within 30 days. Defendant has purchased and

taken delivery of the goods, but failed to pay the value of the goods, inspite of several demands;

- the suit claim arises out of a written contract, therefore, the suit is maintainable under Order XXXVII Rule 1 of the CPC;
- while taking delivery of goods, defendant has submitted Bill of Entry for Home consumption before the Customs House (Sea Cargo), Chennai and remitted the amount as Customs Duty and after filing the Bill of Entry, the defendant has taken delivery of the goods from Customs Department and paid the Customs duty.

10. With the above submissions, Shri. Jain and Shri. Jagadeesh prayed for dismissal of the appeal.

11. We have carefully considered the rival contentions and perused the records.

12. Plaintiff's case is, defendant had entered into two separate 'High Seas' Sale agreements dated 15.07.2022 to

purchase steel coils weighing 20.788 MTs and 20.478 MTs shipped from Rio-de-Janeiro, Brazil to Chennai, India, subject to the condition that the defendant shall pay the value of goods within 30 days from the date of invoice. Plaintiff raised two separate debit notes bearing No.001 and No.002 dated 07.10.2002 aggregating to Rs.27,67,046-87. Defendant's books of accounts disclose that he has taken the delivery of the goods. However, he has failed to make the payment.

13. Plaintiff has averred thus in the para 7 of the plaint:

"7. The Total Outstanding amount as on today, due by the Defendant to the Plaintiff is **Rs.25,67,000.00 (Rupees Twenty Five Lakhs Sixty Seven Thousand Only)** as per the particulars furnished herein below:

Particulars	Amount
Value of the goods sold (DEBIT NOTE 1)	13,77,648.59
Value of the goods sold (DEBIT NOTE 2)	13,89,398.28
Interest accrued thereon	7,99,953.13
Total	35,67,000.00
Less: Amount Received	10,00,000.00
Total Amount Due	25,67,000.00

14. The above claim is based on both Debit Note Nos. 001 & 002. A notice was issued under Order XII Rule 5 with following questions:

"1. That you have entered into High Seas Sale Agreement with Plaintiff on 15.07.2002 inter alia agreeing to purchase goods referred to in Invoice No.X200935 dated 5.7.2002, for purchase of 20.788 M. Tons of value worth US\$ 27959.86.

2. That pursuant to said High Seas Sale Agreement, Plaintiff has raised Debit Note No.002 dated 7.10.2002 in respect of the said invoice No.X200935 dated 5.7.2002.

3. That in respect of the said goods which is subject matter of Debit Note No.2, the goods was shipped to India under Bill .00000000000000000000 of Lading bearing No.MOLU732353168 dated 8.7.2002.

4. That to take delivery of said goods which is subject matter of Debit Note No.2, you have submitted Bill of Entry for Home Consumption before the Customs House (Sea Cargo). Chennai and remitted a sum of Rs.7,93,559-60 as Customs Duty and pursuant to filing of said Bill of Entry you have taken delivery of the goods from Customs Department after remitting the said customs duty.

5. That you have entered into High Seas Sale Agreement with Plaintiff on 15.7.2002 inter alia agreeing to purchase goods referred to in Invoice No.X200936 dated 5.7.2002,

for purchase of 20.478 M. Tons of value worth US\$ 27542.91.

6. That pursuant to said High Seas Sale Agreement, Plaintiff has raised Debit Note No.001 dated 7.10.2002 in respect of the said Invoice No.X200936 dated 5.7.2002.

7. That in respect of the said goods which is subject matter of Debit Note No.001, the goods was shipped to India under Bill of Lading bearing No.MOLU732353151 dated 8.7.2002.

8. That to take delivery of said goods which is subject matter of Debit Note No.2, you have submitted Bill of Entry for Home Consumption before the Customs House (Sea Cargo), Chennai and remitted a sum of Rs.7,79,356-10 as Customs Duty and pursuant to filing of said Bill of Entry you have taken delivery of the goods from Customs Department after remitting the said customs duty.

9. That both the Bill of Entry for Home Consumption, filed by the Defendant before the Customs Authorities, contains address of the Defendant viz., STOVE KRAFT PVT LTD., # 28/1, adjacent to AGS Layout, 3rd Main Road, Arehalli village, uttarahalli Hobli, Bangalore-560 061 and its Permanent Account No. AADCS9958BFT001.

10. That Defendant's Account Books disclose the fact that said goods have been purchased by the Company and it has taken delivery of the said goods and it is accounted in the books of accounts maintained by the Defendant Company."

15. Defendant has admitted questions No. 1 to 4 and 8 and denied questions No. 5 to 7 and 9 and 10. Question No. 5 to 7 are in respect of Debit Note No.001 for Rs. 13,77,648.59. Plaintiff has accounted for Rs.10 lakhs received by him and reduced the said amount in the claim as is clear from para 7 of the plaint extracted hereinabove.

16. The argument of Shri. Anantha Krishna Murthy, in substance is that no documents are produced to show that the dissolved partnership firm was converted into plaintiff's company and that the assets and liabilities of the dissolved partnership firm were taken over by plaintiff. The second agreement relating to supply of 20.788 MT is a contract between defendant and M/s. Pradeep International (a Partnership firm). Therefore, it is not enforceable.

17. In the light of facts recorded herein above and submissions of the Advocates, following points arise for our consideration:

- i) *Whether the summary suit under Order XXXVII of the CPC is maintainable?*

- ii) *Whether there is privity of contract between plaintiff and defendant?*
- iii) *Whether the impugned judgement and decree calls for any interference?*

Re-point No.1

18. Order XXXVII Rule 2 of CPC reads as follows:

" Court and classes of suits to which the Order is to apply'

(1) xxx

(2) *Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:-*
(a) *suits upon bills of exchange, hundies and Promissory notes:*

(b) *suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,-*

(i) on a written contract, or

(ii)xxx

(iii) xxx"

19. It is settled that summary suit is maintainable if the suit is based on written contract arising out of written

purchase orders. (See *B.L.Kashyap and Sons Limited Vs. JMS Steels and Power Corporation and Another*³)

20. In the instant suit, plaintiff and defendant entered into 'High Seas' Sale Agreements dated 15-07-2002. Plaintiff has raised following two debit notes:

a. Debit Note No.001 dated 7-10-2002 in respect of the said Invoice No.X200936 dated 5-7-2002 for purchase of 20.478 MT and the goods was shipped to India under Bill of Landing bearing No. MOLU732353151 dated 8-7-2002;

b. Debit Note No.002 dated 7-10-2002 in respect of the said Invoice No. X200935 dated 5-7-2002 for purchase of 20.788 MT and the goods was shipped to India under Bill of Landing bearing No. MOL.U732353 168 dated 8-7-2002.

21. It is also settled that invoices amount to 'written contracts' within the provision of Order XXXVII of the CPC. It is not in dispute that the plaintiff has brought the instant suit based on invoices raised for supply of goods.

³ (2023) 3 SCC 294 (para 28)

22. We may also profitably advert to the authority in *Jatin Koticha Vs. Vfc Industries Pvt. Ltd*⁴, in which the Bombay High Court dealing with a summary suit has held as follows:

"It is not the requirement of the law that it should be a written contract signed by both the parties. What is necessary is that the suit should be based on a written contract. That, one can find in this case, in the form of invoices which were raised on the defendants along with delivery of the goods in pursuance of each purchase order."

(Emphasis Supplied)

23. Defendant has urged that there was no transaction between the parties relating to the alleged sale of 20.478 MT of stainless-steel coils in respect of Debit Note No. 001. We have perused the agreement. It shows that the defendant has entered into an agreement wherein the name of seller is shown as 'M/s. Pradeep International' and name of buyer as 'Stove Kraft Private Limited'. There is a corresponding Bill of Lading issued by the carrier Mitsui O.S.K. Lines Limited. The Bill of Lading contains items covered under both Debit No.001 & 002.

⁴ 2008 (2) BomCR 155, para 12

24. Plaintiff has also produced a letter written by defendant dated 24.01.2003 and it reads as follows:

"SKPL/PIL/177

24th January, 2003

M/S. PRADEEP INTERNATIONAL,
Plot No.C3, Phase 11,
Madras Export Processing Zone
Tambaram,
CHENNAI-600 045
Phone No.2623050, 51, 52

Dear Sir,

Sub: High Seas Sales Agreement - Debit Note Regarding

Ref: **Your Letter Ref. No.PI/701/02-03 Dated 14.12.2002**

This is with reference to the above subject and your Letter Ref. No.PI/701/02-03 Dated 14.12.2002 enclosed please find a Demand Draft bearing Serial Number 086314 Dated 24th January, 2003 for Rs.10,00,000/= drawn on Canara Bank, Madhavanagar Branch, Bangalore-560 001 in your favour, payable at Chennai towards Document amount on High Seas Sales made by you (Import of S.S. Sheets for 20.478 MT vide Invoice No.X200936 Dated 05.07.2002) vide your **Debit Note No.001** Dated 07.10.2002.

Sorry for the delay, meanwhile the balance outstanding will be sending shortly.

Kindly bear with us and acknowledge the receipt of the same.

Thanking you,

Yours faithfully,

For **STOVEKRAFT PRIVATE LIMITED**

Sd/-

Rajendra J Gandhi
MANAGING DIRECTOR

Encl: as above."

25. The above letter shows that defendant has admitted the transaction pertaining to Debit note No.001, paid a sum of Rs.10,00,000/- and the same has been accounted in para 7 of the plaint.

26. Plaintiff has produced the ledger extracts of accounts maintained by plaintiff for the years ending 31st March 2003, 2004 and 2005.

27. The ledger extract for the year 31.03.2003 contains the journal entries towards purchase/sale-import of Rs.13,89,398.28 and Rs.13,77,648.59. It also records receipt of Rs.10,00,000/- on 26.01.2003. The amount due from defendant is shown as Rs.17,67,046.87. We may record here that defendant's letter extracted above is dated

24.01.2003 making payment of Rs.10,00,000/- and the same has been accounted by the plaintiff on 21.06.2003.

28. Ledger extract for the year 31.03.2005 shows a opening balance of Rs. 17,67,046.87. A receipt of Rs.5,00,000/- has also been recorded on 28.03.2005 and the total amount due is shown as 12,67,046.87.

29. Plaintiff has filed in this Court a certified copy of the Balance Sheet and Profit and Loss Account of the defendant Company as on 31.03.2005. We had directed the defendant to disclose its stand with regard to the certified copies by filing an affidavit. Defendant has filed an affidavit dated 19.07.2023 and it reads as follow:

AFFIDAVIT

"I, Dushyanth M, S/o Manjunath B, Aged about 32 Years, Residing at No.19, Ward No.21, Narayanaswamy Layout, Shankar Nag Road, Anekal Taluk, Bangalore District, Karnataka-562 106, do hereby solemnly affirm and state on oath as follows:

1. I am the authorized representative of appellant company in the above case and well conversant with the

facts of the case and accordingly I am swearing to this affidavit.

2. I submit that the statement of accounts filed by the appellant before the Deputy Registrar of Companies Karnataka, Bengaluru is admitted.

I, the Deponent, do hereby state and declare that what is stated supra are true and correct to the best of my knowledge, belief and information.

*IDENTIFIED BY ME,
ADVOCATE*

*Sd/-
DEPONENT*

(Emphasis Supplied)

30. In the certified copy of Profit and Loss Account of defendant for the year ending 31.03.2004, the 'creditors for import' under the head Sundry Creditors in schedule K is mentioned as Rs.17,67,047/- and for the year ending 31.03.2005 it is mentioned as Rs.12,67,047/-. These figures precisely match with the account extracts maintained by the plaintiff.

31. As on the date of filing of the suit i.e., 07.02.2005, plaintiff has claimed a sum of

Rs. 13,77,648.59 (Debit Note No.001) and Rs.13,89,398.28 (Debit Note No.002). The ledger extract filed by the plaintiff shows that after filing the suit, plaintiff has received a sum of Rs.5,00,000/- on 28.03.2005 from the defendant.

32. Defendant has admitted in his affidavit the certified balance sheet and Profit and Loss Account for the year ending 31.03.2005, issued by the Registrar of Companies. We have perused the same and recorded the above findings. The defendant has made a true disclosure of the accounts and shown a sum of Rs.12,67,047/- as due to the Sundry Creditors.

33. Hence, in principle we find no ground to interfere in this appeal. However we may record that plaintiff's claim must be reduced by Rs.5,00,000/- as he has received the said sum on 28.03.2005 after filing the suit.

34. In view of the above, following:

ORDER

a) Appeal is ***allowed in part*** holding that plaintiff shall be entitled to recover a sum of Rs. 20,67,067/- along with interest at 12% from the date of filing this suit and till the date of realisation.

No costs.

Before parting with this judgment, this Court places on record its deep appreciation for the research and assistance rendered by its official Research Assistants-cum-Law Clerks, Ms. Preksha R. Lalwani and Ms. Pooja Umashankar.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

PREKSHA/POOJA/SPS