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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2026

PRONOUNCED ON : 26.10.2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

CS No. 72 of 2020

CNR:{HCMA012208112019}

Case QR

M.Mohan
Proprietor,
Sivasakthi Corporation.
Office at No.319, Nehru Street,
2nd Line, Near Funmail,
Peelamedu Post,
Coimbatore-641 004.

..Plaintiff(s)

Vs

Tamil Nadu Co operative Union
Rep.by Special Officer/Managing Director,
N.V.Natarajan Maaligai,
No.170, Periyar EVR Road,
Kilpauk, Chennai-10.

..Defendant(s)

PRAYER - Civil Suit filed under Order IV Rule 1 of Original Side Rules, read with Order VII Rule 1 of C.P.C., seeking for a (a) direction to the defendant to pay the plaintiff a sum of Rs.2,57,91,638/- with interest 18% p.a. principal Rs.2,57,91,638/- from this date till date of realization and (b) to pay the cost of the suit.

For Plaintiff(s): Mr.K.V.Ananthakrushnan

For Defendant(s): Mr. P.V.Balasubramanian, (AAG)
Assisted by
Mr.Arasu Sanga Tamil (GA)

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JUDGMENT

This Civil Suit has been filed by the plaintiff seeking a direction to the defendant to pay a sum of Rs.2,57,91,638/- (Rupees Two Crores Fifty-Seven Lakhs Ninety-One Thousand Six Hundred and Thirty-Eight only), together with interest at 18% per annum on the said amount from the date of institution of the suit till the date of realization, along with costs.

2. The plaintiff, is the sole proprietor of M/s. Sivasakthi Corporation, engaged in the business of supplying spares, scraps, tools, instruments and computer components. The defendant, Tamil Nadu Cooperative Union, by proceedings in Na.Ka.No.6676/2011/D1 dated 06.06.2012, placed orders with the plaintiff for the supply of machineries and equipment to nine Industrial Training Institutes in Tamil Nadu, for a total value of Rs.6,86,93,549/-. According to the plaintiff, machineries and equipment worth Rs.4,97,14,956/- were supplied during 2012 in accordance with the specifications prescribed by the National Council for Vocational Training (NCVT). However, the defendant paid only Rs.2,39,23,318/-, leaving an outstanding balance of Rs.2,57,91,638/-. The plaintiff further states that he had placed orders with his principal supplier for the remaining machineries worth Rs.1,89,78,593/-, but the defendant failed to take delivery of the same.

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3. The plaintiff further contends that, nearly two and a half years after the supply of machineries, the defendant initiated enquiry proceedings on 07.01.2015 under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983, alleging defective supply. According to the plaintiff, the undertaking dated 10.06.2012 provided for rectification of manufacturing defects or deviations within three months from the date of supply. Earlier, the plaintiff had filed W.P.No.11061 of 2014, wherein this Court, by order dated 04.07.2014, directed the defendant to dispose of his representation dated 13.03.2014 on merits, after affording an opportunity of hearing. However, the defendant withheld the balance payment on the ground that the enquiry was pending. By letters dated 23.07.2018 and 12.10.2018, the plaintiff raised objections to the alleged breach of contractual obligations, contending that the enquiry report was not furnished to him and that the machineries were inspected without his participation. He further contends that no inspection by the competent NCVT authorities was conducted between 2012 and 2015 establishing defects in the machineries supplied. The plaintiff disputes the finding that machineries worth Rs.82,96,542/- were defective, as being unsupported by proper inspection or verification. Alternatively, he contends that, even assuming that a portion of the machineries was defective, the defendant was liable to pay the balance amount Rs. 1,74,95,093 /- attributable to the remaining machineries.

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4. The plaintiff further states that, in response to his letter dated 05.04.2019, the defendant, by communication dated 03.06.2019, acknowledged the outstanding amount of Rs.2,57,91,638/- and stated that payment would be made after obtaining necessary permission from the higher authorities. Relying upon the said communication, the plaintiff contends that the liability stood acknowledged and that the suit is within the period of limitation. The plaintiff further claims that he had borrowed funds for executing the contract and was deprived of the use of the amount due to him for several years. Despite the issuance of a legal notice dated 13.09.2019, the defendant neither paid the outstanding amount nor sent any reply. Hence, the plaintiff has instituted the present suit, restricting his claim for interest at 18% per annum from the date of institution of the suit. The plaintiff further states that the transaction constitutes a commercial dispute of specified value under Sections 2(1)(c) and 2(1)(i), read with Section 12 of the Commercial Courts Act 4 of 2016, and that the cause of action arose within the territorial jurisdiction of this Court.

5. The defendant is a registered society under the Tamil Nadu Cooperative Societies Act, 1983, engaged in promoting cooperative education and training. Under Section 72 of the Act and Section 91 of the Tamil Nadu Cooperative Societies Rules, 1988, contributions received towards the Cooperative Education Fund are administered for educational and training purposes. During 2012–2013, the defendant decided to introduce vocational courses in Fitter,

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Welder and Electrician trades in seven Institutes of Cooperative Management situated at Kancheepuram, Vellore, Salem, Coimbatore, Madurai, Tirunelveli and Thanjavur, and two Industrial Training Institutes at Pattukottai and Burgur. For obtaining the requisite approval from the National Council for Vocational Training (NCVT), it became necessary to procure machineries, tools and equipment. Accordingly, a tender was floated on 17.05.2012, in which the plaintiff emerged as the lowest bidder (L1), and a work order dated 06.06.2012 was issued for a total value of Rs.6,86,93,549/-. The defendant states that payments of Rs.1,26,67,247/-, Rs.56,73,634/- and Rs.55,82,437/- were made on 14.06.2012, 27.06.2012 and 29.06.2012 respectively, aggregating to Rs.2,39,23,318/-.

6. The defendant further contends that the machineries, tools and equipment supplied by the plaintiff were of inferior quality, substandard, non-branded, deficient in quantity and without the prescribed ISI or BIS standards, rendering them unfit for imparting vocational training. Pursuant to the directions of the Registrar of Cooperative Societies, inspections were conducted at the concerned institutions, and the Principals of the Salem and Madurai Institutes, by their reports dated 23.08.2012 and 12.08.2012 respectively, reported serious defects and deficiencies. It is further alleged that, despite being called upon to install the machineries and conduct trial runs to ascertain their suitability, the plaintiff failed to do so. According to the defendant, the defective supplies prevented the

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institutions from obtaining NCVT approval and commencing the proposed training programmes. Consequently, by communication dated 22.01.2014, the defendant directed the Principals of the institutions to stop installation and take steps to return the machineries and recover the amounts paid. The respective Principals also addressed communications to the plaintiff during January to April 2014, calling upon him to take back the machineries and refund the amounts received. However, the plaintiff neither took back the materials nor refunded the amount.

7. The defendant further states that, in view of the irregularities in the tender process and the defective supplies, an enquiry was ordered under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983. An Enquiry Officer was appointed by proceedings dated 13.05.2014 to enquire into the procurement, supply and payments relating to the machineries. The defendant relies upon an enquiry report stated to be dated 03.10.2013, wherein it was allegedly found that the machineries and equipment supplied were defective and unfit for training purposes, resulting in a loss of Rs.2,39,23,318/- to the defendant. Based on the enquiry, domestic, criminal and surcharge proceedings were initiated. In the surcharge proceedings under Section 87 of the Act, the Deputy Registrar (Non-Credit), by order dated 09.12.2015, held that the plaintiff and four others were responsible for the loss caused to the defendant. According to the defendant, the plaintiff was not proceeded against under the surcharge

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provisions as he was not a member of the cooperative society. The surcharge order was challenged by Mr.K.P.P.Paneerselvan in C.M.A.No.9 of 2017 before the Cooperative Tribunal, Chennai, which was stated to be pending. The defendant further contends that verification of the plaintiff's Central Sales Tax registration through the Assistant Commercial Tax Officer, Singanallur Circle, Coimbatore, by communication dated 19.12.2014, revealed that the plaintiff was engaged in the business of textile scraps, sales and trading, contrary to his claim of being a dealer in industrial tools, instruments and computer components. It is therefore alleged that the plaintiff had misrepresented his business credentials while securing the tender.

8. With regard to the earlier proceedings, the defendant submits that, pursuant to the order dated 04.07.2014 in W.P.No.11061 of 2014, the plaintiff's representation was considered and rejected by proceedings dated 07.01.2015. The said order was communicated to the plaintiff's counsel on 14.05.2015. Challenging the rejection, the plaintiff filed W.P.No.23443 of 2015, seeking to quash the proceedings dated 07.01.2015 and for payment of Rs.2,57,91,638/- with interest at 18% per annum. The said writ petition was dismissed by this Court on 03.08.2015. The defendant specifically denies having issued any communication dated 03.06.2019 acknowledging liability. It is further contended that, the present suit is barred by limitation and the supplies were effected during 2012 and the limitation period had expired in June 2015. The

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defendant also disputes the classification of the transaction as a commercial dispute under Section 2(1)(c) of the Commercial Courts Act, 2015, and contends that Section 156 of the Tamil Nadu Cooperative Societies Act, 1983, bars the jurisdiction of the Civil Court. On these grounds, the defendant prays for dismissal of the suit with costs.

9. The plaintiff filed a reply statement denying the allegations in the written statement and contending that the defendant had suppressed material facts relating to the proceedings under Sections 81 and 87 of the Tamil Nadu Cooperative Societies Act, 1983. It is submitted that the dispute arises out of an individual commercial contract and that departmental proceedings initiated against the defendant's officials cannot absolve the defendant of its contractual obligations. The plaintiff further states that the proceedings against Mrs.U.R.Dhavamani and Mr.K.P.P.Panneerselvan were stayed by orders dated 23.04.2019 in W.P.(MD)No.9601 of 2019 and 11.04.2017 in W.P.No.8444 of 2017 respectively, which the defendant failed to disclose. It is also contended that the plaintiff was not a party to either the enquiry or the surcharge proceedings.

10. With regard to the alleged defective supplies, the plaintiff reiterates that no defects were pointed out within the period stipulated in the undertaking dated 10.06.2012. According to the plaintiff, the Registrar, by communication dated

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20.02.2013, identified the Director of Employment and Training and the NCVT as the competent authorities for independent inspection. However, no such inspection was conducted in the plaintiff's presence during 2013, nor was any certificate establishing defects issued. The plaintiff further states that the alleged enquiry report dated 12.02.2015 was not furnished to him and that the machineries continued to remain in the defendant's custody.

11. The plaintiff further relies upon the inspections conducted by the officials of the Directorate of Employment and Training during 2018 and early 2019 in his presence. According to him, the inspection reports and subsequent communications dated 09.02.2019, 18.02.2019 and 21.02.2019 established that the machineries supplied to the nine institutions were in working condition and suitable for the five vocational courses. It is also stated that the Director recommended procurement of additional materials for the revised syllabus. The plaintiff contends that these subsequent inspections contradict the defendant's allegations of defective supply.

12. As regards the allegations concerning his business credentials, the plaintiff relies upon the sales tax registration dated 28.11.2003, the subsequent commercial tax registration and the GST certificate dated 26.06.2017. He further submits that, since the defendant had made only partial payments, the applicable taxes remained unpaid and that the defendant could deduct the lawful

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tax liability from the amount payable. On limitation, the plaintiff relies upon the correspondence, inspections and the defendant's communication dated 03.06.2019 as constituting a continuing acknowledgment of liability. It is further contended that the defendant cannot retain the machineries without payment while simultaneously alleging defective supply. The plaintiff therefore seeks rejection of the defendant's objections and a decree as prayed for.

13. This Court by its order dated 19.02.2025, framed the following issues:

1. Whether the suit claim is barred by limitation? (OPD)

2. Whether the suit is maintainable in view of order dated 07.01.2015 in W.P.No.23443 of 2015? (OPD)

3. Whether the letter dated 03.06.2019 from the defendant qualifies as an acknowledgment of liability for purposes of the Limitation Act, 1963?(OPP)

4. Whether the goods supplied by the plaintiff to the defendant were defective and unfit for purpose?(OPD)

5. Whether the plaintiff was under an obligation to take back the machineries as per the terms of contract?(OPD)

6. Whether the plaintiff is entitled to the principal suit claim?(OPP)

7. Whether the plaintiff is entitled to interest at the rate of 18% per annum or

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any other rate?(OPP)

8. Whether the parties are entitled to any other relief?

14. On the side of the plaintiff, the plaintiff, M. Mohan, proprietor of M/s. Sivasakthi Corporation, examined himself as P.W.1 and marked Exs.P1 to P37. On the side of the defendant, G. Kamaraj, Assistant Director of the Tamil Nadu Cooperative Union, was examined as D.W.1. The documents Exs.D1 to D8 were marked during the cross-examination of P.W.1.

15. Learned counsel for the plaintiff submitted that the execution of the contract, supply of machineries worth Rs.4,97,14,956/-, payment of Rs.2,39,23,318/- and the outstanding balance of Rs.2,57,91,638/- are substantially admitted. It was pointed out that D.W.1, during cross-examination, admitted the purchase order under Ex.P1, the invoices under Ex.P3 and the balance amount payable. Therefore, according to learned counsel, the principal liability stands established, subject only to the defendant's allegation of defective supplies.

16. Learned counsel further submitted that the allegation of defective supplies is unsupported by reliable evidence. Referring to Ex.P2, the undertaking dated

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10.06.2012, it was contended that defects ought to have been communicated within three months of supply. However, the communications marked as Exs.D2 to D8 were issued only during 2014 and did not sufficiently identify or quantify the alleged defects. Particular reliance was placed on the admission of D.W.1 that the communications were general in nature and that the relevant enclosure referred to in Ex.D3 had not been produced along with the document.

17. Learned counsel relied upon the inspection reports marked as Exs.P25 to P33 and the subsequent communications under Exs.P34 to P36 to contend that the machineries were inspected by the competent authorities during 2018 and 2019 and found to be in working condition. It was further pointed out that D.W.1 had neither personally inspected the machineries nor verified their working condition. According to learned counsel, the defendant, having retained the machineries without establishing their defects, cannot refuse payment of the balance consideration.

18. On the point of limitation, learned counsel placed particular reliance upon the communications dated 14.05.2015, 07.05.2018, 19.09.2018 and 03.06.2019, marked as Exs.P8, P10, P12 and P15 respectively. It was submitted that these communications constitute successive acknowledgments of liability under Section 18 of the Limitation Act, 1963, thereby extending the period of

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limitation. Learned counsel also referred to Section 19 of the Limitation Act. According to him, the acknowledgment contained in Ex.P8 was made within three years of the last supply in November 2012, and the subsequent communications preserved the plaintiff's right to institute the suit.

19. Alternatively, learned counsel contended that Ex.P15 dated 03.06.2019 amounts to a written promise to pay the outstanding amount after obtaining approval from the higher authorities. Even assuming that the original debt had become barred by limitation, it was submitted that such a written promise constitutes an enforceable agreement under Section 25(3) of the Indian Contract Act, 1872, giving rise to a fresh cause of action. In support of these propositions, learned counsel referred to the decisions reported in **AIR 1975 Mad 333** and the **judgment dated 11.02.2015 in C.S.No.205 of 2007** of this Court.

20. Learned counsel further submitted that the surcharge proceedings initiated against the defendant's officials were subsequently quashed by order dated 11.08.2023 in W.P.No.8444 of 2017. Reliance was also placed upon the cross-examination of D.W.1, who admitted that no surcharge proceedings were pending in respect of the subject machineries. It was therefore contended that the defendant cannot rely upon those proceedings to withhold the contractual

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payment. Learned counsel also pointed out that the defendant had failed to examine any officer who had personally inspected the machineries or participated in the original transaction.

21. Referring to the earlier proceedings in O.S.A.(CAD)No.141 of 2021, learned counsel submitted that the Division Bench, by judgment dated 12.03.2024, restored the suit for consideration on merits. It was therefore contended that the issue of limitation must be determined upon appreciation of the evidence rather than upon the dates of supply alone.

22. Learned counsel further submitted that the transaction is commercial in nature and that the plaintiff is entitled to interest at 18% per annum. Although interest could have been claimed from the date of supply, the plaintiff has restricted the claim to the date of institution of the suit. Accordingly, learned counsel prayed that the suit be decreed for the principal amount together with interest and costs.

23. Per contra, the learned Additional Advocate General appearing for the defendant submitted that the suit is barred by limitation and is also unsustainable on merits. It was contended that the cause of action for recovery

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of the amount arose in 2012, when the tender was floated on 17.05.2012 and the machineries were supplied during the said year. According to learned Additional Advocate General, the prescribed period of three years under Article 113 of the Limitation Act, 1963, expired in 2015. It was therefore submitted that the subsequent correspondence exchanged during 2015, 2018 and 2019 cannot give rise to a fresh cause of action or revive a claim which had already become barred by limitation.

24. Learned Additional Advocate General placed reliance upon the decisions of the Hon'ble Supreme Court in ***Khan Bahadur Shapoor Fredoom Mazda v. Durga Prosad Chamaria and others*, 1961 SCC OnLine SC 147; *Shanti Conductors Private Limited v. Assam State Electricity Board and others*, (2020) 2 SCC 677; and *J.C. Budhraja v. Chairman, Orissa Mining Corporation Ltd. and another*, (2008) 2 SCC 444**, to contend that an acknowledgment under Section 18 of the Limitation Act does not create a new right of action but merely extends the period of limitation in respect of an existing liability, provided such acknowledgment is made before the expiry of the prescribed period. It was submitted that Ex.P12 dated 19.09.2018 and Ex.P15 dated 03.06.2019 were issued after the expiry of limitation and therefore could not revive the claim. It was further contended that the said communications do not satisfy the requirements of Section 25(3) of the Indian

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Contract Act, 1872, as they do not contain any express and duly signed promise to pay a time-barred debt, but merely refer to the processing of the claim and obtaining permission from the higher authorities.

25. Learned Additional Advocate General further submitted that the plaintiff had failed to establish that the persons who issued the communications relied upon were duly authorised to acknowledge liability or bind the defendant Union. It was contended that the burden of establishing such authorisation rested upon the plaintiff, which had not been discharged. According to learned Additional Advocate General, the communications were conditional and made subject to the outcome of the pending proceedings under the Tamil Nadu Cooperative Societies Act, 1983, and the orders of the competent authorities. It was therefore submitted that the correspondence did not constitute an unconditional acknowledgment of a subsisting liability or an enforceable promise to pay the outstanding amount.

26. On the merits, learned Additional Advocate General submitted that the machineries supplied by the plaintiff were defective, substandard and unfit for use in the vocational training institutions. Reliance was placed upon the communications issued by the Principals of the respective institutions during 22014, marked as Exs.D2 to D8, calling upon the plaintiff to take back the

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machineries and equipment. Referring to the cross-examination of P.W.1, learned Additional Advocate General questioned the plaintiff's experience in supplying industrial equipment and pointed out that the plaintiff had admittedly not installed the machineries supplied. It was further contended that the plaintiff had failed to conduct the necessary trial runs and that the machineries remained idle and unutilised. According to learned Additional Advocate General, the defendant cannot be compelled to pay for defective machineries, and the subsequent correspondence cannot be relied upon to revive a stale claim. In support of the contentions, reliance was also placed upon ***Food Corporation of India v. Assam State Cooperative Marketing and Consumer Federation Ltd. and others*****, (2004) 12 SCC 360.** Accordingly, learned Additional Advocate General prayed for dismissal of the suit with costs.

27. The plaint in the present suit was earlier rejected by this Court under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, by order dated 19.08.2021 in A.No.2087 of 2021. Aggrieved by the said order, the plaintiff preferred O.S.A.(CAD)No.141 of 2021. By judgment dated 12.03.2024, the Division Bench allowed the appeal, set aside the order of the learned Single Judge and restored the suit to file.

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28. The defendant preferred Special Leave Petition (C) No.26038 of 2024 challenging the judgment of the Division Bench. The Hon'ble Supreme Court, by order dated 11.11.2024, dismissed the Special Leave Petition, while clarifying that the observations made by the learned Single Judge or the Division Bench shall not be treated as binding findings.

Issue Nos.1 and 3:

29. The plaintiff, a proprietary concern, has instituted the present suit seeking recovery of a sum of Rs.2,57,91,638/-, being the outstanding balance of the sale consideration for the goods supplied and delivered to the defendant.

30. The defendant invited tenders on 17.05.2012 for the supply of machinery and equipment to its nine Industrial Training Institutions. The plaintiff, being the lowest bidder, was selected, and pursuant to the purchase order dated 06.06.2012 placed by the defendant, the plaintiff supplied goods valued at Rs.4,97,14,956/-. The defendant paid Rs.2,39,23,318/-, leaving a balance of Rs.2,57,91,638/-, for recovery of which the present suit has been filed.

31. The tender, the placement of the purchase order and the payments made are not in dispute. However, the defendant disputes its liability to pay the balance amount, alleging that the plaintiff, in connivance with the heads of the

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Industrial Training Institutions concerned, supplied defective materials and failed to conduct the requisite trial tests. The defendant further states that a criminal complaint was lodged against the plaintiff and others and that an enquiry under the Tamil Nadu Co-operative Societies Act, 1983, as well as surcharge proceedings, was initiated against the officials concerned. Apart from these defences on merits, the defendant also contends that the suit is barred by limitation.

32. For examining the plea of limitation, the chronology pleaded by the plaintiff may first be considered. According to the plaintiff, the machinery and equipment were supplied pursuant to the purchase order dated 06.06.2012, issued following the tender. The defendant made payments of Rs.1,26,67,247/- on 15.06.2012, Rs.56,73,634/- on 28.06.2012 and Rs.55,82,437/- on 30.06.2012, aggregating to Rs.2,39,23,318/-. Thus, the last payment, as pleaded by the plaintiff, was made on 30.06.2012, whereas the suit was instituted on 16.12.2019.

33. The defendant accordingly contends that the suit was instituted beyond the prescribed period of three years. The plaintiff seeks to overcome this objection by relying upon five communications issued by the defendant, namely, Ex.P20 dated 07.01.2015, Ex.P8 dated 14.05.2015, Ex.P10 dated 07.05.2018, Ex.P12 dated 19.09.2018 and Ex.P15 dated 03.06.2019. According

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to the plaintiff, these communications constitute successive acknowledgments of liability, giving rise to fresh periods of limitation under Section 18 of the Limitation Act, 1963.

34. The plaintiff relied upon Ex.P20, being the order passed by the defendant pursuant to the order dated 04.07.2014 in W.P.No.11061 of 2014. In Ex.P20 dated 07.01.2015, the defendant did not admit any liability, but merely stated that an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act had been initiated and that a decision would be taken on merits upon receipt of the enquiry report. Such a statement does not constitute an acknowledgment of liability.

35. Even assuming that Ex.P20 constituted a valid acknowledgment, Ex.P10 dated 07.05.2018 would fall beyond three years from 07.01.2015. The plaintiff therefore relies upon the intervening communication, Ex.P8 dated 14.05.2015, to establish continuity of limitation. The crucial question, therefore, is whether Ex.P8 constitutes a valid acknowledgment of a subsisting liability. If so, a fresh period of limitation would commence from 14.05.2015, and Ex.P10 dated 07.05.2018 would fall within that period. Whether Ex.P10, in turn, constitutes a valid acknowledgment must then be examined independently. On the other hand, if Ex.P8 does not constitute a valid acknowledgment, the plaintiff cannot rely upon Ex.P10 to revive a claim already barred by limitation. Thus, Ex.P8

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assumes significance in determining the plea of limitation.

36. Thus, Ex.P8 assumes significance in examining this contention. Although the subsequent three communications were issued within three years preceding the institution of the suit, that circumstance alone does not establish that the suit is within limitation. Each acknowledgment relied upon under Section 18 of the Limitation Act must have been made before the expiry of the then subsisting period of limitation. Therefore, if the plaintiff seeks to rely upon Ex.P8 to bridge the period between the last part payment made on 30.06.2012 and the subsequent communications, it must establish that Ex.P8 constitutes a valid acknowledgment of liability.

37. An acknowledgment under Section 18 of the Limitation Act need not specify the precise amount due or contain an express promise to pay. Nevertheless, the writing, signed by the defendant or its duly authorised agent, must acknowledge, either expressly or by necessary implication, a subsisting liability in respect of the right claimed. The document must be read as a whole and in the light of the surrounding circumstances.

38. Ex.P8 was issued in response to the plaintiff's advocate's notice dated 08.05.2015, marked as Ex.P7, alleging non-compliance with the order dated 04.07.2014 passed in W.P.No.11061 of 2014 and stating that the defendant had

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thereby rendered itself liable to contempt proceedings. The relevant contents of Ex.P8 are extracted hereunder:

> *"As per the orders dated 4.7.2014 passed by the Hon'ble High Court in W.P.No.11061 of 2014. The representation of your client was disposed of on 7.1.201. The order was sent to your client by Registered Post with acknowledge due. However the communication returned with endorsement 'door locked'. Hence your client wanted us to send the communication to his address at No.235, Kamarajar Road, (Balasubramaniya Mill Opposite) Varadharajapuram, Upplipalayam Post, Coimbatore-641015. As per the request the communication was sent on 21.02.2015. Even this communication was not received by him though intimation was given by the postal authority. Hence it may not be proper to say that we have not implemented the orders of the Hon'ble High Court. Suppressing the above said facts your client has requested you to issue the notice under reply.*
>
> *We are enclosing the copy of the order passed on 7.1. 2015. The order is self-explanatory."*

39. Ex.P8 primarily concerns the disposal of the plaintiff's representation and the steps taken to serve the consequential order upon the plaintiff. It asserts

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compliance with the direction of this Court and disputes the allegation of non-compliance. It does not, either expressly or by necessary implication, acknowledge any outstanding liability towards the plaintiff for the goods supplied.

40. The absence of a reference to the precise amount due would not, by itself, disqualify a document from constituting an acknowledgment. However, in the present case, the deficiency is more fundamental, as the contents of Ex.P8 do not disclose any admission of a subsisting liability. A mere statement that the representation has been disposed of cannot, by itself, be construed as an acknowledgment that the monetary claim made therein has been accepted.

41. The background in which Ex.P8 came to be issued supports this interpretation. Before instituting the present suit, the plaintiff had filed W.P.No.11061 of 2014 seeking a writ of mandamus directing the defendant to receive the remaining materials and pay a sum of Rs.2,47,91,638/-. The plaintiff had earlier issued a legal notice dated 07.05.2013, marked as Ex.P4, demanding payment. By order dated 04.07.2014, marked as Ex.P6, this Court directed the defendant to dispose of the plaintiff's representation within eight weeks. Such a direction to consider and dispose of the representation did not, by itself, determine the defendant's liability to pay the amount claimed.

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42. Ex.P8 was issued in the context of the subsequent allegation that the defendant had failed to comply with the said direction. Therefore, its reference to the disposal and dispatch of the representation cannot reasonably be construed as an acknowledgment of the underlying debt.

43. Further, the order stated to have been enclosed with Ex.P8 has been produced as Ex.P20. Thus, Ex.P8 establishes only that the defendant claimed to have disposed of the representation and communicated its decision to the plaintiff.

44. Accordingly, Ex.P8, having regard to its contents, does not constitute an acknowledgment of liability within the meaning of Section 18 of the Limitation Act, 1963, and therefore does not give rise to a fresh period of limitation. The original period of limitation having expired on 30.06.2015, the subsequent communications relied upon by the plaintiff, namely, Exs.P10, P12 and P15, issued during 2018 and 2019, cannot extend the period of limitation under Section 18. Even assuming that those communications contain acknowledgments of liability, they were issued after the expiry of the prescribed period and cannot revive a claim already barred by limitation. Consequently, the plaintiff's reliance upon these communications to bring the suit within limitation

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is unsustainable.

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45. As regards Ex.P15, the defendant, in its reply to the plaintiff, stated that a decision regarding payment would be taken only after obtaining permission from the higher authorities. Even assuming that such a statement amounts to an acknowledgment of a subsisting liability, the communication was issued on 03.06.2019, after the expiry of the prescribed period of limitation on 30.06.2015. It therefore cannot give rise to a fresh period of limitation under Section 18 of the Limitation Act, 1963, or revive the time-barred claim.

46. The plaintiff further sought to rely upon Ex.P15 as a promise to pay a time-barred debt under Section 25(3) of the Indian Contract Act, 1872. An acknowledgment under Section 18 of the Limitation Act, 1963, and a promise under Section 25(3) of the Indian Contract Act operate in different circumstances. While the former must be made before the expiry of the prescribed period of limitation, the latter requires an express promise, made in writing and signed by the debtor or his duly authorised agent, to pay wholly or in part a debt which has become unenforceable by reason of limitation. A mere acknowledgment of debt does not, by itself, satisfy the requirements of Section 25(3).

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47. The plaintiff's reliance upon these provisions cannot be rejected merely on the ground that the pleas are mutually destructive, since they may be raised in the alternative. Nevertheless, Ex.P15 must independently satisfy the requirements of Section 25(3). On a reading of the communication, it is evident that the defendant has neither expressly undertaken to pay the amount claimed nor unequivocally admitted its liability to make such payment. Instead, the communication states that a decision regarding payment of the balance amount would be taken only after obtaining permission from the higher officials. Thus, the question of payment was left open for a future decision, and the communication does not constitute a concluded promise to pay.

48. Consequently, Ex.P15 cannot be construed as an enforceable promise to pay a time-barred debt under Section 25(3) of the Indian Contract Act, 1872. The plaintiff's contention in this regard is therefore rejected.

49. In the circumstances, Issue No.1 is answered in the affirmative, holding that the suit is barred by limitation. Issue No.3 is answered in the negative, holding that Ex.P15 does not constitute an acknowledgment capable of extending the period of limitation under Section 18 of the Limitation Act, 1963.

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50. Although the suit has been held to be barred by limitation, the parties have adduced evidence on all the issues framed. Therefore, in terms of Order XIV Rule 2(1) of the Code of Civil Procedure, 1908, this Court proceeds to determine the remaining issues also.

Issue No.2:

51. The plaintiff filed W.P.No.23443 of 2015 challenging the defendant's order dated 07.01.2015 in Na.Ka.No.6676/11/D1, passed pursuant to the directions issued in W.P.No.11061 of 2014. The plaintiff sought a writ of certiorarified mandamus to quash the said order and direct the defendant to pay the balance amount of Rs.2,57,91,638/- together with interest.

52. By order dated 03.08.2015, marked as Ex.P21, this Court dismissed the writ petition, observing that the relief sought was, in substance, for recovery of money arising out of a private contract. This Court also declined the request to appoint a retired Judge or an Advocate as an arbitrator.

53. The defendant contends that, since the plaintiff's claim had already been rejected in the writ proceedings, the plaintiff cannot institute the present suit for recovery of the same amount.

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54. A reading of Ex.P21 reveals that the writ petition was dismissed on the ground that the relief sought was not appropriate for adjudication in the exercise of writ jurisdiction. The plaintiff's entitlement to recover the amount claimed was not adjudicated on merits. Consequently, the dismissal of the writ petition does not preclude the plaintiff from pursuing the claim by way of a civil suit, subject to limitation and other requirements of law.

55. Accordingly, the present suit is not barred by the dismissal of W.P.No.23443 of 2015. This issue is answered.

Issue No.4:

56. With the object of improving technical education and introducing trades such as Fitter, Welder and Electrician in its nine Industrial Training Institutions in Tamil Nadu, the defendant decided to upgrade the existing infrastructure and procure the machinery and equipment necessary for obtaining the requisite approval. Accordingly, tenders were invited, and the plaintiff supplied machinery and equipment to the nine institutions pursuant to the purchase order placed by the defendant.

57. According to the defendant, verification of the goods revealed that the

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machinery supplied was of inferior quality and unsuitable for its intended use. By letter dated 09.07.2012, the defendant directed the Regional Joint Registrar concerned to inspect the materials supplied. Thereafter, by letter dated 19.07.2012, the Principals of the institutions were instructed to verify the quality of the machinery and submit reports. The Principals reported that the machinery supplied was defective and unsuitable for use.

58. The defendant further states that, upon receipt of these reports, the plaintiff was called upon to conduct trial runs of the machinery but failed to do so. According to the defendant, the deficiencies in the machinery and the failure to demonstrate its satisfactory functioning affected the institutions' ability to obtain approval from the National Council for Vocational Training. Consequently, the defendant instructed the Principals concerned to take steps to return the machinery and equipment and recover the amounts paid.

60. The plaintiff denies that the goods supplied were defective and contends that the inspections were conducted in its absence and that the adverse reports were incorrect. This objection requires consideration. However, the plaintiff has not satisfactorily explained its failure to attend the institutions and demonstrate the functioning of the machinery when called upon to do so. Nor has the

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plaintiff established that it offered to participate in a joint inspection or otherwise rectify the defects reported by the institutions. Such failure is a relevant circumstance when appreciated along with the inspection reports, though it would not, by itself, establish that the goods supplied were defective.

61. The plaintiff relies upon Ex.P2 dated 10.06.2012, a photocopy of the undertaking letter issued by the plaintiff, which provides for rectification of manufacturing defects or deviations within three months from the date of supply. However, no acknowledgment evidencing receipt of the said communication by the defendant has been produced. Nor has the plaintiff established that the condition contained in Ex.P2 formed part of the tender conditions or the purchase order, or was subsequently accepted by the defendant. The plaintiff cannot, by a unilateral communication, impose a contractual restriction upon the defendant's right to complain of defective supply. At the same time, the absence of acknowledgment or proof of acceptance, by itself, is insufficient to conclude that Ex.P2 was fabricated for the purpose of the suit.

62. The defendant also relies upon the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. Although the enquiry

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officer's report has not been produced before this Court, both parties acknowledge that the report contains an adverse finding regarding the quality of the goods supplied by the plaintiff. The plaintiff, however, disputes the correctness of the finding and states that the proceedings have been challenged before the Tribunal. Thus, while the existence of the adverse finding is not disputed, its correctness has not been admitted by the plaintiff. In the absence of the enquiry report, this Court cannot examine the materials or reasoning underlying the finding and therefore cannot treat it as conclusive proof of defective supply. The issue must consequently be determined independently on the evidence adduced in the present suit.

63. The question must therefore be determined principally on the evidence relating to the condition and performance of the machinery supplied. The reports of the institutions concerned, read with the contemporaneous correspondence calling upon the plaintiff to demonstrate the functioning of the machinery, lend support to the defendant's case. The plaintiff's denial does not satisfactorily explain the deficiencies recorded in those reports, and its failure to attend to the complaints or conduct the requested trial runs further supports the defendant's contention.

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64. On an overall appreciation of the evidence, this Court finds, on a preponderance of probabilities, that the machinery and equipment supplied by the plaintiff were defective and unfit for their intended purpose. Accordingly, this issue is answered in favour of the defendant.

Issue No.5:

65. The tender document, marked as Ex.D1, does not contain any specific clause requiring the plaintiff to take back the machinery supplied. Nevertheless, the absence of such a clause does not absolve the plaintiff of its obligation to supply goods conforming to the contractual specifications.

66. Under Issue No.4, this Court has found that the machinery supplied was defective and unfit for its intended purpose. However, such a finding does not, by itself, establish an express contractual obligation on the part of the plaintiff to take back the machinery and refund the consideration received. The defendant's entitlement to reject the goods, require their removal or recover the amount paid would depend upon the applicable law, the terms of the contract and the relief duly claimed.

67. The present issue is confined to whether the terms of the contract required the plaintiff to take back the machinery supplied. Since no specific provision

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imposing such an obligation has been established from Ex.D1, Issue No.5 is answered in the negative, to that limited extent. This finding does not affect the conclusion under Issue No.4 regarding the defective nature of the goods supplied.

Issues Nos. 6, 7 and 8 :

68. These issues are taken up together for consideration. In view of the finding under Issue No.1 that the suit is barred by limitation, the plaintiff is not entitled to a decree for the principal amount or interest thereon. The plaintiff is also not entitled to any other relief. Accordingly, Issue Nos.6 to 8 are answered against the plaintiff.

69. In the result, the suit is dismissed with costs.

26-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
GSA

List of witnesses on the side of the plaintiff:

P.W.1 – Mr.M.Mohan

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List of evidences on the side of the plaintiff:

Ex.P1	Photocopy of the proceedings of Na.Ka.No.6676/2011/P1 for ordering for machineries dated 06.06.2012.
Ex.P2	Photocopy of the undertaking letter by plaintiff dated 10.06.2012.
Ex.P3	Letter with all invoices for supply of materially.
Ex.P4	Photocopy of the letter by plaintiff's counsel dated 07.05.2013.
Ex.P5	Photocopy of the representation by plaintiff to take delivery of machineries dated 13.03.2014.
Ex.P6	Certified copy of the order in W.P.No.11061 of 2014 dated 04.07.2014.
Ex.P7	Photocopy of the notice by plaintiff's counsel dated 08.05.2015.
Ex.P8	Photocopy letter by defendant with copy of letter dated 14.05.2015
Ex.P9	Photocopy of the letter by plaintiff dated 23.04.2018
Ex.P10	Letter by defendant dated 07.05.2018
Ex.P11	Photocopy of the letter by plaintiff pointing breach of obligations dated 23.07.2018
Ex.P12	Letter by defendant dated 19.09.2018.
Ex.P13	Photocopy of the letter by plaintiff dated 12.10.2018
Ex.P14	Photocopy of letter by plaintiff dated 05.04.2019.
Ex.P15	Photocopy of letters by the defendant to plaintiff dated 03.06.2019.
Ex.P16	Legal notice sent by plaintiff's counsel to defendant with acknowledgment card dated 13.09.2019.
Ex.P17	Photocopy of the GST certificate dated 28.11.2008
Ex.P18	Photocopy of the T.N. Commercial Tax certificate dated 05.01.2007.
Ex.P19	Photocopy of the appointing inspection officials dated 20.02.2013.
Ex.P20	Photocopy of the defendant order dated 07.01.2015.
Ex.P21	Photocopy of the order in W.P.No.23443/2015 dated 03.08.2015.
Ex.P22	Photocopy of the order in WMP.No.9242 of 2017 in W.P.No.8444/2017 dated 11.04.2017.
Ex.P23	Photocopy of the IGST certificate dated 26.06.2017
Ex.P24	Photocopy of the Director Appointing Inspection officials dated 17.10.2018

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Ex.P25	Photocopy of the Verification Report Tirunelveli ITI dated Nil
Ex.P26	Photocopy of the Verification Report Coimbatore ITI dated Nil
Ex.P27	Photocopy of the Verification Report Madurai ITI dated Nil
Ex.P28	Photocopy of the Verification Report Thanjavur ITI dated Nil
Ex.P29	Photocopy of the Verification Report Krishnagiri ITI dated 15.11.2018
Ex.P30	Photocopy of the Verification Report Ranipet ITI dated 28.12.2018
Ex.P31	Photocopy of the Verification Report Kanchipuram ITI dated Nil
Ex.P32	Photocopy of the Verification Report Pattukottai ITI dated Nil
Ex.P33	Photocopy of the Verification Report Salem ITI dated 02.01.2019
Ex.P34	Photocopy of the Director Employment Letter to MD/TNCU dated 09.02.2019
Ex.P35	Photocopy of the Director Employment Letter to MD/TNCU dated 18.02.2019
Ex.P36	Photocopy of the Inspection Committee Report dated 21.02.2019
Ex.P37	Photocopy of the order made in WMP No.7548/2019 in WP.No.9601/2019 dated 23.04.2019

List of Witnesses on the side of defendant:

DW1 – Mr.G.Kamaraj

List of documents on the side of defendant:

Ex.D1	Tender document dated 17.05.2012
Ex.D2	Letter to the plaintiff Principal ICM, Thirunelveli dated 31.01.2014
Ex.D3	Letter to the plaintiff from the Principal ICM, Thanjavur dated 07.02.2014
Ex.D4	Letter to the plaintiff from the Principal ICM, Salem dated 03.03.2014
Ex.D5	Letter to the Plaintiff from the Principal ICM, Vellore dated 15.04.2014
Ex.D6	Letter to the plaintiff from the Principal II Pattukootai dated 07.02.2014
Ex.D7	Letter to the Plaintiff dated 23.01.2014

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Ex.D8	Letter to the plaintiff from the Principal ICM, Coimbatore dated 05.03.2014

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GSA

To

The Special Officer/Managing Director,
Mr.N.V.Natarajan Maaligai,
Tamil Nadu Co operative Union
No.170, Periyar EVR Road,
Kilpauk, Chennai-10.

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DR.A.D.MARIA CLETE J.

GSA

PRE-DELIVERY JUDGMENT IN
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